

# EAST MAUI IRRIGATION COMPANY, LLC

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

April 25, 2020

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

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

Dear Chair Case:

The purpose of this letter is to provide a compliance status report on A&B/EMI's compliance with permit conditions imposed by the Board of Land and Natural Resources ("**BLNR**") as part of its October 11, 2019 approval of the holdover of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to A&B and Revocable Permit No. S-7266 issued to EMI for the calendar year 2020. We are providing this status report at this time in compliance with the conditions of the permits requiring quarterly written reports to the BLNR.

The attached document lists each of the permit conditions and corresponding compliance actions undertaken as of the date of this letter. We have also attached a copy of the agenda, draft minutes, and staff recommendation of the BLNR's October 11, 2019 meeting relating to the subject permits. These three documents are the source of the permit conditions listed on the attached.

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

A&B and EMI continues to work with Mahi Pono on the filing of the Environmental Impact Statement ("**EIS**") for the proposed long-term water lease for East Maui, in lieu of these revocable permits. We are

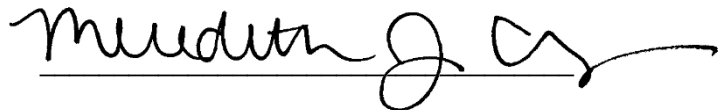
## Exhibit Y-5

currently drafting responses to each of the hundreds of comments that were submitted during the Draft EIS comment period.

Additionally, previously scheduled MP/A&B East Maui Revocable Permit Committee meetings for the fiscal year 2020 have been postponed because of the COVID 19 pandemic. Quarterly meetings that were tentatively scheduled for March 25, June 25, September 25, and December 29, 2020 will be rescheduled or confirmed when it is safe to do so.

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

Sincerely,

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

Meredith J. Ching, A&B

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

Mark Vaught, EMI

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

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## BLNR CONDITIONS FOR HOLDOVER OF EAST MAUI WATER PERMITS STATUS OF COMPLIANCE AS OF March 31, 2020

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

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

The current need for water from the East Maui streams averages approximately 28 million gallons per day (MGD), and only that amount of water is being diverted from the East Maui watershed. This amount continues to be well within the bounds of the 2018 IIFS decision concerning total quantity as well as the use of specific streams. This water is being used to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, as well as fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

Mahi Pono will continue the expansion of its agricultural operations, which will result in a corresponding increase in the need for water from East Maui over the remainder of the year. In the short-term (Q2 2020), this expansion will include the planting of 317 acres of coffee, 40 additional acres of papaya, 18 acres of onions, 208 acres of citrus, and 21 acres of sudan grass cultivated for cattle feed. That said, the Permittees – and by extension, Mahi Pono – are committed to the efficient use of East Maui stream water. Mahi Pono's total amount of water usage, together with that of the County of Maui, will not exceed the limits of the IIFS decision at any point during its expansion.

The Permittees have also initiated discussions with CWRM staff on IIFS compliance for the 'non-taro streams.' A draft work plan has been submitted to CWRM for 41 diversions on 17 additional streams that are implicated by the 2018 IIFS decision. Prior to the issuance of a final approval, CWRM will need to conduct site visits to each diversion site. In the meantime, the Permittees comply with the IIFS decision concerning flow requirements (i.e., by individual streams and the total quantity of flow). Connectivity requirements of the IIFS decision are being met to the extent possible without the physical modifications that require governmental reviews and approvals. The draft work plan transmitted by the Permittees to the CWRM does address means of achieving full connectivity compliance for these additional streams.

In summary, the Permittees' diversion of water under the subject 2019 RP's has been in compliance with the CWRM's June 20, 2018, IIFS order concerning flow volumes, by individual streams, and compliance with connectivity requirements has been met to the

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extent legally possible without further governmental review and approvals and significant progress has been made on pursuing the modifications and abandonment of diversions on the seven 'taro streams,' an established and continued priority for both the permittees and the State.

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

Status: See uses outlined in response to #3 above. All are beneficial uses related to agriculture and municipal/public needs.

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

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

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

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui was approximated 28 MGD this past quarter, which is well within the bounds of the CWRM's 2018 IIFS decision concerning the diversion of specific streams and the total amount of water diverted. The Permittees achieved significant progress in 2019 relative to pursuing the ditch system/diversion modifications that are necessary to ensure IIFS compliance.

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

Status: This permit condition was initially imposed in 2018 and we believe relates to a pipe at Pualoa (aka Puolua) Stream at the Lowrie Ditch. In last year's status report, we reported that the pipe had been extended to provide wetted pathways for the movement of stream biota on Pualoa Stream. At the 2018 BLNR hearing on the subject RP's (for 2019), statements were made that the pipe needs to be extended further to go under the road and that two 4" rusted pipes needed to be removed. Accordingly, the two 4" pipes have since been removed from the watershed and a new design intended to improve fish migration has been incorporated in the diversion modification plan for compliance with the IIFS, and approved by the CWRM in its approval of the Category 3 SWUP's. This specific scope of work was part of the overall work plan referenced earlier.

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

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Status: The Permittees have established a number of standard operating procedures to address the cleanup of trash and debris in the license areas. Besides recognizing unnecessary debris in the field during routine maintenance tasks, EMI has conducted specific identification and removal operations of debris that has been observed from previous field work. To date, EMI has recovered hundreds of feet of old PVC and steel pipe, old wooden and steel gates, discarded wooden structures and remnant pieces of concrete. Also, as previously reported, EMI also removed two large tractors that were abandoned in the field many decades ago. EMI also has in place a practice of removing any equipment and excess materials it brings into the license area to perform work on the ditch system as soon as the job(s) is completed.

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

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

Status: Previously scheduled MP/A&B East Maui Revocable Permit Committee meetings for the fiscal year 2020 have been postponed because of the COVID 19 pandemic. Quarterly meetings that were scheduled for March 25, June 25, September 25, and December 29, 2020, will be rescheduled or confirmed when it is safe to do so.

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

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

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Status: The amount of water used on a monthly basis, including the monthly amount of water delivered for the County of Maui DWS and Kula Ag Park, diversified agriculture, industrial and non-agricultural uses, and reservoir/fire protection/hydroelectric uses can be found in the table attached as Exhibit A. This table also includes an estimated 22.7% system loss, which is consistent with the Hearing Officer's Amended Proposed Findings of Fact, Conclusions of Law, & Decision & Order for Case No. CCH-MA13-01.

The location, crop, and users of agricultural water, and the specifics on industrial and non-agricultural uses can be found in the table attached as Exhibit B.

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

Status: See attached table in Exhibit C.

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

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

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

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

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

Status: The current need for water from the East Maui streams averages approximately 28 million gallons per day (MGD), and only that amount of water is being diverted from the East Maui watershed. This amount continues to be well within the bounds of the 2018 IIFS decision concerning total quantity as well as the use of specific streams. This water is being used to supply the County of Maui for its Nahiku and Upcountry Maui water systems, the Kula Ag Park, as well as fire suppression needs, historical industrial/non-agricultural use, and agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono.

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

Status: Representatives from EMI and DOFAW held a follow-up meeting on March 18, 2020 to discuss general logistics related to the potential removal of forest reserve acreages from the license area. This initial meeting included an exchange of information related to access routes and a discussion relating to potential impacts on EMI's operations as a result of a reduction in the license area. This was the first meeting to broadly discuss a very fluid situation, and future meetings will be scheduled as more information becomes available.

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**EXHIBIT A – MONTHLY WATER USAGE**

All Figures in Millions of Gallons per Day (“MGD”)

<i>Month</i>	<i>East Maui Water @ Honopou</i>	<i>System Losses (22.7% as cited in CWRM D&amp;O)</i>	<i>County of Maui DWS <sup>1</sup></i>	<i>County of Maui Ag Park <sup>2</sup></i>	<i>Diversified Agriculture <sup>4</sup></i>	<i>Historical/Industrial Uses <sup>5</sup></i>	<i>Reservoir / Fire Protection / Evaporation / Dust Control / Hydroelectric <sup>3</sup></i>
JANUARY	30.10	6.83	1.07	0.39	2.45	1.10	18.26
FEBRUARY	25.28	5.74	1.17	0.37	2.46	1.10	14.45
MARCH	27.98	6.35	0.95	0.37	2.58	1.10	16.63
QUARTERLY AVERAGE	27.79	6.31	1.06	0.38	2.50	1.10	16.44

1. The numbers in this column are based on reports received from the County of Maui and have not been independently verified by EMI. Operationally, a minimum of approximately 6 mgd must be reliably conveyed to / made available to the County each and every day so that the County has flexibility regarding when to run its plan depending upon weather conditions, demand, water available from its Piholo plant, etc. Water conveyed by EMI but not used by the County is redirected by EMI to reservoirs located on the former plantation.
2. The numbers in this column are based on reports received from the County and have not been independently verified by EMI. Operationally, a minimum of approximately 1.5 mgd must be reliably conveyed to / made available to the County each and every day so that the County can be flexible regarding how to meet the needs of the Ag Park. Water conveyed by EMI but not used by the County is redirected by EMI to reservoirs located on the former plantation.
3. The numbers in this column include water not separately accounted for in the columns to the left, including evaporation, which cannot be directly measured. The EMI system is operated in a manner that insures continuous water availability in the reservoirs to meet the County's needs for fire protection for brush fires, the risk of which has increased due to the reduction of the irrigated acreage following the cessation of sugar cultivation. Imported water that is used for hydroelectric power generation is also directed to the reservoirs.
4. Diversified Ag includes the users/uses described in Exhibit B.
5. Historical/Industrial Uses are uses other than plantation and A&B uses. These include uses by entities located either adjacent to or within the boundaries of the farm and are further described in Exhibit B.



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**EXHIBIT B – WATER USAGE SPECIFICS**

Primary Ag Water Users

<b>Entity</b>	<b>Crop</b>	<b>Location (TMK)</b>	<b>Field</b>
<b>Mahi Pono</b>	Row Crops (Potatoes & Onions)	380040010000	809
<b>Mahi Pono</b>	Papaya	380030020000	807
<b>Mahi Pono</b>	Citrus	380040010000	803
<b>Mahi Pono</b>	Coffee	250020020000	301
<b>Maui Best (Tenant)</b>	Sweet Potato	250010010000	409
<b>Maui Best (Tenant)</b>	Sweet Potato	250010010000	408

Other Water Users

<b>Water Users</b>	<b>Source/Delivery Point</b>	<b>Use</b>	<b>Water User's Location</b>	<b>Relation</b>
HC&D, LLC and subtenant Maui Paving (Camp 10 Puunene Quarry)	Puunene Surface Water (702 Cistern south of Pulehu Rd and Haiku Ditch)	Historical & Industrial	38001001, 38003004, 38003021	Tenant
HC&D, LLC and subtenant Maui Paving (Camp 10 Puunene Quarry)	Pumps from Haiku Ditch	Historical & Industrial		Tenant
Imua Energy Maui, LLC (fka Maui EKO Systems LLC (tenant of County Central Maui Landfill))	Puunene Surface Water (pumps from Haiku Ditch)	Historical & Industrial	38003019	Neighbor
HC&S Fire Suppression	Puunene Surface Water (702 Cistern)	Historical & Industrial		
New Leaf Ranch (non-profit)	Puunene Surface Water (702 Cistern south of Pulehu Rd and Haiku Ditch)	Historical & Industrial	38006029	Tenant
Chem Plant Baseyard	Puunene Surface Water (702 Cistern south of Pulehu Rd and Haiku Ditch)	Historical & Industrial		Subsidiary
Costo Maddela (pasture tenant)	Puunene Surface Water	Ag - Pasture	38001001	Tenant
Maui Demolition & Construction Landfill (Decoite Trucking)	Pipeline from Reservoir 91	Historical & Industrial	38005002	Tenant
Gary Vares, Sr. & Gary Vares, Jr	Pumps from Waihee Ditch	Ag - Pasture	38007101	Tenant
Brendan Balthazar	Pumps from Waihee Ditch (supplied by G. Vares)	Ag - Pasture	38007101	Tenant
Manuel Lopes & Christopher Lopes	Pumps from Waihee Ditch	Ag - Pasture	38007101	Tenant
Santos, Harriet, Michael & Jordan	Rights to pipe water from Kauhikoa Ditch	Ag - Pasture	25001018, 25001019	Tenant
Pagan, Leonard	Kauhikoa Ditch	Ag - Pasture	25002001	Tenant
Cambra, Harry	Hamakua Ditch	Ag - Pasture	25003026, 25003027	Tenant
Cambra, Harry	Kauhikoa Ditch	Ag - Pasture	250030380003, 25003036, 25003037, 250030380004	Tenant
Kolani Distillers - Rum Tenants Fire Suppression	Surface water from Haiku Ditch	Historical & Industrial	250050540000	Tenant
Kulolio stock water	Lowrie and Haiku Ditches	Stock water/Cattle	250040360000	Internal MP Use
Terviva trials (30 Acres)	Lowrie Ditch (extra bypasses to res 82)	Pongamia Orchard	380040010000	Tenant

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**EXHIBIT C – CWRM ORDER STATUS UPDATE**

Stream Name	Restoration Status	BFQ50 at IIFS (cfs) 38	IIFS Value (cfs)	IIFS Location	Current Status
Makapipi	Full	1.3	n/a	Above Hana Highway	Gate removed, water flowing downstream below the intake
Hanawi	Connectivity	4.6	0.92	Below Hana Highway	Gate open, water flowing downstream below the intake
Kapaula	Connectivity	2.8	0.56	On diversion at Koolau Ditch	Main gate open, water flowing downstream below intake
Waiaka	None	0.77	0.77	Above Hana Highway	Gate open, water flowing downstream below the intake
Pa'akea	Connectivity	0.9	0.18	At Hana Highway	Intake gate closed, water flowing downstream over dam
Waiohue	Full	5	n/a	At Hana Highway	Intake gate closed, sluice gate removed. All water flowing downstream
Puakaka	Connectivity	1.1	0.2	Above Hana Highway	Gate open, water flowing downstream below the intake
Kopiliula	H90	5	3.2	Below Hana Highway	Main gates open, ditch control gates closed.
East Wailuaki	H90	5.8	3.7	At Hana Highway	Gate open, water flowing downstream below the intake
West Wailuaki	Full	6	n/a	Above Hana Highway	Gate open, water flowing downstream below the intake
Wailuanui	Full	6.1	n/a	At Hana Highway	All intakes sealed (Category 1) water flowing below the intake
Ohia/Waiamu	None	4.7	n/a	None	No diversion
Waiokamilo	Full	3.9	n/a	Below diversion at Koolau Ditch	All intakes closed, water flowing downstream
Palauhulu	Full	11	n/a	Above Hana Highway	All water either passing intakes or flowing out of the Kano sluice gate
Pi'inau	Full	14	n/a	Above Hana Highway	Intake sealed, water flowing downstream
Mua'ilua	Connectivity	0.28	2.2	To be determined	Intake gate closed, water flowing downstream over dam
Honomanu	H90	4.2	4.2	Above Hana Highway	All 4 diversion sluice gates are open
Punahau/Koiaa	H90	4.5	2.9	Above Hana Highway	Sluice gate open, water flowing downstream below intake
Hai'pua'ena	Connectivity	4.9	1.36	Below Hana Highway	Intake gate closed, water flowing downstream. dam will require modification
Puohokamoa	Connectivity	8.4	1.1	Below Hana Highway	Intake gate closed, water flowing downstream. Intake dam will require significant modification
Wahinepee	None	0.9	0.9	Above Hana Highway	No diversion
Waikeoni	H90	6.7	3.8	Above Hana Highway	Center Ditch sluice gate open
Haneho'i	Full	2.54	n/a	Upstream of Lowrie Ditch	Intakes sealed
Huele (Puulua)	Full	1.47	n/a	Downstream of Haiku Ditch	Lowrie intake will require significant modification/Haiku intake sealed
Honopou	Full	6.5	n/a	Below Hana Highway	Three sluice gates open, one intake sealed. One of two Waiolale intakes sealed