

From: Beau Acoba
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony Regarding KIUC Permit
Date: Tuesday, October 8, 2019 4:29:41 PM

Aloha Board,

My name is Beau Acoba and I am born on Kaua'i and raised in the small town of Kekaha.

I am in support of the necessary diversions to get water through KIUC's Hydropower Plant. To offer the island 24 hr energy from a renewable source is vital to keep every ounce of oil being imported to Kaua'i. The plant doesn't consume the water, it just borrows the necessary volume to turn the turbine.

Sure, electricity bills are high but in the end, that's because of the user leaving lights or fans on. This plant is only helping the island and its resources. Any rumor I've heard about hydroelectric plants being detrimental to the environment is simply not true and was spread by fear mongering misinformation by a group that hides behind a skewed ideologies with no interest in the vast majority of Kaua'i residents.

I urge you to renew this permit because in the end, its the locals that are working to better the island of Kaua'i by utilizing these renewable energy sources we are blessed with. These hydroelectric plants are critical for the future of Kaua'i and for the generations after me to live a life with clean energy and less oil being burned.

Thank you for your attention to this testimony.

Beau Acoba

ITEM D-1

From: Peter Baldwin
To: [DLNR.BLNR.Testimony](#)
Subject: KIUC Hydro Plant
Date: Sunday, October 6, 2019 12:44:27 PM

I am a resident of Kauai and member of KIUC and am in support of KIUCs efforts to continue to be allowed to have water for their Hydro Plant. Please issue them the appropriate permits.

Thank you.

Peter Baldwin

From: Tom Blackburn-Rodriguez
To: [DLNR.BLNR.Testimony](#)
Subject: Testifying before The Board Of Land & Natural Resources in support of the passage of Item D-1
Date: Tuesday, October 8, 2019 7:21:28 PM

Aloha,

I am submitting written testimony to The Board Of Land & Natural Resources in support of the passage of Item D-1 on the Friday, October 11 agenda, to continue Revocable Permits for Water Use and to issue a Revocable Permit for Water Use to Kau Mahi.

I am testifying in support of the following:

Continuation of Revocable Permits for Water Use to:

Alexander & Baldwin and East Maui Irrigation Company (Maui)
Hawaii Electric Light Company (Hawaii Island)
Kapapala Ranch (Hawaii Island)
Kuahiwi Contractors (Hawaii Island)
Edmund Olson Trust (Hawaii Island)
Wood Valley Water & Farm Cooperative (Hawaii Island)
 Kauai Island Utility Cooperative (Kauai)
 Jeffrey Linder (Kauai)

Issuance of Revocable Permit for Water Use to:
 Kau Mahi, LLC (Hawaii Island)

In December 20,2018, much of the former HC&S sugar cane lands were acquired by Mahi Pono, which plans to cultivate these fields with diversified agricultural crops.

The Revocable Water Permits are needed until a long term water lease can be issued to continue to provide water for agricultural and domestic purposes in Central and Upcountry Maui. Much progress has been made towards the issuance of a long term state water lease:

Several important, but time-consuming steps must be taken prior to BLNR considering a long term water lease, which include:

- A decision on the petition to amend the Interim Instream Flow Standards for East Maui streams;
- Preparation of an Environmental Impact Statement; and
- A contested case proceeding on the lease.

Progress has been made on two of these items:

- Interim Instream Flow Standards (IIFS) Established – In June 2018, the Commission on Water Resource Management issued its IIFS decision for the petitioned East Maui streams. Of the 36 streams in the state lease area, the decision provides for:
 - o Kalo & Community Streams – Full restoration of 10 streams; no diversions allowed.
 - o Habitat Streams – In addition to the 10 fully restored streams, water restored to 12

additional streams, limiting diversions, to foster improved habitat for native fish and other stream animals.

- o Public Use Streams – County’s use of stream water for off stream purposes recognized (Upper and Lower Kula Pipelines, Kamole Treatment Plant).
- o Streams To Support Diversified Agriculture – Off-stream use of stream water for agriculture recognized; decision said to provide for 90% of irrigation needs for 23,000 acres of IAL in Central Maui.

Environmental Impact Statement (EIS) – A Draft EIS was published for public review by the State Office of Environmental Quality Control in September 2019. Publication of the Final EIS is anticipated in mid-2020.

Contested Case Proceeding – Still pending, it is envisioned to re-commence following completion of the EIS.

East Maui Water is being used for the public benefit—preservation of agriculture on Maui; Upcountry Maui community:

The revocable water permits will enable water to continue to be provided to meet the:

- agricultural irrigation needs for diversified agricultural production in Central Maui;
- domestic water needs for approximately 36,000 Upcountry Maui residents, and Upcountry public facilities and businesses; and
- agricultural irrigation needs of small farmers in Kula.

Mahi Pono’s Farm Plan includes potential crops for approximately 30,000 acres of land in Central Maui:

- Orchard Crops;
- Tropical Fruits;
- Row & Annual Crops;
- Energy Crops;
- Pasture (Irrigated & Unirrigated).

·The continuation of revocable water permits will allow the collection and use of water to continue on Maui while the long term water lease is being actively pursued. Maui residents believe the continuation of revocable water permits is very important.

We want:

- o to see the central valley remain green;
- o to see new agricultural opportunities spawned on Maui;
- o to see Maui’s economy strengthened and their rural quality of life maintained;
- o to continue to see a healthy Upcountry Maui community.

Mahalo for your consideration of my testimony.

Tom Blackburn-Rodriguez



From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony in OPPOSITION to Agenda Item D-1, renewal of A&B/Mahi Pono's revocable permits
Date: Tuesday, October 8, 2019 4:32:52 PM

Dear Chair Case and the members of the Board of Land and Natural Resources,

I support naturally flowing streams, local diversified agriculture and a sustainable future for our island community but I ask that the Board deny Alexander & Baldwin, East Maui Irrigation Company and Mahi Pono's request for a renewal on their revocable permits to divert stream water from East Maui.

I thank the Board and the Department of Land and Natural Resources' staff for submitting a more comprehensive review of the East Maui stream diversion situation than in past years. Among the improvements is a cap on the amount of water that can be diverted from East Maui. I, however, ask that the cap be decreased—A&B and Mahi Pono have not given sufficient justification for the taking of additional water over the 25 million gallons a day. A&B no longer uses the land for agriculture and Mahi Pono is currently only using a small portion of the agricultural lands that they purchased, and those lands have access to groundwater wells and water from West Maui.

Another related improvement is the recent work to remove diversion in some streams. This is noteworthy progress towards restored stream ecosystems but the Board should require the diverters to notify surrounding residents downstream when stream work is in progress to avoid putting residents and visitors in danger.

The Board should also take further steps to ensure the protection of public water and resources dependent on that water. The Board must protect those 13 streams which are completely unprotected now and which A&B routinely completely de-waters. A&B, EMI, Mahi Pono should be required to measure and report the amount of water that is taken from each stream.

A&B and Mahi Pono are also currently in the review process of their Draft Environmental Impact Statement to obtain a long-term lease. This study is long overdue and is bound to reveal impacts and data that would directly inform the Board's decision. For this reason and others previously stated, I ask that you at least limit the amount of water taken from East Maui streams to the 25 mgd that it has been using for the past two years or better yet deny A&B and Mahi Pono's request to renew their revocable permits.

Thank you for this opportunity to testify on this important matter.

Sincerely,
Richard Booth

[REDACTED]

From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony in OPPOSITION to Agenda Item D-1, renewal of A&B/Mahi Pono's revocable permits
Date: Tuesday, October 8, 2019 4:42:22 PM

Dear Chair Case and the members of the Board of Land and Natural Resources,

I support naturally flowing streams, local diversified agriculture and a sustainable future for our island community but I ask that the Board deny Alexander & Baldwin, East Maui Irrigation Company and Mahi Pono's request for a renewal on their revocable permits to divert stream water from East Maui.

I thank the Board and the Department of Land and Natural Resources' staff for submitting a more comprehensive review of the East Maui stream diversion situation than in past years. Among the improvements is a cap on the amount of water that can be diverted from East Maui. I, however, ask that the cap be decreased—A&B and Mahi Pono have not given sufficient justification for the taking of additional water over the 25 million gallons a day. A&B no longer uses the land for agriculture and Mahi Pono is currently only using a small portion of the agricultural lands that they purchased, and those lands have access to groundwater wells and water from West Maui.

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A&B and Mahi Pono are also currently in the review process of their Draft Environmental Impact Statement to obtain a long-term lease. This study is long overdue and is bound to reveal impacts and data that would directly inform the Board's decision. For this reason and others previously stated, I ask that you at least limit the amount of water taken from East Maui streams to the 25 mgd that it has been using for the past two years or better yet deny A&B and Mahi Pono's request to renew their revocable permits.

Thank you for this opportunity to testify on this important matter.

Sincerely,
Jonathan Boyne

[REDACTED]

From: Scott Giarman
To: [DLNR.BLNR.Testimony](#)
Subject: Waiahi Kauai hydropower
Date: Friday, October 4, 2019 1:26:49 PM

Aloha—

I am writing in support of Kauai Island Utility Cooperative’s pursuit of approval for a long-term lease for the Blue Hole Diversion in order to keep its Waiahi Hydropower Plants operational.

Hydropower is inexpensive and as clean an energy source as is possible; it makes eminent sense to utilize Kauai’s abundant supply of water (home of “the wettest spot on Earth”) to produce electricity for the people of our island.

The Waiahi power plants in question have been operating inexpensively, efficiently and cleanly for over 100 years. The people of Kauai have greatly benefitted from – and have not been adversely affected in any way by – this means of generating electricity. The use of water to operate this clean facility has no negative impacts upon the environment, facilitates agricultural activity and is not detrimental to the use of water for recreational activities.

At this time of extreme peril to the planet resulting from climate change, it is incumbent for every citizen of Earth to do as much as possible to mitigate man-made environmental degradation. As this facility obviates the need to burn 675,000 gallons of diesel fuel *every year* (not to mention saving Kauai residents \$1.75M every year), permitting it to continue in operation, frankly, is a “no-brainer”.

Respectfully submitted,
Scott N. Giarman

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██████████



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From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony in OPPOSITION to Agenda Item D-1, renewal of A&B/Mahi Pono's revocable permits
Date: Tuesday, October 8, 2019 4:19:37 PM

Dear Chair Case and the members of the Board of Land and Natural Resources,

I support naturally flowing streams, local diversified agriculture and a sustainable future for our island community but I ask that the Board deny Alexander & Baldwin, East Maui Irrigation Company and Mahi Pono's request for a renewal on their revocable permits to divert stream water from East Maui.

I thank the Board and the Department of Land and Natural Resources' staff for submitting a more comprehensive review of the East Maui stream diversion situation than in past years. Among the improvements is a cap on the amount of water that can be diverted from East Maui. I, however, ask that the cap be decreased—A&B and Mahi Pono have not given sufficient justification for the taking of additional water over the 25 million gallons a day. A&B no longer uses the land for agriculture and Mahi Pono is currently only using a small portion of the agricultural lands that they purchased, and those lands have access to groundwater wells and water from West Maui.

Another related improvement is the recent work to remove diversion in some streams. This is noteworthy progress towards restored stream ecosystems but the Board should require the diverters to notify surrounding residents downstream when stream work is in progress to avoid putting residents and visitors in danger.

The Board should also take further steps to ensure the protection of public water and resources dependent on that water. The Board must protect those 13 streams which are completely unprotected now and which A&B routinely completely de-waters. A&B, EMI, Mahi Pono should be required to measure and report the amount of water that is taken from each stream.

A&B and Mahi Pono are also currently in the review process of their Draft Environmental Impact Statement to obtain a long-term lease. This study is long overdue and is bound to reveal impacts and data that would directly inform the Board's decision. For this reason and others previously stated, I ask that you at least limit the amount of water taken from East Maui streams to the 25 mgd that it has been using for the past two years or better yet deny A&B and Mahi Pono's request to renew their revocable permits.

Thank you for this opportunity to testify on this important matter.

Sincerely,
ANDREW ISODA

[REDACTED]



Via E-Mail

October 8, 2019

The Honorable Suzanne D. Case, Chairperson
And Members of the Board of Land and Natural Resources
DLNR Main Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Comments in Support of Agenda Item D-1 - Continuation of Revocable Permits for Water Use on the Islands of Maui, Hawaii and Kauai; Issuance of Revocable Permit for Water Use to Kau Mahi, LLC (Island of Hawaii).

Friday, October 11, 2019, 9:15 a.m., in Land Board Conference Room 132, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF submits that there are ample facts and evidence to **support passage of Agenda Item D-1 to continue Revocable Permits for Water Use and to issue a Revocable Permit for Water Use to Kau Mahi, LLC.** LURF's position is based on the consistency of continuing said Revocable Permits with the purpose, intent and provisions of Hawaii Revised Statutes (HRS), Section 171-58 (as amended); and the fact that the continuation and issuance of the Permits are also consistent with the public trust doctrine. LURF's comments are based on information regarding and underlying the Permits, as well as laws and principles relating to land use, water and the public trust doctrine.

Factual Background. HRS Section 171-58 was amended by Act 126 (effective July 1, 2016), and thereby afforded the Board of Land and Natural Resources (BLNR, or Board) the authority to issue, on an annual basis, holdover permits to enable a previously authorized disposition of water rights to continue while a pending application for the disposition of said rights is being finally resolved or a total of three consecutive one-year holdovers, whichever is sooner; provided that the total period of the holdover for any applicant shall not exceed three years; and provided further that the holdover is consistent with the public trust doctrine.

Act 126 (2016) was specifically enacted to address and resolve an inequitable situation which had affected a number of permittees, and had been made known through a January 2016 Circuit Court decision which held that under HRS Section 171, the BLNR did not possess the authority to issue State water permits for a term greater than one year, thereby invalidating the permits which allowed water collection to continue. The Circuit Court's ruling essentially provided that under HRS Chapter 171, the BLNR was only able to grant either one-year revocable permits, or long-term water leases, and nothing else – which left a number of permittees which have had revocable State water permits in place for longer than one year, in limbo.

Since the passage of Act 126 in 2016, BLNR has approved the holdover of revocable permits for water use, however, that Act sunsets in 2019 and the Legislature did not pass a bill to further extend the authority of BLNR to annually authorize the continuation of revocable water permits.

Meanwhile, in June 2019, the Hawaii Intermediate Court of Appeals (ICA) vacated the above-referenced 2015 Circuit Court decision that had invalidated the Revocable Permits. LURF understands the case has been sent back to the Circuit Court for further proceedings, and that the State Attorney General has determined that the ICA ruling enables the State to renew the Revocable Permits which are presently set to expire at the end of 2019.

The Board's approval of this item will therefore authorize the continuation of Revocable Permits for water use through 2020 and authorize the issuance of a Revocable Permit to Kau Mahi for water use purposes.

LURF's Position

Board Approval Will Authorize Vital Continuation of Revocable Water Permits Through 2020.

LURF believes the drafters of the original version of HRS Section 171-58 could not possibly have anticipated, let alone intended the inequity of the application of the statute to extraordinary current situations involving a number of permittees

of water rights, which have relied upon the waters for years past, and have made substantial investments based on said waters.

LURF further believes it would be unconscionable for this Board to stand by and ignore the potential agricultural, economic and social consequences, as well as the health and safety issues that could arise should it decide against exercising its authority to continue the Revocable Permits pursuant to HRS Section 171-58 (as amended) in situations such as the present, when in fact, underlying extraordinary circumstances exist, which are completely outside the control of said permittees, and where every effort is being made to timely effectuate the process for issuance of a long-term State water lease.

Even given the opportunity to continue the Revocable Permits, the present reality is that the process for issuance of a long-term water lease requires completion of several complex, time-consuming regulatory processes, and is fraught with contested case hearing proceedings and other legal challenges, including litigation, brought by opponents of the disposition¹.

LURF believes it only right and fair that present permittees should, at the very least, be allowed to continue their Revocable Permits through 2020 to provide them with additional time to work with DLNR so long as they are making earnest effort to comply with the process required to secure their leases to continue previously authorized dispositions of water rights, and so long as the continuation of said Permits is consistent with the public trust doctrine.

Passage of this agenda item will enable the State of Hawaii to attain several critical objectives, including the following:

- Continue to make progress towards achieving its local food production and renewable energy goals;
- Provide a reliable source of irrigation water to farmers and ranchers State-wide, which supports the long-term viability and security of local agricultural operations; allows for the local production of food; and promotes the goal of food sustainability and food security in Hawaii;

¹ Today, the process for issuing a long-term State water lease could include several important, potentially time-consuming regulatory processes, which were likely not contemplated by the drafters of HRS Chapter 171. Prior to the issuance of a water lease, required steps may include the following:

- An environmental assessment or environmental impact statement - compliance with HRS Chapter 343.
- The amendment of interim instream flow standards.
- An appraisal.
- Contested case hearing proceedings and other litigation.
- Conduct of the sale of the lease at public auction.

- Allow local farmers and ranchers to continue agricultural operations on Kauai, Maui, and Hawaii Island, which have depended on access to water via revocable water permits;
- Allow utility companies on Hawaii Island and Kauai to provide clean energy to domestic and commercial users through use of water authorized by revocable water permits for hydroelectric facilities, thereby sustaining their on-going contribution to Hawaii's renewable energy portfolio; and
- Avoid significant disruption to on-going agricultural and renewable energy operations and give existing revocable water permit holders time to pursue long-term leases with the State while maintaining access to an adequate supply of water.

Continued Revocable Water Permits are Needed Until a Long-Term Water Lease Can be Issued to Provide Water for Agricultural and Domestic Purposes in Central and Upcountry Maui.

The potential invalidation of Revocable Permits on Maui which serve the water needs of the County of Maui and its 36,000 Upcountry Maui residents and small farmers, as well as 30,000 acres which had been farmed by Hawaiian Commercial & Sugar Company (HC&S) prior to cessation of sugar operations at the end of 2016 and which is now being transitioned into a diversified agricultural model,² is of significant concern.³

On the island of Maui, much of the water used for residents' domestic use and agricultural purposes in Central and Upcountry Maui would not be available until a long-term State water lease is secured, which may be years away. This vital water source has enabled agriculture to thrive in Central Maui for over one hundred years and is essential to keep these lands in continued agricultural production after cessation of sugar operations. Ongoing efforts to transition Maui sugar operations to diversified agriculture (grass fed livestock, bio-energy crops, establishment of an agricultural park) are in jeopardy due to the need for an adequate and reliable supply of cost-efficient water.

East Maui Irrigation Company (EMI), a subsidiary of Alexander & Baldwin, Inc. (A&B), has collected water from State lands in East Maui continuously for well

² In December 2018, much of the former HC&S sugar cane lands were acquired by Mahi Pono, LLC, which plans to cultivate these lands with diversified agricultural crops.

³ While the situation faced on Maui is of imminent concern, other islands are also significantly affected. Board disapproval of the continuation of Revocable Water Permits could also negatively impact Kauai Island Utility Cooperative, Hawai'i Electric Light Company, and several other entities, individuals, ranchers and small farmers state-wide.

over a century – since 1878, pursuant to various lease agreements, initially with the kingdom of Hawaii, and subsequently with the Territorial and State governments. In 1985, the State proposed the sale of a long-term lease for these waters, but that effort was ultimately stalled by a lawsuit filed by the Native Hawaiian Legal Corporation.

In 2001, A&B applied to the BLNR to re-initiate the lease process, recognizing that the lease would be put up for sale at a public auction; that preparation of an EIS would be required; and that instream flow standards would need to be established and acknowledged by the lease. Since 2001, however, the lease process has been held up by subsequent procedural and legal challenges initiated by opposing parties, and the request to issue a long-term water lease remains pending before this Board. In the interim, the BLNR has issued permits to enable the waters to continue to flow pending resolution of the legal and procedural challenges which would allow the lease process to ensue.

As articulated previously herein, the procedure for issuing a long-term State water lease is arduous and may entail several steps and processes, all or each one of which, may likely take more than a year to complete. LURF understands that A&B has undertaken action necessary for issuance of a long-term State water lease, and that the following is the status of the progress which has been made in this effort:

1. Environmental Impact Statement (EIS). A draft EIS was published for public review by the State Office of Environmental Quality Control in September 2019. Publication of the Final EIS is anticipated in mid-2020.
2. Interim Instream Flow Standards (IIFS). IIFS have been established. In June 2018, the CWRM issued its IIFS decision for the petitioned East Maui streams.
3. Contested Case Proceeding on the Lease. This item is still pending and is envisioned to recommence following completion of the EIS.

It is imperative that the BLNR allow Permits held by existing permittees to be continued pursuant to HRS Section 171-58 (as amended) in order that State waters which are used and relied upon may continue to be collected while the long-term lease process is properly and thoroughly vetted.

Particularly with respect to the Island of Maui, LURF understands that with the loss of sugar, if there is to be any chance of an agricultural future for Central Maui, as well as new economic opportunity and activity for the island while preserving its rural quality of life, access to the State's East Maui waters must be sustained through these Permits. Since many diversified agricultural crops have

low tolerance to the salinity of water from Central Maui brackish water wells, a sufficient quantity of water from East Maui streams is critical to keep Central Maui in continued agricultural production.

Should the continuation of Revocable Permits be denied, the future of the East Maui irrigation system and agriculture in general in Central Maui will be at risk, with ditches, roads, and other features of the irrigation system quickly eroding and otherwise falling into disrepair. The condition of lands recently utilized for sugar production, together with farm infrastructure will also deteriorate, making future farming even more costly.

LURF also understands that only the amount of water that is actually needed is being utilized by the existing permittee(s), and that most of the water diverted is going to the County for use by Upcountry Maui; the rest of the water remaining in the watershed for other uses.

As the BLNR is surely well-aware, title to water resources is held in trust by the State for the benefit of the people of Hawaii, including agricultural use of water to promote and implement the underlying intent and objectives of the long-awaited Important Agricultural Lands (IAL) laws (HRS Sections 205-41 to 52), which were specifically developed and enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, “to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” This Board is requested to take into consideration that if water is not made available for use on lands designated as IAL, there lies a definite risk that those lands which then can no longer sustain agriculture may potentially be withdrawn from IAL and designated for use for other purposes.

Conclusion. In view of the fact that Revocable Permits must be continued in order that State waters which are used and relied upon may continue to be collected while the long-term lease process is properly and thoroughly pursued and vetted; that the present permittees are making convincing effort to secure the leases necessary to continue previously authorized disposition of water rights; and that the use of water pursuant to existing Permits is, in LURF’s opinion, incontrovertibly consistent with the public trust, the Board is respectfully requested to exercise its statutory authority to **allow for the continuation of Revocable Water Permits through 2020.**

Your consideration is greatly appreciated. Thank you for the opportunity to present comments regarding this important matter.

ITEM D-1

From: Mauna Ala Hiking Club
To: [DLNR, BLNR Testimony](#)
Subject: Public testimony for agenda item D1 of BLNR October 11 meeting
Date: Sunday, October 6, 2019 2:54:54 PM

Renewal of Revocable Permits S-7263, S-7264 and S-7265 to Alexander and Baldwin, Inc., and S-7266 to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

The Mauna Ala Hiking Club has over 200 members on Maui and has been leading hikes on Maui for over fifty years.

We request that any renewal of revocable water permits 7263, 7264, 7265, and 7266 should include the following statement:

"Public access is allowed in the Ko'olau Forest Reserve for recreational and cultural uses, according to the rules of the Hawaii Department of Forestry and Wildlife."

We believe adding this statement to the permit will be a big step in improving public access on Maui. We have worked with East Maui Irrigation for many years and led many hikes in the Ko'olau Forest Reserve. We appreciate the work that EMI does in maintaining roads and trails in the Ko'olau.

Mahalo for your consideration,

Al Bayless, Mauna Ala Hiking Club

From: john meier
To: [DLNR.BLNR.Testimony](#)
Subject: Public testimony for agenda item D1 of BLNR October 11 meeting
Date: Friday, October 4, 2019 2:16:43 PM

John Meier


October 4, 2019

Board of Land and Natural Resources
State of Hawaii

Re: Public testimony for agenda item D1 of BLNR October 11 meeting

Renewal of Revocable Permits S-7263, S-7264 and S-7265 to Alexander and Baldwin, Inc., and S-7266 to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

I am a full-time resident of Maui and an avid hiker. My hiking group has 8 people and we average 15 miles a week.

My request is that any renewal of revokable water permits 7263, 7264, 7265, and 7266 should include the following statement:

“Public access is allowed in the Ko’olau Forest Reserve for recreational and cultural uses, according to the rules of the Hawaii Department of Forestry and Wildlife.”

The reason this statement needs to be added is that East Maui Irrigation has repeatedly tried to block, hinder, and limit public access to the Ko’olau Forest Reserve.

For example, East Maui Irrigation employees are instructed to tell hikers that all of the Ko’olau Forest Reserve is EMI Private Property, and to threaten that anyone in the Ko’olau Forest Reserve without their permission will be arrested for trespassing. This happened to me personally on May 29th, 2019.

EMI has invented its own system that it says is required to use the Ko’olau forest reserve. It is arbitrarily limited to two specific hiking clubs and requires advance scheduling. Each attendee has to go in person to an EMI office at restricted hours. The net result is they are limiting hiking access to the Ko’olau forest reserve to less than 10 days a year.

It is very clear that the requested permits are “permits for water use” and not a land lease on over 30,000 acres of land. EMI itself calls it a “water permit” consistently in their documents. EMI asks for the the right to enter the forest reserves, but does not ask for exclusive access or the right to block others. The appraisal section of the permits only talks about the value of water, and does not talk about land value. A cost of a land lease for over 30,000 acres would be astronomical, hundreds of thousands of dollars a month. In any case, a land lease from a the forest reserve is something that requires legislative approval.

Furthermore, EMI has already agreed to Public Access under condition A7 of the original holdover permit from the year 2000:

“A 7. Observe and comply with all laws, ordinances, rules, and regulations of federal, state, municipal, or county governments affecting the premises or improvements”

Thank you for the opportunity to comment on how to improve Public Access on Maui.

-John Meier

FACSIMILE MESSAGE

**Torrie Nohara, Trails & Access Specialist
DLNR - Div. of Forestry and Wildlife - Maui District
Na Ala Hele Trails and Access Program**

1955 Main Street, Room 301, Wailuku, Hawaii 96793
Tel: 873-3508 ♦ Fax: 984-8104 ♦ E-mail: torrie.l.nohara@hawaii.gov



Date: 10/9/2019

To: Board Members Agency: BLNR - DLNR

Phone#: _____ Fax#: (808) 587-0390 Pages: 4

Original Mailed/Delivered: _____ Yes XX No

Message:

Please accept this written testimony on behalf of the Maui Na Ala Hele Advisory Council in regard to item D. 1. on the agenda for the October 11, 2019 Board of Land and Natural Resources board meeting. If you have any questions feel free to contact me at 808-873-3508. Mahalo!

Please call (808) 873-3508 if any portion of this transmission is unreadable.

000019



Na Ala Hele, Trails & Access Program
Maui Island Advisory Council

October 4, 2019

Department of Land and Natural Resources
Attention: Board Members
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

SUBJECT: D. 1. Urging the Board to limit the lands included in the Revocable Permit to the diversion infrastructures and aqueduct systems only and not include the entire 33,000 acres of the Ko'olau Forest Reserve

The Ko'olau Forest Reserve, comprising of over 33,000 acres, is part of the public trust lands designated for public use, including hunting, gathering, recreational, subsistence and cultural use. The Maui Island Na Ala Hele Advisory Council (AC) is very concerned regarding the proposed Revocable Permit (RP) for the Reserve by Mahi Pono and East Maui Irrigation Company, Limited. We don't see the necessity to lease the entire 33,000-acre Reserve if only portions are needed for water transmission. We are deeply concerned about the restriction of public access on public lands.

The Maui AC has expressed concern about this issue repeatedly in the past. Attached you will find a copy of our testimony for the Early Consultation of the Environmental Impact Statement Notice for the Proposed Lease of the Reserve dated 2016. This issue has also been discussed at several Council meetings throughout the years.

We recommend that the RP be issued for only diversion infrastructures and aqueduct systems. We would like to see responsible management of public access for recreational and subsistence use under the Division of Forestry and Wildlife.

We appreciate you reviewing this very important matter. We strongly encourage you to protect the public use of this land for now and future generations. Access to public lands on Maui is very limited. The Ko'olau Forest Reserve comprises nearly 1/3 of all state public lands on Maui. To keep this large land parcel closed to public access is inadvisable and not in the best interest of the public.

Sincerely,

Russell Reinertson, Chairperson

Sue Guille, Co-Chairperson

cc: David G. Smith, DOFAW Administrator
Dr. Scott Fretz, Maui District Manager

attachment



Na Ala Hele, Trails & Access Program
Maui Island Advisory Council

December 21, 2016

Ms. Suzanne Case
State of Hawaii Department of Land and Natural Resources
Land Division
P.O Box 621
Honolulu, Hawaii 96809

Re: Early Consultation for the Preparation of an Environmental Impact Statement Preparation Notice Proposed Lease for the Nahiku, Keanae, Honomanu and Huelo License Areas East, Central, and Upcountry Maui, Hawaii

Dear Ms. Case:

The Na Ala Hele, Trail and Access Program's vision, goals and objectives has as its vision statement the following:

"To develop, via the Na Ala Hele program, a trail and access network and management system which:

- 1. Provides a broad range of recreational, cultural, religious, and subsistence opportunities for all of Hawaii's people and*
- 2. Helps to conserve Hawaii's cultural heritage and environment."*

In light of this vision, the Maui Island Na Ala Hele Advisory Council has the following concerns regarding the proposed lease:

1. We don't see the necessity to lease the entire Koolau Forest Reserve and Hanawi Natural Area parcels if only portions are needed for water transmission. We are deeply concerned about restriction of public access. We do recommend the license be for only delivery systems and infrastructure, including intakes, ditches, tunnels, dams, pipes and flumes. We would like to see shared use of all roads for multi-use purposes including, equestrian, hiking, biking, hunting and OHV use as appropriate.
2. We feel a 30-year lease is an inappropriate duration of time. A shorter timeframe is preferable.
3. As A&B has been leasing this land since 1886, we would like to see included in the Cultural Impact Assessment historic research and inventory on all the roads, trails and features because all such trails and roads are public access under the Highways Act of 1892.
4. We would strongly encourage the roads that go through EMI lands also be set aside as an easement for public use.

c/o Maui Na Ala Hele, Trails & Access Program - 1955 Main Street, #301, Wailuku, Hawaii 96793
Phone: (808) 873-3508 Fax: (808) 984-8114

000021

5. What is proposed in the lease is not consistent with the statutory purpose of the forest reserve system and the protection of natural resources including aquatic stream life and riparian ecosystems.
6. Streams in Hawaii have traditionally been used as linear open spaces for connecting recreational, educational, cultural and natural areas and therefore fit the definition of a greenway. Our concern is that these pathways are accessible to the public for the above uses and subsistence opportunities.

Sincerely,

Russell Reinertson

Russell Reinertson, Chair
Maui Island Advisory Council

Cc:	Scott Fretz	Department of Land and Natural Resources
	David Smith	Department of Land and Natural Resources
	Jeffery Pearson	Commission on Water Resources Management
	Meredith Ching	Alexander & Baldwin
	Garret Hew	East Maui Irrigation Company
	Earl Matsukawa	Wilson Okamoto Corporation

EDMUND C. OLSON TRUST No.2

HILO: 26-238 Hawai'i Belt Road · Hilo, Hawai'i 96720 KA'U: PO Box 280 · Pahala, Hawai'i 96777



October 7, 2019

Board of Land and Natural Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Conference Room 132
Honolulu, Hawaii 96813

Re: October 11, 2019 BLNR Meeting, regarding Agenda items D-1 and D-2. Extension of Revocable Permits Statewide and Development of Implementation of Watershed Management Plans for leases of water rights.

Dear Members of the Board;

Please except this letter supporting the agenda items listed above. The Edmund C. Olson Trust No. 2 has held Revocable Permit S-7432 for many years and is diligently working on conversion of the R.P. to a long term lease. We have read the D-1 narrative and have no objections and support the recommendations made therein.

Regarding item D-2 on Watershed Management Plans, the Trust stands ready to assist and help implement the goals of the Ka'u Forest Reserve Management Plan. We have had DLNR DOFAW staff and DLNR Land Division staff visit our Keaiwa Water System several times in the past few years. On these trips we showed how Olson Trust *hanawai* men have been trained in clearing the areas around our water system of invasive species such as Himalayan Ginger, Night Blooming Jasmine and Strawberry guava. In addition to these actions we allow the public access through Trust Lands to access the Forest Reserve for subsistence hunting and gathering, (weekend permits).

The Trust looks forward to working with DOFAW on implementing an interactive Watershed Management Plan that involves water lessees such as the Trust and the other R.P. holders looking to gain leases as well. The current R.P. holders in Ka'u are supportive of each other and we work well as a group. All of us will be there to help protect our Forest and the Watershed into the future.

If you have any questions I can be available by phone at [REDACTED] or email at [REDACTED]

Sincerely,

John C. Cross
Land Consultant
On behalf of the Edmund C. Olson Trust No. 2

CC: Ian Hirokawa, DLNR
Edmund C. Olson
Paul Alston

000023

From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony in OPPOSITION to Agenda Item D-1, renewal of A&B/Mahi Pono's revocable permits
Date: Tuesday, October 8, 2019 4:28:36 PM

Dear Chair Case and the members of the Board of Land and Natural Resources,

I support naturally flowing streams, local diversified agriculture and a sustainable future for our island community but I ask that the Board deny Alexander & Baldwin, East Maui Irrigation Company and Mahi Pono's request for a renewal on their revocable permits to divert stream water from East Maui.

I thank the Board and the Department of Land and Natural Resources' staff for submitting a more comprehensive review of the East Maui stream diversion situation than in past years. Among the improvements is a cap on the amount of water that can be diverted from East Maui. I, however, ask that the cap be decreased—A&B and Mahi Pono have not given sufficient justification for the taking of additional water over the 25 million gallons a day. A&B no longer uses the land for agriculture and Mahi Pono is currently only using a small portion of the agricultural lands that they purchased, and those lands have access to groundwater wells and water from West Maui.

Another related improvement is the recent work to remove diversion in some streams. This is noteworthy progress towards restored stream ecosystems but the Board should require the diverters to notify surrounding residents downstream when stream work is in progress to avoid putting residents and visitors in danger.

The Board should also take further steps to ensure the protection of public water and resources dependent on that water. The Board must protect those 13 streams which are completely unprotected now and which A&B routinely completely de-waters. A&B, EMI, Mahi Pono should be required to measure and report the amount of water that is taken from each stream.

A&B and Mahi Pono are also currently in the review process of their Draft Environmental Impact Statement to obtain a long-term lease. This study is long overdue and is bound to reveal impacts and data that would directly inform the Board's decision. For this reason and others previously stated, I ask that you at least limit the amount of water taken from East Maui streams to the 25 mgd that it has been using for the past two years or better yet deny A&B and Mahi Pono's request to renew their revocable permits.

Thank you for this opportunity to testify on this important matter.

Sincerely,
Lory Ono

[REDACTED]

TESTIMONY ON A REVOCABLE PERMIT FOR EAST MAUI DIVERSIONS
DLNR LAND BOARD
October 11, 2019

ITEM D-1; D-7

Good morning Chair and Land Board members. My name is Jeff Pearson, and I am the Director of the Department of Water Supply (DWS), for the County of Maui, under the leadership of Mayor Michael Victorino. The DWS is in full support of A&B obtaining a revocable permit (RP) to allow for a reasonable and beneficial use to provide drinking water, a public trust, to the Upcountry residents of Maui.

Mahi Pono has shared with me their schedule for not only the EIS, but for the long-term lease. Of course, there are many factors within the schedule that are beyond their control, however, I feel that they are sincere with their efforts in obtaining a long-term lease. This would also provide benefits to DWS, where we would enter into an agreement with Mahi Pono for a longer term for reliable surface water supply.

From the Decision and Order, signed by the Water Commission on June 20, 2018 for the contested case for East Maui Streams, it states: "The public interest includes not only protecting in-stream values but also preserving agricultural lands and assuring adequate water supplies for Maui." The resolution of the contested case allows 10 streams to be fully restored, while returning water to most other streams addressed in the contested case. After this decision, water can be diverted for public trust purposes and for off stream beneficial uses. The petitioners in the contested case agree that Maui DWS has a legal right to the water for domestic uses. But without the revocable permit holder managing the diversions and transporting the water through their ditch system, water will not be delivered to our Kamole WTP, and on to our customers after treatment. We need A&B to obtain this revocable permit.

Based on current agreements with EMI, and referencing the 1973 MOU, for water use at the Wailoa Ditch, Maui DWS can receive 12 mgd, with an option for an additional 4 mgd. Stated in the Conclusion of Law for the East Maui contested case, Kamole Water Treatment Facility averages 3.6 mgd with a capacity to produce 6 mgd. Kula Agricultural Park's average use is 3.5 mgd with future expansion of the agricultural park on the horizon.

Water diverted into the Wailoa Ditch, for agricultural use, and more importantly to provide Maui DWS with surface water for treatment at our Kamole Water Treatment Plant, is crucial to supply drinking water to our 36,000 Upcountry customers. Without this water source, Maui DWS has a much less reliable source of water, especially during times of less rain and drought conditions. This would lead to severe restrictions for these residents.

There has been discussion about Maui County or Maui DWS obtaining their own revocable permit, as earlier suggested by Senator Kahele. There also was discussion in obtaining the EMI system. While these suggestions are well meaning, they would cause great financial hardship on Maui County and Maui DWS. Obtaining the revocable permits without the infrastructure to divert, manage, maintain, and transport the water, short of purchase or condemnation of the ditch system, would not improve the current situation. To purchase the system would be overwhelming and would make poor financial sense at what would be at a very high cost.

Therefore, Maui County and Maui DWS supports this Land Board in allowing a revocable permit be granted to A&B, while Mahi Pono finalizes their EIS, and moves towards a long-term lease. We will work with Mahi Pono and EMI through existing and future agreements, to ensure that with water available in the Wailoa Ditch, will continue to be provided to our Kamole Water Treatment Plant for treatment and use by our Upcountry customers.

Thank you for allowing me to testify on this most important issue.

JEFFREY T. PEARSON, P.E., DIRECTOR
Department of Water Supply
County of Maui

October 5, 2019

Board of Land and Natural Resources
DLNR Main Office
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Subject: Support for the Renewal of KIUC's Revocable Permit (RP S-7340) to Divert Water for the Waiahi Hydropower Facilities

Honorable Commissioners:

As one of the many owner-members of KIUC, I support the renewal of KIUC's Revocable Permit (RP S-7340) to divert water for the Waiahi Hydropower facilities. In every contentious issue that our island and state has faced, we need to consider what is factual, whether the parties involved are acting responsibly and respectfully, and determine if the action will provide for the betterment of our community – our home.

We are fortunate to live in a country that gives everyone a voice. However, testimony and allegations should be fact-based, not rhetoric, and decision makers like the BLNR need to distinguish between fact and fiction, or even slander.

KIUC's Board and its management have acted with the utmost respect for the community and have been responsible and diligent in their efforts to fulfill what has been directed of them – to achieve the state's renewable energy goals. Actions have been taken to comply with in-stream flow standards and studies have been completed to ensure our island's resources are protected.

Will this action which allows hydroelectric renewable energy better our island? Yes! Hydroelectricity is a firm power that is available 24/7. It is a non-consumptive use of water whereby 100% of the water is returned to the streams and ditches. Beyond the hydropower facilities are the many users of the water such as farmers, ranchers, schools, civic centers and much more. In fact, the water from these diversions are used by the surface water treatment plant to provide drinking water to my home. All of these uses are statutory public uses that need to be allowed to continue. Furthermore, these hydropower plants displace approximately 675,000 gallons of diesel each year, which is a considerable savings to all members. Also, the hydropower facilities do not create the level of greenhouse gasses as compared to burning fuel and it is the cheapest form of KIUC's renewable energy sources – all significant positives!

Please support the renewal of KIUC's revocable permit to allow continued progress in building a sustainable island community. Thank you for your consideration.

Sincerely,



Shawn Shimabukuro



October 8, 2019

Ms. Suzanne Case, Chair
Board of Land and Natural Resources
P. O. Box 621
Honolulu, Hawai'i 96809

RE: Renewal of RP No. S-7340

Dear Chair Case and Board members:

On behalf of the Board of Directors for Kaua'i Island Utility Cooperative (KIUC), I urge you to support renewal of the subject revocable permit (RP) at the October 11, 2019 BLNR meeting.

Since being formed in 2002, KIUC has utilized water provided by the century-old Blue Hole Diversion to produce affordable, renewable electricity from the Waiahi hydropower plants for our members. In doing so, KIUC has been a responsible steward of these natural resources, and has worked closely with various state agencies to insure compliance with the terms of our RP.

Upon the direction of BLNR, KIUC has taken action to make sure that streamflow is maintained in North Fork Wailua and Waikoko, commensurate with the inflow stream standards recommended by the Commission on Water Resource Management staff in August 2018. At the same time, we are proceeding with the necessary activities to secure a long-term lease for the Blue Hole Diversion. Earlier today, an environmental assessment was published by the Office of Environmental Quality Control, which is a very important step in the lease process and demonstrates KIUC's commitment to following appropriate due diligence.

The KIUC Board of Directors has set a goal of reaching 70% renewable generation by 2030, and is committed to meeting the State of Hawai'i's mandate of 100% renewable by 2045. These are important and aggressive goals, and we will need to utilize all available renewable resources – hydro, biomass and solar – in order to achieve them. The Waiahi hydropower plants are an integral part of that equation and we ask for your support in our effort to responsibly maximize productivity of the facilities for the benefit of the people of Kaua'i.

Mahalo for your consideration.

Warmest aloha,

A handwritten signature in black ink, appearing to read "Allan A. Smith", written over a white background.

Allan A. Smith, Chair
KIUC Board of Directors

Cc: David J. Bissell, President and CEO

From: [REDACTED]
To: [DLNR.BLNR.Testimony](#)
Subject: Testimony in OPPOSITION to Agenda Item D-1, renewal of A&B/Mahi Pono's revocable permits
Date: Tuesday, October 8, 2019 5:06:34 PM

Dear Chair Case and the members of the Board of Land and Natural Resources,

I Am From Mau'I As Well As My Ancestors. The Missionaries Ended Up Staying Here And The Greed That Filled Their Grandchildrens Minds Initially Started The Unjust Act Of The Illegal Overthrown Of Our Queen Liliuokalani.!!!! I fully, fully support our naturally flowing streams, local diversified agriculture and a sustainable future for our island community but I ask that the Board deny Alexander & Baldwin, East Maui Irrigation Company and Mahi Pono's request for a renewal on their revocable permits to divert stream water from East Maui.

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A&B and Mahi Pono are also currently in the review process of their Draft Environmental Impact Statement to obtain a long-term lease. This study is long overdue and is bound to reveal impacts and data that would directly inform the Board's decision. For this reason and others previously stated, I ask that you at least limit the amount of water taken from East Maui streams to the 25 mgd that it has been using for the past two years or better yet deny A&B and Mahi Pono's request to renew their revocable permits.

Thank you for this opportunity to testify on this important matter.

Sincerely,
R Momi Ventura

[REDACTED]