

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawai'i 96813

October 11, 2019

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

STATEWIDE

Continuation of Revocable Permits for Water Use for the Islands of Maui, Hawai'i and Kaua'i. See **Exhibit 1** for list of Revocable Permits.

Issuance of Revocable Permit for Water Use to Ka'u Mahi, LLC from Moa'ula Gulch Tunnel, Ka'u Forest Reserve, Ka'u, Island of Hawai'i, Tax Map Key (3) 9-6-006:010.

BACKGROUND

For the past three years, the Board has approved the holdover of revocable permits for water use statewide pursuant to Act 126, Session Laws of Hawaii 2016. The legislature passed Act 126 in response to a decision by the Circuit Court of the First Circuit (Circuit Court) regarding litigation of the water permits held by Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Co., Ltd. (EMI). The Circuit Court invalidated the revocable permits on the basis that the uninterrupted use of the land by A&B/EMI was not a "temporary" use authorized under Sections 171-10 and 171-55, Hawaii Revised Statutes (HRS). Act 126 authorized the holdover of revocable permits for the use of water under certain conditions. Under the Act, the Board could authorize three consecutive one-year holdovers. Pursuant to its terms, Act 126 was automatically repealed on June 30, 2019. For further reference, Board approvals of the holdovers for 2019 are attached as **Exhibits 2 and 3**, providing a history regarding the water permits as well as a discussion of the legal issues.

On June 18, 2019, the Intermediate Court of Appeals (ICA) issued an opinion vacating the Circuit Court decision and remanded the case back to the Circuit Court. Of note to the present action, the ICA concluded that the wording in Section 171-55, HRS, that applied the section "notwithstanding any law to the contrary" authorized the Board to continue the revocable permits despite the one-year term prescribed by Section 171-58, HRS. The ICA also noted that the revocable permits must be temporary and issued under such conditions and rent which would serve the best interests of the State. The ICA determined that whether these requirements were met were genuine issues of material fact and should not have been resolved by the Circuit Court via summary judgment. Additionally, the ICA affirmed the Circuit Court's conclusion that Chapter 343, HRS is not applicable to the holdover of the water permits. The ICA reasoned that the Section 171-55, HRS authorizes the Board "to issue a temporary permit in the interim while a permittee pursues a long-term lease, for which an environmental review process under HRS

chapter 343 must be undertaken.” However, an exemption notice for the continuation of the revocable permits is included for the Board’s review and approval, out of an abundance of caution. The time for a writ of certiorari to the Supreme Court for the ICA decision has not expired. The ICA decision is not final.

DISCUSSION

Through April and May of 2019, the Department sent letters to the permittees summarizing the leasing process and requirements per Section 171-58, HRS, and the Department’s understanding of the proposed amount and use of water sought by the permittees under a water lease. The permittees were then requested to confirm the Department’s understanding, as well as their understanding of the water leasing process. Additionally, the Department offered to work closely with the permittees to fulfill those requirements. The major outstanding issues for the Department to resolve are the development and implementation of the watershed management plan pursuant to Section 171-58(e), HRS, and determining the value of water as required by Section 171-17, HRS.

At its meeting on March 22, 2019, the Board deferred action on item D-11, which sought approval for a watershed management cost share formula and contribution for water leases. The Board requested staff to consult with the Attorney General to determine to what extent the Board can act without rulemaking or whether rulemaking is required. The Board also asked that, to the extent rulemaking is not required, staff return with the suggested minimum requirements for the watershed management plan and identify the existing watershed and forest reserve management plans to use as a basis for the watershed management plans, and how they meet the proposed minimum content requirements. Staff will bring the watershed management plan requirements and watershed management plans before the Board for review and approval in a separate action. For the determination of the value of water, the Department is seeking to retain the services of a legal consultant with national experience on water rights, as well as a local appraisal consultant. The goal is for the consultants to assist the Department in its development of a valuation methodology for water.

The current submittal seeks approval for the continuation of the water permits for 2020 on a temporary basis that will allow the applicants to continue to work in good faith with the Department to complete the requirements of the water leasing process. Also, where appropriate, the Board is requested to impose additional conditions on the continuation of revocable permits that will serve the best interest of the State. The submittal also includes a status update and discussion of water permits/lease applications by island, including any staff recommendations to the Board.

MAUI

The four revocable permits for the island of Maui are RP S-7263, S-7264 and S-7265 to A&B and S-7266 to EMI. In addition to the use of water and the irrigation system, the permits cover four license areas consisting of approximately 33,000 acres of the Ko’olau Forest Reserve and the Hanawā Natural Area Reserve under the DLNR Division of Forestry and Wildlife (DOFAW). At its meeting on November 9, 2018 under agenda item D-7, the Board approved, as amended

the holdover of all four permits. Sierra Club of Hawaii (Sierra Club) verbally requested a contested case at the meeting and submitted a written petition thereafter. At its meeting on December 7, 2018, the Board voted to deny the contested case. Sierra Club did not appeal the Board's decision but instead filed an original action against the State, alleging public trust violations regarding the Board's approval of the 2018 holdover. The case is scheduled for trial in May 2020.

Originally, the Board had placed these four permits into holdover status as a result of the original contested case requests. The Board has maintained its position that these permits were correctly placed into holdover status. Act 126 authorized a statutory holdover of these permits. Although the Board is continuing the revocable permits pursuant to section 171-55, HRS, and the ICA decision in *Carmichael*, the Board maintains that these revocable permits remain in holdover status as the contested case hearing has not yet been resolved and the Board has not acted to take these permits out of holdover status.

In addition to the conditions that were contained in the original permits, over the course of the holdover approvals between 2016 and 2018 pursuant to Act 126, the Board imposed the following additional conditions that are currently in effect:

1. 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;¹
2. There shall be no waste of water. All water diverted shall be put to beneficial agricultural use or municipal use;
3. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended interim instream flow standards (IIFS);
4. The holdover shall comply with all conditions required by the CWRM's Amended IIFS decision
5. 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
6. Permittee shall cleanup trash from revocable permit areas starting with areas that are accessible and close to streams;
7. The revocable permits shall be subject to any existing or future reservations of water for the Department of Hawaiian Home Lands (DHHL); and

¹ CWRM issued orders addressing diversion modifications and abandonment dated February 19, 2019 and August 29, 2019 for Category 2 and 3 diversions respectively. CWRM will issue future decisions to address Category 1 and 4 diversions.

8. Establish an interim committee to discuss water usage issues in the license area. The committee shall consist of five members, representing Alexander & Baldwin, Farm Bureau, Office of Hawaiian Affairs, the 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.

Since the Board's prior holdover approval, A&B has sold most of its former sugar cane lands in central Maui and a portion of the ownership in EMI to Mahi Pono, LLC (Mahi Pono). Mahi Pono's goal is to engage in diversified agriculture on the former sugar cane lands. At this point, A&B and EMI remains as the revocable permit holders, as well as the applicants for the water lease. On September 23, 2019, a Draft Environmental Impact Statement (EIS) for the water lease was published in the Office of Environmental Quality Control's (OEQC) *The Environmental Notice*. Upon completion of the public comment period and subsequent revision, the Final EIS will be brought before the Board for review and acceptance. The Draft EIS can be accessed through the link below:

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

Staff met with representatives from A&B/EMI and Mahi Pono to discuss issues regarding the continuation of the revocable permits. A&B/EMI has submitted a status report on compliance with the terms and conditions of the revocable permit, attached as **Exhibit 4**. In addition to the pre-existing requirements, staff desires to include additional requirements to the revocable permit which were discussed with A&B/EMI and Mahi Pono. Staff believes that certain issues can be addressed now rather than deferring until the lease is considered due to their significance in fulfilling public trust obligations. Staff suggests the following additional conditions be imposed in connection with the continuation of the revocable permits:

1. First, the Board should impose reporting requirements regarding the use of water under the revocable permits. It is an essential component to the Board's stewardship of the water resource to understand how much water is being diverted.
2. Second, the Board is requested to approve the withdrawal of the Hanawā Natural Area Reserve from the revocable permit license area. 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.

DOFAW has major concerns with the vast amount of forest reserve land included in the revocable permits as from what is being used by the irrigation system (including access to the system). DOFAW desires to reduce the four license areas by removing significant portions of the forest reserve and natural area reserve lands from the license areas that are not managed by A&B/EMI or required by A&B/EMI to operate, maintain and repair the system. DOFAW would then assume management of public access to those lands, including working with A&B/EMI and stakeholders to manage public access consistent with protecting the forest reserve's sensitive

resources. A&B/EMI expressed concerns about the impact on their ability to manage the system that may result from a sudden, significant reduction in the license areas. However, A&B/EMI understands that ultimately, the license areas will be reduced for the eventual water lease.

In the short term, A&B/EMI is agreeable to removing the Hanawā Natural Area Reserve from the license areas. This area consists of approximately 7,500 acres, however, it should be noted that the natural area reserve is “landlocked” within the Nāhiku license area, so it is unlikely that this will provide for immediate increased public access to the area. A&B/EMI have pledged to continue discussions with DOFAW to identify additional areas for withdrawal, with considerations to manage public access and operational and security concerns regarding the system. Therefore, the Board is requested to approve the withdrawal of the Hanawā Natural Area Reserve from the revocable permit license area, as well as require 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.

Staff also noted that with the issuance of the water lease, or sooner if necessary, staff will seek the Board’s approval to require A&B/EMI provide water in a minimum amount of 5 million gallons per day (mgd) to serve various State projects at Pulehunui, Maui and the County of Maui Department of Water Supply for municipal purposes, including domestic use. The water will be used to serve both public trust uses of water and public purposes. Those projects include the Department’s proposed industrial and business park and a Department of Hawaiian Home Lands (DHHL) project for agricultural homesteads, as well as a commercial/industrial leasing component that would generate much needed income for future homestead development. Additional state lands in this area currently house or will house the National Guard Armory and the new Maui Community Correctional Facility to address public safety concerns, and the Maui County Raceway Park that would provide recreational opportunities for residents.

The Board has the authority to take such action. Section 171-58(d) reads in part:

“Any lease of water rights shall contain a covenant on the part of the lessee that the lessee shall provide from waters leased from the State under the lease or from any water sources privately owned by the lessee to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or for those public uses and purposes as may be determined by the board, at the same rental price paid under the lease, plus the proportionate actual costs, as determined by the board, to make these waters available, so much of the waters as are determined by the board to be surplus to the lessee's needs and for that minimum period as the board shall accordingly determine; provided that in lieu of payment for those waters as the State may take for public uses and purposes the board may elect to reduce the rental price under the lease of water rights in proportion to the value of the waters and the proportionate actual costs of making the waters available.”

The Department’s project is an appropriate public purpose. It is a use of State lands that provides a public benefit by generating public funds from State lessees that will be used to fund the essential functions of Department (e.g., conservation and forestry management, game

management, etc.). The Department's proposed industrial and business park site is located on former sugar cane land, entitling DHHL to 30% of the Department's lease revenues as well. The remaining 70% income generated by the Department's project would remain within the Department to fund water resource management as well as other resource management and protection programs, including wildland firefighting, dam safety and conservation district regulation. Additionally, staff emphasizes that allocating 5mgd for State and County use would not result in a greater cumulative amount of diverted water requiring an amendment of the IIFS. Rather, the 5mgd of water would be apportioned from the amount that A&B/EMI is allowed to divert under the current amended IIFS, or in other words, if such option is exercised by the Board, A&B/EMI would have 5mgd less available water to use.

Staff from the Department also met with representatives of the Sierra Club at their request to discuss their concerns regarding the revocable permits. Sierra Club provided a list of conditions to be required as part of an approval for continuation of the revocable permits, which is attached as **Exhibit 5**. In review and consideration of the Sierra Club's comments, as noted previously, staff concurs that a reporting requirement be incorporated as a revocable permit condition. Information that would be provided in the reports would reasonably assist the Board in its decision making regarding the future allotment of water, as well as determining current reasonable and beneficial use of water. As Mahi Pono has completed a farm plan, providing more detailed information regarding diversified agriculture uses of water is an appropriate requirement. Staff addresses these issues in recommendations that follow this discussion.

Additionally, the Board is recommended to impose a limit on the amount of water that may be diverted through the revocable permits not to exceed an average of **35mgd** per month. Although a higher amount of water can be diverted under the amended IIFS, staff understands that does not nor should it serve as a license to completely divert all water from the streams in question when the need to do so has not been shown. Staff determined this recommended amount by calculating a daily average based on the six individual months where the highest amount of water was diverted from the period of January 2017 to April 2019, which resulted in an average of 33.45mgd. Additionally, in an article from Pacific Business News dated May 8, 2019, Mahi Pono stated that EMI "estimates usage this year to be approximately 30 million to 35 million gallons per day, which includes water used by about 35,000 residents in Upcountry Maui that are served by the county's water system, Mahi Pono and other users served by EMI." This limit would be compliant with CWRM's amended IIFS. The farm plan does not currently justify the use of a greater amount of water. Staff notes however, that this amount may be further limited subject to the reasonable and beneficial use of the water. If, in the implementation of the farm plan, it is determined that more water is required, then the parties may request the Board to increase the limit, to be decided in a Board public meeting.

Staff does not recommend imposing any conditions that would interfere with CWRM's regulatory authority, including the IIFS determination and diversion abandonment processes. According to the CWRM amended IIFS decision, evaluation of instream uses included such considerations as maintenance of fish and wildlife habitats, outdoor recreational activities, maintenance of ecosystems such as estuaries, wetlands and stream vegetation, aesthetic values such as waterfalls and scenic waterways, navigation, instream hydropower generation, maintenance of water quality, conveyance of irrigation and domestic water supplies to

downstream points of diversion, and the protection of traditional and customary Hawaiian rights. It appears that requiring A&B/EMI to conduct a new study to address many of these issues, in addition to the Draft EIS, would be duplicative of past efforts. Furthermore, it is unclear as to how such a study would provide additional useful information for the Board's decision making.

If the Sierra Club believes that the 12 streams that were not included in the CWRM order warrant further protection, then the appropriate action would be to file a petition to amend the IIFS for those streams. The Board does not have the expertise to evaluate the necessary flow standards to protect instream uses. That expertise lies with the CWRM. If the CWRM fails to act on petitions filed for those 12 streams, then the Board may look to act. In addition to its regulatory authority, CWRM and its staff possess the knowledge and expertise to thoroughly evaluate the factors and determine an IIFS. If CWRM deems it appropriate to amend the IIFS, then the matter can be brought before the Board to determine any allocation issues that may result. For item 8, staff has consulted with CWRM and have been informed that A&B/EMI are compliant with the amended IIFS order and are working in good faith to comply with the diversion abandonment permitting process. Considering that diversion abandonment is a complex process that may require additional approvals from such agencies as the State Department of Health and the U.S. Army Corps of Engineers, imposing a deadline may serve to conflict with obtaining such approvals. Staff will continue to consult with CWRM on this issue, and if warranted, return to Board for further action as appropriate.

Finally, as part of its 2018 approval, the Board authorized the adjustment of revocable permit rent to account for CPI. The 2019 revocable permit rents are as follows:

RP S-7263:	\$2,478.15 per month
RP S-7264:	\$9,613.65 per month
RP S-7265:	\$5,073.15 per month
RP S-7266:	\$2,082.07 per month

Adjusted for CPI calculated from September 2018 to August 2019, the 2020 rents are as follows:

RP S-7263:	\$2,518.59 per month
RP S-7264:	\$9,831.49 per month
RP S-7265:	\$5,155.93 per month
RP S-7266:	\$2,116.04 per month

Therefore, staff recommends that, in addition to any pre-existing requirements, the Board approve the continuation of the revocable permits subject further to the following requirements:

1. Permittees shall provide quarterly written reports to the Board containing the following information:
 - a. The amount of water used on 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 the water. Industrial and non-agricultural uses shall specify the character and purpose of water use and the user of the water.

- 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.
 - 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.
 - d. The method and timeline for discontinuing the diversion of water from Waipio and Hanehoi streams into Ho`olawa stream, including status updates on implementation.
2. The permittee may not divert an amount of water per month exceeding an average of 35mgd, further subject to all water diverted shall be for reasonable and beneficial uses.
 3. For RP S-7266, the area identified as the Hanawā 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.
 4. Approve the revocable permit rental amounts as follows:

RP S-7263:	\$2,518.59 per month
RP S-7264:	\$9,831.49 per month
RP S-7265:	\$5,155.93 per month
RP S-7266:	\$2,116.04 per month

ISLAND OF HAWAII

For the island of Hawai`i, approval is requested to continue five water permits. RP S-7463, is issued to Hawai`i Electric Light Co., Inc. (HELCO) for hydroelectric power generation purposes on the Wailuku River in South Hilo, Hawai`i. The permit requires all water used under the permit to be returned to the Wailuku River at convenient points. The hydroelectric facility and various water dispositions to allow it to operate have been in place for many decades. The remaining requirements for this water lease request are the determination of upset lease rent and the watershed management plan.

The other four revocable permits are located in Ka`u, Hawai`i, by smaller diversified agriculture users. Previously, Hawaiian Agricultural and Hutchinson Sugar Company, both subsidiaries of

C. Brewer & Co., Ltd., developed a system of tunnels, flumes and ditches in Ka`u in the 1900s, using the water primarily for fluming sugarcane and for wash water in the mills. Beginning in the late 1990s, some of the tunnels and transportation systems were converted to provide water to farmsteads and diversified crop endeavors. Diversified agriculture, livestock pasturage, orchard and field crops have expanded within the Ka`u District since that time.

The four revocable permits are as follows:

1. RP S-7054 to Kapapala Ranch for watering livestock purposes.
2. RP S-7267 to Wood Valley Water & Farm Co-op for public drinking water, irrigation and watering livestock purposes.²
3. RP S-7426 to Kuahiwi Contractors, Inc. for watering livestock purposes.
4. RP S-7432 to Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 for irrigation and watering livestock purposes.

As previously directed by the Board, on July 5, 2019, Land Division staff as well as the First Deputy, CWRM Deputy and a Board member met with the permittees to review the water leasing process, discuss the status of the water lease applications and resolve the outstanding water lease issues. Staff also had a follow up meeting on July 18, that included DHHL staff to discuss the water reservation and beneficiary consultation. DHHL beneficiary consultation was conducted on August 22, 2019. Staff also conducted site visits to the Wood Valley Water & Farm Co-op and Kuahiwi Contractors on July 18 and August 23, 2019, respectively. Staff notes that the Ka`u permittees are working in good faith to comply with the water leasing requirements.

Finally, as part of its 2018 approval, the Board authorized the adjustment of revocable permit rent to account for CPI. The 2019 revocable permit rents are as follows:

1. RP S-7054 (Kapapala Ranch)
\$41.53 per month or \$8.20 per million gallons (whichever is greater)
2. RP S-7267 (Wood Valley Water & Farm Co-op)
\$41.53 per month or \$6.71 per million gallons (whichever is greater)
3. RP S-7426 (Kuahiwi Contractors, Inc.)
\$96.35 per month
4. RP S-7432 (Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2)
\$41.53 per month or \$6.14 per million gallons (whichever is greater)
5. RP S-7463 (HELCO)
\$1,887.82 per month

Adjusted for CPI calculated from September 2018 to August 2019, the 2020 rents are as follows:

² Permittee had a second water permit, RP S-7234, which they elected not to continue. The Board did not approve the holdover of this revocable permit as part of its 2018 approval.

1. RP S-7054 (Kapapala Ranch)
\$42.21 per month or \$8.33 per million gallons (whichever is greater)
2. RP S-7267 (Wood Valley Water & Farm Co-op)
\$42.21 per month or \$6.82 per million gallons (whichever is greater)
3. RP S-7426 (Kuahiwi Contractors, Inc.)
\$97.92 per month
4. RP S-7432 (Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2)
\$42.21 per month or \$6.24 per million gallons (whichever is greater)
5. RP S-7463 (HELCO)
\$1,918.62 per month

In addition to the four Ka`u revocable permits, another entity that has applied for a lease is Ka`u Mahi, LLC (Ka`u Mahi). Given the time it has taken to complete the water leasing process and the current clarity provided by the ICA decision, the Board is requested to approve a revocable permit to Ka`u Mahi for their use of water from the Moa`ula Gulch Tunnel located on Tax Map Key (3) 9-6-006:010 within the Ka`u Forest Reserve.

Water from the Moa`ula Tunnel was used primarily to irrigate sugarcane fields owned by the Hawaiian Agricultural Company. After the plantation ceased sugarcane cultivation, Moa`ula Tunnel water serviced coffee farmers, cattle ranchers, and macadamia nut farms, which moved into the former sugarcane lands. Water is transported from the Moa`ula Tunnel by Ka`u Mahi via an above ground transmission and distribution system. Ka`u Mahi uses a maximum of about 150,000 gallons per day, or 0.15mgd, which is the current yield from the Moa`ula Tunnel.

The water from the Moa`ula Tunnel is used by Ka`u Mahi to supply water to approximately 30-40 coffee farm tenants on approximately 2,050 acres owned by Ka`u Mahi. The water is used for ancillary purposes and irrigation for initial crop plantings but the amount of water is not sufficient for irrigation purposes. The coffee farmers rely primarily on rainfall to provide water for regular crop irrigation. Ka`u Mahi's long-term plan is to create an agricultural subdivision and offer lots to their tenant farmers at discounted prices. Ka`u Mahi does not foresee any changes to the current use and amount of water for the long-term lease, except to assign the lease to a planned agricultural water cooperative formed by users of the system.

In addition to Ka`u Mahi, other users of the system who are located makai of Ka`u Mahi include two lower Moa`ula agricultural homesteads, three ranchers and Royal Hawaiian Orchards, LP, a 350-acre macadamia nut orchard. With the exception of the homesteads, the water is used for ancillary purposes³, not irrigation. Rather than execute separate revocable permits for all the parties, staff recommends that the revocable permit be issued to Ka`u Mahi with the expectation that Ka`u Mahi work with the other users to provide them water. As the amount of water used is minimal and consistent with past agricultural uses, staff recommends that the Board declare that the revocable permit is exempt from the preparation of an environmental assessment. Staff also recommends that the revocable permit rent be set at \$42.21 per month, which is consistent with the other Ka`u agricultural users.

³ Such ancillary uses include hand washing or cleaning equipment, stock water for cattle and horses and mixing crop protection chemicals.

Therefore, staff recommends that the Board approve the continuation of the water use revocable permits for the island of Hawaii, subject to previously approved requirements and rents as follows:

1. RP S-7054 (Kapapala Ranch)
\$42.21 per month or \$8.33 per million gallons (whichever is greater)
2. RP S-7267 (Wood Valley Water & Farm Co-op)
\$42.21 per month or \$6.82 per million gallons (whichever is greater)
3. RP S-7426 (Kuahiwi Contractors, Inc.)
\$97.92 per month
4. RP S-7432 (Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2)
\$42.21 per month or \$6.24 per million gallons (whichever is greater)
5. RP S-7463 (HELCO)
\$1,918.62 per month

Additionally, the Board is requested to approve the issuance of a revocable permit for the use of water to Ka`u Mahi, LLC to divert water from the Moa`ula Gulch Tunnel located on Tax Map Key (3) 9-6-006:010 within the Ka`u Forest Reserve at a rent of \$42.21 per month.

KAUA`I

The Board is requested to approve the continuation of two revocable permits. RP S-7088 to Jeffrey S. Lindner allows for the use of water from State land in Kawaihau, Kaua`i, specifically from Moloa`a Well No. 1. Portions of this water are delivered to users that cannot be accommodated by the County of Kaua`i and the Moloa`a Irrigation Cooperative (MIC), as well as used by Mr. Lindner on his private property. The MIC provides water for both irrigation and domestic use. The water system has been designated as a public water system by the Hawai`i Department of Health Safe Drinking Water Branch, requiring the water to be treated prior to reaching the MIC and other users. On March 1, 2019, staff from Land Division, DOFAW, the Attorney General and DHHL met with Mr. Lindner and conducted a site inspection. Staff understands that Mr. Lindner is currently in discussions with DHHL regarding access to water for their nearby lands.

RP S-7340 was issued in 2003 to Kaua`i Island Utility Cooperative (KIUC) for water diverted from the North Fork Wailua River and the Waikoko Stream to operate two hydroelectric plants. Members of the public have written to the Department expressing their concerns with this permit. The comments appear to focus on an alleged failure by KIUC to comply with various regulatory requirements to obtain a lease of water rights, the initial approval of the permit being based on a non-consumptive use which was incorrect, such consumptive use of the water being inconsistent with the public trust, and the diversion of water by KIUC resulting in a negative impact on the downstream environment. The commenters requested that the Board reconsider its approval of the permit based on their comments.

As part of its 2017 holdover approval, the Board required that:

1. KIUC shall provide to the Board within one year a proposal that involves the restoration

of stream flows to the North Fork Wailua River (which could be satisfied by the adoption of interim instream flow standards).

2. Department staff work with landowners on what is expected for the watershed management plan.
3. KIUC shall consult with DHHL to honor DHHL's reservation rights under the law.

At its meeting on August 21, 2018, CWRM considered a staff recommendation to amend the IIFS for Wai'ale'ale and Waikoko streams. However, there is currently a contested case regarding the CWRM staff proposed amended IIFS. As part of its 2018 holdover approval, the Board imposed a limit on the amount of water allowed to be diverted under the revocable permit, based on the proposed amended IIFS developed by CWRM staff, as a temporary measure to restore stream flows while the parties resolve the contested case petitions and an amended IIFS can be ultimately approved by CWRM. Additionally, the Board included a condition that KIUC was to invite Earthjustice, Kia'i Wai O Wai'ale'ale, Sierra Club, Grove Farm, and the Department of Hawaiian Home Lands (together, the "Working Group"), to participate in a facilitated discussion regarding their respective positions on KIUC's request to use State water for its hydroelectricity plants in the permit area, as well as any other relevant matters they choose to discuss. The Working Group could invite other individuals or organizations to participate in the discussion. KIUC was to report back to the Board on the progress of the discussions in three months. KIUC provided a briefing to the Board at its meeting on April 26, 2019.

Based on public testimony presented at that meeting, as well as additional comments received by the Department since then, there continue to be complaints that KIUC is failing to comply with the requirements of the revocable permit. In response, staff consulted with CWRM staff and they confirmed that KIUC is compliant with the stream flow restoration requirements. Another issue that has been raised is whether KIUC is using the diverted water for reasonable and beneficial purposes. Staff understands that the entirety of the diverted water is used to power KIUC's two hydroelectric plants, consistent with the revocable permit. Moreover, KIUC states that all of the water available for diversion is needed to power the hydroelectric plants. KIUC has prepared a draft environmental assessment (EA), which should be published for public review and comment by the end of this year. Pursuant to the ICA opinion, the continuation provides KIUC the opportunity to complete its water leasing requirements, including environmental review under Chapter 343, HRS, development of a watershed management plan, determine the DHHL water reservation, and establishing the amended IIFS. The Board will ultimately determine whether the proposed water lease meets public trust requirements at the end of this process. A status update from KIUC is attached as **Exhibit 6**.

RP S-7310 was issued in 2002 to the East Kaua'i Water Users' Cooperative (EKWUC) for irrigation purposes over a system that had previously been used for sugarcane plantations. The permit restricts the use of irrigation water to those agricultural lands presently served by the system, or that had been served in the past. During the 2019 legislative session, EKWUC supported passage of Senate Bill 223 which proposed to transfer operational authority of the irrigation system to the Hawaii Department of Agriculture (DOA), as well as provide DOA with

staff and funding for management of the system. The bill failed to pass out of conference committee.

As a result, EKWUC voted to not request renewal of the revocable permit. EKWUC has previously stated that they lack the resources to comply with the water lease requirements as well as serve as a long-term operator of the system. EKWUC's intent was to serve as an interim operator of the system until the system could be transferred to DOA. A letter from EKWUC explaining their decision is attached as **Exhibit 7**. The Department has met with DOA to discuss long term management and operation of the system. DOA has stated firmly that without the funding and additional staff provided by the proposed legislation, they do not have the resources to assume management of the system.

Staff acknowledges EKWUC's position and recommends that the Board not approve continuation of this revocable permit. Staff will work with EKWUC on closing the system intakes to stop the diversion of water into the system. For the long term, if the management issues cannot be resolved, the Department intends to permanently shut down the system, including removal of the Wailua and Upper Kapahi Reservoirs. Funding is needed to conduct planning and studies for the closure of the irrigation system.

Finally, as part of its 2018 approval, the Board authorized the adjustment of revocable permit rent to account for CPI. The 2019 revocable permit rents are as follows:

1. RP S-7088 (Lindner) \$320.43 per month
2. RP S-7340 (KIUC) \$4,315.76 per month

Adjusted for CPI calculated from September 2018 to August 2019, the 2020 rents are as follows:

1. RP S-7088 (Lindner) \$325.66 per month
2. RP S-7340 (KIUC) \$4,386.18 per month

Therefore, staff recommends that the Board approve the continuation of the water use revocable permits S-7088 to Jeffrey S. Lindner and S-7340 to Kaua'i Island Utility Cooperative, subject to previously approved requirements and rents as follows:

1. RP S-7088 (Lindner) \$325.66 per month
2. RP S-7340 (KIUC) \$4,386.18 per month

Public Trust Doctrine

Title to water resources is held in trust by the State for the benefit of its people. Pursuant to *In re Water Use Permits*, 94 Hawaii 97, 9 P.3d 409 (2000), and *In re Wai'ola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004) the Hawai'i Supreme Court has identified four public trust purposes with respect to water:

1. Maintenance of waters in their natural state;

2. Domestic water use of the general public, particularly drinking water;
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights; and
4. Reservations for Hawaiian home lands.

In order to satisfy its public trust obligations, the Board must balance the proposed use of water against the foregoing public trust purposes, as well as competing uses.

Of these four purposes, domestic water use is implicated in two of the current revocable permits: S-7088 to Mr. Lindner, and S-7267 to Wood Valley Water and Farm Cooperative. The remaining revocable permits are for agricultural use or hydroelectric power generation. With respect to the agricultural use of water, the Hawai'i Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawai'i Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawai'i Constitution, Article XI, Section 10.

In staff's view, making irrigation water available to farmers and ranchers supports the long-term viability and security of local agricultural operations and is critical to the State's compliance with the constitutional mandates of Article XI. It also allows for the local production of food, supporting the goal of food sustainability and food security for Hawai'i. It may also translate into lower prices for consumers when produce does not have to be shipped to Hawai'i from outside of the state. Any tension between identified public trust uses of water and the constitutional mandates above will be resolved in the process of issuing water leases, because Section 171-58, HRS, requires the joint development of a water reservation to support current and future DHHL homestead needs.

For the east Maui revocable permits, the use of diverted water for agriculture in consideration of competing uses and public trust purposes has been extensively discussed previously, with appropriate recommendations presented. For the agricultural users on the island of Hawai'i, the only apparent competing use would be to leave the water in its natural state, with no diversion. However, the amount of water diverted is minimal, especially in comparison to the available amount of water. The permittees collectively use less than 1mgd, against a sustainable yield of the source aquifer at over 100mgd. Furthermore, as opposed to east Maui, the Ka'u permittees are diverting groundwater, not surface water. Also, the permittees are working in good faith to convert their revocable permits to long term leases. In view of these considerations, staff

believes that allowing the revocable permits to continue on a temporary basis in support of the State's agricultural goals is consistent with the public trust.

The hydroelectric use of water allows utility companies to provide clean energy to domestic and commercial users. This method of energy production also supports Hawaii's Clean Energy Initiative, which sets goals for the state to achieve 100 percent clean energy by 2045 coming from locally generated renewable sources. Although hydroelectric projects are not an identified public trust use of State waters, the public trust concerns will be addressed in the processing of the water lease applications under Section 171-58, HRS.

HELCO has completed most of the water leasing requirements, including an environmental assessment with a finding of no significant impact for the project. Further, the HELCO hydroelectric project returns the diverted water to the same stream source from which it was drawn and is considered non-consumptive. For the KIUC project, as the use of water is consumptive, the competing uses would be to leave the water in its natural state, and other downstream uses. Staff does not believe that not allowing any diversion is appropriate in consideration of the State's renewal energy goals, but rather diversion in an appropriate amount. As the revocable permit is subject to a diversion amount limit that would restore stream flow consistent with the CWRM staff proposed IIFS, staff believes that this condition addresses the competing uses. Staff also notes that KIUC is in the process of completing a Draft EA, working to complete other lease requirements, and participating in a contested case regarding the IIFS. If the contested case results in a different IIFS, the allocation will be adjusted accordingly by the Board for the long-term lease. In view of these considerations, staff believes that allowing the revocable permits to continue on a temporary basis in support of the State's renewable energy goals is consistent with the public trust.

Finally, continuation of the revocable permits pursuant to staff's recommendations would be consistent with the ICA requirement that they be temporary and under such conditions and rent which serve the best interest of the State. All of the permittees have taken significant steps to convert their permits to long term leases, including working with the Department and DHHL regarding DHHL's water reservations, seeking or obtaining an IIFS determination from CWRM, and compliance with Chapter 343, HRS, including conducting environmental studies where appropriate. Additionally, through this submittal, staff seeks to implement additional requirements where appropriate to ensure that the terms of the revocable permits serve the best interest of the State.

RECOMMENDATION: That the Board:

1. Find that the continuation of the revocable permits listed in Exhibit 1 is consistent with the public trust doctrine;
2. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, these projects will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment;

3. Subject to the terms and conditions noted in this submittal, approve the continuation of the revocable permits listed in Exhibit 1 on a month-to-month basis for another one-year period through December 31, 2020, except for permits that are in arrears of rental payment for more than 60 days and/or have been approved for forfeiture by a separate Board action. Permits in arrears of rental for 60 days or more and/or approved by the Board for forfeiture shall not be renewed; and
4. Authorize the issuance of a revocable permit to Ka'u Mahi, LLC covering the subject area for water use purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 11, 2019

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

- Project Title:** Holdover of Revocable Permits for Water Use for the Islands of Maui, Hawai'i and Kaua'i; Issuance for Revocable Permit for Water Use to Ka'u Mahi, LLC from Moa'ula Gulch Tunnel, Ka'u Forest Reserve, Ka'u, Island of Hawai'i, Tax Map Key (3) 9-6-006:010.
- Project Location:** Statewide.
- Project Description:** Revocable permits for interim water use by water lease applicants.
- Chap. 343 Trigger(s):** Use of State Water (Land)
- Exemption Class No. and Description:** In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 51 that states, "Permits, license, registrations, and rights-of-entry issues by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
- Cumulative Impact of Planned Successive Actions in Same Place Significant?:** No, this action applies only to pre-existing diversions, and will not serve to authorize any new diversions of water beyond that currently occurring.
- Action May Have Significant Impact on Particularly Sensitive Environment?:** No. To the extent this may be relevant to certain revocable permits, those applicants are conducting environmental reviews.

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- Analysis:** The State Intermediate Court of Appeals has determined that pursuant to Section 171-55, HRS the Board may issue a temporary permit in the interim while a permittee pursues a long-term water lease. For all of the revocable permits, the proposed use will involve negligible or no expansion or change of use beyond that previously existing.
- Consulted Parties:** Department of Hawaiian Home Lands, Department of the Attorney General
- Recommendation:** That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT 1

Revocable Permits for Water Statewide

Permittee	Location	Proposed Use of Water	Consumptive or Non-consumptive	Notes
ALEXANDER & BALDWIN, INC. (RPs 7263, 7264 & 7265) and EAST MAUI IRRIGATION CO. LTD. (RP7266)	Hana, Maui; (2) 1-1-001:044; 1-1-001:050; 2-9-014:various; 1-1-002:002; 1-2-004:005 & 007	Irrigation and other uses.	Consumptive	Est. total water use from May 2018 through April 2019= 9723.01 million gallons. Average of 26.64mgd.
HAWAII ELECTRIC LIGHT CO., INC. (RP7463)	South Hilo, Hawaii; (3) 2-6-009	Hydroelectric power generation.	Non-consumptive, except for system losses	
KAPAPALA RANCH (RP7054)	Kau, Hawaii; (3) 9-8-1:3,9,10; 9-7-1:1	Watering livestock and wildlife.	Consumptive	Est. total water use from January 2019 through June 2019= 4.627 million gallons. Average of 0.0257mgd.
KUAHIWI CONTRACTORS, INC. (RP7426)	Kau, Hawaii; (3) 9-7-1:1,15	Watering livestock.	Consumptive	Est. total water use from December 2018 through June 2019= 13.396 million gallons. Average of 0.0638mgd.
OLSON, TRUSTEE, EDMUND C. (RP7432)	Kau, Hawaii; (3) 9-6-6; 9-6-7; 9-6-8; 9-7-1	Irrigation and watering livestock.	Consumptive	Est. total water use from December 2018 through June 2019= 3.195 million gallons. Average of 0.0152mgd.
WOOD VALLEY WATER & FARM COOPERATIVE (RP7267)	Kau, Hawaii; (3) 9-7-001:001	Public drinking water, irrigation and watering livestock.	Consumptive	Est. total water use from January 2019 through June 2019= 4.288 million gallons. Average of 0.0238mgd.
KAUAI ISLAND UTILITY COOPERATIVE (RP7340)	Lihue, Kauai; (4) 3-9-001:001	Hydroelectric power generation.	Consumptive. Although this is a hydroelectric project, the water is not returned to the same stream from which it is diverted.	Est. total water use from June 2018 through May 2019: North Wailua Ditch (Waikoko Stream)= 3261 million gallons; (North Fork Wailua Stream)= 2351 million gallons. Total average of 15.38mgd; 2019 average of 11.34mgd.

Revocable Permits for Water Statewide

LINDER, JEFFREY S. (RP7088)	Kawaihau, Kauai; (4) 4-9-001:001	County water supply and irrigation purposes.	Consumptive	No reporting requirement in permit but estimated average use is 0.15mgd.
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EXHIBIT 2

AMENDED

D-7

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 9, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 9, 2018

MAUI

Holdover of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

LEGAL AUTHORITY:

Section 171-58, Hawaii Revised Statutes (HRS), as amended.

BACKGROUND:

At its meeting on December 11, 2015, under agenda item D-14, as amended, the Board of Land and Natural Resources (Board) directed Land Division staff to submit annual revocable permit renewals by county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent was set. At its meeting on June 24, 2016, under agenda item D-7, the Board further approved the recommendations of the Department of Land and Natural Resources Revocable Permit Task Force, as amended, requesting all divisions to notate any non-compliance issues and pending litigation in the renewal request. In compliance with these directives, staff presented the revocable permits for land uses by county over four separate meetings in 2016. However, staff omitted revocable permits for water use from the renewal requests because of the complex issues they present. At its meeting on December 9, 2016 under agenda item D-11, the Board approved, as amended, a one-year holdover of the existing water permits on the island of Maui pursuant to Section 171-58, HRS, as recently amended by Act 126 Session Laws of Hawaii 2016 (Act 126). The Board imposed additional conditions in granting its approval:

- 1) To require the holdover of the revocable permits to incorporate the July 18, 2016 order of the Commission on Water Resource

D-7

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- 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;
- 2) There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
 - 3) Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted;
 - 4) A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of additional water if necessary during the term of the permits;
 - 5) The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams; and
 - 6) The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of contact for the other group.

At its meeting on November 9, 2017, the Board approved the continued holdover of the permits for an additional year but added additional requirements as follows:

- 1) The holdover shall comply with all conditions required by the CWRM's Interim Instream Flow Standards decision;
- 2) 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; and
- 3) Permittee shall begin cleanup of trash from revocable permit areas starting with areas that are accessible and close to streams.
- 4) Reword the previous condition 5 so it addresses the ability of stream biota to move upstream.

Staff now brings the existing water permits on the island of Maui to the Board for approval of an additional one-year holdover. The status as to the Board's additional conditions is addressed in the Remarks section.

REMARKS:

On July 1, 2016, Act 126 became law, amending Section 171-58, HRS. The amended section provides in part:

Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three years; provided further that the holdover is consistent with the public trust doctrine

A copy of the full text of Act 126 is attached as Exhibit 1. In the present matter, applicants Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI) come before the Board to request that the Board consent to the pre-existing holdover status of the revocable permits issued to them, as explained in the following section.

Procedural History

On May 26, 2000, the Board approved the issuance of revocable permits to A&B and EMI to take water from four license areas on Maui. The diverted water is transported to central and upcountry Maui for agricultural and domestic purposes. Four revocable permits were issued for four license areas, respectively, S-7263 (Honomanu), S-7264 (Huelo), and S-7265 (Keanae) to A&B, and S-7266 (Nahiku) to EMI. See maps attached as Exhibit 2.

On May 14, 2001, A&B and EMI filed an Application for Long Term Water License with the Board. The application sought a continuation of the existing diversions for the same agricultural and domestic uses through a 30-year lease of water originating from state lands. At its meeting on May 25, 2001, the Board heard the request, which included the continued issuance of interim revocable permits on an annual basis pending the issuance of a long-term disposition. During the meeting, there was a request for a contested case hearing to challenge the legality of the long term license by Nā Moku Aupuni O Ko'olau Hui (Na Moku), which was granted by the Board. Pending the outcome of the contested case, the Board deferred action on the request and granted holdover revocable permits to A&B and EMI. In addition to the contested case hearing on the long term water license, Na Moku also filed petitions with CWRM to amend the Interim Instream Flow Standards (IIFS) for certain East Maui streams. The IIFS petitions resulted in litigation and a contested case hearing.

The Board affirmed the holdover status of the water permits at its meeting on May 24, 2002 and its intention to preserve the status quo until the resolution of the contested case. The water license contested case also led to litigation and ultimately resulted in the Board

issuing a Findings of Fact, Conclusions of Law and Decision and Order on March 23, 2007. The intent was to provide interim relief until the IIFS petitions were resolved, requiring A&B and EMI to decrease diversions on Waiokamilo Stream to allow for more water to flow downstream to the local taro growers.¹ The March 23, 2007 decision acknowledged that the environmental review and IIFS would likely take years to resolve, and that the holdover was essential to the Board's proper discharge of its public trust responsibilities.

In 2015, Na Moku filed a separate action with the First Circuit Court challenging that the annual renewal of the revocable permits did not undergo the appropriate environmental review under Chapter 343, HRS. The court decided that the continuance of the revocable permits was not an action subject to Chapter 343, HRS. However, the court, independent of any claims made by Na Moku, determined that the Board exceeded its authority under Sections 171-10 and 171-55 HRS, in placing the revocable permits into holdover status for 13 years, and declared the revocable permits invalid. The decision is currently on appeal in the Intermediate Court of Appeals (ICA) by the County of Maui, A&B, EMI and the State. The Board reaffirmed that the permits were in holdover status at its meeting on December 11, 2015. Na Moku filed another action with the State's Environmental Court challenging the December 11, 2015 reaffirmation. That matter has been stayed pending resolution of the appeal at the ICA.

On June 20, 2018, CWRM issued its Findings of Fact, Conclusions of Law & Decision and Order in the contested case hearing regarding the petition to amend the IIFS for the 27 East Maui streams that were subject to the petition. Of those 27 streams, 10 were fully restored, with no diversion of water allowed. In determining the IIFS, CWRM noted that it was its duty to protect instream values to the extent practicable and to protect the public interest. However, CWRM must also weigh the importance of off-stream uses of water, including the economic impact of restricting those uses. CWRM also determined that the off-stream use of water in preserving agricultural lands and assuring adequate water supplies for Maui was in the public interest. CWRM's Findings of Fact, Conclusions of Law & Decision and Order is available through the following link:

<http://files.hawaii.gov/dlnr/cwrm/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf>

The Department considers the revocable permits to be in continued holdover status, until the resolution of the pending contested case before the Board on the water license.² Although the permits were invalidated by the Circuit Court, the ruling was stayed pending the appeal. Therefore, the permits remain in holdover status until that time. However, in

¹ A&B eventually ceased all diversions of Waiokamilo Stream in 2007.

² As noted above, the Board approved the revocable permits to be in holdover in 2001, then reaffirmed the holdover status in 2002 and again in 2015. The holdover status was also validated by the hearings officer in the 2007 contested case decision. Only the 2015 decision was challenged by Na Moku. The inclusion of the revocable permits in the annual renewal for all revocable permits brought to the Board was simply to address the annual rent, not to reconsider the holdover status of the permits.

an abundance of caution and in the event the decision is upheld on appeal, staff recommends that the Board approve the written request submitted by A&B and EMI (attached in part as Exhibit 3³) to authorize the continued holdover of the revocable permits in compliance with Act 126. Staff takes the position that, despite the revocable permits already being in holdover status, the Board authorizing the continued holdover would comply with Act 126. As noted previously, Act 126 allows the Board to authorize annual holdovers where an application for a lease has been made to continue a previously authorized disposition of water rights. The Board did previously authorize the initial revocable permits in 2001, which have been in valid holdover since. Furthermore, A&B and EMI submitted their lease applications in 2001, and are currently proceeding with their environmental impact statement. The applications are attached as Exhibit 4.

In their request to approve the holdover, A&B and EMI contend the holdover is consistent with the public trust. Specifically, the continued diversion of water through the ditch system is necessary to preserve the operational integrity of the ditch system, which will in turn keep A&B's former sugar cane lands in central Maui viable for future agricultural uses, including diversified agriculture.⁴ Additionally, a portion of water diverted through the ditch system is utilized by the County of Maui to service the Nahiku and Upcountry Maui communities.

In previous approvals for holdovers, the Department has noted that title to water resources is held in trust by the State for the benefit of its people, and with respect to the agricultural use of water, the Hawaii Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawaii Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawaii Constitution, Article XI, Section 10.

Considering the foregoing constitutional provisions and in the absence of compelling evidence to the contrary, the Department finds that the justification provided by A&B and EMI is sufficient to recommend that the requested holdover is consistent with the public trust doctrine. Given the short term, one-year holdover period, Staff acknowledges the need to ensure the continued operation of the ditch system to provide water for the County of Maui to deliver to its residents, at a minimum. Since the IIFS has now been

³ Due to the length of the request document, its attachments have been omitted.

⁴ A large portion of A&B's lands in central Maui has been designated as Important Agricultural Lands (IAL).

amended by CWRM, there is greater assurance that the use of water under the revocable permits would be consistent with public trust responsibilities. Additionally, staff recommends that the Board affirm that the diversion of water under the revocable permits be subject to compliance with the amended IIFS. However, staff emphasizes that such finding is based solely within the context of Act 126, and further inquiry and analysis are required to determine whether a long term lease would be consistent with the public trust doctrine.

As part of its 2017 approval, the Board set a maximum diversion amount at 80 million gallons per day (mgd). As the amended IIFS has been established, the Board is recommended to forego the 80 mgd limit, but instead require that any water diverted under the revocable permits shall be for reasonable and beneficial use and always subject to compliance with the amended IIFS.

The rent or fee to charge for water use is another issue. Standard appraisal methodologies may not work well in establishing a charge for water. There are few comparables that an appraiser could look at, and other types of appraisal methodology are ill-suited for determining a cost to charge for consuming a resource. It is even more difficult to appraise the non-consumptive use of water involved in hydroelectric uses.

Land Division staff has met with the Department of Hawaiian Home Lands (DHHL), the Office of Hawaiian Affairs (OHA) and the Office of Environmental Quality Control (OEQC) regarding the processing of water lease applications. All agencies are interested in devising a method of charging for the use of water in a way that will help to sustain the resource. As several applicants are making progress in meeting the statutory requirements for a water lease, staff intends to hire an appraiser to address the valuation issue.

The current rents for the revocable permits are as follows:

RP S-7263:	\$1698.32 per month
RP S-7264:	\$6588.40 per month
RP S-7265:	\$3476.72 per month
RP S-7266:	\$1426.88 per month

Staff has previously recommended keeping the current rents for holdover revocable permits in place. However, pursuant to further meetings between DLNR and DHHL staff, DHHL raised concerns that revocable permit rents have been static for an extended period of time with no adjustment and has advocated that, at a minimum, rents be adjusted for inflation. Acknowledging the difficulty in appraising a holdover revocable permit, staff concurs with DHHL's recommendation as an interim measure, and that the Board approve adjusting the rents accordingly. As the permits were originally granted in the year 2000, the original rents have been adjusted by CPI to the approximate value as of August 2018. The adjusted rents are as follows:

RP S-7263:	\$2478.15 per month
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RP S-7264: \$9613.65 per month
RP S-7265: \$5073.15 per month
RP S-7266: \$2082.07 per month

In addition to the rent issue, DHHL has commented that pursuant to HRS 171-58(c)(1), any holdover be “consistent with the public trust doctrine”, and furthermore that all revocable permits shall be subject to any existing or future reservations of water for DHHL. Staff concurs with DHHL’s comments and recommends that the Board incorporate them into approval of any holdover. A review of the files shows the permittees are compliant with the permit terms. Staff believes that a one-year holdover of these revocable permits is appropriate under Section 171-58, HRS, and Act 126. Additional agency comments were not solicited for this action since the revocable permits are limited term holdovers. Furthermore, as all permit holders subject to this approval have applied for water leases, there will be numerous opportunities for government agencies and general public to provide input during the Chapter 343 HRS environmental review process and any Board approval for a public auction for the water leases.

Since the Board’s prior approval of the holdover, A&B and EMI have proceeded with conducting their Environmental Impact Statement. An Environmental Impact Statement Preparation Notice (EISPN) was published in the Office of Environmental Quality Control Environmental Notice on February 8, 2017. A number of comments were received, with many expressing concerns about the proposed water lease. A&B and EMI will address the comments as part of the EIS. Additionally, A&B and EMI have taken action to address the additional conditions imposed by the Board pursuant to the prior holdover approvals in 2016 and 2017. A summary of the actions taken is attached as Exhibit 5.

In consideration of the foregoing, the Board is recommended to approve the holdover of the revocable permits, subject to all previous conditions that remain consistent with the June 20, 2018 CWRM Findings of Fact, Conclusions of Law & Decision and Order. In addition, previous conditions required by the Board that are inconsistent with the CWRM decision have been deleted from the recommendations.

RECOMMENDATION: That the Board:

1. Find that the holdover of the subject revocable permits is consistent with the public trust doctrine;
2. Approve the holdover of the subject revocable permits on a month-to-month basis for another one-year period through December 31, 2019, at the adjusted rent amounts previously identified;
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;

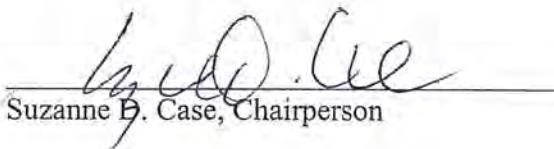
4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
5. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS;
6. The holdover shall comply with all conditions required by the CWRM's Amended IIFS decision;
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;
8. Permittee shall cleanup trash from revocable permit areas starting with areas that are accessible and close to streams; and
9. The revocable permits shall be subject to any existing or future reservations of water for DHHL.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne B. Case, Chairperson

Land Board Meeting: November 9, 2018; D-7: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: November 9, 2018; D-7: Approved as amended.

Approved as amended. 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.

Sierra Club verbally requested a contested case after the Board's approval.

A BILL FOR AN ACT

RELATING TO WATER RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) Disposition of water rights may be made by lease at
4 public auction as provided in this chapter or by permit for
5 temporary use on a month-to-month basis under those conditions
6 which will best serve the interests of the State and subject to
7 a maximum term of one year and other restrictions under the law;
8 provided that ~~any~~:

9 (1) Where an application has been made for a lease under
10 this section to continue a previously authorized
11 disposition of water rights, a holdover may be
12 authorized annually until the pending application for
13 the disposition of water rights is finally resolved or
14 for a total of three consecutive one-year holdovers,
15 whichever occurs sooner; provided that the total
16 period of the holdover for any applicant shall not
17 exceed three years; provided further that the holdover
18 is consistent with the public trust doctrine;



1 (2) Any disposition by lease shall be subject to
2 disapproval by the legislature by two-thirds vote of
3 either the senate or the house of representatives or
4 by majority vote of both in any regular or special
5 session next following the date of disposition;
6 ~~[provided further that after]~~ and
7 (3) After a certain land or water use has been authorized
8 by the board subsequent to public hearings and
9 conservation district use application and
10 environmental impact statement approvals, water used
11 in nonpolluting ways, for nonconsumptive purposes
12 because it is returned to the same stream or other
13 body of water from which it was drawn, and essentially
14 not affecting the volume and quality of water or biota
15 in the stream or other body of water, may also be
16 leased by the board with the prior approval of the
17 governor and the prior authorization of the
18 legislature by concurrent resolution."

19 SECTION 2. The department of land and natural resources
20 shall prepare and submit annual reports to the legislature no
21 later than twenty days before the convening of each of the



1 regular sessions of 2017, 2018, 2019, and 2020. The reports
2 shall include:

- 3 (1) The status of applications to continue previously-
4 authorized dispositions of water rights;
- 5 (2) Actions taken on the applications during the fiscal
6 period of July 1, 2016, to November 30, 2016, fiscal
7 year 2016-2017, fiscal year 2017-2018, and fiscal year
8 2018-2019, respectively; and
- 9 (3) Any relevant recommendations for legislative action or
10 appropriation.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval,
14 and shall apply to applications for a lease to continue a
15 previously authorized disposition of water rights that are
16 pending before the board of land and natural resources on the
17 effective date of this Act or filed with the board of land and
18 natural resources on or after the effective date of this Act,
19 but prior to June 30, 2019; provided that:

- 20 (1) This Act shall be repealed on June 30, 2019, and
21 section 171-58(c), Hawaii Revised Statutes, shall be



H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

1 reenacted in the form in which it read on the day
2 prior to the effective date of this Act; and
3 (2) Any holdovers first applied for under this Act prior
4 to June 30, 2019, may be reauthorized, as provided in
5 section 1 of this Act, beyond June 30, 2019.



H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

Report Title:
Water Rights; Holdover

Description:

Requires that where an application has been made for a lease to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner. (HB2501 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB2501 CD1 HMS 2016-3425



000036

RP S-7263 Huomanu

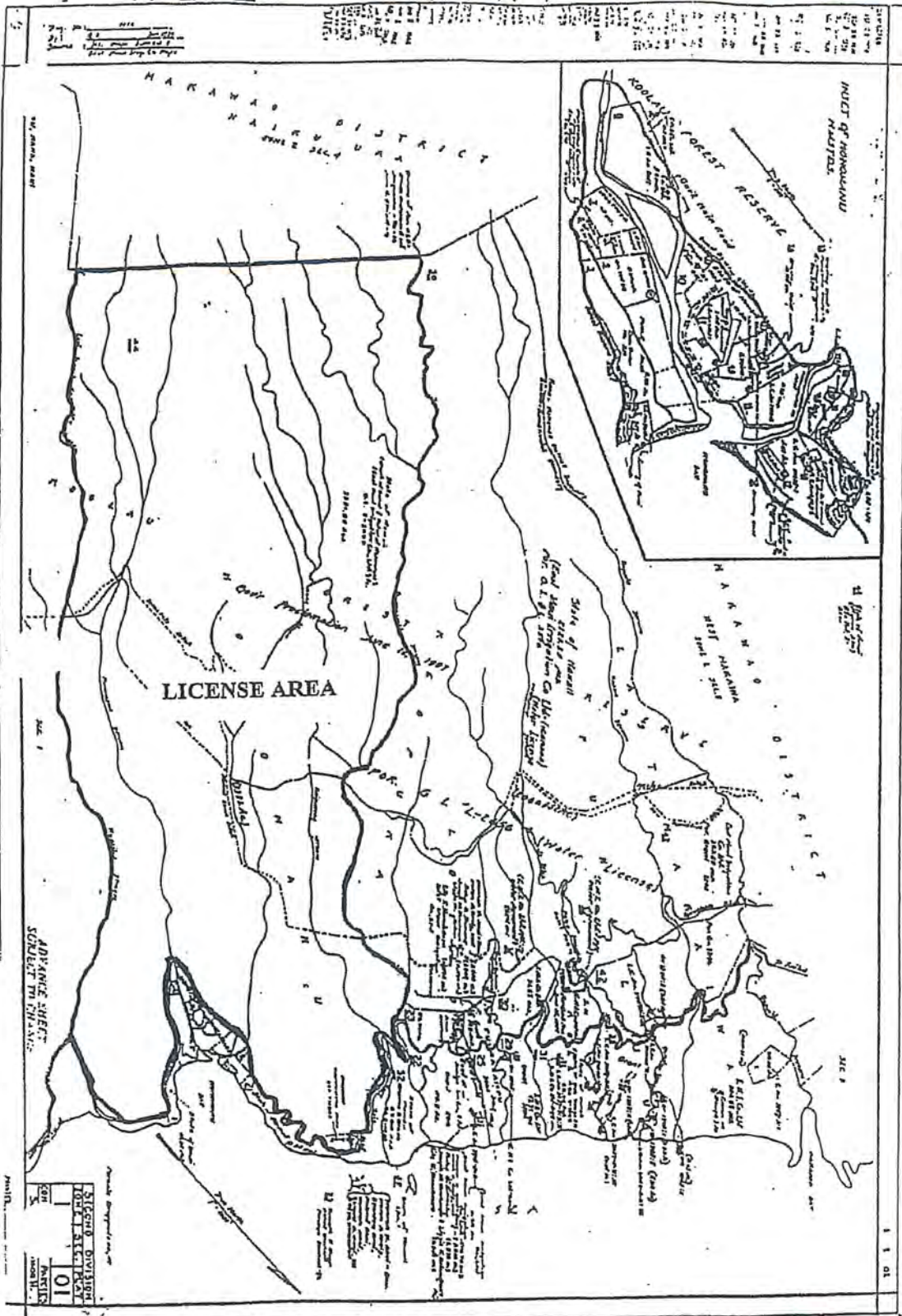
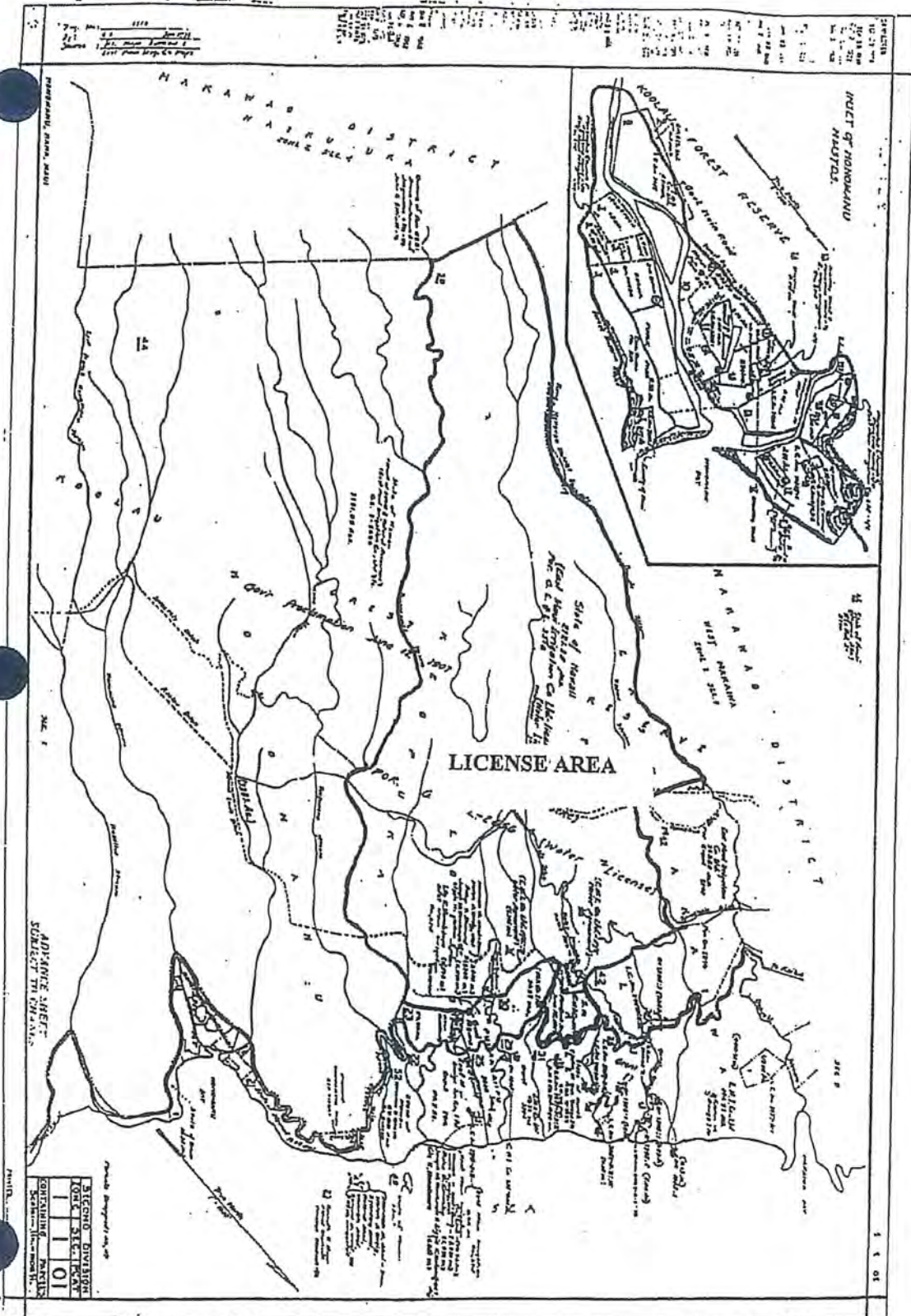
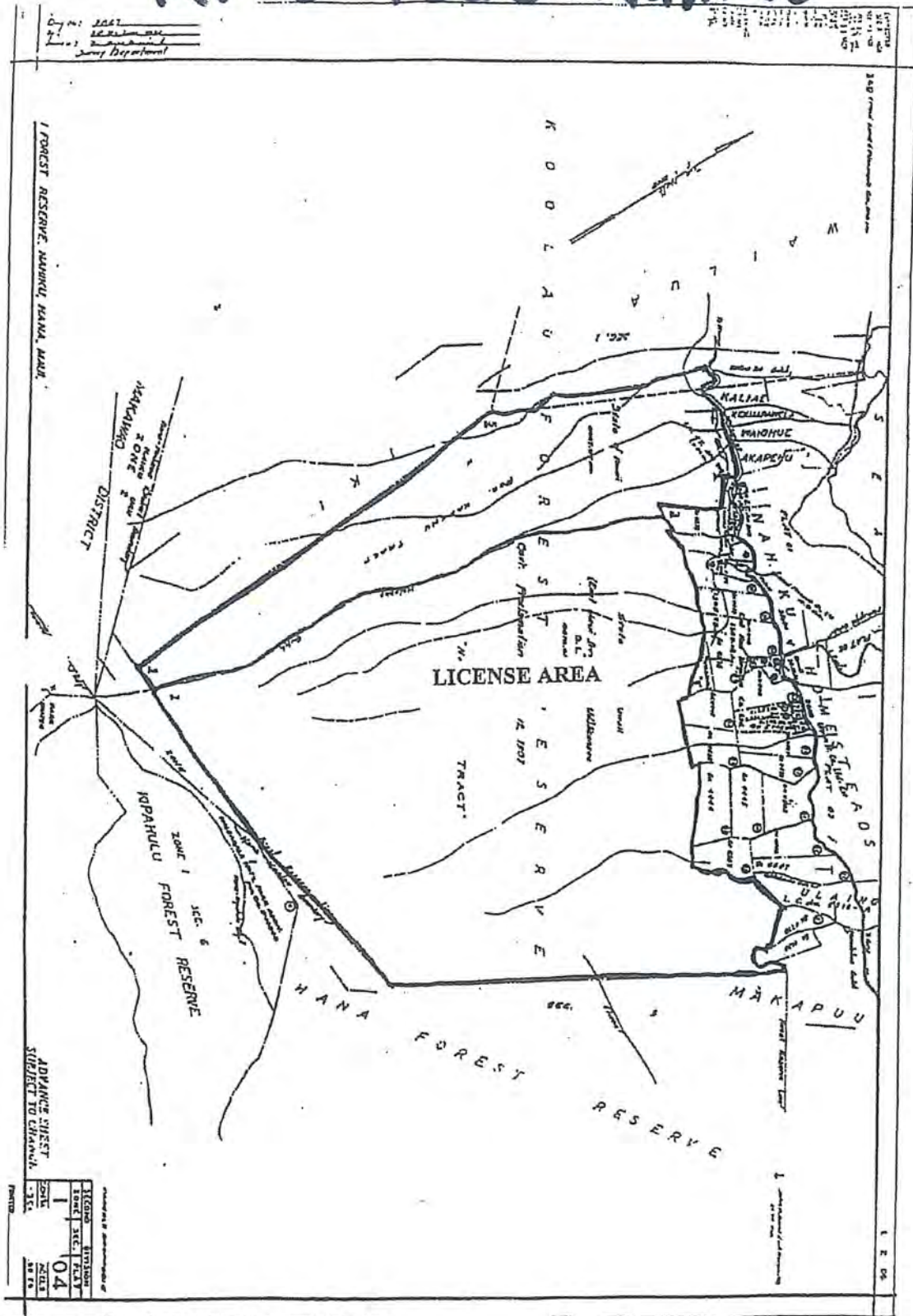


EXHIBIT "2"

RP S-7264 Huelo



RP S-7266 Nahiku



Day No: 2067
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 Army Department

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I. FOREST RESERVE, MAHUKU, HANA, MAHA

ADVANCE STREET SUBJECT TO THROUGH

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ALEXANDER & BALDWIN
PARTNERS FOR HAWAII

October 24, 2018

VIA E-MAIL and U.S. MAIL

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

RE: Authorization of Holdover Status of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited for purposes of Compliance with Act 126

Dear Ms. Case:

The purpose of this letter is to formally request the Board of Land and Natural Resources (“*BLNR*”), pursuant to Haw. Rev. Stat. §171-58, to review and authorize the holdover status 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 purposes of Compliance with Act 126.

Background

This is A&B/EMI’s third Act 126 request to BLNR for review and authorization of the continued holdover status of these four Revocable Permits (hereafter, the “*East Maui RP’s*”). EMI’s first request was made by letter dated November 23, 2016, and its second request was made by letter dated October 24, 2017. Copies of both letters are enclosed, with the November 23, 2016 letter providing a background of the East Maui RP’s.

The second holdover request was considered by the BLNR at its November 9, 2017 meeting and approved subject to conditions recommended by Department of Land and Natural Resources (DLNR) staff (see pages 6-7 of the Staff Submittal for item D-5, attached) as well as certain conditions imposed by the BLNR (the “*RP Additional Conditions*”), enumerated on

EXHIBIT "3"

page 13 of the minutes of the meeting, which were approved on December 8, 2017, a copy of which minutes is also enclosed.

Holdover of EMI's permits continues to be consistent with the Public Trust Doctrine

As recognized by BLNR when it granted EMI's first and second requests to authorize the continued holdover status of the East Maui RP's, the holdover of EMI's permits is consistent with the Public Trust Doctrine. Water collection enabled by the East Maui RP's continue to serve the needs of the public water system that serves Upcountry Maui, owned and operated by the County of Maui Department of Water Supply, as well as increasing diversified agricultural activities in Central Maui. 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's ("*CWRM*") for East Maui streams, 24 of which are within the area covered by the East Maui RP's. Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the CWRM's recently issued IIFS decision.

BLNR's conditions have been met

A status report of A&B/EMI's compliance with the conditions imposed by the BLNR in 2017 for the second holdover request was recently provided to the Department of Land and Natural Resources, Land Division, a copy of which is also enclosed. Since our submittal letter, we have received all of the required regulatory approvals to proceed with work of permanently abandoning 15 of the taro stream diversions. That work will proceed immediately.

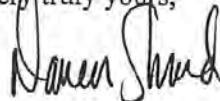
EIS/Lease process proceeding

Lastly, work on the Environmental Impact Statement ("*EIS*") that BLNR ordered A&B to prepare in its July 8, 2016 Order Re Alexander & Baldwin, Inc.'s and East Maui Irrigation Company, Limited's Submission of Environmental Impact Statement Scope of Work filed June 9, 2016 has continued throughout the year, to the extent possible pending the CWRM's East Maui IIFS decision. With the issuance of the IIFS decision in June, the maximum amount of water that could be diverted pursuant to the state water lease could be defined, in turn enabling studies of the corresponding impacts to proceed. The current projected timeline estimates that the Draft EIS will be provided to the DLNR for its review, prior to publication, within the second quarter of 2019. Assuming no undue delays or challenges, the Final EIS should be able to be provided to the DLNR by the end of 2019, enabling the lease process to be initiated.

Ms. Suzanne D. Case
October 24, 2018
Page 3

In light of the above, EMI respectfully asks the BLNR to re-authorize the holdover of Revocable Permits Nos. S-7263, S-7264, S-7265 and S-7266 and to declare the holdover to be consistent with the public trust doctrine.

Very truly yours,



Darren Strand
General Manager, Diversified Agriculture

Enclosures

cc: Linda Chow, Esq.
Summer L. H. Sylva, Esq.
Camille K. Kalama, Esq.
Isaac Hall, Esq.
Patrick K. Wong, Esq.
Caleb P. Rowe, Esq.
Kristin K. Tarnstrom, Esq.
Robert H. Tomas, Esq.
Russell Tsuji
Kevin Moore
Ian Hirokawa



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www.alexanderbaldwin.com
Tel (808) 525-6611
Fax (808) 525-6652

May 14, 2001

BY HAND DELIVERY

Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Sale of Lease (Water License) at Public Auction, Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui

Ladies and Gentlemen:

Alexander & Baldwin, Inc. and its subsidiary, East Maui Irrigation Company, Limited, request sale of a lease at public auction of the Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui, in accordance with the following:

Statute: Chapter 171, HRS generally; Section 171-58(c), HRS.

Location: Portion of the government land within the Koolau Forest Reserve and the Hanawi Natural Area Reserve generally identified as the Nahiku, Keanae, Huelo and Honomanu License areas.

Tax Map Keys 1-1-01, 1-1-02, 1-2-04, 2-9-14

<u>Area:</u>	Nahiku	10,111.22 acres, more or less
	Keanae	10,768.00 acres, more or less
	Huelo	8,752.69 acres, more or less
	Honomanu	3,381.00 acres, more or less
	Total Lease Area	33,012.91 acres, more or less

(The total area shall be subject to review and confirmation by the Department of Accounting and General Services, Survey Division)

Status: Nahiku encumbered under Revocable Permit No. S-7266

Keanae encumbered under Revocable Permit No. S-7265

Huelo encumbered under Revocable Permit No. S-7263

Honomanu encumbered under Revocable Permit No. S-7264

EXHIBIT S-2

EXHIBIT "4"

Board of Land and Natural Resources
State of Hawaii
May 14, 2001
Page 2

- Land Title: Subsection 5(b) of the Admissions Act
- Zoning: State Land Use Commission: Conservation
- Purpose: Right, privilege and authority to enter and go upon the above-described areas for the purpose of developing, diverting, transporting and using government-owned waters.
- Term: Thirty (30) years, commencing sixty (60) days from public auction.
- Rental: Minimum Rental to be determined by appraisal, subject to review and acceptance by Chairperson. Minimum Rental shall be subject to reopening and redetermination at the end of the tenth (10th) and twentieth (20th) years of the term; such redetermination to be made by appraisal.
- Bond: A performance bond shall be posted to the extent required by statute.
- EIS: All bidders shall prepare and file with the Office of Environmental Quality Commission an Environmental Impact Statement with respect to the proposed use. Disposition of the cost of the EIS shall be determined at a future date.
- Other:
1. The lease shall be subject to that certain Indenture dated March 18, 1938, by and between the Territory of Hawaii and East Maui Irrigation Company, Limited, as amended by Correction Agreement dated March 24, 1938.
 2. Lessee shall maintain roads, trails and the water system.
 3. The State shall have limited rights, to be specified in the lease, to withdraw water for domestic purposes and for emergency purposes.
 4. Public hunting will be allowed, subject to reasonable restrictions to be contained in the lease and consistent with June 5, 1995 Vehicular Access Agreement.
 5. The lease shall be issued subject to Instream Flow Standards as subsequently determined by the Commission on Water Resource Management.
 6. Lessee shall continue to supply of water for domestic purposes to the Maui County Board of Water Supply pursuant to the April 13, 2000 Memorandum of Understanding between BWS and A&B.
 7. Other relevant terms as reflected in the existing revocable permits and expired license agreements shall be included.

Board of Land and Natural Resources
State of Hawaii
May 14, 2001
Page 3

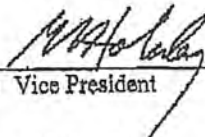
Summary: We request the Board to take the following action:

- A. Authorize the sale of a lease (water license) at public auction covering the area in question under the above-listed terms and conditions which are by reference incorporated herein and, in addition, under the following conditions:
 - i. Provision for proper maintenance of the water system.
 - ii. Compliance with all applicable laws, rules and regulations.
 - iii. Disapproval by the State legislature following date of sale.
 - iv. Filing of an Environmental Impact Statement by all bidders.
 - v. Other terms and conditions as Chairperson may prescribe.
- B. Authorize temporary continuation of the year-to-year revocable permit for existing permittees (the Nahiku revocable permit to Alexander & Baldwin, Inc. and the Honomanu, Huelo and Keanae revocable permits to East Maui Irrigation Company, Limited for fiscal year 2001/2002) pending issuance of the lease.

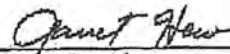
Thank you for your consideration of this request.

Very truly yours,

Alexander & Baldwin, Inc.

By: 
Its Vice President

East Maui Irrigation Company, Limited

By: 
Its Vice President

HOLDOVER OF EAST MAUI WATER PERMITS
2017 BLNR CONDITIONS: STATUS OF COMPLIANCE
OCTOBER 16, 2018

CONDITIONS PER 11/9/17 STAFF SUBMITTAL (pp. 6, 7)

3. To require the holdover of the revocable permits to incorporate the July 18, 2016 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.

Status: The CWRM's July 18, 2016 order has been complied with. Streams that were ordered to remain undiverted were undiverted as total needs from the East Maui watershed remained at 20-25 million gallons per day (MGD). The CWRM's July 2016 order has now been superseded by the CWRM's June 2018 East Maui IIFS decision.

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

Status: Total water diverted from East Maui streams approximated 20-25 MGD throughout 2018. All water was used to meet the needs of the County of Maui for its Upcountry and Nahiku public water systems, the Kula Ag Park, and fire suppression needs, as well as for diversified agricultural needs on former sugar lands in Central Maui.

5. Honomanu shall also be designated as a stream from which no water diversion shall be permitted

Status: All four sluice gate diversions on Honomanu Stream have remained open to-date, and no water is being diverted from this stream.

6. A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of additional water if necessary during the term of the permits

Status: As mentioned above, total water diverted for use in Upcountry and Central Maui has approximated 20-25 MGD this past year.

7. The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams

Status: See response to question 2 below, in "Additional Conditions".

BLNR ADDITIONAL CONDITIONS (Pg 13, 11/9/17 BLNR Meeting Minutes):

1. The holdover permit shall comply with all conditions required by the Commission on Water Resource Management's Interim Instream Flow Standards decision

Status: The Commission on Water Resource Management (CWRM) issued its East Maui Interim Instream Flow Standard ("IIFS") decision on June 20, 2018. No appeals were filed at the end of the 30-day appeal period, rendering the decision final. In that the current need for water from the East Maui streams averages 20-25 million gallons per day (MGD), only that amount of water is being diverted from the East Maui watershed—well within the bounds of the June IIFS decision with respect to 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, and for agricultural uses in Central Maui. The Permittee is also in the process of submitting a proposed compliance plan to the CWRM staff to outline the diversion modifications that will be made to ensure compliance with the IIFS decision once irrigation demands increase, as is expected over the coming months and years.

2. Reword Condition 5 [sic] so it addresses the ability of stream biota to move upstream.

Status: (NOTE: Our response to this condition assumes that a typo was made, and that this condition in intended to refer to rewording condition 7, rather than condition 5. We assume the focus was to address the need to create pathways to allow for the upstream movement of stream biota.)

A number of modifications have been made on the EMI ditch system to facilitate the upstream movement of stream biota, as follows:

- *Hanawi Stream: Modifications were made at the intake to ensure a constant wetted path across both sides of the dam diversion, via a pipe extending over the dam.*
- *Waiohue Stream: A two-inch pipe was installed to divert water from the upstream waterfall to the dam to create a wetted path across the dam.*
- *East Wailuaiki Stream: A two-inch pipe was installed to bring water from upstream across the top of the dam to create a wetted path across the dam.*
- *West Wailuaiki Stream: A two-inch pipe was installed between the upstream waterfall and the dam, to provide a wetted path across the dam.*
- *Honopou Stream at Haiku Ditch: Rocks were concreted in place next to the pipes in the dam to create a wetted path for upstream migration*
- *Puoloa Stream at Lowrie Ditch: The 8" pipe that carries water over the top of the ditch was extended to reach the small pool below the ditch to provide connectivity.*

These actions have removed physical obstacles to upstream movement and/or provided wetted areas around dams. In addition, in our implementation of the June IIFS decision, we will be addressing the movement of stream biota as needed.

3. Need a more specific report on progress regarding removing diversions and fixing pipe issues before the end of holdover period

Status: We believe the pipe issues referred to above related to a pipe at Puolua Stream at the Lowrie Ditch. As mentioned in the last bullet point above, the pipe was extended to provide wetted pathways for the movement of stream biota.

As for the removal of diversions on the seven taro streams that A&B earlier volunteered to restore, permit applications have been submitted to the CWRM for the work necessary to permanently modify and abandon some 70 diversion structures on the EMI system and we are awaiting their approval. Additionally, approval has been sought from the Office of Conservation and Coastal Lands (OCCL) for work on diversions located within the Conservation District. Note that we have already sought and received concurrence from the Army Corps of Engineers and the County of Maui that Section 404 and Special Management Area (SMA) permits are not required for this work. Once approvals are received from the CWRM and OCCL, we will proceed with the planned work. Please note that pending this "final work" to permanently abandon these diversions, we have been able to accomplish the return of more than 90% of the water formerly diverted from these taro streams by making operational adjustments to the system, such as the opening of sluice gates, etc.

4. A&B needs to clear up their debris starting with more accessible areas and along streams.

Status: We have removed an abandoned tractor along Pi'ina'au Road, after first checking with the State Division of Forestry and Wildlife (DOFAW). Ownership of the tractor was unknown, but DOFAW had no objection to our removing and disposing of the item. There was little other debris specifically identified, however existing operating procedures which require the removal of all construction equipment, forms and tools when doing maintenance work on the ditch system have been reinforced with EMI crews, as well as the removal of any debris they may find during the course of their work. We also urge that if anyone has information about debris in the watershed area, please let us know and we will take action to remove the items.

EXHIBIT 3

AMENDED

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 14, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii and Kauai

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits.

LEGAL AUTHORITY:

Section 171-58, Hawaii Revised Statutes (HRS), as amended.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject action is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.", Item 51, "Permits, licenses, registrations and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." See Exhibit 1 attached.

BACKGROUND:

At its meeting on December 11, 2015, Item D-14, as amended, the Board of Land and Natural Resources directed Land Division staff to submit revocable permit renewals by county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent was set. At its meeting on June 24, 2016, Item D-7, the Board further approved the recommendations of the Department of Land and Natural Resources Revocable Permit Task Force, as amended, requesting all divisions to notate any non-compliance issues and pending litigation in each renewal request. In compliance with these directives, staff has presented the revocable permits for land uses by county over four separate meetings in 2016. However, staff omitted revocable permits for water use from the renewal requests because of the complex issues they present. At its meeting on November 10, 2016, under agenda item D-3, the Board approved the one year holdover of nine water revocable permits on the islands of Hawaii and Kauai pursuant to Section 171-58, HRS, as amended by Act 126 Session Laws of Hawaii 2016

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 14, 2018 up

(Act 126).

At its meeting on December 8, 2017 under agenda item D-4, the Board approved as amended the continued holdover of the revocable permits until December 31, 2018. Additional conditions imposed by the Board were the following:

With respect to all revocable permits covered by this action with the exception of RP S-7340:

- A. Department staff shall explore working with permittees statewide to clarify lease requirements in HRS section 171-58 in regards to compliance with Chapter 343, HRS and the development of a watershed management plan, specifically whether certain leases may be exempted from an EA/EIS and whether existing watershed management plans are sufficient to meet the requirement of the statute.
- B. With regard to Kau (Waiohinu), Department staff shall work with DHHL and the County of Hawaii Department of Water to explore releasing and separating the part of the water spring source that is the county water system, and determine whether there is any part over which DLNR may issue water leases to DHHL beneficiaries.

With respect to Revocable Permit S-7340:

- A. Applicant Kauai Island Utility Cooperative (KIUC) shall provide to the Board within one year a proposal that involves the restoration of stream flows to the North Fork Wailua River (which could be satisfied by the adoption of interim instream flow standards).
- B. Department staff work with landowners on what is expected for the watershed management plan.
- C. KIUC shall consult with DHHL to honor DHHL's reservation rights under the law.

REMARKS:

On July 1, 2016, Act 126 became law, amending Section 171-58, HRS. The amended section provides in part:

Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three

years; provided further that the holdover is consistent with the public trust doctrine

A copy of the full text of Act 126 is attached as Exhibit 2.

By letter dated July 20, 2016, Land Division notified its current water permit holders on the islands of Hawaii and Kauai of the enactment of Act 126, and asked them to submit applications for water leases if they intended to seek a holdover of their water permits. In response, DLNR received eight applications for water leases from seven of its current water permittees. Additionally, Kauai Island Utility Cooperative (KIUC) has a pending application (received July 20, 2001) for an existing hydroelectric power project in Lihue, Kauai. KIUC is relying on its prior application for this use.

The list of revocable permits for water use on the islands of Hawaii and Kauai that staff recommends be held over for 2019 is attached as Exhibit 3. Included in the exhibit are the revocable permit numbers, permittee names, locations with tax map keys, State Land Use District of the land where the water source is situated, commencement date of the permit, land area, and comments. Copies of the maps from the revocable permits to be renewed are attached as Exhibit 4. Staff reviews the nine water permits by island below, followed by a discussion of the public trust doctrine as it relates to the permits.

Hawaii

Of the nine water permits that are the subject of this submittal, five are located in Kau, Hawaii. Hawaiian Agricultural and Hutchinson Sugar Company, both subsidiaries of C. Brewer & Co., Ltd., developed a system of tunnels, flumes and ditches in Kau in the 1900s, using the water primarily for fluming sugarcane and for wash water in the mills. Beginning in the late 1990s, some of the tunnels and transportation systems were converted to provide water to farmsteads and diversified crop endeavors. Diversified agriculture, livestock pasturage, orchard and field crops have expanded within the Kau District since that time.

At its meeting of January 11, 2008, under agenda Item D-8, the Board approved the withdrawal of the irrigation water system from the Kau Forest Reserve (KFR) and the set-aside of the system, along with other irrigation systems located outside of the KFR, to the Agribusiness Development Corporation (ADC). The staff submittal identified approximately 30 tunnel sources and systems to be set-aside to ADC. The approved Board action required ADC to survey the tunnels and water systems so the State Surveyor could prepare the official CSF maps to be included with the set-aside.

ADC provided the survey maps and descriptions to Land Division in 2015. As Land Division continued to process the approved disposition, it consulted with the Division of Forestry and Wildlife (DOFAW) on the survey maps and the status of the withdrawal from the KFR. DOFAW advised Land Division that DOFAW was opposed to the withdrawal of the water system from the KFR, but would be agreeable to an easement in favor of ADC over the portions of the irrigation system located in the KFR.

To address DOFAW's concerns, staff prepared a draft Board submittal to rescind the Board's prior action of January 11, 2008, Item D-8, and authorize instead the grant of a perpetual non-exclusive easement to ADC for the irrigation systems located in and outside of the KFR. The draft Board submittal would also have transferred the existing water permits and irrigation infrastructure to ADC. When the draft submittal was circulated for agency review in June 2016, however, it was opposed by the Department of Hawaiian Home Lands (DHHL) and Office of Hawaiian Affairs (OHA). DHHL argued that the proposed action was an improper circumvention of Section 171-58, HRS, and ignored DHHL's need for water in Kau. OHA expressed concern about ADC's ability to properly manage the revocable permits and fulfill the public trust obligations inherent in water use.

After the Board approved the holdover for 2018, DLNR and DHHL staff met with representatives of permittees Kuahiwi Contractors, Inc. (RP S-7426), Kapapala Ranch (RP S-7054), and Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 (RP S-7432) in Kau on January 8, 2018. Issues discussed at the meeting were the history of the tunnel system and the water leasing process, including requirements such as compliance with Chapter 343, Hawaii Revised Statutes. Pursuant to the Board's approval, staff and applicants discussed the possibility of obtaining an exemption from an environmental assessment (EA) or Environmental Impact Statement (EIS). Staff instructed the applicants that if appropriate, they should formally request and justify an exemption, which would be subject to review and ultimate approval by the Board. Whether an exemption is appropriate would be dependent upon the applicants' proposed use for the water under the lease, so the applicants were advised to finalize their water use requests. The remaining permittee, Wood Valley Water & Farm Coop (RP S-7234 and RP S-7267) was not in attendance at the meeting, but did reach out to staff. Staff and permittee then held a phone call to discuss the water leasing requirements. In regards to DHHL obtaining water for its tenants, as DHHL has reservation rights, having DLNR execute water leases with individual DHHL lessees may not be an appropriate or effective solution. Staff will continue to work with DHHL and assist in a solution for this issue to the extent appropriate.

A sixth water permit, Revocable Permit No. S-7463, is issued to Hawaii Electric Light Co., Inc. (HELCO) for hydroelectric power generation purposes on the Wailuku River in South Hilo, Hawaii. The permit requires all water used under the permit to be returned to the Wailuku River at convenient points. The hydroelectric facility and various water dispositions to allow it to operate have been in place for many decades. On August 15, 2017, Department staff attended a beneficiary consultation held by DHHL in regards to their water reservation. HELCO and DHHL have since agreed to an appropriate water reservation. Additionally the Board approved the acceptance of HELCO's Final Environmental Assessment and the issuance of a Finding of No Significant Impact at its meeting on September 28, 2018. The final EA was then published in the OEQC Environmental Notice on October 23, 2018.

Kauai

There are three water permits currently active on Kauai. RP S-7088 to Jeffrey S. Lindner allows for the use of water from State land in Kawaihau, Kauai, specifically from Moloaa Well No. 1. A portion of this water goes to the County of Kauai, a portion goes to the Moloaa Irrigation Cooperative (MIC), and a portion is used by Mr. Lindner on his private property. Staff understands that MIC provides water for both irrigation and domestic use. At the end of 2015, the Department of Health Safe Drinking Water Branch (SDWB) notified Mr. Lindner that SDWB was designating the system as a public water system which requires that that water be chlorinated prior to reaching the first customer, MIC. This has increased the cost of operation to Mr. Lindner, who has applied for a water lease explaining that a long-term disposition is necessary to allow him to recover his costs. Additionally, MIC has also applied for a water lease from the same well. However, it appears that MIC does not have access over the adjacent public lands to access and deliver the water.

When the Board approved the permit to Mr. Lindner in 1996, the permit was supposed to be a temporary measure to allow the County of Kauai Department of Water (KDOW) time to conduct a feasibility study to determine the appropriateness of creating a new water system based on the Moloaa well. KDOW did not complete the feasibility study. At its meeting of September 24, 1999, Item D-4, the Board amended this condition and stated that in the event no government entity indicates an intention to operate a water system, a public auction sale of the water license was to be conducted by October 30, 2000. No auction has been conducted to date, in part because the water source is landlocked by Mr. Lindner's private lands. Recently, KDOW expressed some interest in acquiring this water source. However, because the well is landlocked, KDOW would need to negotiate the purchase of or otherwise acquire the water transmission facilities and an easement to maintain it on Mr. Lindner's land, which complicates the creation of a public water system here.

Mr. Lindner reached out to both DLNR and DHHL to proceed with the lease application. Staff from both agencies had discussions with Mr. Lindner regarding the water lease process including DHHL's reservation. A site visit by DLNR and DHHL staff is planned for early next year to help determine DHHL's and Mr. Lindner's needs for the reservation and water lease respectively.

Revocable Permit No. S-7310 was issued in 2002 to the East Kauai Water Users' Cooperative (EKWUC) for irrigation purposes over a system that had previously been used for sugarcane plantations. The permit restricts the use of irrigation water to those agricultural lands presently served by the system, or that had been served in the past. On August 26, 2016, EKWUC submitted an application for a water lease.

Senate Bill 2846 was heard during the 2018 legislative session. The measure proposed to permit the transfer operational authority of portions of the East Kauai irrigation system operated and maintained by EKWUC to the Department of Agriculture. Additionally, the bill proposed to allow an additional two years for EKWUC to obtain a water lease. The bill was assigned to a conference committee, but the committee was unable to resolve the

outstanding issues. It is our understanding that the bill will be introduced again for the 2019 legislative session. Depending on the outcome, the scope of the lease may be revised to exclude the physical irrigation infrastructure.

Revocable Permit No. S-7340 was issued in 2003 to Kauai Island Utility Cooperative (KIUC) for water from the Blue Hole Diversion to operate two hydroelectric plants. KIUC requested a water lease from the Board at its meeting of December 10, 2004, Item D-26, but the Board took no action on the request. OHA requested a contested case hearing. OHA and KIUC entered into a memorandum of agreement dated November 9, 2006 whereby OHA agreed to withdraw its request for a contested case if KIUC committed to performing specified studies in connection with the use of surface water. OHA and KIUC have agreed on the scope of the studies and OHA has withdrawn its request, although KIUC continues to work on a cultural impact assessment for the project. KIUC is still intending to obtain a water lease, but is relying on its lease application submitted on July 20, 2001.

Since the 2017 holdover approval, members of the public have written to the Department expressing their concerns with this permit. The comments appear to focus on an alleged failure by KIUC to comply with various regulatory requirements to obtain a lease of water rights, the initial approval of the permit being based on a non-consumptive use which was incorrect, such consumptive use of the water being inconsistent with the public trust, and the diversion of water by KIUC resulting in a negative impact on the downstream environment. The commenters requested that the Board reconsider its approval of the permit in light of their comments.

Staff seeks to clarify that in the prior approval of the holdover, it was noted in the submittal that the use of the water under the permit was consumptive, and the Board deemed the holdover appropriate under such circumstances. Additionally the purpose of the holdover is to allow the applicant to fulfill the regulatory requirements to obtain a water lease, such as compliance with Chapter 343, HRS. Any rights under the permit are short term and will terminate at the sunset of the holdover period unless the applicant fulfills its requirements and obtains a water lease. Also any request for a water lease will be considered by the Board in an open, sun-shined meeting. Additionally, KIUC has taken actions in fulfilling the additional requirements imposed by the Board pursuant to the holdover approval for 2018. A progress report submitted by KIUC is attached as Exhibit 6.

Regarding the downstream impacts of the water use, the Commission on Water Resource Management (CWRM) is currently in the process of developing Interim Instream Flow Standards (IIFS). Once the IIFS is approved, any water diversion pursuant to either the current revocable permit or potential long term lease will be subject to the IIFS. At its meeting on August 21, 2018, CWRM considered an amended IIFS. However, prior to approval, KIUC, along with other parties, requested a contested case. At its meeting on October 16, 2018, CWRM intended to take action on contested case petitions on the matter filed by KIUC, Earthjustice, James Torio, DHHL and Grove Farm Company, Inc. Ultimately, CWRM deferred the item in order to provide the parties the opportunity to

resolve the matter.

In order to balance KIUC's desire to continue its hydro power operation, along with addressing with the community's concerns, staff recommends that the Board impose a limit on the amount of water allowed to be diverted under the revocable permit. Based on the proposed amended IIFS developed by CWRM staff, the available amounts that could be diverted at median stream flow would be 8.0 million gallons a day (mgd) from the Wai'ale'ale stream and 1.6 mgd from the Waikoko stream¹. At times of higher stream flow more water could be diverted provided that a sufficient amount of water, as determined by the proposed amended IIFS, remains in the streams. Although the amended IIFS has not been implemented, adopting it as a basis for limiting the amount of water diverted will assist in restoring stream flow, in furtherance of the Board's priority per its previous approval. This is intended as a temporary measure while the parties resolve the contested case petitions and an amended IIFS can be ultimately approved by CWRM.

As far as whether the use of water under the permit is consistent with the public trust, staff notes that the permit limits the use of the water for the purpose of generating hydroelectric power with KIUC's two hydroelectric plants, and that KIUC is a Hawaii non-profit cooperative electric company. This issue discussed further in the following section. Additionally, the proposed limit on the amount of water diverted would address the public trust purposes as noted below.

Public Trust Doctrine

Title to water resources is held in trust by the State for the benefit of its people. Pursuant to *In re Water Use Permits*, 94 Hawaii 97, 9 P.3d 409 (2000), and *In re Wai'ola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004) the Hawaii Supreme Court has identified four public trust purposes with respect to water:

- Maintenance of waters in their natural state;
- Domestic water use of the general public, particularly drinking water;
- The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights; and
- Reservations for Hawaiian home lands.

Of these four purposes, domestic water use is implicated in three of the current revocable permits: RP Nos. S-7088 to Mr. Lindner, and S-7234 and S-7267, both to Wood Valley Water and Farm Cooperative. The six remaining RPs are for agricultural use or hydroelectric power generation. With respect to the agricultural use of water, the Hawaii Constitution provides:

¹ Staff notes that the permit does not impose a specific volume limit on the amount of water KIUC can divert, except that it cannot exceed the average annual amount diverted for the period from years 1992 to 2002.

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawaii Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawaii Constitution, Article XI, Section 10.

In staff's view, making irrigation water available to farmers and ranchers supports the long term viability and security of local agricultural operations and is critical to the State's compliance with the constitutional mandates of Article XI. It also allows for the local production of food, supporting the goal of food sustainability and food security for Hawaii. It may also translate into lower prices for consumers when produce does not have to be shipped to Hawaii from outside of the state. Any tension between identified public trust uses of water and the constitutional mandates above will be resolved in the process of issuing water leases, because section 171-58, HRS, requires the joint development of a water reservation to support current and future DHHL homestead needs.

The hydroelectric use of water allows utility companies to provide clean energy to domestic and commercial users. This method of energy production also supports Hawaii's Clean Energy Initiative, which sets goals for the state to achieve 100 percent clean energy by 2045 coming from locally generated renewable sources. Further, those hydroelectric projects that return water to the same stream or other body of water from which it was drawn are considered non-consumptive. Although hydroelectric projects are not an identified public trust use of State waters, the public trust concerns will be addressed in the processing of the water lease applications under Section 171-58, HRS.

In discussions with staff, DHHL has commented that pursuant to HRS 171-58(c)(1), any holdover be "consistent with the public trust doctrine", and furthermore that all revocable permits shall be subject to any existing or future reservations of water for DHHL. Staff concurs with DHHL's comments and recommends the Board approve the holdover of all revocable permits subject to DHHL's water reservations.

Charging for Water

Staff has previously recommended keeping the current rents for holdover revocable permits in place. However, pursuant discussions between DLNR and DHHL staff, DHHL raised concerns that revocable permit rents have been static with no adjustment and has advocated that, at a minimum, rents be adjusted for inflation. Acknowledging the difficulty in appraising a holdover revocable permit, staff concurs with DHHL's recommendation as an interim measure, and that the Board approve adjusting the rents

accordingly. As noted in the table below, the permit rents have been adjusted by CPI for each year since any prior rent adjustment, to the approximate value as of August 2018. The recommended adjusted rents are as follows:

RP No.	Permittee	Previous Rent	Recommended Rent
S-7054	Kapapala Ranch	\$40.00 per month or \$5.00 per million gallons (whichever is greater)	\$41.53 per month or \$8.20 per million gallons (whichever is greater)
S-7088	Jeffrey S. Lindner	\$201.17 per month	\$320.43 per month
S-7234	Wood Valley Water & Farm Co-op	\$40.00 per month or \$5.00 per million gallons (whichever is greater)	\$41.53 per month or \$7.30 per million gallons (whichever is greater)
S-7267	Wood Valley Water & Farm Co-op	\$13.00 per month ² or \$5.00 per million gallons (whichever is greater)	\$41.53 per month or \$6.71 per million gallons (whichever is greater)
S-7310	East Kauai Water Users Co-op	\$40.00 per month or \$5.00 per million gallons (whichever is greater)	\$41.53 per month or \$7.01 per million gallons (whichever is greater)
S-7340	Kauai Island Utility Cooperative	\$3,110.00 per month	\$4,315.76 per month
S-7426	Kuahiwi Contractors, Inc.	\$77.00 per month	\$96.35 per month
S-7432	Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2	\$40.00 per month or \$5.00 per million gallons (whichever is greater)	\$41.53 per month or \$6.14 per million gallons (whichever is greater)
S-7463	Hawaii Electric Light Co., Inc.	\$1,641.00 per month	\$1,887.82 per month

Per the Board’s directive as part of its holdover approval for 2018, staff from Land Division, the Division of Forestry and Wildlife, CWRM and the Attorney General, have been developing a cost sharing contribution as an alternative to the requirement for a lessee to develop and implement a watershed management plan. The formula for determining the appropriate cost share amount will be based on factors such as the amount of water used, amount of available water from the subject watershed, and estimated management costs. Staff intends to bring the cost formula and justification to the Board for review and approval in early 2019.

² As part of its 2017 holdover approval, the Board raised base rents for selected revocable permits to a minimum of \$40.00 per month. RP S-7267 was inadvertently excluded from the permits identified for a base rent increase. The Board is requested to retroactively adjust the base rent for RP S-7267 to the same as the other permits paying the minimum base rent as of January 1, 2017.

The parties holding the nine water permits covered by this submittal have all submitted applications for water leases as indicated in Exhibit 3. A review of the files shows the permittees are compliant with the permit terms including payment of rent, posting of liability insurance, and reporting on water usage where required. Attached as Exhibit 5 are summaries of the water usage reports. Staff believes that a one-year holdover of these permits is appropriate under Section 171-58, HRS and Act 126. Agency comments were not solicited from agencies other than CWRM for this action since the permits are limited term holdovers, and as all permit holders subject to this approval have applied for water leases there will be numerous opportunities for government agencies and general public to provide input.

RECOMMENDATION: That the Board:

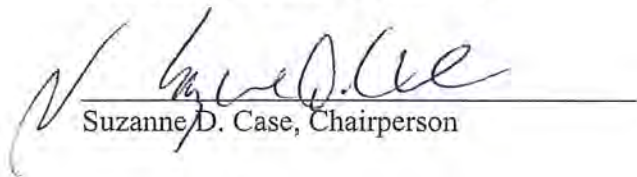
1. Find that the holdover of the revocable permits listed in Exhibit 3 is consistent with the public trust doctrine; and
2. Subject to the terms and conditions noted in this submittal, approve the holdover of the revocable permits listed in Exhibit 3 on a month-to-month basis for another one-year period through December 31, 2019, except for permits that are in arrears of rental payment for more than 60 days and/or have been approved for forfeiture by a separate Board action. Permits in arrears of rental for 60 days or more and/or approved by the Board for forfeiture shall not be renewed.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

\APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: December 14, 2018; D-13: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: December 14, 2018; D-13: Approved as amended.

Approved as amended. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases.

First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative (“KIUC”), as amended, with Board member Thomas Oi recusing himself on this KIUC permit. The Board included a condition that KIUC is to invite Earthjustice, Kia’i Wai O Wai’ale’ale, Sierra Club, Grove Farm, and the Department of Hawaiian Home Lands (together, the “Working Group”), to participate in a facilitated discussion regarding their respective positions on KIUC’s request to use State water for its hydroelectricity plants in the permit area, as well as any other relevant matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

Second, the Board approved the holdover of Revocable Permit No. S-7462 to Hawaii Electric Light Co., Inc.

Third the Board approved the holdover of the remaining water permits on the islands of Hawaii and Kauai, with the exception of Revocable Permit No. S-7234 to Wood Valley Water and Farm Cooperative (“Wood Valley”). Staff advised the Board that Wood Valley recently submitted a letter stating that it no longer intends to pursue a water lease of the undeveloped source covered by the permit.

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai.

Project / Reference No.: Not applicable

Project Location: Various locations on the Islands of Hawaii and Kauai

Project Description: Holdover existing revocable permits for a term of one year.

Chap. 343 Trigger(s): Use of State Land and Water

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject request for issuance for right-of-entry is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item 51, "Permits, licenses, registrations and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

The holdover of existing revocable permits on State lands involves the continuation of existing uses on the lands. No change in use is authorized by the holdover.

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No, the requested locations have been used for same uses since the permits were granted.

Action May Have Significant Impact on Particularly Sensitive Environment?

To the extent environmental studies have been conducted for long term dispositions of water, no of significant impacts have been discovered.

Analysis:

The request pertains to renewing the revocable permits for water on Hawaii and Kauai. Staff believes that the request would involve negligible or no expansion or change in use of the subject location

beyond that previously existing.

Consulted Parties

Commission on Water Resource Management

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Approved by the Governor
on JUN 27 2016
HOUSE OF REPRESENTATIVES
TWENTY-EIGHTH LEGISLATURE, 2016
STATE OF HAWAII

ORIGINAL

ACT 126
H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO WATER RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) Disposition of water rights may be made by lease at
4 public auction as provided in this chapter or by permit for
5 temporary use on a month-to-month basis under those conditions
6 which will best serve the interests of the State and subject to
7 a maximum term of one year and other restrictions under the law;
8 provided that [any]:

9 (1) Where an application has been made for a lease under
10 this section to continue a previously authorized
11 disposition of water rights, a holdover may be
12 authorized annually until the pending application for
13 the disposition of water rights is finally resolved or
14 for a total of three consecutive one-year holdovers,
15 whichever occurs sooner; provided that the total
16 period of the holdover for any applicant shall not
17 exceed three years; provided further that the holdover
18 is consistent with the public trust doctrine;

HB2501 CD1 HMS 2016-3425



EXHIBIT 2

1

000065

1 (2) Any disposition by lease shall be subject to
2 disapproval by the legislature by two-thirds vote of
3 either the senate or the house of representatives or
4 by majority vote of both in any regular or special
5 session next following the date of disposition;
6 ~~[provided further that after]~~ and
7 (3) After a certain land or water use has been authorized
8 by the board subsequent to public hearings and
9 conservation district use application and
10 environmental impact statement approvals, water used
11 in nonpolluting ways, for nonconsumptive purposes
12 because it is returned to the same stream or other
13 body of water from which it was drawn, and essentially
14 not affecting the volume and quality of water or biota
15 in the stream or other body of water, may also be
16 leased by the board with the prior approval of the
17 governor and the prior authorization of the
18 legislature by concurrent resolution."

19 SECTION 2. The department of land and natural resources
20 shall prepare and submit annual reports to the legislature no
21 later than twenty days before the convening of each of the



1 regular sessions of 2017, 2018, 2019, and 2020. The reports
2 shall include:

- 3 (1) The status of applications to continue previously-
4 authorized dispositions of water rights;
- 5 (2) Actions taken on the applications during the fiscal
6 period of July 1, 2016, to November 30, 2016, fiscal
7 year 2016-2017, fiscal year 2017-2018, and fiscal year
8 2018-2019, respectively; and
- 9 (3) Any relevant recommendations for legislative action or
10 appropriation.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

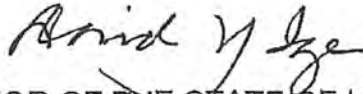
13 SECTION 4. This Act shall take effect upon its approval,
14 and shall apply to applications for a lease to continue a
15 previously authorized disposition of water rights that are
16 pending before the board of land and natural resources on the
17 effective date of this Act or filed with the board of land and
18 natural resources on or after the effective date of this Act,
19 but prior to June 30, 2019; provided that:

- 20 (1) This Act shall be repealed on June 30, 2019, and
21 section 171-58(c), Hawaii Revised Statutes, shall be



1 reenacted in the form in which it read on the day
2 prior to the effective date of this Act; and
3 (2) Any holdovers first applied for under this Act prior
4 to June 30, 2019, may be reauthorized, as provided in
5 section 1 of this Act, beyond June 30, 2019.

APPROVED this 27 day of JUN, 2016



GOVERNOR OF THE STATE OF HAWAII



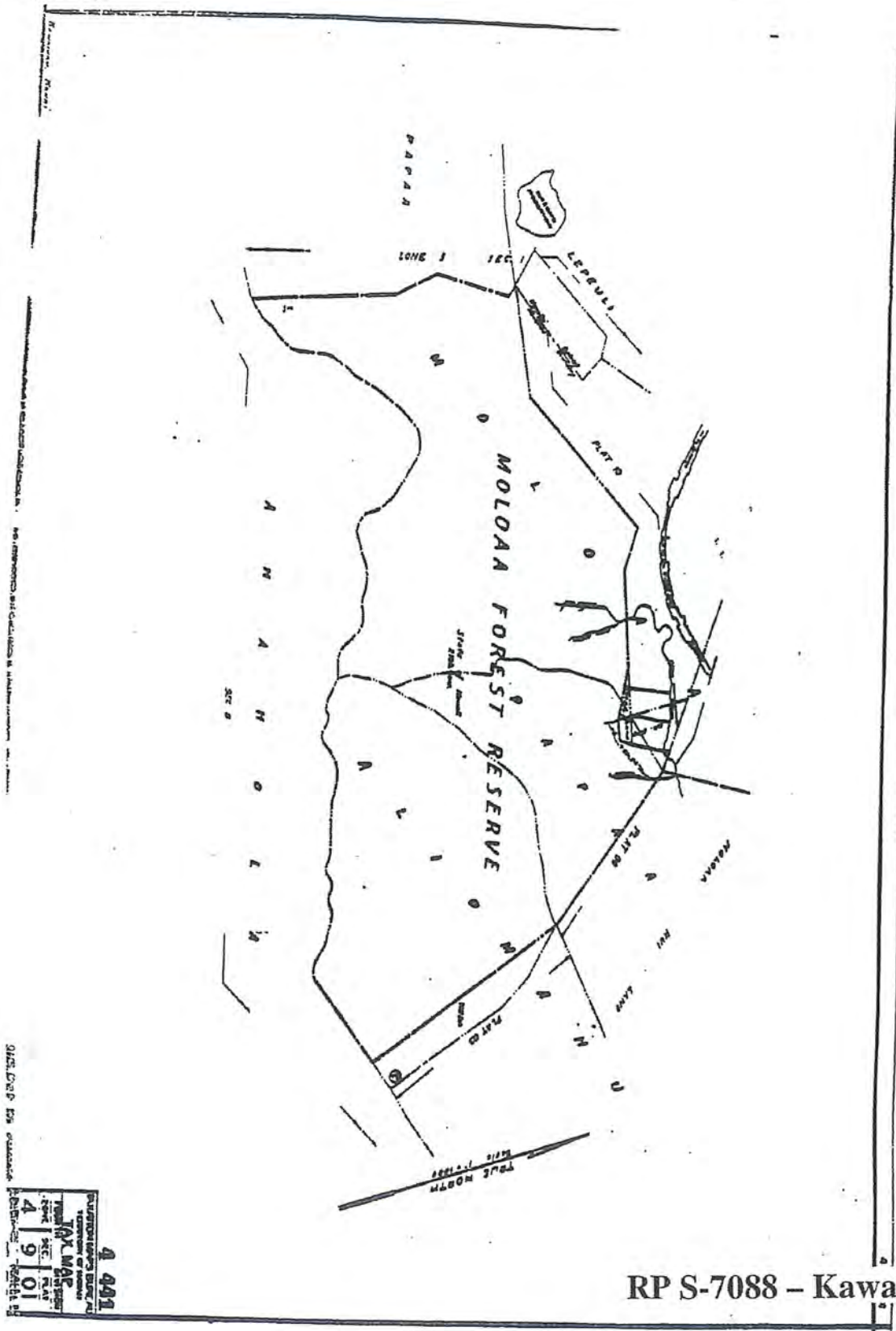
Water Revocable Permits on Hawaii and Kauai as of September 2016

Doc No.	Permittee Name	Location	State Land Use District	Lease From	Leased Area (acres)	Comments
RP S-7054	KAPAPALA RANCH	Kau, Hawaii; (3) 9-8-1:13,9,10; 9-7-1:1	Conservation	10/13/1995	23,408.46	This revocable permit overlies General Lease No. S-5374 to Kapapala Ranch, which results in the large acreage being stated in the "Leased Area (acres)" column. The RP does not identify a separate land area for the RP by itself. Permittee applied for a water lease on 8/29/16 for watering livestock and wildlife (consumptive use).
RP S-7088	LINDER, JEFFREY S.	Kawaihau, Kauai; (4) 4-9-001:001	Conservation	10/1/1996	125	Permittee applied for a water lease on 9/1/16 for county water supply and irrigation purposes (consumptive use).
RP S-7234	WOOD VALLEY WATER & FARM COOP	Kau, Hawaii; (3) 9-7-001:001	Conservation	8/1/2000	0.006	Permittee applied for a water lease on 8/24/16 for public drinking water, irrigation and livestock watering purposes (consumptive use). The water source is not currently developed.
RP S-7267	WOOD VALLEY WATER & FARM COOPERATIVE	Kau, Hawaii; (3) 9-7-001:001	Conservation	4/1/2004	0	Permittee applied for a water lease on 8/24/16 for public drinking water, irrigation and watering livestock purposes (consumptive use).
RP S-7310	EAST KAUAI WATER USERS COOP.	Kawaihau, Kauai; (4) 4-1, 2, 4, 6, 7, 8	Conservation	4/1/2002	6,700.00	Permittee applied for a water lease on 8/26/16 for irrigation and other purposes (consumptive use).
RP S-7340	KAUAI ISLAND UTILITY COOPERATIVE	Lihue, Kauai; (4) 3-9-001:001	Conservation	1/1/2003	0	Permittee applied for a water lease on 7/20/01 for hydroelectric power generation purposes. Use considered consumptive because water is not returned to the stream from which it was drawn.
RP S-7426	KUAHIWI CONTRACTORS, INC.	Kau, Hawaii; (3) 9-7-1:1,15	Conservation	11/1/2006	0	Permittee applied for a water lease on 8/3/16 for livestock watering purposes (consumptive use).

EXHIBIT "3"

Water Revocable Permits on Hawaii and Kauai as of September 2016

RP S-7432	EDMUND C. OLSON, TRUSTEE OF THE EDMUND C. OLSON TRUST No. 2	Kau, Hawaii; (3) 9-6-6; 9-6-7; 9-6- 8; 9-7-1	Conservation	3/1/2007	1.82	Permittee applied for a water lease on 8/9/16 for irrigation and livestock watering purposes (consumptive use).
RP S-7463	HAWAII ELECTRIC LIGHT CO., INC.	South Hilo, Hawaii; (3) 2-6- 009	Conservation	12/1/2010	0	On 8/24/16, permittee submitted an application for a water lease and other necessary dispositions for hydroelectric power generation purposes (non-consumptive).



RP S-7088 - Kawaihau, Kauai

Weda Tunnel

(9-7-01: Por. 1)

Plume/Pipeline

K A U A I O U A I L A N D S
S E C T I O N 7
P L A T 01



FORM	DIVISION
9608	9608
DATE	SCALE
	1" = 200'

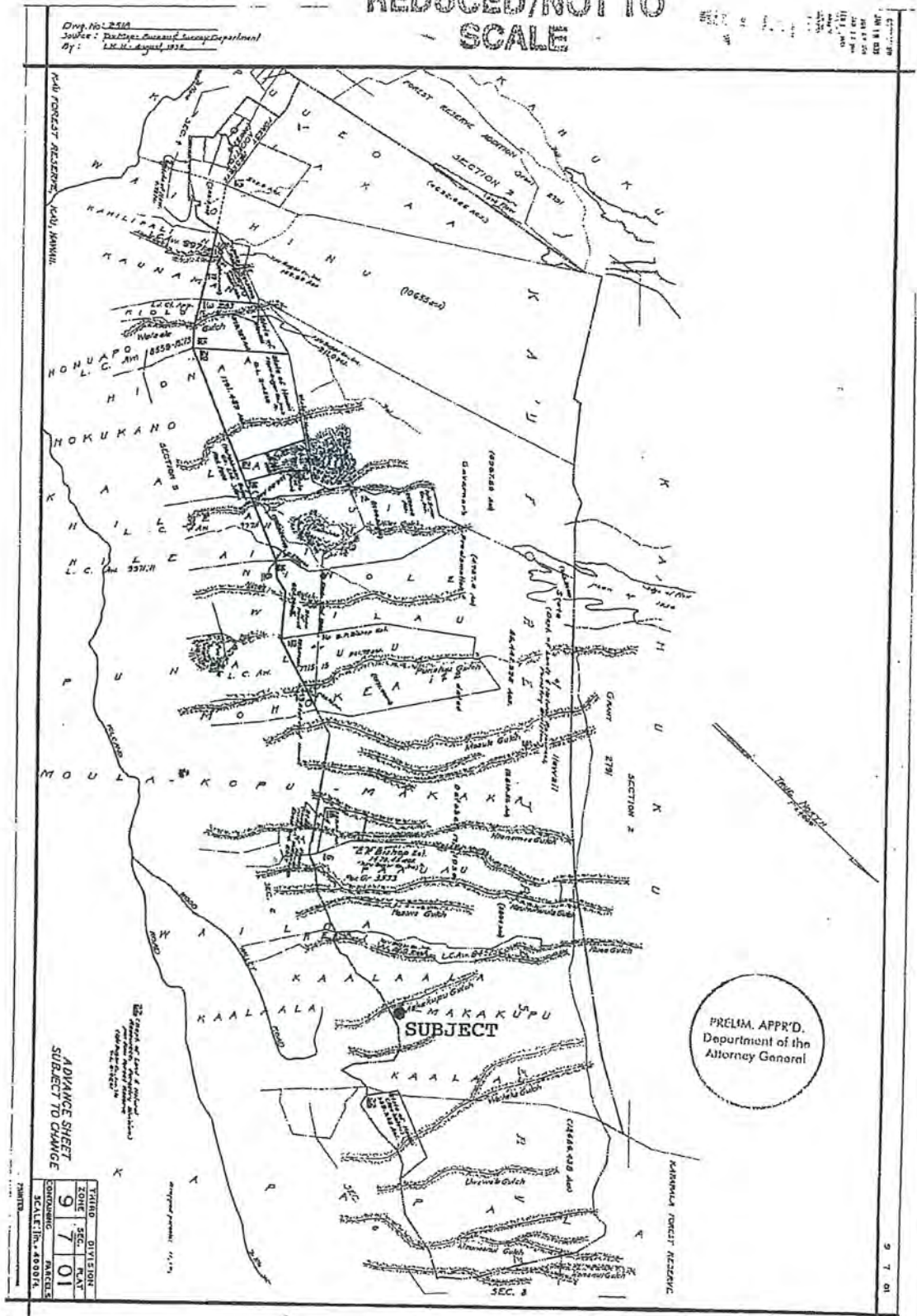
RP S-7234 - Kau, Hawaii

000073

REDUCED/NOT TO
SCALE

Orig. No. 2518
Source: Public Counsel Department
By: L.H. August 1934

1/4" = 100'
1" = 400'
2" = 800'
3" = 1200'
4" = 1600'
5" = 2000'
6" = 2400'
7" = 2800'
8" = 3200'
9" = 3600'
10" = 4000'



PRELIM. APPR'D.
Department of the
Attorney General

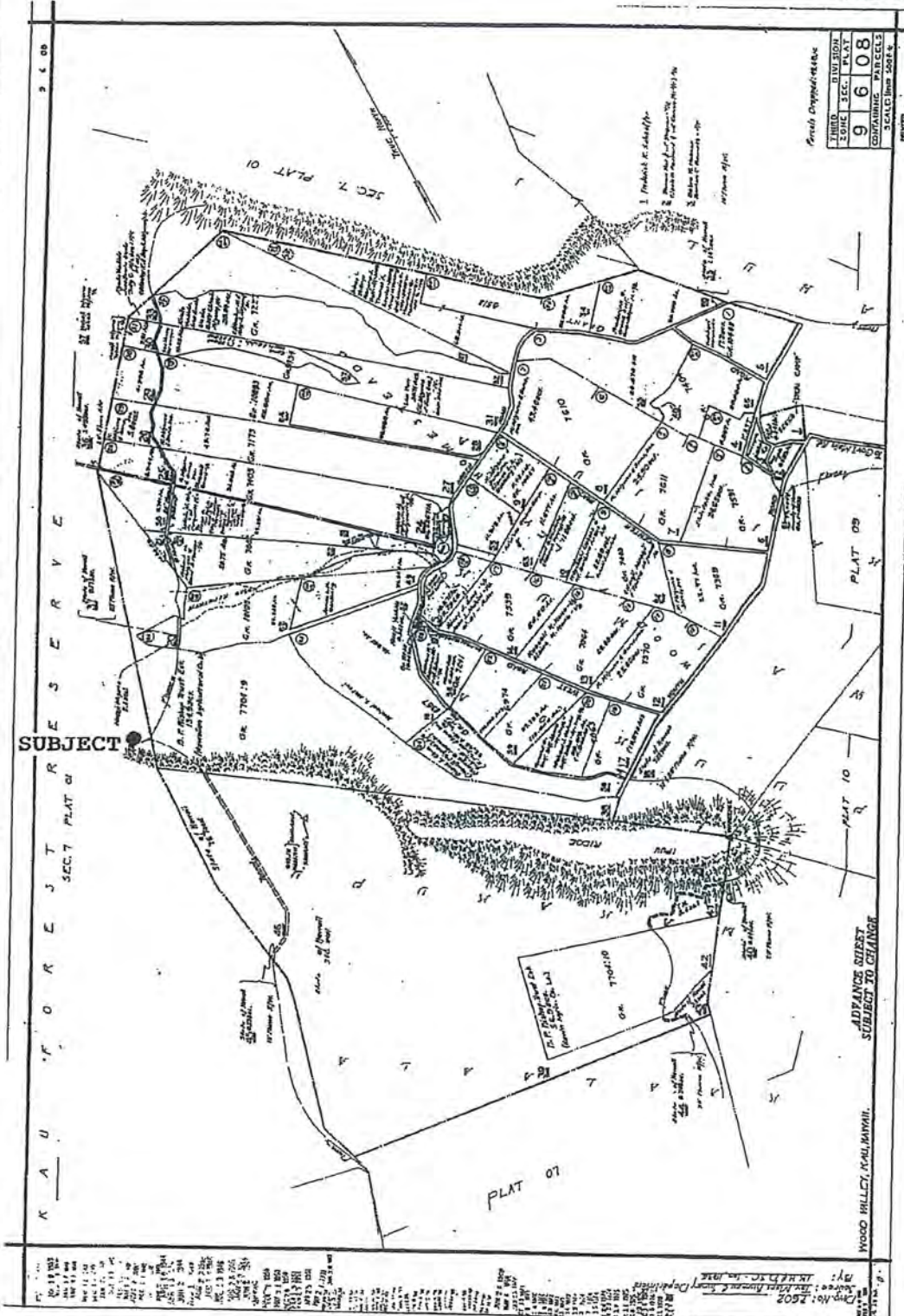
ADVANCE SHEET
SUBJECT TO CHANGE

TERRITORY	DIVISION
9	7
SECTION	PLAN
7	01
PARCELS	
SCALE: 1" = 400'	

RP S-7267 - Kau, Hawaii

000074

REDUCED/NOT TO
SCALE



PRELIM. APPR'D.
Department of the
Attorney General

RP S-7267 - Kau, Hawaii

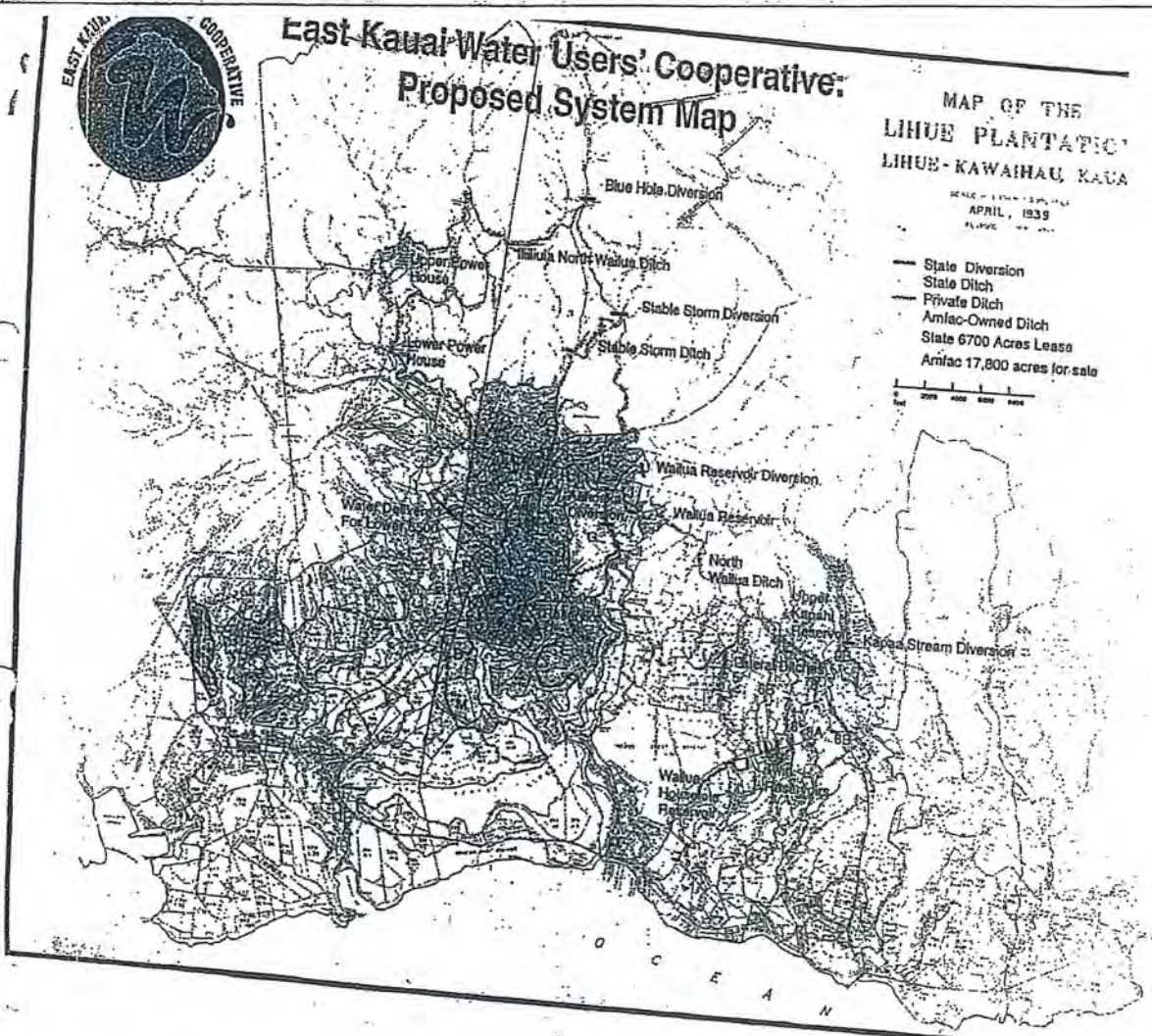
000075



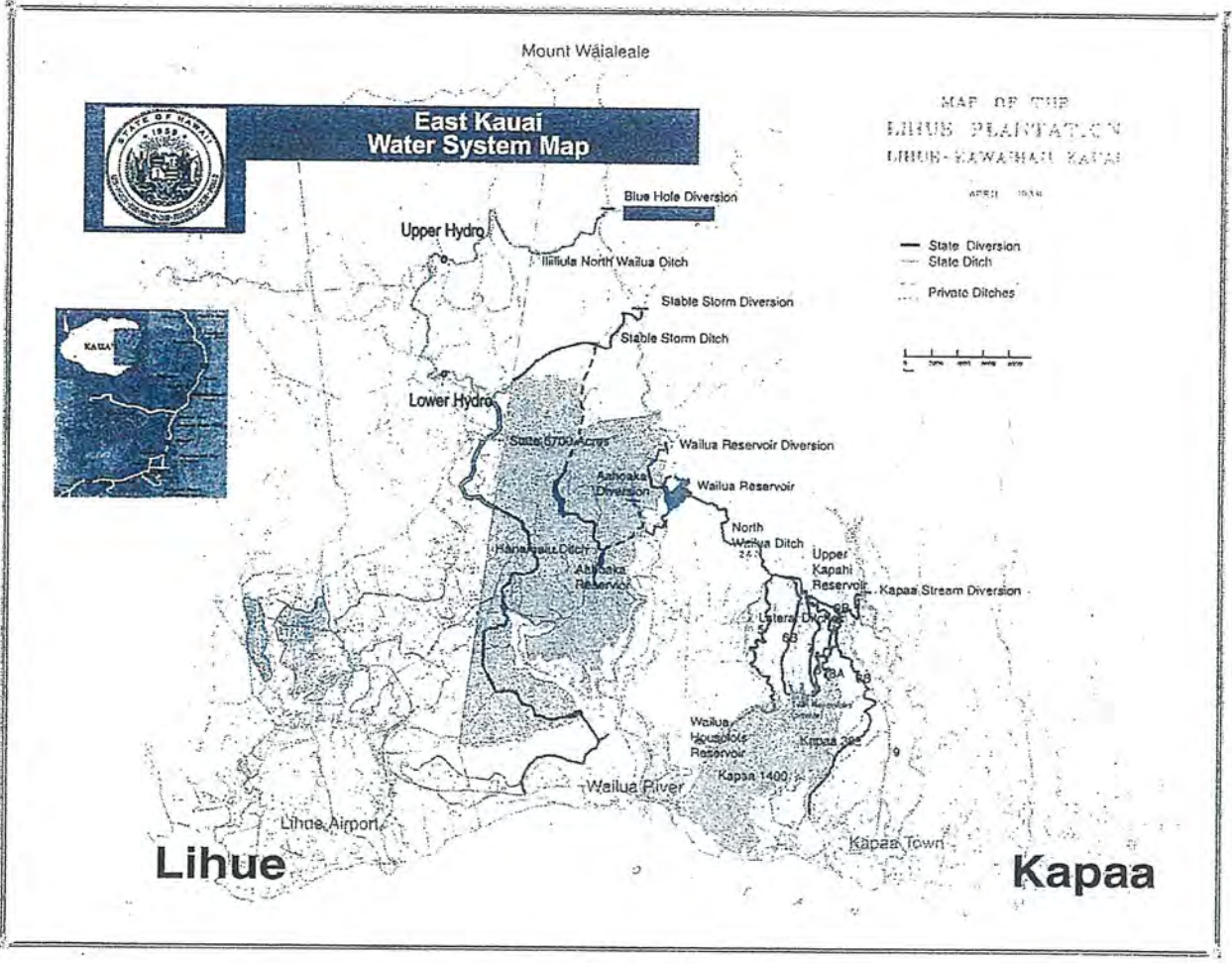
East Kauai Water Users' Cooperative Proposed System Map

MAP OF THE
LIHUE PLANTATION
LIHUE-KAWAIHAU, KAUAI
SCALE - 1 INCH = 1 MILE
APRIL, 1939

- State Diversion
- State Ditch
- Private Ditch
- Amfac-Owned Ditch
- State 6700 Acres Lease
- Amfac 17,800 acres for sale

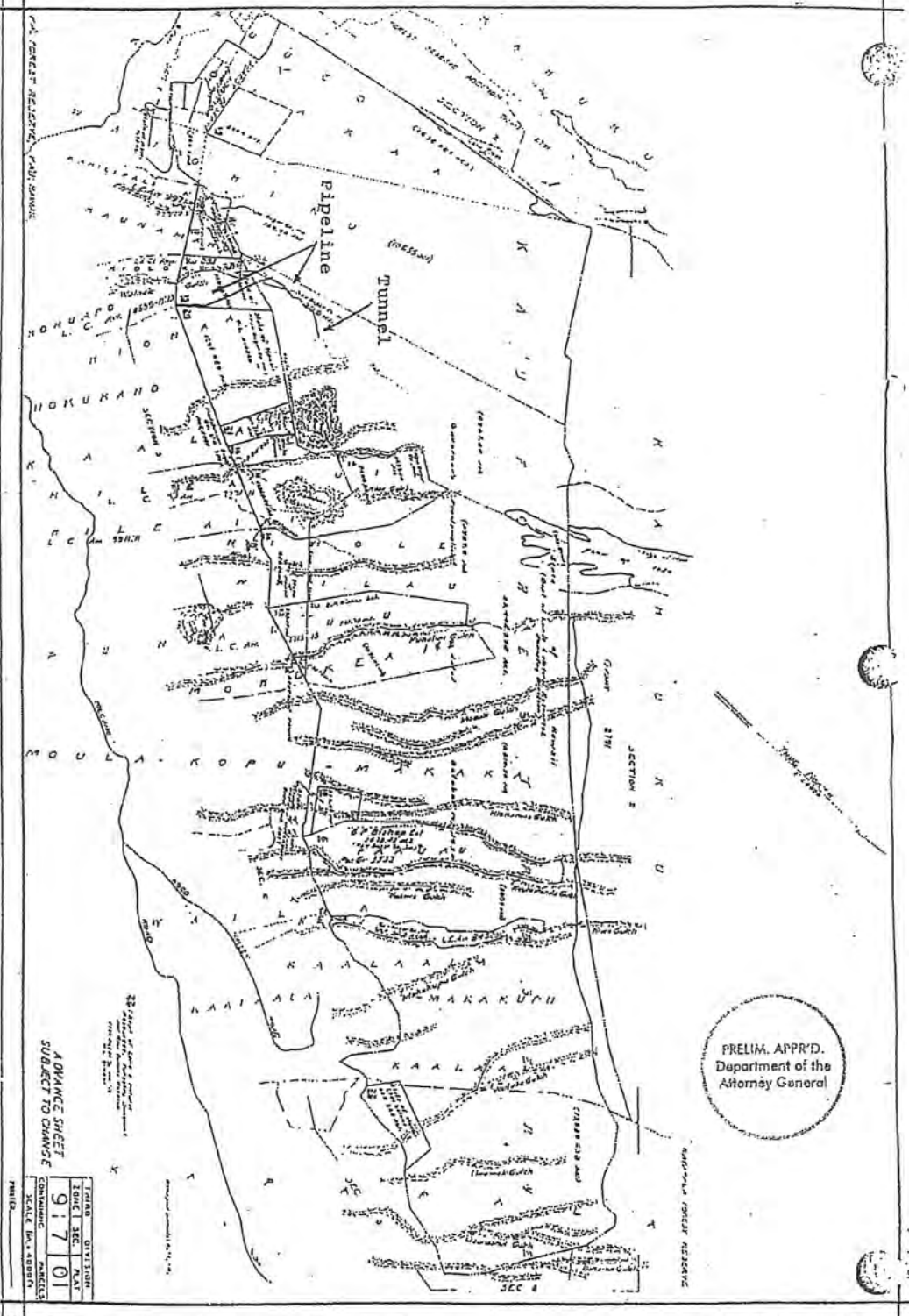


RP S-7310 - Kawaihau, Kauai



RP S-7340 - Lihue, Kauai

Copy No. 2516
 Sheet: 7426
 Department of the Attorney General



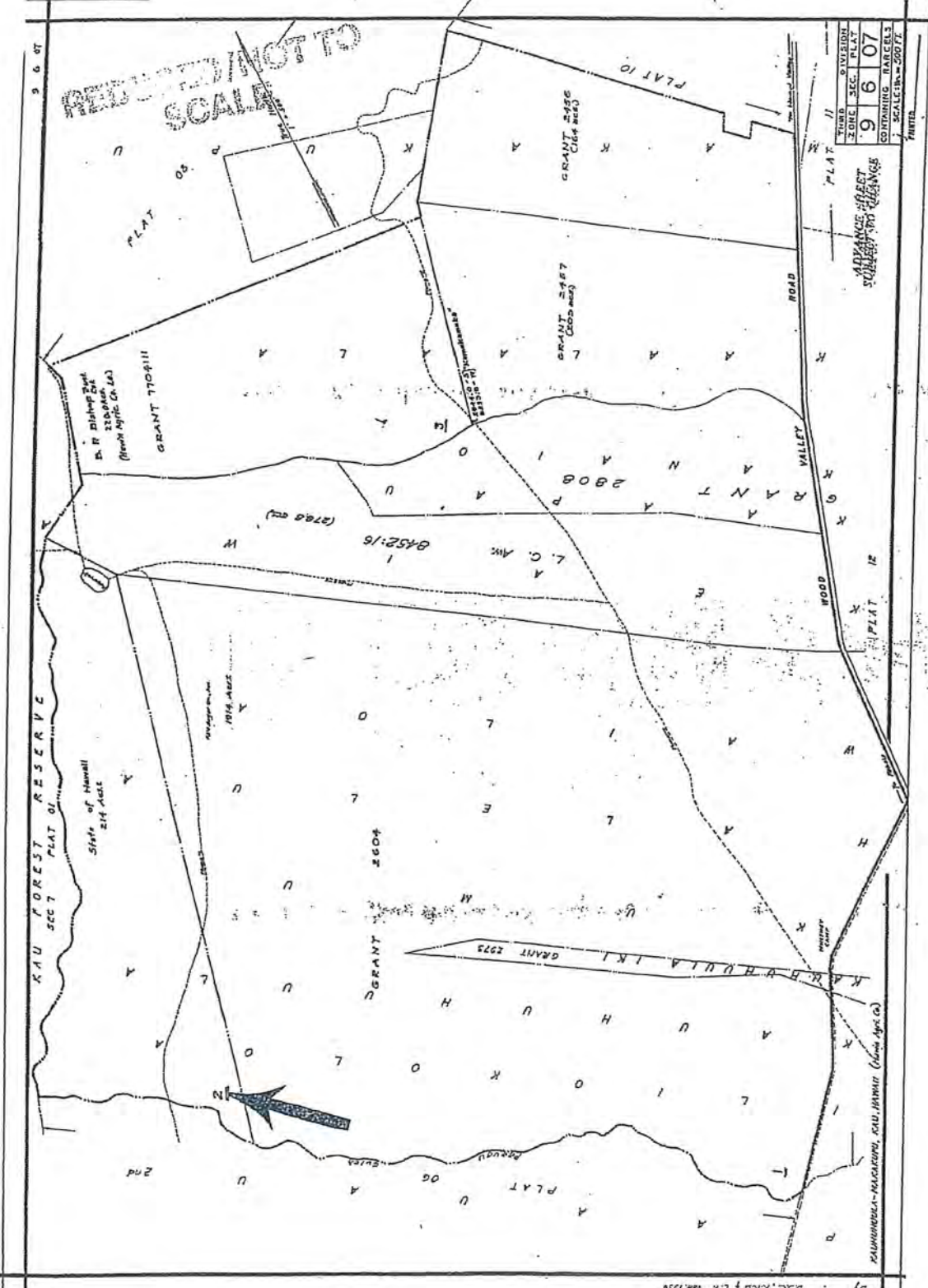
444

ADVANCE SHEET
 SUBJECT TO CHANGE

FORM	DATE
9-17-01	
SCALE	1" = 100'

PRELIM. APPR'D.
 Department of the
 Attorney General

RP S-7426 - Kau, Hawaii



REDUCED TO SCALE

TOWN	DIVISION
ZONE	SEC. PLAT
9	6 07
ADVANCE SHEET SUBJECT TO CHANGE	
CONTAINING PARCELS	
SCALE 1/4" = 500 FT.	

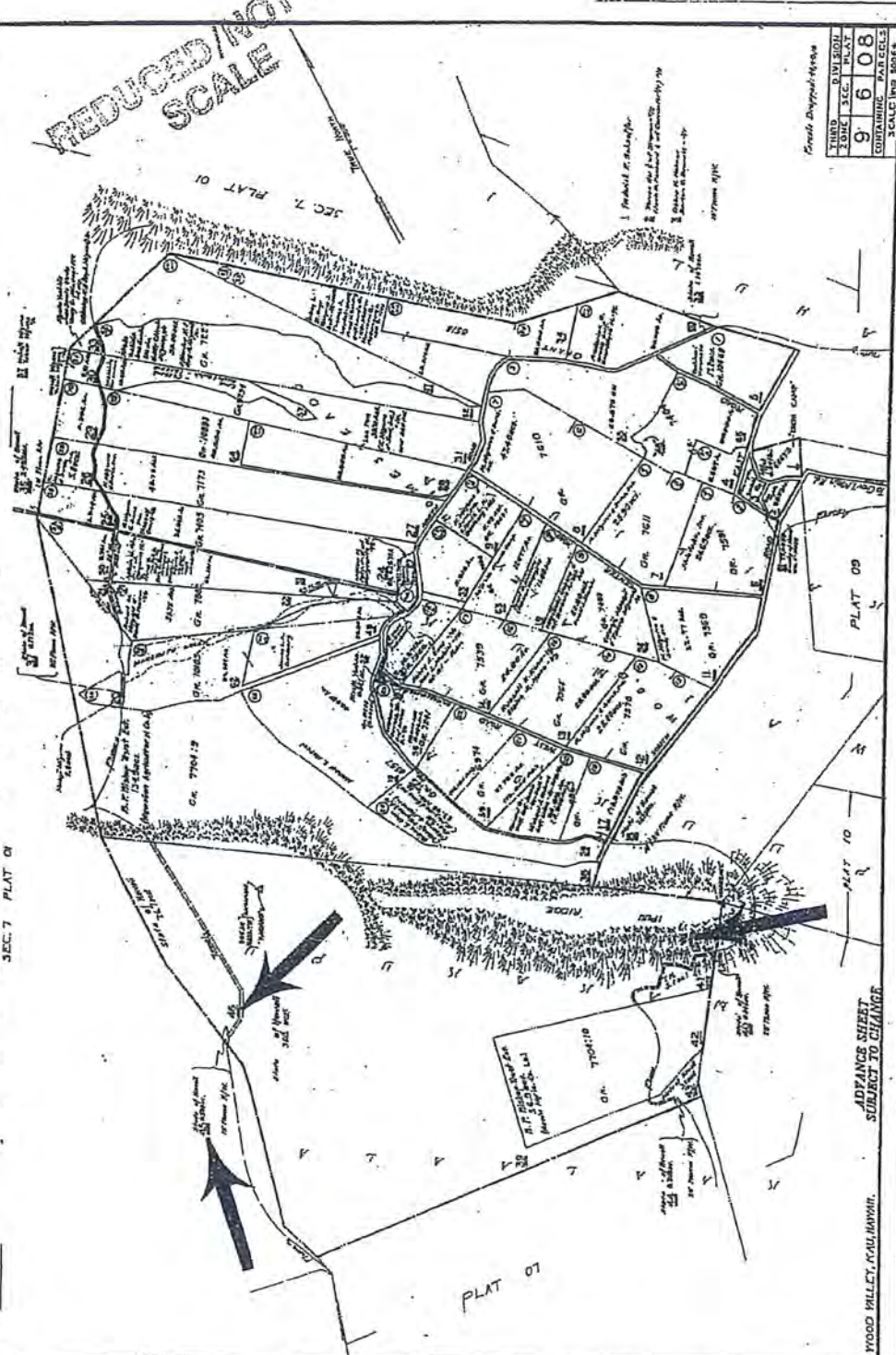
PRELIM. APPR'D.
Department of the
Attorney General

RP S-7432 - Kau, Hawaii

000080

K A U A U F O R E S E R V E S E C T P L A T O 1

REDUCED/NOT TO SCALE

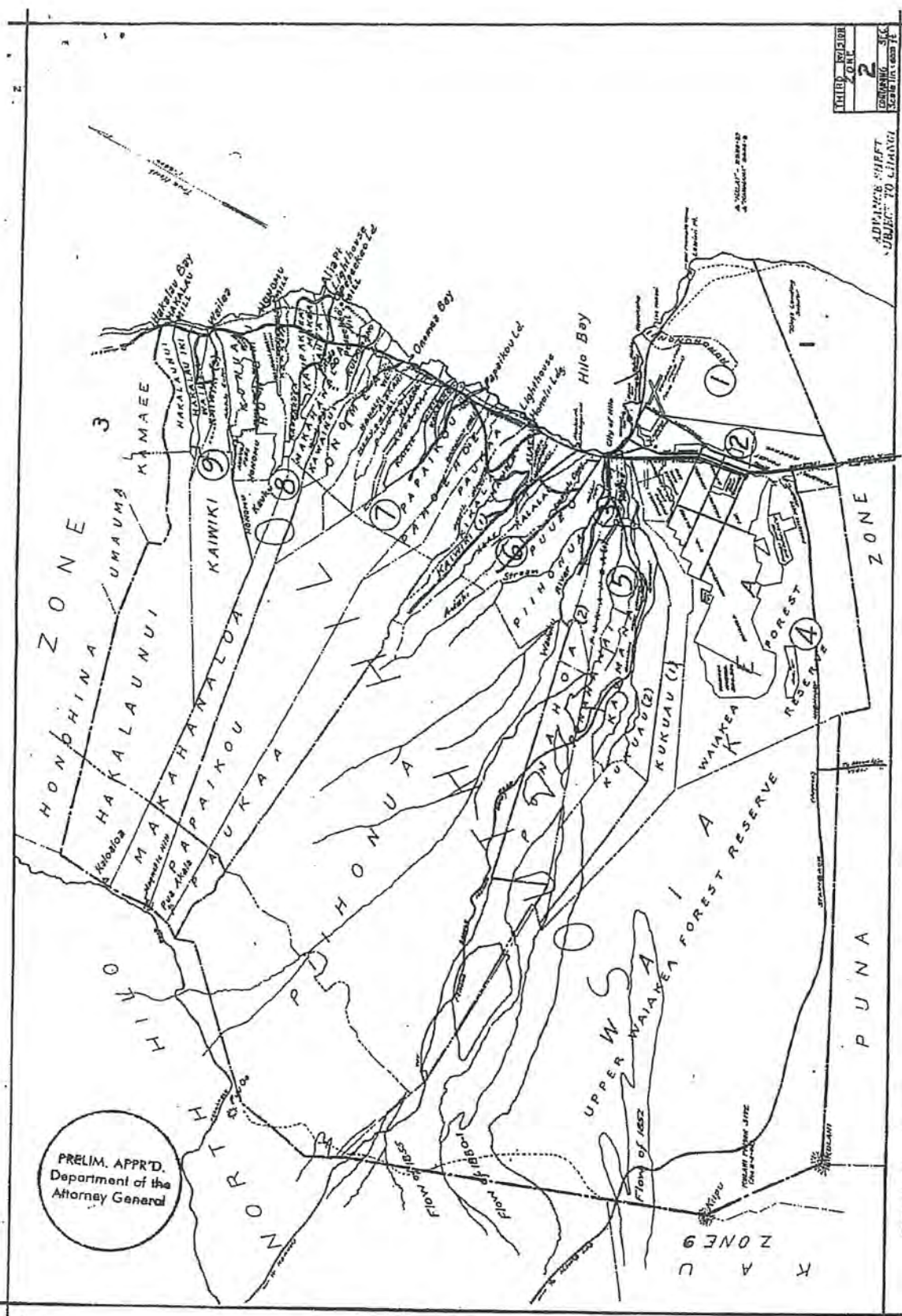


Greatly Detailed Map			
THIRD DIVISION	PLAT	9	608
SECTION	PLAT	6	08
CONTAINING		PARCELS	
SCALE 1/8" = 500'			

ADVANCE SHEET SUBJECT TO CHANGE

PRELIM. APPR'D.
Department of the
Attorney General.

RP S-7432 - Kau, Hawaii



SHEET NO. 2
 SHEET NO. 2
 SHEET NO. 2

ADVANCE SHEET
 SUBJECT TO LITHOGRAPHY

PRELIM. APPR'D.
 Department of the
 Attorney General

REDUCED NOT TO SCALE

RP S-7463 - South Hilo, Hawaii

WATER PERMITS HAWAII AND KAUAI – SUMMARY OF WATER USAGE REPORTS

RP No.	Permittee	Source	Period of Use	Gallons Used	Gallons/Month	Gallons/Year
EXHIBIT "S"	Kapapala Ranch	Makakupu Tunnel, Kau, Hawaii	1/1/18-6/30/18	4,858,100	809,683	2018 = 4,858,100
			7/1/17-12/31/17	5,185,400	864,233	2017 = 9,753,800
			1/1/17-6/30/17	4,568,400	761,400	
			7/1/16-12/31/16	5,733,700	955,617	2016 = 10,847,500
			1/1/16-6/30/16	5,113,800	852,300	
			7/1/15-12/31/15	4,578,200	763,033	2015 = 10,311,100
			1/1/15-6/30/15	5,732,900	955,483	
			7/1/14-12/31/14	6,061,900	1,010,317	2014 = 10,681,800
			1/1/14-6/30/14	4,619,900	769,983	
			7/1/13-12/31/13	4,414,500	735,750	2013 = 9,051,200
			1/1/13-6/30/13	4,636,700	772,783	
			7/1/12-12/31/12	5,019,400	836,567	2012 = 9,959,600
			1/1/12-6/30/12	4,940,200	823,367	
			7/1/11-12/31/11	4,769,800	794,967	2011 = 9,975,400
			1/1/11-6/30/11	5,205,600	867,600	
			1/1/10-12/31/10	7,469,500	622,458	2010 = 7,469,500
			1/1/09-12/31/09	10,800,200	900,017	2009 = 10,800,200
1/1/08-12/31/08	12,026,800	1,002,233	2008 = 12,026,800			
S-7088	Lindner, Jeffrey S.	Moloaa Well No. 1, Kawaihau, Kauai	No requirement in permit to report water usage.			
S-7234	Wood Valley Water and Farm Cooperative	Weda Tunnel, Kau, Hawaii	N/A – source not developed	None	None	None
S-7267	Wood Valley Water and Farm Cooperative	Noguchi Tunnel, Kau, Hawaii	7/6/18-10/3/18	14,717,900	4,905,967	2018 = 39,785,300
			4/6/18-7/5/18	13,226,400	4,408,800	
			1/20/18-4/05/18	11,841,000	3,947,000	
			10/6/17-1/19/18	10,886,400	3,628,800	2017 = 34,490,100
			7/5/17-10/5/17	9,353,800	3,117,933	
			4/5/17-7/5/17	7,797,100	2,599,033	
			1/5/17-4/1/17	6,452,800	2,150,933	
			10/1/16-1/4/17	4,728,800	1,576,267	2016 = 10,277,034
			7/1/16-10/1/16	3,770,500	1,256,833	
			10/2/15-7/1/16	2,660,600	296,289	2016 = 1,777,734

			10/10/14-10/1/15	6,150,000	512,500	2015 = 6,150,000
			11/25/13-10/9/14	5,888,655	560,824	2014 = 6,729,891
			12/30/12-11/24/13	792,350	66,029	2013 = 792,350
			11/19/11-12/29/12	7,137,695	594,808	2012 = 7,137,695
			9/22/10-11/18/11	6,897,500	492,679	2011 = 5,912,148
			10/8/09-9/21/10	6,823,150	593,317	2010 = 7,119,804
			6/5/09-10/7/09	5,146,600	1,286,650	2009 = 8,540,652
			12/13/08-6/6/09	4,092,395	711,721	
			5/13/08-12/12/08	4,722,555	674,651	2008 = 8,095,809
S-7310	East Kauai Water Users' Cooperative	Kawaihau, Kauai	1/1/18-6/30/18	175,370,000	29,228,333	2018 = 175,370,000
			5/1/17-12/31/17	253,950,000	31,743,750	2017 = 253,950,000
			9/1/16-10/31/16	81,310,000*	40,655,000*	2016 = 81,310,000*
S-7340	Kauai Island Utility Cooperative	Lihue, Kauai	See Exhibit 5-A attached.			
S-7426	Kuahiwi Contractors, Inc.	Mountain House Tunnel, Kau, Hawaii	1/1/18-9/30/18	29,506,900	3,278,544	2018 = 29,506,900
			1/1/17-12/31/17	30,379,800	2,531,650	2017 = 30,379,800
			1/1/16-12/31/16	33,749,000	2,789,917	2016 = 33,749,000
			1/1/15-12/31/15	43,515,500	3,626,292	2015 = 43,515,500
			1/1/14-12/31/14	44,338,000	3,694,833	2014 = 44,338,000
			1/1/13-12/31/13	38,331,000	3,194,250	2013 = 38,331,000
			1/1/12-12/31/12	24,533,000	2,044,417	2012 = 24,533,000
			1/1/11-9/30/11	9,586,680	1,065,187	2011 = 12,782,244
			7/14/10-11/10	8,431,300		
S-7432	Edmund C. Olson, Trustee	Noguchi & other ancillary tunnels, Kau, Hawaii	9/15/18	740,955	740,955	2018 = 5,476,669
			8/5/18	740,650	740,650	
			7/10/18	740,320	740,320	
			6/15/18	739,760	739,760	
			5/9/18	712,430	712,430	
			4/5/18	640,565	640,565	
			3/5/18	605,623	605,623	
			1/2/18-2/1/18	556,366	556,366	
			12/5/17-1/1/18	536,939	536,939	2017 = 3,234,905
			11/10/17-12/4/17	571,512	571,512	
			8/29/17-11/9/17**	505,201	505,201	
			5/25/17-6/30/17	442,688	442,688	
			3/1/17-5/31/17***	1,178,565	392,855	
			1/1/16-7/31/16	2,723,620	389,089	2016 = 2,723,620

			1/1/15-12/31/15	4,353,647	362,804	2015 = 4,353,647
			1/1/14-12/31/14	22,810,930	1,900,911	2014 = 22,810,930
			1/1/13-12/31/13	30,241,050	2,520,088	2013 = 30,241,050
			8/1/12-9/30/12**	9,184,900	4,592,450	
			1/1/11-4/25/11**	19,875,000	4,416,666	
S-7463	Hawaii Electric Light Co., Inc.	Wailuku River, South Hilo, Hawaii	No requirement in permit to report water usage.			

*Estimated

**Data incomplete due to meter malfunction.

***Data incomplete due to staff turnover.

EXHIBIT 5A: RP S-7340- SUMMARY OF WATER USAGE REPORTS 2016 TO PRESENT

RP No.	Permittee	Source	Period of Use	Gallons Used	Gallons/Month	Gallons/Year
S-7340	Kauai Island Utility Cooperative	North Wailua Ditch, below North Fork Wailua Stream	July 2018	165,456,300	165,456,300	2018 = 2,109,831,810
			June 2018	35,961,910	35,961,910	
			May 2018	143,345,100	143,345,100	
			April 2018	274,094,100	274,094,100	2017 = 2,548,130,290
			March 2018	643,239,600	643,239,600	
			February 2018	471,315,900	471,315,900	
			January 2018	376,418,900	376,418,900	
			December 2017	0	0	
			November 2017	18,961,990	18,961,990	
			October 2017	N/A	N/A	
			September 2017	251,777,600	251,777,600	
			August 2017	162,408,500	162,408,500	
			July 2017	211,953,900	211,953,900	
			June 2017	301,407,300	301,407,300	
			May 2017	498,971,600	498,971,600	
			April 2017	361,823,800	361,823,800	2016 = 4,803,314,200
			March 2017	160,989,300	160,989,300	
			February 2017	272,846,400	272,846,400	
			January 2017	306,989,900	306,989,900	
			December 2016	295,666,200	295,666,200	
			November 2016	384,537,700	384,537,700	
			October 2016	371,305,200	371,305,200	
			September 2016	476,927,700	476,927,700	
			August 2016	597,374,700	597,374,700	
			July 2016	487,864,100	487,864,100	
			June 2016	557,869,000	557,869,000	
			May 2016	498,971,600	498,971,600	
			April 2016	425,574,100	425,574,100	
			March 2016	257,822,800	257,822,800	
			February 2016	218,973,300	218,973,300	
January 2016	230,427,800	230,427,800				

2-24 North Wailua Ditch below North Fork Wailua Stream; Kauai Island Utility Cooperative, KIUC

WUR ID	Start Date	End Date	Days Count	MG	Gallons	Mgd	CFS
1196	1/1/2016	1/31/2016	31	230.428	230427800	7.433	11.499
1195	12/1/2015	12/31/2015	31	476.26	476259800	15.363	23.767
1133	11/1/2015	11/30/2015	30	461.6	461600000	15.387	23.803
1128	10/1/2015	10/31/2015	31	173.1	173100000	5.584	8.638
1136	9/1/2015	9/30/2015	30	74.8	74800000	2.493	3.857
1130	8/1/2015	8/31/2015	31	292.1	292100000	9.423	14.577
1132	7/1/2015	7/31/2015	31	325	325000000	10.484	16.219
1127	6/1/2015	6/30/2015	30	254.7	254700000	8.49	13.134
1134	5/1/2015	5/31/2015	31	302.5	302500000	9.758	15.096
1131	4/1/2015	4/30/2015	30	396.7	396700000	13.223	20.456
1137	3/1/2015	3/31/2015	31	321.9	321900000	10.384	16.064
1129	2/1/2015	2/28/2015	28	206	206000000	7.357	11.381
1135	1/1/2015	1/31/2015	31	114.7	114700000	3.7	5.724
1055	12/1/2014	12/31/2014	31	273.012	273011600	8.807	13.624
1054	11/1/2014	11/30/2014	30	248.843	248843300	8.295	12.832
1053	10/1/2014	10/31/2014	31	359.652	359651600	11.602	17.948
1052	9/1/2014	9/30/2014	30	211.954	211953500	7.065	10.93
1051	8/1/2014	8/31/2014	31	227.645	227644700	7.343	11.36
1049	7/1/2014	7/31/2014	31	263.243	263243100	8.492	13.137
1050	6/1/2014	6/30/2014	30	338.7	338700000	11.29	17.466
1044	5/1/2014	5/31/2014	31	321.5	321500000	10.371	16.044
1039	4/1/2014	4/30/2014	30	358.8	358800000	11.96	18.502
1041	3/1/2014	3/31/2014	31	362.8	362800000	11.703	18.105
1028	2/1/2014	2/28/2014	28	248.249	248249000	8.866	13.716
1047	1/1/2014	1/31/2014	31	252.658	252658100	8.15	12.608
961	12/1/2013	12/31/2013	31	223.859	223858600	7.221	11.171
960	11/1/2013	11/30/2013	30	322.421	322421500	10.747	16.626
959	10/1/2013	10/31/2013	31	304.399	304398900	9.819	15.19
958	9/1/2013	9/30/2013	30	284.769	284769200	9.492	14.685
957	8/1/2013	8/31/2013	31	265.457	265457500	8.563	13.247
956	7/1/2013	7/31/2013	31	346.967	346967200	11.192	17.315
955	6/1/2013	6/30/2013	30	321.283	321282800	10.709	16.567
954	5/1/2013	5/31/2013	31	329.765	329765000	10.638	16.456
953	4/1/2013	4/30/2013	30	84.732	84732200	2.824	4.369
952	3/1/2013	3/31/2013	31	250.228	250228200	8.072	12.487
951	2/1/2013	2/28/2013	28	292.366	292365700	10.442	16.153
950	1/1/2013	1/31/2013	31	419.058	419058100	13.518	20.912
738	12/1/2012	12/31/2012	31	362.436	362436100	11.691	18.087
737	11/1/2012	11/30/2012	30	196.254	196254300	6.542	10.12
736	10/1/2012	10/31/2012	31	192.585	192584800	6.212	9.611
735	9/1/2012	9/30/2012	30	345.439	345439300	11.515	17.813
734	8/1/2012	8/31/2012	31	319.99	319990300	10.322	15.969
641	7/1/2012	7/31/2012	31	359.946	359946200	11.611	17.962
640	6/1/2012	6/30/2012	30	295.136	295135900	9.838	15.219

EXHIBIT 5-A

639	5/1/2012	5/31/2012	31	355.582	355582300	11.47	17.745
638	4/1/2012	4/30/2012	30	395.908	395908000	13.197	20.416
637	3/1/2012	3/31/2012	31	354.914	354914200	11.449	17.711
636	2/1/2012	2/29/2012	29	253.459	253459300	8.74	13.521
635	1/1/2012	1/31/2012	31	205.321	205320800	6.623	10.246
634	12/1/2011	12/31/2011	31	413.215	413214900	13.33	20.621
633	11/1/2011	11/30/2011	30	368.388	368388100	12.28	18.997
632	10/1/2011	10/31/2011	31	230.686	230685900	7.441	11.512
631	9/1/2011	9/30/2011	30	272.714	272713600	9.09	14.063
630	8/1/2011	8/31/2011	31	337.976	337975700	10.902	16.866
629	7/1/2011	7/31/2011	31	348.278	348278300	11.235	17.38
628	6/1/2011	6/30/2011	30	428.988	428988200	14.3	22.121
627	5/1/2011	5/31/2011	31	189.327	189327000	6.107	9.448
626	4/1/2011	4/30/2011	30	395.513	395512500	13.184	20.395
625	3/1/2011	3/31/2011	31	406.502	406502000	13.113	20.286
624	2/1/2011	2/28/2011	28	339.198	339198100	12.114	18.741
623	1/1/2011	1/31/2011	31	269.273	269272600	8.686	13.438
622	12/1/2010	12/31/2010	31	421.906	421905500	13.61	21.054
621	11/1/2010	11/30/2010	30	394.509	394509000	13.15	20.344
620	10/1/2010	10/31/2010	31	230.686	230685900	7.441	11.512
619	9/1/2010	9/30/2010	30	224.347	224347400	7.478	11.569
618	8/1/2010	8/31/2010	31	346.815	346814700	11.188	17.307
486	7/1/2010	7/31/2010	31	281.626	281626200	9.085	14.054
486	5/1/2010	5/31/2010	31	357.879	357878500	11.544	17.859
486	6/1/2010	6/30/2010	30	301.807	301806800	10.06	15.563
486	4/1/2010	4/30/2010	30	413.077	413077100	13.769	21.301
456	3/1/2010	3/31/2010	31	383.416	383415600	12.368	19.134
455	2/1/2010	2/28/2010	28	201.66	201659700	7.202	11.142
454	1/1/2010	1/31/2010	31	285.311	285311400	9.204	14.238
372	10/1/2008	10/31/2008	31	299.491	299490700	9.661	14.946
294	9/1/2008	9/30/2008	30	352.421	352421000	11.747	18.173
289	8/1/2008	8/31/2008	31	404.439	404438500	13.046	20.183
288	7/1/2008	7/31/2008	31	396.97	396969800	12.805	19.81
280	6/1/2008	6/30/2008	30	374.48	374479800	12.483	19.311
272	5/1/2008	5/31/2008	31	286.824	286824000	9.252	14.313
266	4/1/2008	4/30/2008	30	304.73	304730000	10.158	15.714
260	3/1/2008	3/31/2008	31	377.867	377866500	12.189	18.857
250	2/1/2008	2/29/2008	29	413.942	413942300	14.274	22.082
247	1/1/2008	1/31/2008	31	217.491	217491000	7.016	10.854
241	12/1/2007	12/31/2007	31	99.648	99648060	3.214	4.973
240	11/1/2007	11/30/2007	30	300.329	300328800	10.011	15.487
233	10/1/2007	10/31/2007	31	441.357	441357100	14.237	22.025
128	9/1/2007	9/30/2007	30	309.436	309435900	10.315	15.957
127	8/1/2007	8/31/2007	31	259.002	259001500	8.355	12.925
126	7/1/2007	7/31/2007	31	242.8	242800000	7.832	12.117
125	6/1/2007	6/30/2007	30	464.599	464599000	15.487	23.958
124	5/1/2007	5/31/2007	31	216.645	216644700	6.989	10.811

123	4/1/2007	4/30/2007	30	248.5	248500000	8.283	12.814
122	3/1/2007	3/31/2007	31	23.2	23200000	0.748	1.158
121	2/1/2007	2/28/2007	28	110.7	110700000	3.954	6.116
120	1/1/2007	1/31/2007	31	64.3	64300000	2.074	3.209
119	12/1/2006	12/31/2006	31	42	42000000	1.355	2.096
229	11/1/2006	11/30/2006	30	53.7	53700000	1.79	2.769
228	10/1/2006	10/31/2006	31	370.45	370450000	11.95	18.487
118	9/1/2006	9/30/2006	30	343.5	343500000	11.45	17.713
117	8/1/2006	8/31/2006	31	256.47	256470000	8.273	12.799
116	7/1/2006	7/31/2006	31	326.4	326400000	10.529	16.288
115	6/1/2006	6/30/2006	30	363	363000000	12.1	18.719



November 16, 2018

Mr. Ian Hirokawa, Special Projects Coordinator
Department of Land and Natural Resources
Land Division
P. O. Box 621
Honolulu, Hawai'i 96809

RE: Updates on KIUC Activities per BLNR Request

Dear Mr. Hirokawa:

This letter provides a summary of Kaua'i Island Utility Cooperative's (KIUC) activities at the diversion facilities located on the North Fork River and Waikoko Streams, which they manage and operate through Revocable Permit No. S – 7340. We are also requesting an opportunity to present these updates directly to the Board of Land and Natural Resources (BLNR) at the December 2018 meeting.

As you know, during the December 2017 meeting RP No. S-7340 was approved for holdover by the BLNR with an amendment as outlined below and memorialized in the BLNR meeting minutes approved on January 12, 2018:

1. Within one year, KIUC will provide the Board with a proposal for the partial restoration of flow to the Wailua River (which could be satisfied by the adoption of interim instream flow standards).
2. Direct DLNR staff to work with landowners on what is expected for the watershed management plan.
3. KIUC shall consult with the Department of Hawaiian Homelands (DHHL) and honor DHHL's reservation rights of water under the law.

KIUC has taken the following steps to meet these conditions:

- On December 12, 2017, the KIUC Board approved funds for temporary modifications to the ditch system that will ensure stream flow continuity during all flow conditions. These modifications included constricting inflow into the ditch and releasing water at the sluice gate immediately downstream of the spillway. Also, KIUC has completed draft designs of long-term modifications to the spillway structures at both North Fork and Waikoko that will maintain interim instream flow standards (IIFS) as set by CWRM. The draft designs have been submitted to CWRM for review.
- On January 9, 2018, KIUC met with DHHL and discussed DHHL's plans on DHHL lands located within the Wailua watershed and any associated water needs. In March, KIUC hosted DHHL for a site visit of the North Fork and Waikoko diversions and the Waiahi Hydropower Plants. In September 2018 CWRM approved a DHHL water reservation of 1.2213 MGD for DHHL for waters from the surface water hydrologic unit of Wailua.
- KIUC has been in regular contact with DOFAW regarding expectations for the watershed management plan associated with water lease requirements.

Letter to Ian Hirokawa
November 16, 2018
Page 2

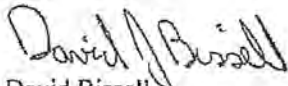
As background, KIUC applied with the Board of Land and Natural Resources (BLNR) for a water lease in 2004. At that time the Office of Hawaiian Affairs (OHA) filed a request for a contested case, which was later withdrawn due to the execution in 2006 of a Memorandum of Agreement (MOA) between OHA and KIUC. Per conditions set forth in the MOA, KIUC completed a Stream Biota Study in 2013, and a draft Cultural Impact Assessment (CIA) was completed in 2017. KIUC is currently undertaking additional cultural resource studies that will be included in the final CIA, which will likely be completed by the end of this year.

Additionally, KIUC has completed other studies in support of an environmental disclosure document including a flora fauna survey, an update to the Stream Biota Study and additional stream studies, and additional cultural and archaeological surveys. Initial study results have indicated that a minimal flow release at the North Fork and Waikoko diversions will address stream connectivity and ensure mauka to makai flow and there are no identifiable impacts to stream health or aquatic species, cultural and archaeological resources, or taro cultivation in the watershed.

While there are no construction activities related to KIUC's request for a water lease and no change of use of the facilities, KIUC is including plans for modifications at the spillway structures at North Fork and Waikoko streams in the environmental disclosure document, since this work would be implemented immediately after a water lease is granted. The diversions are located within the conservation district and the work associated with these spillway modifications may require the following permits: conservation district use permit, a SCAP from CWRM, consultation with SHPD, and possibly a 404 and 401. KIUC is consulting with the associated regulatory agencies regarding plans and associated permitting requirements.

We would appreciate the opportunity to give a presentation to the Board updating them on the work KIUC has accomplished over the last year in direct response to the Board's requests and in support of an environmental assessment.

Best regards,



David Bissell
President and Chief Executive Officer

Cc: Laurel Loo, Shiramizu, Loo, & Nakamura, LLP
Dawn Huff, Joule Group

EXHIBIT 4



ALEXANDER & BALDWIN
PARTNERS FOR HAWAII

September 16, 2019

Electronically Filed
FIRST CIRCUIT
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VIA E-MAIL and U.S. MAIL

Ms. Suzanne Case, Chairperson
and Members of the Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

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

Dear Chair Case:

The purpose of this letter is to provide a status report on A&B/EMI's compliance with permit conditions imposed by the Board of Land and Natural Resources ("**BLNR**") as part of its November 9, 2018 approval of the 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 the calendar year 2019. We are providing this status report at this time in response to the request of the Land Division, who has expressed the intent to place the renewal of existing water revocable permits (including the subject permits) before the BLNR for consideration at its October 11, 2019 meeting.

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 staff recommendation and relevant portion of the minutes of the BLNR's November 9, 2018 meeting relating to the subject permits. These two documents are the source of the permit conditions listed on the attached.

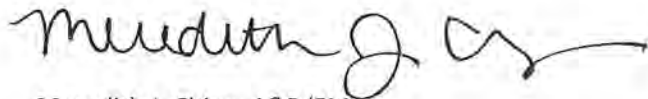
We would also like to note that In December 2018, A&B sold the majority of its former sugar cane lands on Maui to Mahi Pono, LLC and its related entities (collectively referred to as "**Mahi Pono**"), including the Central Maui agricultural lands which have been irrigated for over 100 years by the EMI Aqueduct System. Mahi Pono's objective is the same as that articulated by A&B at the BLNR's November 9, 2018 meeting—to transition as much of the former sugarcane land as possible to diversified agriculture. In February 2019, Mahi Pono became a co-owner of EMI.

During 2019, water collection enabled by these East Maui revocable permits continued to serve the needs of the public water systems that serves 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, as noted in the attached permit compliance status report.

Lastly, we would like to note the achievement of a significant milestone toward the issuance of a long-term State water lease for East Maui, in lieu of these revocable permits ("*Proposed Water Lease*"). The Draft Environmental Impact Statement ("*DEIS*") for the Proposed Water Lease has been submitted to the Office of Environmental Quality Control, and our understanding is that the Notice of Availability will be published in the OEQC's September 23, 2019 bulletin, *The Environmental Notice*, making the document available to the public for review and initiating the 45-day public comment period. Assuming no unexpected delays, we estimate that a Final EIS can be published in June 2020 and accepted later that summer.

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

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Meredith J. Ching", with a long horizontal flourish extending to the right.

Meredith J. Ching, A&B/EMI

cc: Ian Hirokawa, Land Division (via email)

**HOLDOVER OF EAST MAUI WATER PERMITS
2018 BLNR CONDITIONS: STATUS OF COMPLIANCE
AS OF SEPTEMBER 16, 2019**

CONDITIONS PER 11/9/18 STAFF SUBMITTAL (pp. 7, 8)

- 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 Commission on Water Resource Management (CWRM) issued its East Maui Interim Instream Flow Standard ("IIFS") decision on June 20, 2018. No appeals were filed at the end of the 30-day appeal period, rendering the decision final.

The current need for water from the East Maui streams averages approximately 27 million gallons per day (MGD), and only that amount of water is being diverted from the East Maui watershed. This amount is well within the bounds of the 2018 IIFS decision with respect to 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, and for agricultural uses in Central Maui, on lands now owned and managed by Mahi Pono. So far, these agricultural uses include over 500 acres of sweet potato, 60 acres of red and white potato, 40 acres of citrus, over 500 acres of sorghum grass for cattle feed, and 6,500 acres of irrigated pasture to support rotational grazing for 1,300 head of cattle.

Mahi Pono plans the continued expansion of its agricultural operations, which will result in a corresponding increase in the need for water from the East Maui. 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 made significant progress on the diversion modifications in compliance with the 2018 IIFS decision. Priority is being given to the modifications needed to effect the permanent abandonment of the diversions on the seven 'taro' streams. While 90-95% of the stream flow has been returned/redirected back into these taro streams, return of the remaining 5-10% requires work on the diversions that can trigger government agency review and sometimes permitting requirements on the Federal, State and County level. Given the magnitude and the varying complexity of the diversion modification work that is needed to comply with the entirety of the 2018 IIFS decision, the Permittees have worked closely with the CWRM staff. At staff's suggestion, for permitting purposes, the taro stream modification work was divided into four categories, based on the complexity of the needed work. To-date, the fifteen (15) Category 1 diversions have received all of the necessary approvals, and work on eleven (11) of the diversions has been completed. The work on the remaining four (4) Category 1 diversions will be completed before

the end of September 2019. The Permittees also sought and received the initial permitting approvals from the CWRM (Stream Diversion Works Permits, "SDWP's") for fifteen (15) additional Category 2 diversions and eleven (11) Category 3 diversions in February and August 2019 respectively, and are now pursuing the remaining reviews/approvals from the other government agencies needed before work can commence. Category 4 diversions (29) are expected to be before the CWRM for SDWP approval before the end of the year.

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. Once the work plan is approved by CWRM, the Permittees will begin the broader agency review and permitting process. In the meantime, the Permittees are in compliance with the IIFS decision with respect to flow requirements (i.e. by individual streams and 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 with respect to flow volumes, by individual streams, and compliance with connectivity requirements has been met to the extent legally possible without further governmental review and approvals. In addition, significant progress has been made on pursuing the modifications and abandonment of diversions on the seven 'taro streams', an established priority both for 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 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 has approximated 27 MGD this past year, which is well within the bounds of the CWRM's 2018 IIFS decision with respect to diversion of specific streams and total amount of water diverted. Significant progress was achieved by the Permittees in 2019 relative to pursuing the ditch system/diversion modifications that are necessary to ensure IIFS compliance even at higher levels of diversion, which will occur over time as Mahi Pono's agricultural activity is expanded.

Another condition of the 2018 IIFS decision was a requirement that EMI, HC&S, County of Maui and Native Hawaiian Legal Corporation each provide a one-year status report on specific items. EMI and Mahi Pono (as successor to HC&S) submitted reports on June 20, 2019. Copies of those letters are attached

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 is the same as the year prior which we believe related 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 there were two 4" rusted pipes that needed to be removed from the area (see attached minutes of the November 9, 2018 BLNR meeting, page 6 of 25, sixth paragraph). 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 recently approved by the CWRM in its approval of the Category 3 SWUP's.

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

Status: The Permittees have established a number of standard operating procedures to address the cleanup of trash and debris in the license areas. EMI employees are instructed to look for any material that is not serving a function in and around the ditch system or intakes during the course of their daily assignments. They are asked to report any sightings to their supervisors who then coordinate the prompt removal of the debris. To date, EMI has recovered several hundred feet of old pipe, several old wooden gates and remnant pieces of steel and concrete. EMI has 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.

Given the size of the EMI crew and the size of the watershed, it is not possible to be aware of all debris at all times. Accordingly, EMI has reached out to watershed partners, such as Ms. Lucienne de Naie of the Sierra Club, to set up a process to inform EMI of any sightings of debris made by her or Sierra Club members so that EMI personnel can conduct prompt field visits and arrange for the removal of the items as appropriate.

BLNR ADDITIONAL CONDITIONS (11/9/18 BLNR Meeting Minutes, p.11):

- 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: On January 10, 2019, EMI transmitted a proposed plan for the interim committee ("Committee") to BLNR Chair Suzanne Case for approval of its scope. This was done in an effort to initiate the establishment of the Committee as soon as possible, but in the absence of minutes of the December BLNR meeting which would have provided specific guidance. On that same date, EMI sent letters to the Maui County Farm Bureau, OHA, Native Hawaiian Legal Corporation and the County of Maui advising them of the formation of the interim committee and inviting each to designate a participating member.

On February 27, 2019, Chair Case transmitted a letter to EMI, acknowledging that the proposed committee and scope was consistent with the Board's intent and agreeing to it proceeding accordingly. On March 4, 2019, invitations were sent to the parties for a March 12, 2019 meeting. At that initial meeting, the parties agreed that quarterly meetings were appropriate. The second quarter meeting was held on July 31, 2019 and a third quarter meeting has been scheduled for September 30, 2019. Topics discussed include the status of IIFS compliance, Mahi Pono farm plans, and status of the EIS, amongst others. Meeting minutes are prepared and provided to the parties regardless of meeting attendance.

Copies of all of the above-referenced correspondence are attached. A fourth quarter meeting of the interim committee will be scheduled later in the year.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 9, 2018

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

MAUI

Holdover of Revocable Permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

LEGAL AUTHORITY:

Section 171-58, Hawaii Revised Statutes (HRS), as amended.

BACKGROUND:

At its meeting on December 11, 2015, under agenda item D-14, as amended, the Board of Land and Natural Resources (Board) directed Land Division staff to submit annual revocable permit renewals by county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent was set. At its meeting on June 24, 2016, under agenda item D-7, the Board further approved the recommendations of the Department of Land and Natural Resources Revocable Permit Task Force, as amended, requesting all divisions to notate any non-compliance issues and pending litigation in the renewal request. In compliance with these directives, staff presented the revocable permits for land uses by county over four separate meetings in 2016. However, staff omitted revocable permits for water use from the renewal requests because of the complex issues they present. At its meeting on December 9, 2016 under agenda item D-11, the Board approved, as amended, a one-year holdover of the existing water permits on the island of Maui pursuant to Section 171-58, HRS, as recently amended by Act 126 Session Laws of Hawaii 2016 (Act 126). The Board imposed additional conditions in granting its approval:

- 1) To require the holdover of the revocable permits to incorporate the July 18, 2016 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;

- 2) There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
- 3) Honomanu Stream shall also be designated as a stream from which no water diversion shall be permitted;
- 4) A maximum of 80 million gallons per day (mgd) on average shall be permitted for diversions to central Maui. The permittees can apply for the diversion of additional water if necessary during the term of the permits;
- 5) The permittees shall remove (from the no-diversion streams) the dry areas of streams that are created by erosion caused by a diversion, as mentioned on pages 10-11 of the DAR report, as part of the restoration of streams; and
- 6) The permittees and taro farmers shall each designate a point-of-contact for their respective groups who will exchange phone numbers and communicate concerns from their group to the point-of contact for the other group.

At its meeting on November 9, 2017, the Board approved the continued holdover of the permits for an additional year but added additional requirements as follows:

- 1) The holdover shall comply with all conditions required by the CWRM's Interim Instream Flow Standards decision;
- 2) 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; and
- 3) Permittee shall begin cleanup of trash from revocable permit areas starting with areas that are accessible and close to streams.
- 4) Reword the previous condition 5 so it addresses the ability of stream biota to move upstream.

Staff now brings the existing water permits on the island of Maui to the Board for approval of an additional one-year holdover. The status as to the Board's additional conditions is addressed in the Remarks section.

REMARKS:

On July 1, 2016, Act 126 became law, amending Section 171-58, HRS. The amended section provides in part:

Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three years; provided further that the holdover is consistent with the public trust doctrine

A copy of the full text of Act 126 is attached as Exhibit 1. In the present matter, applicants Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI) come before the Board to request that the Board consent to the pre-existing holdover status of the revocable permits issued to them, as explained in the following section.

Procedural History

On May 26, 2000, the Board approved the issuance of revocable permits to A&B and EMI to take water from four license areas on Maui. The diverted water is transported to central and upcountry Maui for agricultural and domestic purposes. Four revocable permits were issued for four license areas, respectively, S-7263 (Honomanu), S-7264 (Huelo), and S-7265 (Keanae) to A&B, and S-7266 (Nahiku) to EMI. See maps attached as Exhibit 2.

On May 14, 2001, A&B and EMI filed an Application for Long Term Water License with the Board. The application sought a continuation of the existing diversions for the same agricultural and domestic uses through a 30-year lease of water originating from state lands. At its meeting on May 25, 2001, the Board heard the request, which included the continued issuance of interim revocable permits on an annual basis pending the issuance of a long-term disposition. During the meeting, there was a request for a contested case hearing to challenge the legality of the long term license by Nā Moku Aupuni O Ko'olau Hui (Na Moku), which was granted by the Board. Pending the outcome of the contested case, the Board deferred action on the request and granted holdover revocable permits to A&B and EMI. In addition to the contested case hearing on the long term water license, Na Moku also filed petitions with CWRM to amend the Interim Instream Flow Standards (IIFS) for certain East Maui streams. The IIFS petitions resulted in litigation and a contested case hearing.

The Board affirmed the holdover status of the water permits at its meeting on May 24, 2002 and its intention to preserve the status quo until the resolution of the contested case. The water license contested case also led to litigation and ultimately resulted in the Board

issuing a Findings of Fact, Conclusions of Law and Decision and Order on March 23, 2007. The intent was to provide interim relief until the IIFS petitions were resolved, requiring A&B and EMI to decrease diversions on Waiokamilo Stream to allow for more water to flow downstream to the local taro growers.¹ The March 23, 2007 decision acknowledged that the environmental review and IIFS would likely take years to resolve, and that the holdover was essential to the Board's proper discharge of its public trust responsibilities.

In 2015, Na Moku filed a separate action with the First Circuit Court challenging that the annual renewal of the revocable permits did not undergo the appropriate environmental review under Chapter 343, HRS. The court decided that the continuance of the revocable permits was not an action subject to Chapter 343, HRS. However, the court, independent of any claims made by Na Moku, determined that the Board exceeded its authority under Sections 171-10 and 171-55 HRS, in placing the revocable permits into holdover status for 13 years, and declared the revocable permits invalid. The decision is currently on appeal in the Intermediate Court of Appeals (ICA) by the County of Maui, A&B, EMI and the State. The Board reaffirmed that the permits were in holdover status at its meeting on December 11, 2015. Na Moku filed another action with the State's Environmental Court challenging the December 11, 2015 reaffirmation. That matter has been stayed pending resolution of the appeal at the ICA.

On June 20, 2018, CWRM issued its Findings of Fact, Conclusions of Law & Decision and Order in the contested case hearing regarding the petition to amend the IIFS for the 27 East Maui streams that were subject to the petition. Of those 27 streams, 10 were fully restored, with no diversion of water allowed. In determining the IIFS, CWRM noted that it was its duty to protect instream values to the extent practicable and to protect the public interest. However, CWRM must also weigh the importance of off-stream uses of water, including the economic impact of restricting those uses. CWRM also determined that the off-stream use of water in preserving agricultural lands and assuring adequate water supplies for Maui was in the public interest. CWRM's Findings of Fact, Conclusions of Law & Decision and Order is available through the following link:

<http://files.hawaii.gov/dlnr/cwrn/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf>

The Department considers the revocable permits to be in continued holdover status, until the resolution of the pending contested case before the Board on the water license.² Although the permits were invalidated by the Circuit Court, the ruling was stayed pending the appeal. Therefore, the permits remain in holdover status until that time. However, in

¹ A&B eventually ceased all diversions of Waiokamilo Stream in 2007.

² As noted above, the Board approved the revocable permits to be in holdover in 2001, then reaffirmed the holdover status in 2002 and again in 2015. The holdover status was also validated by the hearings officer in the 2007 contested case decision. Only the 2015 decision was challenged by Na Moku. The inclusion of the revocable permits in the annual renewal for all revocable permits brought to the Board was simply to address the annual rent, not to reconsider the holdover status of the permits.

an abundance of caution and in the event the decision is upheld on appeal, staff recommends that the Board approve the written request submitted by A&B and EMI (attached in part as Exhibit 3³) to authorize the continued holdover of the revocable permits in compliance with Act 126. Staff takes the position that, despite the revocable permits already being in holdover status, the Board authorizing the continued holdover would comply with Act 126. As noted previously, Act 126 allows the Board to authorize annual holdovers where an application for a lease has been made to continue a previously authorized disposition of water rights. The Board did previously authorize the initial revocable permits in 2001, which have been in valid holdover since. Furthermore, A&B and EMI submitted their lease applications in 2001, and are currently proceeding with their environmental impact statement. The applications are attached as Exhibit 4.

In their request to approve the holdover, A&B and EMI contend the holdover is consistent with the public trust. Specifically, the continued diversion of water through the ditch system is necessary to preserve the operational integrity of the ditch system, which will in turn keep A&B's former sugar cane lands in central Maui viable for future agricultural uses, including diversified agriculture.⁴ Additionally, a portion of water diverted through the ditch system is utilized by the County of Maui to service the Nahiku and Upcountry Maui communities.

In previous approvals for holdovers, the Department has noted that title to water resources is held in trust by the State for the benefit of its people, and with respect to the agricultural use of water, the Hawaii Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawaii Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawaii Constitution, Article XI, Section 10.

Considering the foregoing constitutional provisions and in the absence of compelling evidence to the contrary, the Department finds that the justification provided by A&B and EMI is sufficient to recommend that the requested holdover is consistent with the public trust doctrine. Given the short term, one-year holdover period, Staff acknowledges the need to ensure the continued operation of the ditch system to provide water for the County of Maui to deliver to its residents, at a minimum. Since the IIFS has now been

³ Due to the length of the request document, its attachments have been omitted.

⁴ A large portion of A&B's lands in central Maui has been designated as Important Agricultural Lands (IAL).

amended by CWRM, there is greater assurance that the use of water under the revocable permits would be consistent with public trust responsibilities. Additionally, staff recommends that the Board affirm that the diversion of water under the revocable permits be subject to compliance with the amended IIFS. However, staff emphasizes that such finding is based solely within the context of Act 126, and further inquiry and analysis are required to determine whether a long term lease would be consistent with the public trust doctrine.

As part of its 2017 approval, the Board set a maximum diversion amount at 80 million gallons per day (mgd). As the amended IIFS has been established, the Board is recommended to forego the 80 mgd limit, but instead require that any water diverted under the revocable permits shall be for reasonable and beneficial use and always subject to compliance with the amended IIFS.

The rent or fee to charge for water use is another issue. Standard appraisal methodologies may not work well in establishing a charge for water. There are few comparables that an appraiser could look at, and other types of appraisal methodology are ill-suited for determining a cost to charge for consuming a resource. It is even more difficult to appraise the non-consumptive use of water involved in hydroelectric uses.

Land Division staff has met with the Department of Hawaiian Home Lands (DHHL), the Office of Hawaiian Affairs (OHA) and the Office of Environmental Quality Control (OEQC) regarding the processing of water lease applications. All agencies are interested in devising a method of charging for the use of water in a way that will help to sustain the resource. As several applicants are making progress in meeting the statutory requirements for a water lease, staff intends to hire an appraiser to address the valuation issue.

The current rents for the revocable permits are as follows:

RP S-7263:	\$1698.32 per month
RP S-7264:	\$6588.40 per month
RP S-7265:	\$3476.72 per month
RP S-7266:	\$1426.88 per month

Staff has previously recommended keeping the current rents for holdover revocable permits in place. However, pursuant to further meetings between DLNR and DHHL staff, DHHL raised concerns that revocable permit rents have been static for an extended period of time with no adjustment and has advocated that, at a minimum, rents be adjusted for inflation. Acknowledging the difficulty in appraising a holdover revocable permit, staff concurs with DHHL's recommendation as an interim measure, and that the Board approve adjusting the rents accordingly. As the permits were originally granted in the year 2000, the original rents have been adjusted by CPI to the approximate value as of August 2018. The adjusted rents are as follows:

RP S-7263:	\$2478.15 per month
------------	---------------------

RP S-7264: \$9613.65 per month
RP S-7265: \$5073.15 per month
RP S-7266: \$2082.07 per month

In addition to the rent issue, DHHL has commented that pursuant to HRS 171-58(c)(1), any holdover be “consistent with the public trust doctrine”, and furthermore that all revocable permits shall be subject to any existing or future reservations of water for DHHL. Staff concurs with DHHL’s comments and recommends that the Board incorporate them into approval of any holdover. A review of the files shows the permittees are compliant with the permit terms. Staff believes that a one-year holdover of these revocable permits is appropriate under Section 171-58, HRS, and Act 126. Additional agency comments were not solicited for this action since the revocable permits are limited term holdovers. Furthermore, as all permit holders subject to this approval have applied for water leases, there will be numerous opportunities for government agencies and general public to provide input during the Chapter 343 HRS environmental review process and any Board approval for a public auction for the water leases.

Since the Board’s prior approval of the holdover, A&B and EMI have proceeded with conducting their Environmental Impact Statement. An Environmental Impact Statement Preparation Notice (EISPN) was published in the Office of Environmental Quality Control Environmental Notice on February 8, 2017. A number of comments were received, with many expressing concerns about the proposed water lease. A&B and EMI will address the comments as part of the EIS. Additionally, A&B and EMI have taken action to address the additional conditions imposed by the Board pursuant to the prior holdover approvals in 2016 and 2017. A summary of the actions taken is attached as Exhibit 5.

In consideration of the foregoing, the Board is recommended to approve the holdover of the revocable permits, subject to all previous conditions that remain consistent with the June 20, 2018 CWRM Findings of Fact, Conclusions of Law & Decision and Order. In addition, previous conditions required by the Board that are inconsistent with the CWRM decision have been deleted from the recommendations.

RECOMMENDATION: That the Board:

1. Find that the holdover of the subject revocable permits is consistent with the public trust doctrine;
2. Approve the holdover of the subject revocable permits on a month-to-month basis for another one-year period through December 31, 2019, at the adjusted rent amounts previously identified;
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;

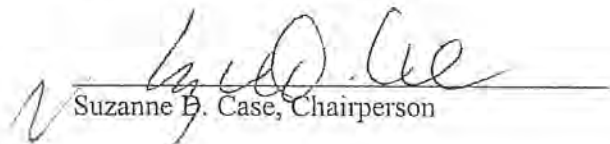
4. There shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use;
5. Any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS;
6. The holdover shall comply with all conditions required by the CWRM's Amended IIFS decision;
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;
8. Permittee shall cleanup trash from revocable permit areas starting with areas that are accessible and close to streams; and
9. The revocable permits shall be subject to any existing or future reservations of water for DHHL.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne B. Case, Chairperson

A BILL FOR AN ACT

RELATING TO WATER RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:
3 "(c) Disposition of water rights may be made by lease at
4 public auction as provided in this chapter or by permit for
5 temporary use on a month-to-month basis under those conditions
6 which will best serve the interests of the State and subject to
7 a maximum term of one year and other restrictions under the law;
8 provided that [any]:

9 (1) Where an application has been made for a lease under
10 this section to continue a previously authorized
11 disposition of water rights, a holdover may be
12 authorized annually until the pending application for
13 the disposition of water rights is finally resolved or
14 for a total of three consecutive one-year holdovers,
15 whichever occurs sooner; provided that the total
16 period of the holdover for any applicant shall not
17 exceed three years; provided further that the holdover
18 is consistent with the public trust doctrine;



1 (2) Any disposition by lease shall be subject to
2 disapproval by the legislature by two-thirds vote of
3 either the senate or the house of representatives or
4 by majority vote of both in any regular or special
5 session next following the date of disposition;

6 ~~[provided further that after]~~ and

7 (3) After a certain land or water use has been authorized
8 by the board subsequent to public hearings and
9 conservation district use application and
10 environmental impact statement approvals, water used
11 in nonpolluting ways, for nonconsumptive purposes
12 because it is returned to the same stream or other
13 body of water from which it was drawn, and essentially
14 not affecting the volume and quality of water or biota
15 in the stream or other body of water, may also be
16 leased by the board with the prior approval of the
17 governor and the prior authorization of the
18 legislature by concurrent resolution."

19 SECTION 2. The department of land and natural resources
20 shall prepare and submit annual reports to the legislature no
21 later than twenty days before the convening of each of the



1 regular sessions of 2017, 2018, 2019, and 2020. The reports
2 shall include:

- 3 (1) The status of applications to continue previously-
4 authorized dispositions of water rights;
- 5 (2) Actions taken on the applications during the fiscal
6 period of July 1, 2016, to November 30, 2016, fiscal
7 year 2016-2017, fiscal year 2017-2018, and fiscal year
8 2018-2019, respectively; and
- 9 (3) Any relevant recommendations for legislative action or
10 appropriation.

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval,
14 and shall apply to applications for a lease to continue a
15 previously authorized disposition of water rights that are
16 pending before the board of land and natural resources on the
17 effective date of this Act or filed with the board of land and
18 natural resources on or after the effective date of this Act,
19 but prior to June 30, 2019; provided that:

- 20 (1) This Act shall be repealed on June 30, 2019, and
21 section 171-58(c), Hawaii Revised Statutes, shall be



H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

1 reenacted in the form in which it read on the day
2 prior to the effective date of this Act; and
3 (2) Any holdovers first applied for under this Act prior
4 to June 30, 2019, may be reauthorized, as provided in
5 section 1 of this Act, beyond June 30, 2019.



H.B. NO. 2501
H.D. 2
S.D. 2
C.D. 1

Report Title:
Water Rights; Holdover

Description:
Requires that where an application has been made for a lease to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner. (HB2501 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

HB2501 CD1 HMS 2016-3425



RP S-7263 Hoomanu

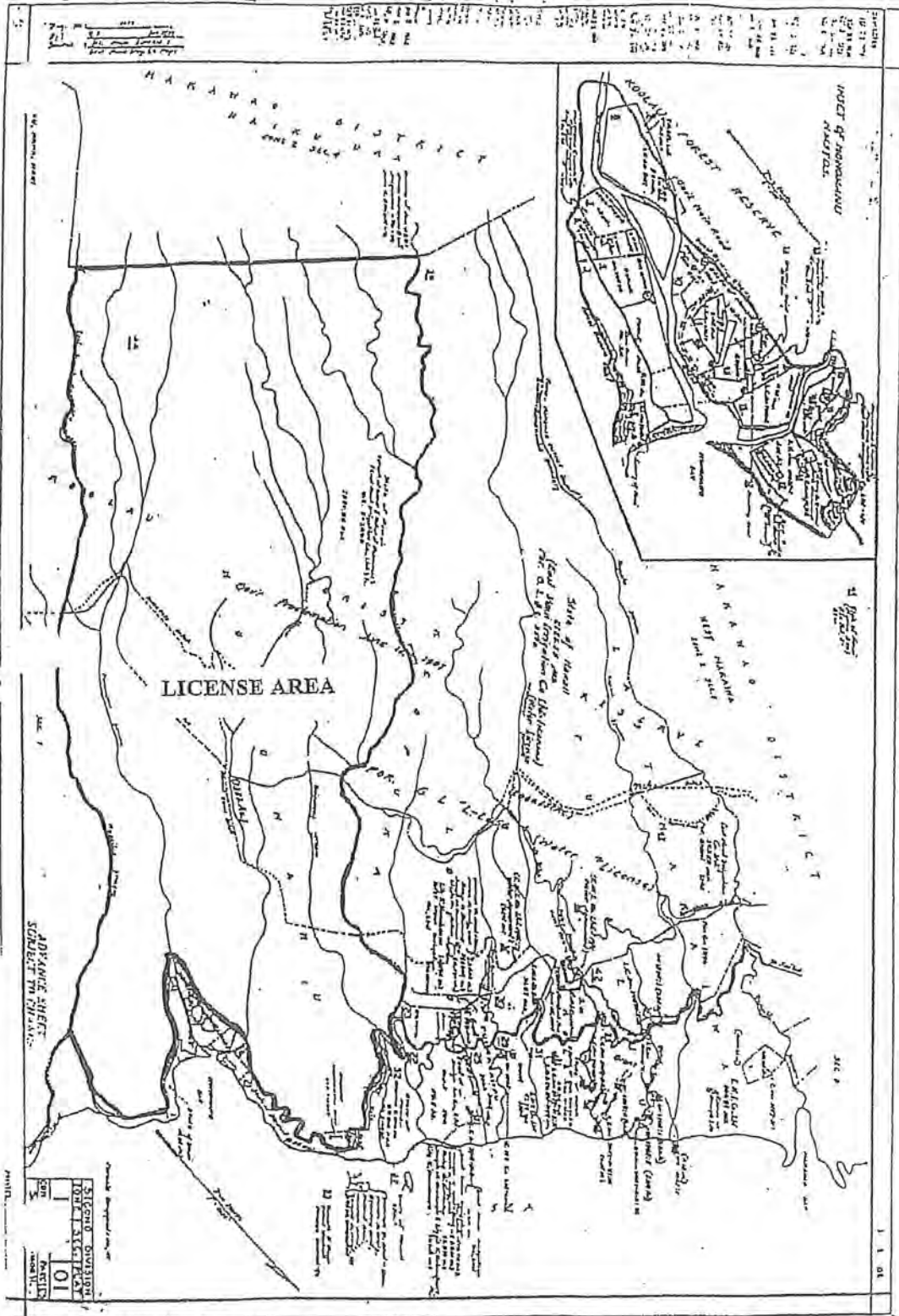
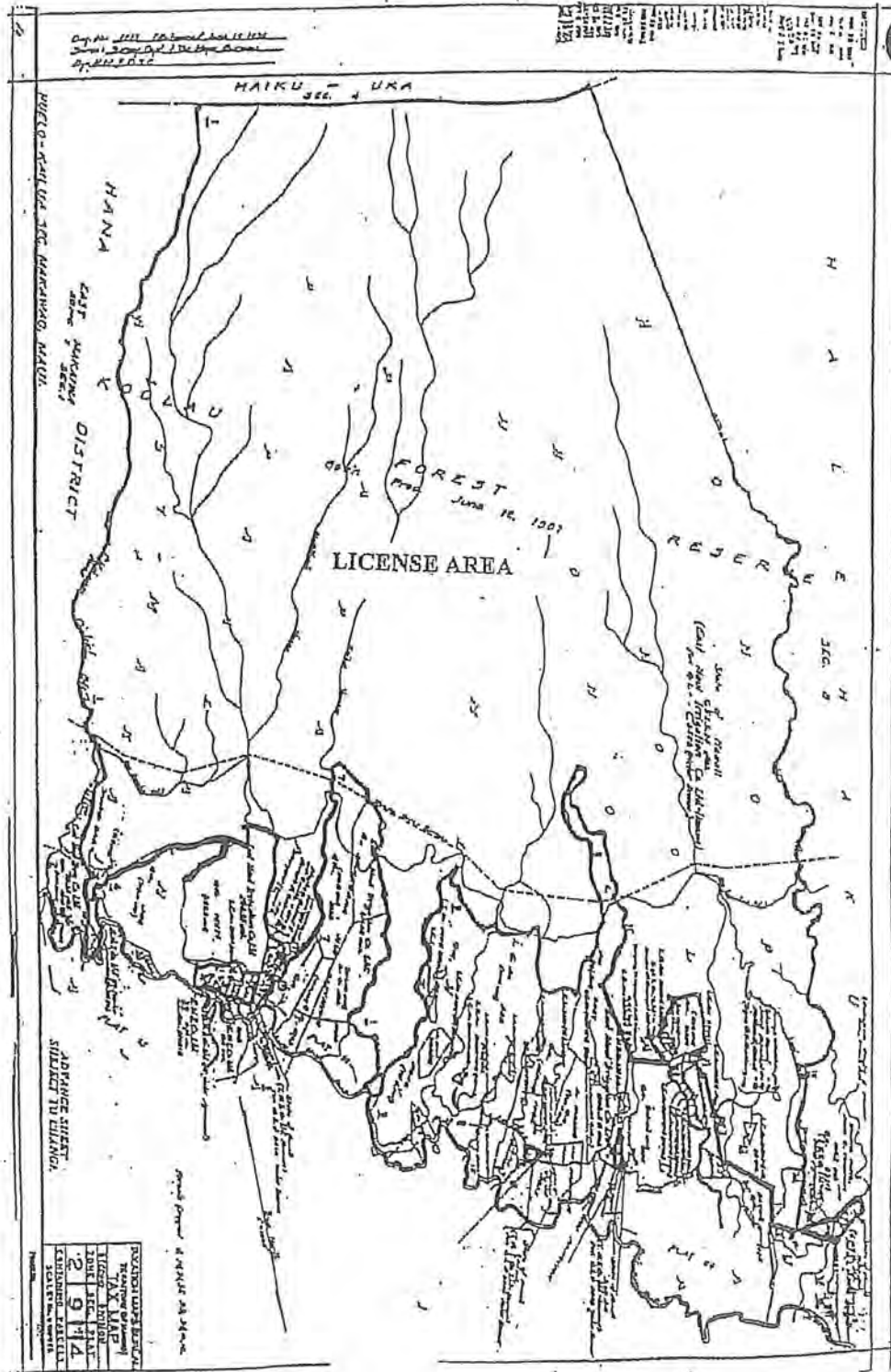


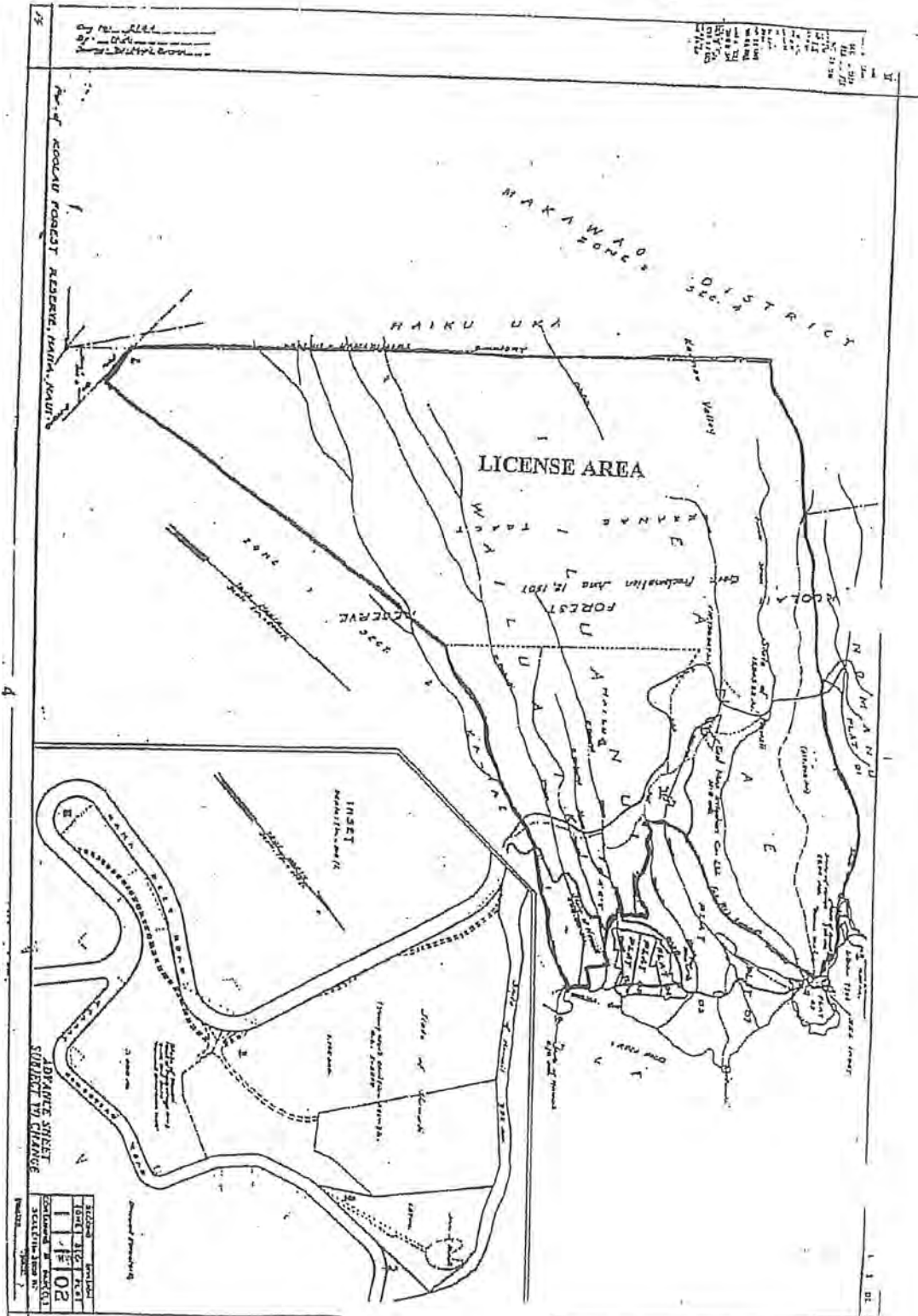
EXHIBIT "2"

RPS-7264 Huelo



320

RPS-7265 Keanae





ALEXANDER & BALDWIN
PARTNERS FOR HAWAII

October 24, 2018

VIA E-MAIL and U.S. MAIL

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

RE: Authorization of Holdover Status of Revocable Permits Nos. S-7263, S-7264, and S-7265 issued to Alexander & Baldwin, Inc. and Revocable Permit No. S-7266 issued to East Maui Irrigation Company, Limited for purposes of Compliance with Act 126

Dear Ms. Case:

The purpose of this letter is to formally request the Board of Land and Natural Resources (“BLNR”), pursuant to Haw. Rev. Stat. §171-58, to review and authorize the holdover status 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 purposes of Compliance with Act 126.

Background

This is A&B/EMI’s third Act 126 request to BLNR for review and authorization of the continued holdover status of these four Revocable Permits (hereafter, the “*East Maui RP’s*”). EMI’s first request was made by letter dated November 23, 2016, and its second request was made by letter dated October 24, 2017. Copies of both letters are enclosed, with the November 23, 2016 letter providing a background of the East Maui RP’s.

The second holdover request was considered by the BLNR at its November 9, 2017 meeting and approved subject to conditions recommended by Department of Land and Natural Resources (DLNR) staff (see pages 6-7 of the Staff Submittal for item D-5, attached) as well as certain conditions imposed by the BLNR (the “*RP Additional Conditions*”), enumerated on

EXHIBIT ” 3 ”

page 13 of the minutes of the meeting, which were approved on December 8, 2017, a copy of which minutes is also enclosed.

Holdover of EMI's permits continues to be consistent with the Public Trust Doctrine

As recognized by BLNR when it granted EMI's first and second requests to authorize the continued holdover status of the East Maui RP's, the holdover of EMI's permits is consistent with the Public Trust Doctrine. Water collection enabled by the East Maui RP's continue to serve the needs of the public water system that serves Upcountry Maui, owned and operated by the County of Maui Department of Water Supply, as well as increasing diversified agricultural activities in Central Maui. 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's ("*CWRM*") for East Maui streams, 24 of which are within the area covered by the East Maui RP's. Any extension by BLNR of the holdover status of the East Maui RP's will be subject to the CWRM's recently issued IIFS decision.

BLNR's conditions have been met

A status report of A&B/EMI's compliance with the conditions imposed by the BLNR in 2017 for the second holdover request was recently provided to the Department of Land and Natural Resources, Land Division, a copy of which is also enclosed. Since our submittal letter, we have received all of the required regulatory approvals to proceed with work of permanently abandoning 15 of the taro stream diversions. That work will proceed immediately.

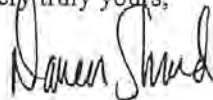
EIS/Lease process proceeding

Lastly, work on the Environmental Impact Statement ("*EIS*") that BLNR ordered A&B to prepare in its July 8, 2016 Order Re Alexander & Baldwin, Inc.'s and East Maui Irrigation Company, Limited's Submission of Environmental Impact Statement Scope of Work filed June 9, 2016 has continued throughout the year, to the extent possible pending the CWRM's East Maui IIFS decision. With the issuance of the IIFS decision in June, the maximum amount of water that could be diverted pursuant to the state water lease could be defined, in turn enabling studies of the corresponding impacts to proceed. The current projected timeline estimates that the Draft EIS will be provided to the DLNR for its review, prior to publication, within the second quarter of 2019. Assuming no undue delays or challenges, the Final EIS should be able to be provided to the DLNR by the end of 2019, enabling the lease process to be initiated.

Ms. Suzanne D. Case
October 24, 2018
Page 3

In light of the above, EMI respectfully asks the BLNR to re-authorize the holdover of Revocable Permits Nos. S-7263, S-7264, S-7265 and S-7266 and to declare the holdover to be consistent with the public trust doctrine.

Very truly yours,



Darren Strand
General Manager, Diversified Agriculture

Enclosures

cc: Linda Chow, Esq.
Summer L. H. Sylva, Esq.
Camille K. Kalama, Esq.
Isaac Hall, Esq.
Patrick K. Wong, Esq.
Caleb P. Rowe, Esq.
Kristin K. Tarnstrom, Esq.
Robert H. Tomas, Esq.
Russell Tsuji
Kevin Moore
Ian Hirokawa

MAY 14 '01 02:59PM A&B PROPERTIES (808) 525-8447

AB
ALEXANDER & BALDWIN, INC.

822 Bishop P. Ct.
Honolulu, Hawaii 96813
P.O. Box 3440
Honolulu, HI 96801-3440
www.alexanderbaldwin.com
Tel (808) 525-6611
Fax (808) 525-6622

May 14, 2001

BY HAND DELIVERY

Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Sale of Lease (Water License) at Public Auction, Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui

Ladies and Gentlemen:

Alexander & Baldwin, Inc. and its subsidiary, East Maui Irrigation Company, Limited, request sale of a lease at public auction of the Koolau Forest Reserve and Hanawi Natural Area Reserve, Hana and Makawao, Maui, in accordance with the following:

Statute: Chapter 171, HRS generally; Section 171-58(c), HRS.

Location: Portion of the government land within the Koolau Forest Reserve and the Hanawi Natural Area Reserve generally identified as the Nahiku, Keanae, Huelo and Honomanu License areas.

Tax Map Keys 1-1-01, 1-1-02, 1-2-04, 2-9-14

<u>Area:</u>	Nahiku	10,111.22 acres, more or less
	Keanae	10,768.00 acres, more or less
	Huelo	8,752.69 acres, more or less
	Honomanu	3,381.00 acres, more or less
	Total Lease Area	33,012.91 acres, more or less

(The total area shall be subject to review and confirmation by the Department of Accounting and General Services, Survey Division)

Status: Nahiku encumbered under Revocable Permit No. S-7266
 Keanae encumbered under Revocable Permit No. S-7265
 Huelo encumbered under Revocable Permit No. S-7263
 Honomanu encumbered under Revocable Permit No. S-7264

EXHIBIT S-2

EXHIBIT "4"

Board of Land and Natural Resources
State of Hawaii
May 14, 2001
Page 2

- Land Title: Subsection 5(b) of the Admissions Act
- Zoning: State Land Use Commission: Conservation
- Purpose: Right, privilege and authority to enter and go upon the above-described areas for the purpose of developing, diverting, transporting and using government-owned waters.
- Term: Thirty (30) years, commencing sixty (60) days from public auction.
- Rental: Minimum Rental to be determined by appraisal, subject to review and acceptance by Chairperson. Minimum Rental shall be subject to reopening and redetermination at the end of the tenth (10th) and twentieth (20th) years of the term; such redetermination to be made by appraisal.
- Bond: A performance bond shall be posted to the extent required by statute.
- EIS: All bidders shall prepare and file with the Office of Environmental Quality Commission an Environmental Impact Statement with respect to the proposed use. Disposition of the cost of the EIS shall be determined at a future date.
- Other:
1. The lease shall be subject to that certain Indenture dated March 18, 1938, by and between the Territory of Hawaii and East Maui Irrigation Company, Limited, as amended by Correction Agreement dated March 24, 1938.
 2. Lessee shall maintain roads, trails and the water system.
 3. The State shall have limited rights, to be specified in the lease, to withdraw water for domestic purposes and for emergency purposes.
 4. Public hunting will be allowed, subject to reasonable restrictions to be contained in the lease and consistent with June 5, 1995 Vehicular Access Agreement.
 5. The lease shall be issued subject to Instream Flow Standards as subsequently determined by the Commission on Water Resource Management.
 6. Lessee shall continue to supply of water for domestic purposes to the Maui County Board of Water Supply pursuant to the April 13, 2000 Memorandum of Understanding between BWS and A&B.
 7. Other relevant terms as reflected in the existing revocable permits and expired license agreements shall be included.

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

June 20, 2019

TRANSMITTED VIA EMAIL

Mr. Kaleo Manuel, Deputy Director
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Manuel:

In compliance with the East Maui Interim Instream Flow Standard Decision and Order (IIFS D&O) issued by the Commission on Water Resource Management (CWRM) on June 20, 2018, East Maui Irrigation Company (EMI) hereby submits a one-year status update on the implementation of the IIFS, as required on page 270 of the IIFS D&O.

Section p. reads:

- p. EMI shall report on:*
- 1. Modifications to diversions to meet the amended IIFS*
 - 2. Water deliveries at Honopou Stream and Maliko Gulch, and any changes EMI ascribes to the amended IIFS*
 - 3. Changes in stream diversion and ditch settings as HC&S's irrigation requirements increase.*

Please find below the requested information:

1. Modifications to Diversions:

Taro Stream Modifications: The IIFS D&O embodied the commitment made to fully and permanently restore the "taro streams" identified by the Native Hawaiian Legal Corporation. Flows in the taro streams have been restored to the maximum extent achievable through operational modifications to the diversions (i.e. opening, closing or removing of gates). The remaining restoration required that various permitting procedures be pursued, due to the need for structural modifications to the stream diversions. Permanent abandonment of the

taro stream diversions also requires a Stream Diversion Works Permit Application (SDWPA) be approved by the CWRM.

In total, 70 diversions must be modified to achieve full and permanent restoration of the taro streams. In consultation with CWRM staff, the permit applications for the 70 diversions were divided into 4 categories, depending on their permitting needs. Here is the status, by category:

Category 1: Of the 15 Category 1 diversions, modifications to 6 have been completed; three are in-progress, expected to be completed by July 3; and two more are to be completed by late July. The remaining 4 are anticipated to be completed by September of this year. All target dates assume favorable weather and stream flow conditions.

Category 2: There are 15 diversions in this category, those that require more significant construction work. Stream Diversion Work Permits (SDWPs) were issued in March 2019. These permits require that construction plans and specifications be submitted to CWRM, and that site-specific Best Management Practices also be developed in conjunction with the Department of Health prior to initiating the modification work. These plans are under development and are expected to be completed by the end of July.

Category 3: There are 11 diversions in this category, and the SWDPA to undertake the modification work has been submitted to CWRM and is scheduled to be taken up by the Commission for consideration at its August 1 meeting.

Category 4: These are the diversions on Waiokamilo stream, except for one believed to be on West Wailuanui Stream. There are 29 registered diversions, but one cannot be found and is believed to be non-functional. Modification work on the 28 remaining diversions has been completed and a SDWPA is currently pending to permanently abandon all 29 diversions.

In summary, of the 70 diversions, modification work has been completed on 35 diversions; 9 more are expected to be completed by September; 11 more are anticipated to receive permitting approval to proceed by August; and the remaining 15 diversions have received required regulatory approvals, with the work plans required by the SDWP currently under development.

Non-taro Stream Modifications: Regarding the remaining streams covered by the IIFS D&O, we have met with CWRM staff, and a Draft Work Plan outlining measures to restore flow in compliance with the IIFS D&O has been submitted to the CWRM for review. Once we receive CWRM's concurrence with the Plan, preparation of the submittals to obtain regulatory approvals, where required, will begin. As with the taro streams, pending completion of the work requiring regulatory approvals, flow is being restored to meet the IIFS requirements to the maximum extent possible through operational modifications to the diversions (i.e. opening, closing or removing the gates).

2. Water deliveries at Honopou Stream and Maliko Gulch:

The following table shows EMI water deliveries to Honopou Stream and Maliko Gulch, from June 2018 through May 2019. No changes are due to the amended IIFS as water needs

have been relatively low this past year as diversified agriculture activity remained low. Note that these are monthly average figures, in million gallons per day (mgd).

YEAR	MONTH	TOTAL @	TOTAL @
		HONOPOU (mgd)	MALIKO (mgd)
2018	May	32.78	31.71
2018	June	33.75	30.21
2018	July	39.97	31.41
2018	August	27.07	34.07
2018	September	20.83	33.70
2018	October	25.34	30.79
2018	November	15.59	29.53
2018	December	21.10	26.72
2019	January	17.03	26.53
2019	February	25.05	28.58
2019	March	30.56	26.83
2019	April	30.22	26.24

In certain months that the Honopou reading is higher than the Maliko, this is due to water being dispersed to several reservoirs to the east of Maliko for water storage purposes.

3. **Changes to System as Irrigation Requirements Increase:**

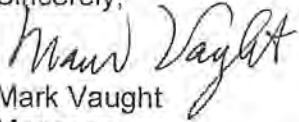
In December 2018, MP West, LLC, MP Central A, LLC, MP Central B, LLC, MP CPR, LLC, MP East A, LLC, MP East B, LLC, and MP EMI LLC (collectively "**Mahi Pono**") purchased lands including the Central Maui agricultural lands irrigated by the EMI Ditch System from Alexander & Baldwin. For purposes of this status report, Mahi Pono will replace HC&S.

As Mahi Pono's irrigation requirements increase, the following protocol will be pursued by EMI to increase deliveries to Mahi Pono, while always maintaining compliance with the CWRM's 2018 IIFS D&O:

EMI will activate diversions, on an intake-by-intake basis, to meet increased irrigation needs, selecting streams on a rotating basis from different geographic sectors of the EMI system so as to keep the entire system operative and maintained as best as possible. This process will be closely monitored, with constant updates from farm personnel regarding field preparation and planting schedules, to ensure that diversions are increased to match needs as closely as possible. At all times, compliance with the 2018 IIFS D&O will be maintained.

Please feel free to contact me if you have any questions. My direct number is (808) 579-9516.

Sincerely,

A handwritten signature in black ink that reads "Mark Vaught". The signature is written in a cursive style with a large, sweeping initial "M".

Mark Vaught
Manager
East Maui Irrigation Company



June 20, 2019

VIA E-MAIL KALEO.L.MANUEL@HAWAII.GOV

Commission on Water Resource Management
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

ATTN: Mr. Kaleo Manuel

Re: HC&S/Mahi Pono Status Update

CCH-MA 13-01, Petition to Amend Interim Instream Flow Standards for Honopou, Hanehoi/Puolua (Huelo), Waikamoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, Nuaailua, Piinaau, Palauhulu, Ohia (Waianu), Waiokamilo, Kualani (Hamau), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi and Makapipi Streams
June 20, 2018. Findings of Fact, Conclusions of Law, & Decision and Order

Dear Mr. Manuel:

Pursuant to the June 20, 2018, Findings of Fact, Conclusions of Law, & Decision and Order ("**D&O**") in the above-referenced case, paragraph "m", the parties were to provide a status update on the implementation of the amended IIFS.

Specifically, HC&S is to report on:

1. Surface, pumped, and total water usage.
2. Crops and acreage planted.
3. Changes in its initial diversified agriculture plan, including major changes in type of crops planned and reduction of planned irrigation acres through changes in use or sales of land.

This letter is submitted on behalf of the successor-in-interest to HC&S to comply with the D&O and provide HC&S/Mahi Pono's status update.

I. BACKGROUND

As widely reported in the media, Alexander & Baldwin ("**A&B**") sold approximately 41,000 acres of agricultural land and watershed land on Maui to MP West, LLC, MP Central A, LLC, MP

Central B, LLC, MP CPR, LLC, MP East A, LLC, MP East B, LLC, and MP EMI LLC (collectively "Mahi Pono") at the end of 2018. Additionally, MP EMI LLC became a 50% member, along with Alexander & Baldwin, LLC, Series T, in the East Maui Irrigation Company, LLC ("EMI").

For purposes of this status report, Mahi Pono, as successor to HC&S is reporting on the required matters.

II. REPORT

A. HC&S/Mahi Pono

1. **Surface, pumped, and total water usage.**

The following is a chart showing the total water usage since the D&O was entered. The total surface water for Honopou and Maliko is in million gallons per day (mgd), while Groundwater is in gallons.

YEAR	MONTH	TOTAL @ HONOPOU	TOTAL @ MALIKO	TOTAL GROUNDWATER
2018	May	32.78	31.71	Total
2018	June	33.75	30.21	0
2018	July	39.97	31.41	0
2018	August	27.07	34.07	0
2018	September	20.83	33.70	761,800
2018	October	25.34	30.79	852,375
2018	November	15.59	29.53	1,135,500
2018	December	21.10	26.72	0
2019	January	17.03	26.53	0
2019	February	25.05	28.58	0
2019	March	30.56	26.83	0
2019	April	30.22	26.24	0

The above water usage numbers include water to Maui Department of Water Supply ("MDWS") to meet the requirements of Upcountry Maui, the Nahiko Community in East Maui, and the Kula Ag park. Other water uses during this time period include water for diversified agriculture, as well as for reservoir storage and fire protection.

The September, October, and November groundwater usage numbers represent well tests that were completed during that time.

2. **Crops and acreage planted.**

The following is a summary of Mahi Pono's plans to plant over 350 acres of crops and establish a 250-acre community farm before the end of 2019.

- a. Mahi Pono will begin planting potatoes in July starting at a rate of approximately 10 acres per week. Mahi Pono intends to have potatoes planted in approximately 120 acres by the end of the year.
- b. Mahi Pono has also prepped approximately 250 acres of land for its future community farm. Mahi Pono will start its application process for its community farm in late July.
- c. Mahi Pono anticipates planting an additional 150 acres of citrus trees, avocado, and cover crops in Q3'19.

In addition to its own agricultural operations, Mahi Pono is also currently leasing some of its property to other agricultural organizations. Included in these leased areas are approximately 220 acres of planted sweet potato, and approximately 30 acres of pongamia.

3. Changes in its initial diversified agriculture plan, including major changes in type of crops planned and reduction of planned irrigation acres though changes in use or sales of land.

As noted above, A&B sold the majority of its agricultural land in Central Maui to Mahi Pono at the end of 2018.

Mahi Pono's long term vision of its IIFS-compliant farm plan, which in turn is contingent upon receiving a long-term commitment of surface water, is as follows:

<u>Proposed Use</u>	<u>Acres (est.)</u>	<u>GPAD (est.)</u>	<u>MGD surface water¹</u>	<u>Ground water MGD</u>	<u>% Total</u>
Community Farm	800	3,392	1.87	0.83	3.28%
Orchards (citrus, mac nuts, beverage crops)	12,850	5,089	53.39	12.04	79.48%
Tropical Fruits	600	4,999	2.07	0.87	3.57%
Row and Annual Crops	1,200	3,392	3.14	0.95	4.96%
Energy Crops	500	3,392	1.18	0.53	2.07%
Pasture, irrigated	4,700	1,161	4.20	1.25	6.63%
Pasture, unirrigated	9,100	0	0	0	0
Green Energy	250	0	0	0	0
TOTAL	30,000	2,744	65.86	16.47	100%

Mahi Pono's farm plan is intended to be 100% IIFS-compliant. This differs from HC&S' farm plan, which was submitted before the establishment of the IIFS. Mahi Pono's plan also includes significantly more orchard crops than HC&S' plan. Orchard crops use much less

¹ After system losses.

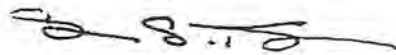
water than sugar cane and provides a more diversified food product for the local market. By incorporating more orchard crops, Mahi Pono's water usage will be significantly less than what has historically been used by HC&S. Additionally, HC&S's plan allocated some water use to a future dairy operation. Mahi Pono's farm plan does not include a dairy component.

Mahi Pono's irrigation engineering team is also designing a high-efficiency irrigation system. The new irrigation system will reduce water usage by: (1) using automatic, real-time irrigation sensors to deliver precise amounts of water efficiently; (2) recycle and re-use all water used in Mahi Pono's processing plants; and (3) integrate various live technology feeds to constantly monitor plant, soil, and tree health.

The full implementation of Mahi Pono's farm plan is contingent upon receiving a long-term commitment of surface water. Pending this and other variables, Mahi Pono's farm plan, as well as its diversified agricultural uses, will continue to evolve as Mahi Pono commences its farming operations in Central Maui. That said, Mahi Pono is 100% committed to honoring the IIFS decision that establishes long-term protection of Maui's water resources, native Hawaiian traditional and cultural practices, and the natural habitat of Maui's streams.

We look forward to working with CWRM and the community on bringing diversified farming to Central Maui.

Sincerely,



Shan Tsutsui
Senior Vice President of Operations

cc: Dean Uyeno dean.d.uyeno@hawaii.gov
RaeAnn Hyatt raeann.hvatt@hawaii.gov

APPROVED BY THE BOARD
AT ITS MEETING HELD
FEBRUARY 22, 2019

MINUTES
FOR THE MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES

DATE: FRIDAY, NOVEMBER 09, 2018
TIME: 9:15 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAI'I 96813

Meeting called to order at 9:16 a.m. by Chair Case. Member Gon read the standard contested case statement. Chair Case noted that we are engaged in agenda management and most of the items today are land disposition matters and we will schedule another meeting for December 7, 2018. Chair Case said that Item D-17 will be heard after lunch. Item D-14 is being withdrawn from today's agenda and will not be heard.

MEMBERS

Suzanne Case
Tommy Oi
Stan Roehrig
Keone Downing

Jimmy Gomes
Chris Yuen
Sam Gon

STAFF

Russell Tsuji-Land
Ian Hirokawa-Land
David Nielson-DAR
Ed Underwood-DOBOR

Kevin Moore-Land
Richard Howard-Land
Cathy Gewecke-DAR
Barry Cheung-Land

OTHERS

Amanda Weston/AG
David Day/AG
Dre Kalili/DOT-Harbors
Rick Volner/D7
Robert Osgood/D7
Scott Enright/D7
David Bobich/D7
Warren Watanabe/D7

Ross Smith/DOT-AIR
Meredith Ching/D7
Darren Strand/D7
Alan Arakawa/D7
Randy Cabral/D7
Lucienne deNaie/D7
Marti Townsend/D7

Wayne Tanaka/D7
James Manaku/D7
Gary Johnson/D12
Donne Dawson/M9, M12
Doug Volner/F1
Tyler Ralston/D17, 18,19
David Robichaux/D7
Dave Reding/D18
Kathy Goodell/D18
Dave Raney/D18

Alan Murakami/D7
Jennifer Suita/D10
Kevin Ito/D8
Hakim Ouansafi/D10
Carl Smigielski/M12
Charles Liniski/D18
James Nicolai/D18
Carl McKolski/D18
Linda Wong/D18

ITEM D-7 Holdover of Revocable Permits S-7263 (Tax Map Key: (2) 1-1-001:044), S-7264 (Tax Map Keys: (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key: (2) 1-1-002: por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys: (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

Member Gomes recused himself, his employer is working with A & B. Member Oi disclosed that he has done some consultant work for a company that does work for A&B on Kauai.

Ian Hirokawa, Land Division. This will be the last year for the hold-over permits, Act 126. He provided an update since the last approval. An amended (IIFS) Interim In-Stream Flow Standards have been approved by the Commission of Water Resource Management which will establish the steam flows and require the removal of several diversions as part of the system. We have tailored this year's hold-over to match the conditions in the IIFS as best as we can. Applicant is in the process of their EIS.

Applicant: Meredith Ching, representing A&B on water matters. Rick Volner, previous manager, and Darren Strand. Ching provided an update of their progress and noted that the approval of the RP will allow for continued water flow to their diversified Ag efforts, providing water to the County of Maui for their upcountry residences, farmers and business and our continued progress to transitioning from sugar to diversified agriculture. Their vision was to establish successful farm operations and keep the lands in open green space that would provide jobs, economic activity, further Hawaii's food and energy self-sufficiency and providing opportunities for new agriculture practices that will enable improved stewardship of the land and water resources on Maui.

Darren Strand gave an update on the process the have made regarding, cattle and the ranches have developed an innovative water system, expanding the pastures, inquiries from small operators for farming, and the County has asked to purchase 300 acres. They are doing crop rotation and using a drip-irrigation system for efficiency. There is a strong interest from a California company to acquire the all the lands for farming. They provided a map showing the different areas and what would be the best uses as well as those areas that are in use already.

We have collected and shared a lot of data regarding soils, climate and the conditions growing different types of crops.

Ching emphasized that a partnership would greatly accelerate our vision to turn these lands into a patchwork of productive and viable sustainable diversified ag land.

Board Discussion

Oi asked if they have submitted their plan in the beginning to Maui Soil and Conservation? Volner replied the current plan is still covered by the current Soils and Conservation Plan that was updated with the close of sugar. Oi asked if they are constantly updating the plan? Volner said yes, as new lands are transitioned.

Yuen noted that last year the Board put a no-diversion condition on Honomanu Stream, how is that treated in the IFFS? Is that part of the petition? Ching said yes. The decision was to restore H-90 flow, which is habitat restoration flow, so there is 64% median flow that has to remain in the stream at all times. Yuen said if we adopt the condition that Staff presented that would change it to a no-flow to this H-90 condition? Ching said it would.

Case asked for an outline of the EIS. Ching noted that the work is continuing, and part of the technical study was put on hold while waiting for the IIFS decision was completed. The goal is to have a draft EIS for review by the second quarter of 2019.

Public Testimony

Mayor Alan Arakawa, Maui County. We have been working very hard with the CWRM on restoring stream flows. When looking at goals for Maui County there is a strong push not to develop housing in central Maui but keep it green and the lands in ag. To do so we need water, we are unable to take water from the upper reaches of Haleakala to support all the agriculture we need to do. The water coming through the EMI system is a lot less expensive than using treated water coming through the County system. The ag line was abandoned this past year so that could be converted into drinking water. The EMI system also provide water to residences. Bottom line is they need the water to sustain agriculture in this area. We need to balance the needs of the people as well as the environment.

Roehrig asked why the County has not applied for a water lease? Arakawa said they do not have the pipes (infrastructure) to transport the water. Roehrig asked why not condemn the pipes? Arakawa said, cost. We are asking for the State's position on the EMI ditch to add more pipes, but for us to just do it is too expensive at the same time try to manage all that, the County does not have the budget. If the State would to lease to the County that could an alternative.

Scott Enright, Chairperson DOA, strongly encourages the Board to approve this permit will help keep this in agriculture.

Robert Osgood, long-term experienced in diversified ag and supports the holdover for another year to have the water available for agriculture, domestic use, and produce hydro-power.

Support sustainability. If we do not provide water, the central valley would turn into a dry wasteland. We need a long-term solution.

Warren Watanabe, Executive Director, Maui Farm Bureau. In support of the hold-over lease. He provided written testimony.

Randy Cabral, President of Hawaii Farm Bureau. Strongly supports the hold-lease. It will provide water to those farm in agriculture. This decision is crucial for the farmers. He provided written testimony.

David Robichaux, Hawaii Agriculture Research Center, provided a statement from Stephanie Whalen. Transition takes a long time, wanted to relate how long it takes to get lands back into production again. Encourage everyone to be patient and supports the hold-over.

Luciene deNaie, Vice Chair Sierra Club Maui Chapter on behalf of the Sierra Club. Noted that they sent in written testimony this morning. She felt that everyone supports farming in central Maui and sharing of water on a reasonable basis. Felt the Board's job was to have accountability as you appropriate public resources. We find accountability missing in this process. To be brief A&B did not say how much water they are using for their farming projects. They mention there is a partner that might come in. There is a rumor the property is up for sale not a partnership. It needs to be determined if this permit transferable?

Everyone hopes it is someone who can farm the lands. It is the Board's job to make sure there is accountability in the process. The Board was wise to adjust the fee structure, obviously more information is needed. They do not know how these conditions are being met, it's like a scout's honor thing. There needs to be a written report. We in the community and Sierra Club supporters feel that the public should be involved in that process, there should be a hearing that Maui people can participate remotely to hear how the conditions are being met.

Presented pictures of debris that has not been removed. It would be nice to have A&B reach out to the community ask for help to clean up some of the debris. That has not happened. When she stopped by the EMI office, she asked how the permit was going Mr. Watts did not inform me there was a new thread going on regarding 11 streams, which she lives on one. There is no communication process here. Need to strengthen condition 6 and require regular communication among the affected communities and the decisions that are being made by the State and EM.

Commented that 200-years ago, Central Maui was a dryland forest with native species. There should be native restoration along some of the gulches. But need a plan with accountability, they have suggested similar conditions for the Board to implement. There is concern in Honopou that if more water is released that there are no drainage basins are not installed and it could wipe out historic bridges if a lot of logs come down. Community consultation is needed for these people who live in the leased area.

They respectfully ask that these stronger conditions be put into place in any approval Puolua stream the fish would have swim across the road, felt someone should be out checking these things and giving the Board information so you know how your conditions are doing. The public could aid in that.

If their conditions and concerns cannot be incorporated Sierra Club would like to respectfully request a contested case formally today. Passed out pictures of a stream that was supposed to be fully restored that was taken on a hike in July.

Case asked for clarification, that she is asking for a contested case on this Revocable Permit now? deNaie responded, yes, if the conditions we are suggesting and the due diligence that we are suggesting are not part of the approval we would like to request a contested case.

Case said we this has not been decided yet, if you are making a conditional request, Case is not going to consider it a request yet. She will leave it to their Director when she testifies.

Yuen said if we are going to deal with that we should have the Director come up and testify.

Marty Townsend, Director Sierra Club Hawaii, and reiterated the testimony the volunteer provided or the full restoration of the streams and the conditions that have not been fulfilled on. We have participated in this process for many years including the legislation on how this decision is based and they are concerned that the communities' needs are not being met and there are opportunities for this Board and this Department to fulfill the community's needs. This permit provides the ground work should future opportunities for legislation in the future if it ever comes up.

Yuen asked if she has in writing the failure of the restoration of the streams? Townsend said it was in the written testimony they submitted today regarding the (7) streams that should have been restored. This is an opportunity for this Board to make sure there is compliance. The Sierra Club feels there is enough water for everyone.

Case asked what Townsend's understanding of the requirements from the Water Commission side of carrying out the interim instream flow standards decision versus we are doing an allocation of water. deNaie said it is the Board job to make sure when you give leases that the resources are well protected and given reasonable and beneficial use. The Water Commission sets the amount in each stream and monitor that and so forth. Right now, there is no meaningful accountability, no timetable, finally a permit is going to be issued. Because one is not going to be needed for 15 streams.

Case noted the Water Commission report was just out in June. deNaie said the abandonment was not dependent on that the streams were going to be restored not matter what the Water Commission decided. The community has not been consulted about when it will be done and more importantly how the work is going to be done.

Oi said when you talk about community are they farmers? Who is the community? deNaie responded that some are farmers and residents who lease the land, and there are landowners who live downstream. Oi said the farmers are in support of this permit. He is a little confused, a lot of times when you go to hearings and you talk about community, it is not necessary everybody.

Townsend agreed, we are talking about the residents of east Maui who live along the streams, some who are taro farmers, cultural practitioners who gather in the streams.

Oi said what he is trying to get at is you are not here to stop the water. Townsend said that is correct. We want accountability, there's enough water for everyone. Oi asked if they had concerns of their own?

Townsend said A&B promised to restore the streams and we want to make sure that promise is fulfilled, our interest is to make sure the eco-system is functional, so all the native streams are restored to their original vibrancy and with that will come the traditional farm community in east Maui.

Oi said in the old days, they had to learn traditional Hawaiian history and culture and if he remembers correctly, everyone using the water, suppose help maintain the source. Is the community willing to pitch in and work with EMI to help maintain the stream flows? deNaie replied yes, but there has been no discussion, no outreach. There are two others that have regular work days out in the water shed to maintain the auwai stream bed. A&B owns a lot of the property and they need to reach out to the community and you should ask them to have regular meetings to talk about these malama activities.

Yuen, A&B in their written submittal regarding connectivity regarding Puolua Stream, the 8" pipe was extended to reach the small pool below the ditch for connectivity, is there something inadequate about that? deNaie said for many years there were (2) 4" rusted pipes that were removed and are part of the debris that is still there. The local farmers in there asked to have an 8" pipe go all the way across before there was an 8" pipe coming out above the little pool. The pipe has to go under the road. The entire stream is diverted, it goes into the ditch. Where the 8" pipe comes out it forms an informal dam that gets washed out every time it rains Mr. Siu has go up and restore the little dam otherwise the water does not make it to the pipe, our community view is that there is not connectivity for the fish to migrate.

Hanehoi is a short stream with diversions at 4 elevations, you need to remove the 3 upper divisions,

Alan Murakami, Native Hawaiian Legal Corporation. Represents East Maui Na Moku. Noted the IFFS covers only 27 streams when there are over 100 streams and tributaries covered by (4) of the licensed areas. There is much uncertainty about how much and where the water is going and

how it is being used. We have asked that this decision be deferred until the EIS is completed. The mention today of another entity coming in creates uncertainty of what the water uses are going to be and again the lack of communication with the community.

He wanted to make it clear that Na Moku are not opposed to the diversified ag or the County's use to supply water to the existing communities it serves. They are opposed to reliance on surface water for expanded domestic uses for upcountry and elsewhere. He mentioned that the community is engaged in stewardship of taking care of the streams.

Murakami continued that they agree along with Sierra Club that there needs to be more communication and cooperation with the communities about the changes that are occurring. The conditions regarding clean-up need to be enforced. Na Moku would like access to these areas, so they can provide information if the conditions are met. They would like request no more than 25/mg based on what has been observed certain amount being used.

Case said she was trying to distinguish between the Water Commission process and the establishment of the interim in-flow standards, which went through a careful analysis stream by stream of in-stream values and the balancing of off stream uses and came up with established in-stream flow standards and off stream uses. Murakami said that only takes care of one-fourth of the water in east Maui. It is the duty of this Board to protect the 75% not covered by the IIFS.

Yuen commented the streams in the licensed areas, are covered either by the IIFS or taro flow restoration. The west end of the Huelo license is not covered by the IIFS and the taro streams overlap. The tributaries flow into lower streams and there seems to be a difference in how people are counting.

Yuen was not sure about limiting the number of gallons. He noted that we have the IIFS decision which has to be implemented, to that extent, the IIFS decision sets a baseline of biological integrity. Then we have the taro streams leaving implementation issues aside, requires restoration of flows, then we have a no-waste condition and they have to leave some water in the ditch, so it does not dry up.

He commented that if they limit the RP to just what they are using then basically we are limiting them to whatever lack of success in expanding farming operations that they have had over the last couple of years. If someone comes in and wants to farm and needs a certain number of gallons and it is available after leaving water in the stream for the IIFS, the taro farmers, if we adopted this 25/mg per day limit, that farmer would be stuck.

Murakami commented that they have the same concern, are we just saying there is a bank of water here and you get to use it when you come up with your diversified ag plan? That has been problematic for years, you are basically allowing the diverter to determine what would be reasonable and beneficial in this year period.

Yuen noted they are dealing with just this year. When the Board looks at the long-term lease, we have to take a careful look at are we going to leave more water in the stream, the IIFS, the taro requirements, from the standpoint of the next year, it would be difficult for someone to come in, for A&B to say to them they have to go to the Board to get any more water.

Murakami said that for a company this big, to say they are going to replace this area with diversified ag farmers, why do they not know this? How much water they are going to need should be a planning points.

Case commented that a) it has been considered by the Water Commission; b) different crops need different amounts of water. The goal is to promote diversified agriculture as well. They are in a transition.

Case also noted that the Water Commission required points of contact in order to facilitate communication between communities that were part of the stream system and this submittal incorporates those conditions.

Murakami said it could be beefed up. Case replied that it is a topic for the longer-term solution and we should start now, so we know where it needs to be beefed up. Na Moku would welcome that if it could work along the lines you are suggesting.

Downing asked what the picture looks like at the end of December 2019? Murakami is pessimistic. His hope that going into the next Legislation that there is not another holdover.

Wayne Tanaka, OHA provided a written testimony and asked the Board to take their time and stands by his written testimony. One point they want to emphasize is A&B needs to provide more information on the water use. They have not addressed other resources. They have ample resources to add meters to measure how much water they are using and the uses. This could be a good opportunity for A&B for a water lease.

James Manaku. His concern is access as a cultural practitioner and has encountered problems in the past.

Yuen asked if there are streams in the licensed area that are diverted that are not covered by the IIFS or the Taro Restoration?

Ayron Strauch, Hydrologist, CWRM, replied yes, and noted that the original petition was for the 27 streams in the licensed area. They were the largest streams and most important ones where communities lived along them. Water Commission did their due diligence to protect the in-stream resources with the IIFS.

Yuen asked where are the streams not covered by the IIFS? Strauch replied that they are spread out through the licensed areas.

Gon asked if the estimated number of over 100 streams accurate? Strauch said it depends if they are calling them individual streams or hydrologic units or a tributary or spring. He noted there are about 450 registered stream diversions. The IIFS accounts for many of them.

Yuen said there was a question regarding inadequate restoration at Hanehoi and Puolua, is it a matter of things that are going to be done but have not happened yet or some other reason? Strauch replied he does not deal with the regulating but from what he understands, there is a process to formally abandon or modify some of the diversions. That process often includes Army Corps and getting DOH permits which takes a while.

Dean Uyeno, Program Manager for Stream Protection, CWRM, A&B had submitted an application for abandonment of the stream diversions that were impacted by the Commission's amended in-stream flow standards. We met with DOH and there were concerns there and the decision was to wait for the final IIFS to come out. A&B applied for 100 diversions to be abandoned, in the review process we asked them to separate the diversions into categories (low, medium and hardest) to abandon.

In the case of Hanehoi and Puolua the streams flow directly into the ditch. It is not a matter of diversion intake or putting up a gate. They have to construct a culvert for the stream to cross over the ditch. A&B has received permits this year and are moving forward. Revised applications have been submitted and they have a few things that need to be addressed, they should be resubmitting revised applications next week. The review process will take 30-days, and we hope to start early next year.

Oi asked if the studies they did, and their due diligence qualify under the Public Trust Doctrine? Uyeno replied yes, the Commission's in-stream flow standards are to implement the Public Trust Doctrine. The review only focused on the (27) streams petitioned.

Downing directed his question to the applicant. He will the same question he did before of NLC, what does December 2019 look like? Ching replied, she agreed with NLC, they will not be able to get to a long-term lease by the end of this Revocable Permit. The EIS process has to be done first which is time consuming. Assuming there are no legal challenges, public comments, it looks like the process will extend into 2020. They will have to go back to the Legislature.

Downing commented that listening today I heard two communities asking for two different things. For him it is about HR 5-7, 4 & 5. He believes we need to involve all aspects of the community. Going forward it would be smart to put everyone's cards on the table and work together to find a solution and solve the problems. In the big picture it is for the good of Maui.

Roehrig made the motion to extend the RP. This is the last year of the 3-year RP process. We need to give the Legislature time on this issue. He has heard that there is "opala", where others do not have access and cannot see and said it needs to be cleaned up and if you need help you

have to speak-up, not hide it. We need some stability. He is very impressed by the people of Maui, they have a great opportunity in agriculture. He is disturbed that the applicant did not say how much water is being used. He feels a relationship between the stake holders would benefit all and suggested that they set their priorities and work through them. Very pleased that the Water Commission has started the process. Part of his motion is to have a committee to meet and have a conversation on the solutions.

Yuen second the motion with a slight modification. Sierra Club has asked for quarterly meetings. He suggested that A&B meet with the Taro Farmers to discuss the plans for stream restoration projects before implementation. The focus should explain the modifications and gather feedback on any impacts with NHL being the point of contact. He agreed that having a committee for the lease is an excellent idea.

Downing commented that this is not a short-term disposition even though it is an RP. We know it is going back to the Legislature. We start this process now, it is a function that could help the Legislators with making a decision. By forming the committee, it may help the community that is in distrust.

Roehrig commented that this is a serious matter and is okay with having a permanent committee built into the lease. You have potential new owners, we have to get together and have a discussion. Someone from OHA, NLC, A&B, the Farmers in the committee.

Oi, noted after listening to the different groups, that this is about the water flow. The farmers need water, the County needs water. Before you can move into a lease, you have to get together and communicate with each other. When you go through the EIS process it will be easier because you will not have opposition, everybody should be on the same page. When they ask for the long-term lease it should be with the same idea and with the same movement going forward in this area.

Gon added that someone representing the in-stream flow protection and the protection of the native stream eco-stream and biota. One of the concerns was that some of the modifications that have been put in place have to address the movement of those biotas have not been met, at least in the view of some people.

Case offered a different prospective on that It is the Water Commission's side of it and they have asked for long-term monitoring of the streams to see if what they have set-up is working. DAR is willing and set-up to do that, they are waiting on funding.

After further discussion, it was decided that the parties involved would meet monthly for the first quarter and quarterly thereafter. Yuen also clarified that the RP is not assignable.

Amendment:

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.

MOTION

Approved as amended (Roehrig, Yuen) unanimous.

11:40 am: Break

11:55 am: Back in session

ITEM D-10 Cancellation of Governor's Executive Order No. 1274; Issuance of Quitclaim Deed and Issuance of Management Right-of-Entry to Hawaii Public Housing Authority; Kalaepohaku and Kapālama, Honolulu, O'ahu, Tax Map Key: (1) 1-6-009:003.

Russell Tsuji, Land Division, presented the submittal. Representatives from HPHA are present to answer any questions.

Board Discussion

Oi asked what will happen to the current tenants? Quansafi said there are only offices there now. There will be no displacement.

Public Testimony

Hakim Quansafi, Executive Director, HPHA. The proposed project is to provide low-income housing for serving the elderly with a 20%-60% EMI.

MOTION

Approved as submitted (Oi, Gomes) unanimous.

ITEM M-9 Issuance of a Revocable Permit for Filming a Feature Film, Legendary Features Productions US, LLC, Kalaeloa Airport, Tax Map Key: (1) 9-1-13: Portion of 32.

Ross Smith, DOT-Airports, presented the submittal. Representative is present to answer any questions.

Board Discussion-None

Public Testimony

Donne Dawson, Hawaii Film Office. Stated that Legendary Features Production US, LLC was a very good company to work with and will do right by us.

MOTION

Approved as submitted (Gomes, Oi) unanimous.

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

January 10, 2019

Suzanne D. Case, Chair
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813
ATTN: Russell Tsuji

Dear Chair Case:

At the Board of Land and Natural Resources meeting held on November 9, 2018, the Board reviewed the matter of the Holdover Revocable Permits S-7263 (TMK (2) 1-1-001:044), S-7264 (TMKs (2) 1-1-001:050, 2-9-014:001, 005, 011, 012, and 017) and S-7265 (TMK (2)-1-1-002: por. 002) to Alexander & Baldwin, Inc., and S-7266 (TMK (2) 1-2-004:005 and 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui. After much consideration, the Board approved the holdover of the four permits and, as one of the conditions of the permits, directed the formation of a Committee to create a forum to improve communication and address community issues related to the water permits. (Note: The Board's action was confirmed with its consideration and denial on December 7, 2018 of the Sierra Club's Petition Requesting a Contested Case Hearing on this same matter).

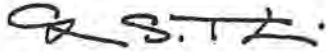
While formal minutes of the Board's November 9, 2018 meeting are not yet available, we have attached a proposed plan for the establishment of the Committee that we think is consistent with the Board's mandate and intent. We would appreciate your review and confirmation to proceed in this manner. As you know, A&B has since sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will co-own and operate East Maui Irrigation Company.

In a related matter, we would defer to your judgment as to whether the Sierra Club should be invited to have a representative on the Committee. While they were not part of the formal action by the Board, and declined participation when offered by a Board member subsequent to the Board approval of the permits, we would like to honor the Board's intent, as you deem fit.

Suzanne D. Case, Chair
Board of Land and Natural Resources
January 10, 2019
Page 2

Thank you for your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely (on behalf of EMI),

Handwritten signature of Shan Tsutsui in black ink.

Shan Tsutsui
Senior Vice President of Operations, Mahi Pono, LLC

Handwritten signature of Meredith J. Ching in black ink.

Meredith J. Ching
Executive Vice President, A&B

cc: Dave Schulmeister (for distribution to litigation parties)

East Maui Water Revocable Permits Committee

1. Committee Purpose

- a. To provide a forum for addressing community issues, including but not limited to:
 - (1) Trash or debris in the watershed area;
 - (2) Restoration of taro streams;
 - (3) Compliance with Interim Instream Flow Standards decisions;
 - (4) Potential flooding issues; and
 - (5) Information from the Division of Aquatic Resources on fish passageways; and
- b. To improve communications and exchange of information with the community

2. Committee Membership- the committee shall be comprised of the following entities; letters of invitation/request to name participant have been transmitted to those indicated below:

- a. Native Hawaiian Legal Corporation c/o Moses Haia III, Executive Director
- b. A&B/EMI- Representative to be determined
- c. Office of Hawaiian Affairs c/o Chair Collette Machado
- d. County of Maui c/o Mayor Michael Victorino
- e. Maui Farm Bureau c/o Warren Watanabe, Executive Director

3. Meetings

- a. Dates and Frequency- meetings shall be convened each month for the first quarter of 2019, beginning in February, and then quarterly thereafter, as follows:
 - (1) February
 - (2) March
 - (3) Q2 (April-June)
 - (4) Q3 (July-September)
 - (5) Q4 (October-December)
- b. Location- meetings shall be held at a location in Central Maui, to be determined
- c. Times- meetings shall be held during working hours, during the work week, at the lunch hour, when possible
- d. Staffing- Mahi Pono/A&B shall provide staffing to take notes and prepare meeting summaries
- e. Resource Staffing by CWRM and DAR-CWRM will be notified of meeting dates and times, for attendance at their discretion
- f. Rules of Conduct- the Committee shall operate informally, but shall allow all members the opportunity to be heard and decisions, if any, to be made by a simple majority of the members

EAST MAUI IRRIGATION COMPANY, LLC
P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

January 10, 2019

Warren Watanabe, Executive Director
Maui County Farm Bureau
P.O. Box 148
Kula, HI 96790

Dear Mr. Watanabe:

At its meeting on November 9, 2018, the Board of Land and Natural Resources reviewed the matter of the Holdover Revocable Permits to Alexander & Baldwin, Inc., and East Maui Irrigation Company, Limited, for Water Use on the Island of Maui. After consideration, the Board approved the holdover of the four permits and, as one of the conditions of the permits, directed the formation of a Committee to create a forum to improve communication and address community issues related to the water permits. The Board's action was confirmed with its consideration and denial on December 7, 2018, of the Sierra Club's Petition Requesting a Contested Case Hearing on this same matter.

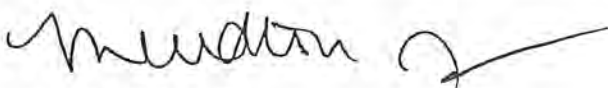
As you may be aware, A&B has since sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will co-own and operate East Maui Irrigation Company. We would appreciate having you, or your designee, serve as a member of the Committee. We are currently in the process of seeking approval for our plan for the Committee from the Board and will be following up with more detailed information on the Committee, its composition and meeting details as such becomes available.

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns. Thank you in advance for your willingness to serve and help advance food security and sustainability on Maui for future generations.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations, Mahi Pono, LLC



Meredith J. Ching
Executive Vice President, A&B

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

January 10, 2019

Moses Haia III, Executive Director
Native Hawaiian Legal Corporation
1151 Punchbowl Street
Honolulu, Hawaii 96813

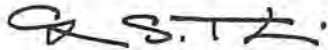
Dear Mr. Haia:

At its meeting on November 9, 2018, the Board of Land and Natural Resources reviewed the matter of the Holdover Revocable Permits to Alexander & Baldwin, Inc., and East Maui Irrigation Company, Limited, for Water Use on the Island of Maui. After consideration, the Board approved the holdover of the four permits and, as one of the conditions of the permits, directed the formation of a Committee to create a forum to improve communication and address community issues related to the water permits. The Board's action was confirmed with its consideration and denial on December 7, 2018, of the Sierra Club's Petition Requesting a Contested Case Hearing on this same matter.

As you may be aware, A&B has since sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will co-own and operate East Maui Irrigation Company. We would appreciate your assistance in appointing a representative of the taro growers to serve on this Committee, as requested by the Board. We are currently in the process of seeking approval for our plan for the Committee from the Board and will be following up with more detailed information on the Committee, its composition and meeting details as such becomes available.

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns. Thank you in advance for your willingness to assist and help advance food security and sustainability on Maui for future generations.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations, Mahi Pono, LLC



Meredith J. Ching
Executive Vice President, A&B

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

January 10, 2019

Collette Y. Machado, Chair
Office of Hawaiian Affairs
560 Nimitz Highway, Suite 200
Honolulu, Hawaii 96817

Dear Chair Machado:

At its meeting on November 9, 2018, the Board of Land and Natural Resources reviewed the matter of the Holdover Revocable Permits to Alexander & Baldwin, Inc., and East Maui Irrigation Company, Limited, for Water Use on the Island of Maui. After consideration, the Board approved the holdover of the four permits and, as one of the conditions of the permits, directed the formation of a Committee to create a forum to improve communication and address community issues related to the water permits. The Board's action was confirmed with its consideration and denial on December 7, 2018, of the Sierra Club's Petition Requesting a Contested Case Hearing on this same matter.

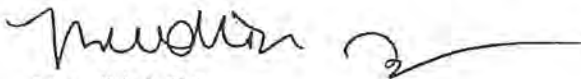
As you may be aware, A&B has since sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will co-own and operate East Maui Irrigation Company. We would appreciate your assistance in appointing an appropriate representative from OHA, such as the Maui Trustee or her designee, to serve on this Committee. We are currently in the process of seeking approval for our plan for the Committee from the Board of Land and Natural Resources and will be following up with more detailed information on the Committee, its composition and meeting details as such becomes available.

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns. Thank you in advance for your willingness to serve and help advance food security and sustainability on Maui for future generations.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations, Mahi Pono, LLC



Meredith J. Ching
Executive Vice President, A&B

cc: Carmen Hulu Lindsey, Maui Trustee

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

January 10, 2019

Honorable Mike Victorino
Kalana O Maui Building, 9th Floor
200 S. High Street
Wailuku, Hawaii 96793

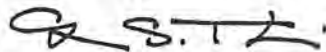
Dear Mayor Victorino :

At its meeting on November 9, 2018, the Board of Land and Natural Resources reviewed the matter of the Holdover Revocable Permits to Alexander & Baldwin, Inc., and East Maui Irrigation Company, Limited, for Water Use on the Island of Maui. After consideration, the Board approved the holdover of the four permits and, as one of the conditions of the permits, directed the formation of a Committee to create a forum to improve communication and address community issues related to the water permits. The Board's action was confirmed with its consideration and denial on December 7, 2018, of the Sierra Club's Petition Requesting a Contested Case Hearing on this same matter.

As you may be aware, A&B has since sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will co-own and operate East Maui Irrigation Company. We would appreciate your assistance in appointing an appropriate representative from the County, such as the Director of the Department of Water Supply or his designee, to serve on this Committee. We are currently in the process of seeking approval for our plan for the Committee from the Board and will be following up with more detailed information on the Committee, its composition and meeting details as such becomes available.

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns. Thank you in advance for your willingness to serve and help advance food security and sustainability on Maui for future generations.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations, Mahi Pono, LLC



Meredith J. Ching
Executive Vice President, A&B

cc: Jeff Pearson, Department of Water Supply

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 27, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Mr. Shan Tsutsui
Senior Vice President of Operations
Mahi Pono, LLC

Ms. Meredith Ching
Executive Vice President
Alexander & Baldwin, Inc.

c/o East Maui Irrigation Company, LLC
P.O. Box 791628
Paia, Maui 96779-1628

Dear Mr. Tsutsui & Ms. Ching,

We have reviewed your proposal for the interim committee to discuss water issues affecting the license area as established by the Board of Land and Natural Resources (Board) at its meeting on November 9, 2018, under agenda item D-7. Your proposal appears to be consistent with the Board action and we are agreeable to you proceeding in the manner prescribed. Regarding whether Sierra Club should be invited to have a representative on the committee, we note that the Board favored an inclusive but manageable process.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne D. Case".

Suzanne D. Case
Chairperson

cc: Land Division
CWRM

000149

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

March 4, 2019

Honorable Mike Victorino
Kalana O Maui Building, 9th Floor
200 S. High Street
Wailuku, Hawaii 96793

Dear Mayor Victorino:

Back in January, we reached out to you regarding the formation of a committee to create a forum to improve communication and address community issues related to the Board of Land and Natural Resources' (BLNR) decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui. As we previously indicated, in December 2018, A&B sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will also co-own and operate EMI.

In a letter dated February 27, 2019, the BLNR recently approved Mahi Pono and A&B's East Maui Water Revocable Permit Committee plan, as attached. Please note that due to the delay in approval, meeting dates may be subject to change. Accordingly, we are planning to convene the Committee this month and would like a County representative, such as the Director of the Department of Water Supply or his designee, to attend. Please advise of the name and title of the attendee who will be representing your organization. Mark Vaught, Operations Manager, will be representing EMI on the Committee.

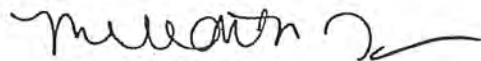
Date: Tuesday, March 12, 2019
Time: 10-11am
Location: Mahi Pono offices (formerly Hawaii Commercial & Sugar Co.)
1 Hansen Rd
Kahului, HI 96732

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations



Meredith J. Ching
Executive Vice President, A&B

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

March 4, 2019

Collette Y. Machado, Chair
Office of Hawaiian Affairs
560 Nimitz Highway, Suite 200
Honolulu, Hawaii 96817

Dear Chair Machado:

Back in January, we reached out to you regarding the formation of a committee to create a forum to improve communication and address community issues related to the Board of Land and Natural Resources' (BLNR) decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui. As we previously indicated, in December 2018, A&B sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will also co-own and operate EMI.

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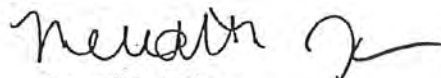
Date: Tuesday, March 12, 2019
Time: 10-11am
Location: Mahi Pono offices (formerly Hawaii Commercial & Sugar Co.)
1 Hansen Rd
Kahului, HI 96732

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations



Meredith J. Ching
Executive Vice President, A&B

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

March 4, 2019

Warren Watanabe, Executive Director
Maui County Farm Bureau
P.O. Box 148
Kula, HI 96790

Dear Mr. Watanabe:

Back in January, we reached out to you regarding the formation of a committee to create a forum to improve communication and address community issues related to the Board of Land and Natural Resources' (BLNR) decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui. As we previously indicated, in December 2018, A&B sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will also co-own and operate EMI.

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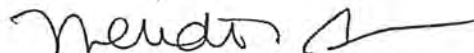
Date: Tuesday, March 12, 2019
Time: 10-11am
Location: Mahi Pono offices (formerly Hawaii Commercial & Sugar Co.)
1 Hansen Rd
Kahului, HI 96732

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations



Meredith J. Ching
Executive Vice President, A&B

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

March 4, 2019

Moses Haia III, Executive Director
Native Hawaiian Legal Corporation
1151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Haia:

Back in January, we reached out to you regarding the formation of a committee to create a forum to improve communication and address community issues related to the Board of Land and Natural Resources' (BLNR) decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui. As we previously indicated, in December 2018, A&B sold its former sugar lands in Central Maui to Mahi Pono, LLC, who has plans to reestablish agriculture on these lands, utilizing waters collected under the subject permits. A&B and Mahi Pono will also co-own and operate EMI.

In a letter dated February 27, 2019, the BLNR recently approved Mahi Pono and A&B's East Maui Water Revocable Permit Committee plan, as attached. Please note that due to the delay in approval, meeting dates may be subject to change. Accordingly, we are planning to convene the Committee this month and would like your designee, a representative of the taro growers, as requested by the BLNR, to attend. Please advise of the name and title of the attendee who will be representing your organization. Mark Vaught, Operations Manager, will be representing EMI on the Committee.

Date: Tuesday, March 12, 2019
Time: 10-11am
Location: Mahi Pono offices (formerly Hawaii Commercial & Sugar Co.)
1 Hansen Rd
Kahului, HI 96732

Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Senior Vice President of Operations



Meredith J. Ching
Executive Vice President, A&B

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

East Maui Water Revocable Permits Committee

1. **Committee Purpose**
 - a. To provide a forum for addressing community issues, including but not limited to:
 - (1) Trash or debris in the watershed area;
 - (2) Restoration of taro streams;
 - (3) Compliance with Interim Instream Flow Standards decisions;
 - (4) Potential flooding issues; and
 - (5) Information from the Division of Aquatic Resources on fish passageways; and
 - b. To improve communications and exchange of information with the community
2. **Committee Membership**- the committee shall be comprised of the following entities; letters of invitation/request to name participants have been transmitted to those indicated below:
 - a. Native Hawaiian Legal Corporation c/o Moses Haia III, Executive Director
 - b. A&B/EMI- Representative to be determined
 - c. Office of Hawaiian Affairs c/o Chair Collette Machado
 - d. County of Maui c/o Mayor Michael Victorino
 - e. Maui Farm Bureau c/o Warren Watanabe, Executive Director
3. **Meetings**
 - a. Dates and Frequency- meetings shall be convened each month for the first quarter of 2019, beginning in February, and then quarterly thereafter, as follows:
 - (1) February
 - (2) March
 - (3) Q2 (April-June)
 - (4) Q3 (July-September)
 - (5) Q4 (October-December)
 - b. Location- meetings shall be held at a location in Central Maui, to be determined
 - c. Times- meetings shall be held during working hours, during the work week, at the lunch hour, when possible
 - d. Staffing- Mahi Pono/A&B shall provide staffing to take notes and prepare meeting summaries
 - e. Resource Staffing by CWRM and DAR-CWRM will be notified of meeting dates and times, for attendance at their discretion
 - f. Rules of Conduct- the Committee shall operate informally, but shall allow all members the opportunity to be heard and decisions, if any, to be made by a simple majority of the members

TELEPHONE: (808) 579-9516
FACSIMILE: (808) 579-9517

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

July 24, 2019

Carmen Hulu Lindsey
Office of Hawaiian Affairs
560 Nimitz Highway, Suite 200
Honolulu, Hawaii 96817

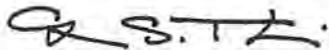
Dear Trustee Lindsey:

Pursuant to the Board of Land and Natural Resources' (BLNR) approval of the East Maui Water Revocable Permit Committee plan, established as part of the BLNR's decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui, we are planning to convene the second Committee meeting next week. We are once more requesting your attendance or the name and title of the individual who will be representing you and your organization. Mark Vaught, Operations Manager, will again be representing EMI on the Committee.

Date: Wednesday, July 31, 2019
Time: 10-11am
Location: Mahi Pono Office
2200 Main Street, Suite 405
Wailuku, HI 96739

Summary notes from the March 12, 2019 meeting are also attached. Again, the meeting dates and participants may vary due to the delayed approval of the plan and member availability. Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Mahi Pono Senior Vice President of Operations
On behalf of East Maui Irrigation Company, LLC

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

000155

EAST MAUI IRRIGATION COMPANY, LLC

P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

July 24, 2019

Jeffrey T. Pearson, Director
Department of Water Supply
County of Maui
Kalana O Maui Building, 5th Floor
Wailuku, Hawaii 96793

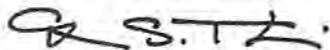
Dear Director Pearson:

Pursuant to the Board of Land and Natural Resources' (BLNR) approval of the East Maui Water Revocable Permit Committee plan, established as part of the BLNR's decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui, we are planning to convene the second Committee meeting next week. We are once more requesting your attendance or the name and title of the individual who will be representing you and your organization. Mark Vaught, Operations Manager, will again be representing EMI on the Committee.

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2200 Main Street, Suite 405
Wailuku, HI 96739

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Mahalo,



Shan Tsutsui
Mahi Pono Senior Vice President of Operations
On behalf of East Maui Irrigation Company, LLC

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

EAST MAUI IRRIGATION COMPANY, LLC
P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

July 24, 2019

Warren Watanabe, Executive Director
Maui County Farm Bureau
P.O. Box 148
Kula, HI 96790

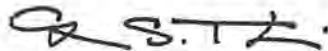
Dear Mr. Watanabe:

Pursuant to the Board of Land and Natural Resources' (BLNR) approval of the East Maui Water Revocable Permit Committee plan, established as part of the BLNR's decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui, we are planning to convene the second Committee meeting next week. We are once more requesting your attendance or the name and title of the individual who will be representing you and your organization. Mark Vaught, Operations Manager, will again be representing EMI on the Committee.

Date: Wednesday, July 31, 2019
Time: 10-11am
Location: Mahi Pono Office
2200 Main Street, Suite 405
Wailuku, HI 96739

Summary notes from the March 12, 2019 meeting are also attached. Again, the meeting dates and participants may vary due to the delayed approval of the plan and member availability. Thank you for your cooperation and attention to this matter. Please contact us with any questions or concerns.

Mahalo,



Shan Tsutsui
Mahi Pono Senior Vice President of Operations
On behalf of East Maui Irrigation Company, LLC

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

EAST MAUI IRRIGATION COMPANY, LLC
P.O. BOX 791628, PAIA, MAUI, HAWAII 96779-1628

July 24, 2019

Moses Haia III, Executive Director
Native Hawaiian Legal Corporation
1151 Punchbowl Street
Honolulu, Hawaii 96813

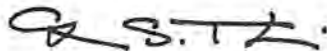
Dear Mr. Haia:

Pursuant to the Board of Land and Natural Resources' (BLNR) approval of the East Maui Water Revocable Permit Committee plan, established as part of the BLNR's decision on Holdover Revocable Permits to Alexander & Baldwin, Inc. (A&B), and East Maui Irrigation Company, Limited (EMI), for Water Use on the Island of Maui, we are planning to convene the second Committee meeting next week. We are once more requesting your attendance or the name and title of the individual who will be representing you and your organization. Mark Vaught, Operations Manager, will again be representing EMI on the Committee.

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Shan Tsutsui
Mahi Pono Senior Vice President of Operations
On behalf of East Maui Irrigation Company, LLC

cc: Suzanne Case, Chair, Board of Land and Natural Resources
Kaleo Manuel, Deputy Director, Commission on Water Resource Management

East Maui Water Revocable Permits Committee
Meeting Summary

March 12, 2019

10am

1. Call to Order

Meeting was called to order by Mark Vaught, Operations Manager for East Maui Irrigation Co. (EMI)

2. Committee Members

- a. Native Hawaiian Legal Corporation- not present
- b. EMI- *Mark Vaught, Operations Manager*
- c. Office of Hawaiian Affairs- *Carmen Hulu Lindsey, OHA Maui Trustee*
- d. County of Maui- not present
- e. Maui Farm Bureau- *Warren Watanabe, Executive Director*

Also present was Shan Tsutsui, VP of Operations, Mahi Pono, notetaker

3. Committee Purpose

The origin of the Committee was discussed—at its meeting on November 9, 2018, Board of Land and Natural Resources (BLNR) approved the Holdover Revocable Permits to A&B and EMI and directed the formation of a Committee to help improve communication and address community issues related to the water permits. A plan for the Committee was submitted by EMI and approved by BLNR in a letter dated February 27, 2019.

It was discussed that the objective of the Committee is to communicate/share information with the members and report progress back to the BLNR at the end of the year.

4. Administrative Matters

Administrative matters were discussed, including that meeting summaries would be provided to all members via email following each meeting. Members were advised that meetings will be conducted informally and that, during the meetings, members would be provided the opportunity to comment and provide input.

It was agreed that meetings would be held quarterly until the end of 2019, with the next meeting to be held later in the 2nd quarter of this year. All members would be provided with an email invitation prior to the meeting.

5. Discussion

The initial meeting was used to inform members as to the purpose of the Committee and discuss a plan for future meetings. Accordingly, the members were asked what questions they had and what information they were interested in obtaining.

A brief discussion on completed work in compliance with the Interim Instream Flow Standards (IIFS) decision was conducted; however, based on the discussion, a more complete presentation will be made at the next meeting. Additionally, it was agreed that a presentation on a draft Community Farm Plan will be provided to the members to demonstrate what types of crops are being contemplated, timelines and other relevant information to advise community farmers about what they can expect going forward. Finally, more information on the EIS process, what has been done to date and what additional action need to be undertaken prior to completion, was also requested.

6. Next Steps

Next meeting will be scheduled for the 2nd quarter (April-June 2019) and include the following:

1. IIFS compliance update by EMI
2. Draft Community Farm Plan by Mahi Pono
3. Presentation on the EIS process, including a timeline of completed and outstanding actions

Per June 20, 2018 Decision and Order				Draft Work Plan to Comply with Interim Instream Flow Standards (Case No. CCH-MA13-01) - All Streams (September 26, 2019)					Approvals Required/Current Status of Approvals					
Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit
Makapipi	Full	n/a	Above Hana Highway					Flow has been restored by temporary measures. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-1 298.6	Makapipi	Major	Sluice gate has been completely removed and the intake windows will be sealed with concrete.	NA	Yes	Yes	SPA	NA	TBD
				Koolau	K-1a	Makapipi 6" pvc pipe intake	Minor	6-inch pipe to be removed; diversion box to remain in tributary.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Koolau	K-1b	Makapipi 8" aluminum pipe diversion from development tunnel to main ditch	Minor	No modification needed or planned; does not divert Makapipi stream. County DWS supply for the Nahiku homeowners.	No Approvals Required					
Hanawi	Connectivity	0.92	Below Hana Highway					Flow has been restored to achieve the IIFS; no modifications to diversions required. Connectivity has been achieved.	Draft Work Plan submitted to CWRM for review and comment. No regulatory approvals anticipated to be required.					
				Koolau	K-2 292.6	Hanawi (Awaimakaino Intake)	Major	The sluice gate has been adjusted to create a wetted path.	No Approvals Required					
				Koolau	K-3 293.6	Hanawi (Machine Tunnel Gulch Intake)	Major	The sluice gate has been adjusted to create a wetted path.	No Approvals Required					
				Koolau	K-4 294.6	Hanawi (Main Hanawi Intake)	Major	The sluice gate has been adjusted to provide for the IIFS. A wetted path already exists on the dam.	No Approvals Required					
				Koolau	K-2a	Hanawi small stream intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-2b	West Awaimakaino Stream intake - diverted to East 2" intake pipe East of Main Hanawi Stream off Hana Highway	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4a	Maui Land & Pine Hanawi dam mauka Hana Hwy. bridge	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4b	8" aluminum pipe intake East of Hanawi	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4c	6" pvc pipe intake East of Hanawi	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4d	4" pvc pipe intake East of Hanawi (diverted to K-6)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4e	2" drisco pipe intake to crosscut below Hanawi sluice gate	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-4f		Minor	No modification needed or planned.	No Approvals Required					
Kapaula	Connectivity	0.56	On diversion at Koolau Ditch					Flow has been restored to meet the IIFS by temporary measures. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-5 295.6	Kapaula (East Kapaula Intake)	Major	A drisco pipe will be installed to create a wetted path.	NA	Yes	Yes	SPA	NA	No
				Koolau	K-6 285.6	Kapaula (Kapaula 15" pvc pipe diversion)	Major	No sluice gate is present. Add drisco pipe to provide wetted path over top of dam. No alteration to this diversion is required to achieve IIFS flow.	NA	Yes	Yes	SPA	NA	No
				Koolau	K-7 286.6	Kapaula (Main Kapaula Intake)	Major	Notch dam to achieve required flow and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Koolau	K-8 284.6	No Name (Jack's Flume Intake)	Major	No further modification required after implementing modifications to Main Kapaula Intake (K-7).	No Approvals Required					
				Koolau	K-6a	East Kapaula 6" pvc pipe intake (diverted to K-6)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-6b	East Kapaula old 6" aluminum pipe intake (diverted to K-6)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-7a	East Kapaula 2" drisco pipe intake (diverted to main Kapaula)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-7b	East Kapaula 6" pvc pipe intake (diverted to main Kapaula)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-7c	Kapaula 2" galvanized pipe intake below main intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-7d	3" pipe intake in Old Kapaula intake tunnel	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-7e	Old Kapaula intake	Minor	No modification needed or planned.	No Approvals Required					
Waiaaka	None	0.77	Above Hana Highway					Unclear what restoration status "None" means. Flow has been restored to achieve the IIFS; no modifications to diversions required. Connectivity has been achieved.	Draft Work Plan submitted to CWRM for review and comment. No regulatory approvals anticipated to be required.					
				Koolau	K-9 283.6	Waiaaka	Major	Adjust sluice gate as needed to meet IIFS.	No Approvals Required					
Pa'akea	Connectivity	0.18	At Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-10 281.6	Paakea	Major	Sluice gate has been opened to meet the IIFS. A drisco pipe will be installed to create a wetted path.	NA	Yes	Yes	SPA	NA	No
				Koolau	K-10a	Paakea Stream 3" pvc pipe intake	Minor	No modification needed or planned. Gate on intake from pool is shut, so there is no flow to ditch.	No Approvals Required					
Waiohue	Full	n/a	At Hana Highway					Flow has been restored to achieve the IIFS; no modifications to diversions required. Connectivity has been achieved.	Draft Work Plan submitted to CWRM for review and comment. No regulatory approvals anticipated to be required.					
				Koolau	K-12 279.6	Waiohue (East Waiohue Intake)	Major	Bypass gate is closed. Sluice gate at chute ditch settling basin has been completely removed.	No Approvals Required					
				Koolau	K-13 280.6	Waiohue (West Waiohue Intake)	Major	Intake gates are completely closed and sluice gate is removed. All water remains in the stream.	No Approvals Required					
				Koolau	K-12a	Waiohue concrete channel intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-12b	East Waiohue concrete channel intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-12c	East Waiohue concrete V channel intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-12d	East Waiohue 8" concrete intake	Minor	No modification needed or planned.	No Approvals Required					
Pua'aka'a	Connectivity	0.2	Above Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-13a	Cut stone run-off intake by Puaakaa overflow	Minor	Install drisco pipe for wetted path.	NA	Yes	Yes	SPA	NA	No

Per June 20, 2018 Decision and Order				Draft Work Plan to Comply with Interim Instream Flow Standards (Case No. CCH-MA13-01) - All Streams (September 26, 2019)					Approvals Required/Current Status of Approvals					
Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit
Kopiliula	H90	3.2	Below Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-14 277.6	East Kopiliula (West Fork Intake)	Major	Install drisco pipe to provide wetted path.	NA	Yes	Yes	SPA	NA	No
				Koolau	K-15 290.6	West Kopiliula (Main Kopiliula Intake)	Major	Sluice gate can be adjusted to provide for both the IIFS and connectivity. May need to add drisco pipe for wetted path (approvals required only for installation of pipe).	NA	Yes	Yes	SPA	NA	No
				Koolau	K-14a	East Kopiliula - East Fork 8-inch aluminum pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-14b	East Kopiliula - West Fork 2" drisco pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-14c	Kopiliula 3" drisco pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-14d	Kopiliula concrete channel intake by Hana Highway	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-15a	West Kopiliula diversion ditch on top of bank by Control house	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-15b	West Kopiliula 2" pipe intake from wall	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-15c	West Kopiliula diversion ditch by wall	Minor	No modification needed or planned.	No Approvals Required					
East Waiuauiki	H90	3.7	At Hana Highway					Flow has been restored to achieve the IIFS; no modifications to diversions required. Connectivity has been achieved.	Draft Work Plan submitted to CWRM for review and comment. No regulatory approvals anticipated to be required.					
				Koolau	K-16 288.6	East Waiuauiki	Major	Existing drisco pipe provides for a wetted path. Sluice gate has been adjusted to provide for IIFS.	No Approvals Required					
				Koolau	K-16a	East Waiuauiki steel pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16b	8" steel pipe intake West of East Waiuauiki intake (#1 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16c	8" steel pipe intake West of East Waiuauiki intake (#2 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16d	8" steel pipe intake West of East Waiuauiki intake (#3 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16e	8" steel pipe intake West of East Waiuauiki intake (#4 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16f	8" steel pipe intake West of East Waiuauiki intake (#5 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-16g	8" steel pipe intake West of East Waiuauiki intake (#6 intake)	Minor	No modification needed or planned.	No Approvals Required					
				Koolau	K-17a	8" concrete pipe intake East of Main West Waiuauiki intake	Minor	No modification needed or planned.	No Approvals Required					
West Waiuauiki	Full	n/a	Above Hana Highway					Flow has been restored to achieve the IIFS. Connectivity has been achieved.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-17 327.6	West Waiuauiki	Major	Existing drisco pipe provides for a wetted path. Sluice gate is open and will be completely removed. The intake tunnel will be sealed with concrete to keep water from bypassing the stream.	NA	Yes	Yes	SPA	NA	TBD
Waiuanui	Full	n/a	At Hana Highway					Flow has been restored to the extent feasible pending completion of work requiring permits. Continuity achieved in main stem. All diversions to be abandoned.	O&M work on Category 1 diversions completed or (in one case) nearly completed; SDWP application for formal abandonment of these diversions is pending with CWRM. SDWP application for abandonment of Category 4 diversions is pending with CWRM. CWRM has issued SDWP for abandonment of Category 2 diversions; work is pending development of a BMP Plan in consultation with DOH and submittal of construction plans to CWRM (in progress).					
(Taro Stream)				Koolau	K-18	East Waiuanui (#6 Intake and sluice basin)	Major	Work necessary to permanently halt water diversion anticipated to be completed 9/27/2019.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Koolau	K-19	East Waiuanui (#6 control house intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Koolau	K-20	Waiuanui (#7 intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Koolau	K-21	West Waiuanui (#9 intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Koolau	K-19a	3" aluminum pipe intake by #6 control house intake	Minor	Pipe will be removed.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-20a	Waiuanui stream intake (#8 intake pipe)	Minor	Pipe will be removed.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-21a	8" steel pipe intake East of #9 intake	Minor	Pipe will be removed.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-21b	Filipino Ditch diversion to #9 intake	Minor	Location unknown. No water being diverted. No work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
'Ohi'a/Waianu	None	n/a	None.					Not diverted by EMI	No regulatory approvals required.					
Waiokamilo	Full	n/a	Below diversion at Koolau Ditch					Flow has been restored. Connectivity has been achieved.	SDWP application for abandonment of Category 4 diversions is pending with CWRM.					
(Taro Stream)				Koolau	K-22 326.6	East Waiokamilo (Kualani) at Koolau Ditch	Major	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-23 329.6	Waiokamilo # 11 intake at Koolau Ditch	Major	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24 328.6	Waiokamilo #12 intake at Koolau Ditch	Major	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25 320.6	Waiokamilo Kikokiko intake at Koolau Ditch	Major	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22a	6-inch Kualani (East Waiokamilo) aluminum pipe at Koolau Ditch	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22b	#10 crosscut intake at Koolau Ditch (#1)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22c	#10 crosscut intake at Koolau Ditch (#2)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22d	#10 crosscut intake at Koolau Ditch (#3)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22e	#10 crosscut intake at Koolau Ditch (#4)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22f	#10 crosscut intake at Koolau Ditch (#5)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-22g	#10 crosscut intake at Koolau Ditch (#6)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No

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Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit
				Koolau	K-23a	4-inch pipe east of #11 intake at Koolau Ditch	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24a	#12 crosscut intake at Koolau Ditch (#1)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24b	#12 crosscut intake at Koolau Ditch (#2)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24c	#12 crosscut intake at Koolau Ditch (#3)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24d	#12 crosscut intake at Koolau Ditch (#4)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24e	#12 crosscut intake at Koolau Ditch (#5)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24f	Small intake west of (main) #12 crosscut at Koolau Ditch (#1)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24g	Small intake west of (main) #12 crosscut at Koolau Ditch (#2)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24h	Small intake west of (main) #12 crosscut at Koolau Ditch (#3)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24i	Small intake west of (main) #12 crosscut at Koolau Ditch (#4)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-24j	Small intake west of (main) #12 crosscut at Koolau Ditch (#5)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25a	Small intake west of (main) #12 crosscut at Koolau Ditch (#6)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25b	(East Kikokiko 2-inch pipe intake)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25c	Kikokiko small intake at Koolau Ditch	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25d	West Kikokiko small intake at Koolau Ditch (Kikokiko 6" pipe intake mauka of bridge)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25e	West Kikokiko small intake at Koolau Ditch (West Kikokiko 4-inch pipe intake)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25f	West Kikokiko small intake at Koolau Ditch (West Kikokiko 3-inch pipe intake)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
				Koolau	K-25f	West Kikokiko small intake at Koolau Ditch (Kikokiko 3-inch pvc pipe intake under bridge)	Minor	Diversion closed in 2007; no further work planned.	Yes-Cat 4	No	No Work	No Work	NA	No
Palauhulu	Full	n/a	Above Hana Highway					Flow and continuity have been restored to the extent possible by temporary means pending completion of work requiring permits. All diversions to be abandoned.						
(Taro Stream)				Koolau	K-26	Kano	Major	Gate in tunnel is open. Dam may need to be altered to prevent water from entering the tunnel. Seal tunnel with rocks.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-27	Lalahai (#3 intake - Hauolo Wahine Ditch)	Major	Seal tunnel with rocks.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-28	Lalapipi (#2 intake - Hauolo Wahine Ditch)	Major	Seal tunnel with rocks.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-29	Kaauau (#1 intake - Hauolo Wahine Ditch)	Major	Seal tunnel with rocks.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-30	Hauolo Wahine	Major	Concrete Intake window.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-29a	Kaauau diversion tunnel to #1 intake	Minor	Seal diversion with concrete.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-30a	Hauolo Wahine small diversion	Minor	Remove pipe.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-30b	Hauolo Wahine small intake	Minor	Remove dam, block ditch downstream of dam.	Cat 3 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-30c	Hauolo Wahine small intake	Minor	Remove pipe.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Koolau	K-30d	Hauolo Wahine small intake runoff pad	Minor	Install ditch overpass.	Cat 3 issued	No	Confirmed	SPA issued	NA	No
Pi'ina'au	Full	n/a	Above Hana Highway					Flow and continuity have been restored to the extent feasible pending completion of work requiring permits. All diversions to be abandoned.						
(Taro Stream)				Koolau	K-31	Piinau	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Koolau	K-31a	Piinau 6" steel and pvc pipe diversion to main Piinau intake	Minor	Completely remove the pipe	Cat 2 issued	No	Confirmed	SPA issued	NA	No
Nua'aiiua	Connectivity	2.2	To be determined					Almost all base flow in the stream has been restored by temporarily installing board gates at intake. Connectivity has been achieved.						
				Spreckels	S-1	Nua'aiiua	Major	Remove dam and seal intake with concrete. Board gates installed as temporary measure to block flow.	TBD	TBD	Yes	SPA	NA	TBD
				Spreckels	S-1a	East Nua'aiiua small stream intake (#1 intake)	Minor	Evaluating removal of all four diversions and associated pipe to eliminate ongoing maintenance for this diversion.	TBD	TBD	Yes	SPA	NA	TBD
				Spreckels	S-1b	East Nua'aiiua small stream intake (#2 intake)	Minor	Evaluating removal of all four diversions and associated pipe to eliminate ongoing maintenance for this diversion.	TBD	TBD	Yes	SPA	NA	TBD
				Spreckels	S-1c	East Nua'aiiua small stream intake (#3 intake)	Minor	Evaluating removal of all four diversions and associated pipe to eliminate ongoing maintenance for this diversion.	TBD	TBD	Yes	SPA	NA	TBD
				Spreckels	S-1d	West Nua'aiiua small ditch intake	Minor	Evaluating removal of all four diversions and associated pipe to eliminate ongoing maintenance for this diversion.	TBD	TBD	Yes	SPA	NA	TBD
Honomanu	H90	4.2	Above Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.						
				Spreckels	S-2	Honomanu (Banana intake)	Major	Sluice gate adjusted to provide for both the IIFS and connectivity.						
				Spreckels	S-3	Honomanu (Center Honomanu intake)	Major	Sluice gate adjusted to provide for both the IIFS and connectivity.						
				Spreckels	S-300.6	Honomanu (Center Honomanu intake)	Major	Sluice gate adjusted to provide for both the IIFS and connectivity.						

Draft Work Plan to Comply with Interim Instream Flow Standards (Case No. CCH-MA13-01) - All Streams (September 26, 2019)														
Per June 20, 2018 Decision and Order					Approvals Required/Current Status of Approvals									
Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit
				Spreckels	S-4 278.6	Honomanu (Main Honomanu intake)	Major	Sluice gate adjusted to provide for both the IIFS and connectivity.						
				Spreckels	S-5 301.6	Honomanu (High Falls intake)	Major	Sluice gate adjusted to provide for both the IIFS and connectivity.						
				Spreckels	S-6 310.6	Uluini	Major	Sluice gate adjusted to provide for the IIFS. Install a drisco pipe to create a wetted path on the dam. Additional modifications to facilitate fish migration being evaluated.	NA	Yes	Yes	SPA	NA	No
				Spreckels	S-2a	East Honomanu 2" drisco pipe intake	Minor	No modification needed or planned.						
				Spreckels	S-5a	West Honomanu 2" pvc pipe intake	Minor	No modification needed or planned.						
				Spreckels	S-6a	Uluini 2" drisco and pvc pipe intake (diversion to Uluini intake)	Minor	No modification needed or planned.						
Punalau/Kolea	H90	2.9	Above Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-32 204.6	Kolea	Major	Powerhouse intake. Sluice gate adjusted to provide for the IIFS. Install a drisco pipe to create a wetted path on the dam.	NA	Yes	Yes	SPA	NA	No
				Koolau	K-32a	Uluini Stream diversion to Kolea Stream	Minor	No modification needed or planned.						
				Koolau	K-32b	Kolea 4" pipe intake	Minor	No modification needed or planned.						
				Spreckels	S-7 299.6	Kolea	Major	Gate to ditch to Haipuaena closed; take no water at this diversion.						
				Spreckels	S-7a	East Kolea small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-7b	Middle Kolea small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-7c	West Kolea small stream intake	Minor	No modification needed or planned.						
				Manuel Luis	ML-1 206.6	Manuel Luis Kolea intake	Major	Sluice gate is open and ditch intake gates are shut.						
				Manuel Luis	ML-1a	Kolea crosscut puka intake	Minor	No modification needed or planned.						
				Manuel Luis	ML-1b	Kolea small hole intake	Minor	No modification needed or planned.						
Ha'ipua'ena	Connectivity	1.36	Below Hana Highway					Flow and continuity have been restored to meet the IIFS by temporary measures.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-32c	Haipuaena 3" (steel) pipe intake	Minor	No modification needed or planned.						
				Koolau	K-32d	Haipuaena 3" steel pipe intake	Minor	No modification needed or planned.						
				Koolau	K-32e	Haipuaena 3" pvc pipe intake	Minor	No modification needed or planned.						
				Spreckels	S-8 161.6	Haipuaena	Major	Ditch intake gate has been adjusted to pass water downstream. Road across stream acts as dam, but water is flowing over the road. Install modified culvert (pipe or grated channel) in road to pass flow to meet IIFS; modify intake gate to include a weir.	NA	Yes	Yes	SPA	NA	TBD
				Spreckels	S-8a	Haipuaena small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-8b	East Haipuaena small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-8c	Middle Haipuaena small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-8d	West Haipuaena small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-8e	Haipuaena stream diversion to Kolea stream	Minor	No modification needed or planned.						
				Manuel Luis	ML-2 212.6	Haipuaena	Major	Tunnel intake temporarily blocked with stream rocks to allow flow downstream. Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Manuel Luis	ML-2a	East Haipuaena small stream intake	Minor	No modification needed or planned.						
Puohokamoa	Connectivity	1.1	Below Hana Highway					Flow and continuity have been restored to meet the IIFS by temporary measures.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					
				Koolau	K-33 304.6	Puohokamoa	Major	Intake gate closed to pass water downstream. Raise the height of the intake dam nearest the tunnel intake to reduce flow into tunnel and provide for IIFS and connectivity. Seal holes in dam with concrete.	NA	Yes	Yes	SPA	NA	TBD
				Koolau	K-33a	Puohokamoa sluice gate 6" steel pipe intake	Minor	No modification needed or planned.						
				Spreckels	S-9 162.6	Puohokamoa	Major	Board gate at intake has been closed. Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Spreckels	S-9a	East Puohokamoa small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-9b	Middle Puohokamoa small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-9c	West Puohokamoa small stream intake	Minor	No modification needed or planned.						
				Manuel Luis	ML-3 193.6	Puohokamoa	Major	Intake temporarily blocked with stream rocks. Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Manuel Luis	ML-4 202.6	West Puohokamoa (Pakaka intake)	Major	Control gate adjusted to pass water downstream. Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Manuel Luis	ML-4a	West Puohokamoa small stream intake	Minor	No modification needed or planned.						
Wahinepe'e	None	0.9	Above Hana Highway					Unclear what restoration status "None" means. IIFS is believed met at this stream.	Draft Work Plan submitted to CWRM for review and comment. The need for regulatory approvals has not yet been confirmed.					
				Spreckels	S-9d	East Wahinepee small stream intake	Minor	No modification needed or planned.						
				Spreckels	S-9e	West Wahinepee small stream intake	Minor	No modification needed or planned.						
				Manuel Luis	ML-5 205.6	Wahinepee	Major	The need for modifications to this diversion is being evaluated.	TBD	TBD	TBD	TBD	TBD	TBD
				Manuel Luis	ML-5a	East Wahinepee small stream intake (#1 intake)	Minor	No modification needed or planned.						
				Manuel Luis	ML-5b	East Wahinepee small stream intake (#2 intake)	Minor	No modification needed or planned.						
				Manuel Luis	ML-5c	East Wahinepee small stream intake (#3 intake)	Minor	No modification needed or planned.						
				Manuel Luis	ML-5d	East Wahinepee small stream intake (#4 intake)	Minor	No modification needed or planned.						
				Manuel Luis	ML-5e	East Wahinepee waterfall intake	Minor	No modification needed or planned.						
				Manuel Luis	ML-5f	West Wahinepee small stream intake	Minor	No modification needed or planned.						
Waikamoi	H90	3.8	Above Hana Highway					Flow has been restored to meet the IIFS. Connectivity will be restored once modifications are permitted and completed.	Draft Work Plan submitted to CWRM for review and comment. Preliminary work on requests for regulatory approvals in progress.					

Draft Work Plan to Comply with Interim Instream Flow Standards (Case No. CCH-MA13-01) - All Streams (September 26, 2019)

Per June 20, 2018 Decision and Order

Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	Approvals Required/Current Status of Approvals					
									CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit
				Wailoa	W-2 235.6	Waikamoi	Major	Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Wailoa	W-2a	Waikamoi 4" pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Wailoa	W-2b	Waikamoi 2" pipe intake	Minor	No modification needed or planned.	No Approvals Required					
				Spreckels	S-10 163.6	Waikamoi Stream diversion tunnel to Kolea Stream	Major	Skimming Dam will be notched to provide for both the IIFS and connectivity.	NA	Yes	NA (no fill)	SPA	NA	TBD
				Spreckels	S-9f	East Waikamoi small stream intake	Minor	No modification needed or planned.	No Approvals Required					
				Spreckels	S-9g	West Waikamoi small stream intake	Minor	No modification needed or planned.	No Approvals Required					
				Center	C-1 228.6	Waikamoi	Major	Sluice gate has been adjusted to provide for both the IIFS and connectivity.	No Approvals Required					
Hanehoi	Full	n/a	Upstream of Lowrie Ditch					Flow and continuity have been restored to the extent feasible pending completion of work requiring permits. All diversions to be abandoned.	O&M work on Category 1 diversions completed; SDWP application for formal abandonment of these diversions is pending with CWRM. CWRM has approved SDWP for abandonment of Category 3 diversions, but the permit has not yet been received. Once issued, the permit will require development of a BMP Plan in consultation with DOH, submittal of construction plans to CWRM, and consultation with the County of Maui Department of Planning and with USFWS. Additionally, revised stream overpass plans for four diversions will require amending the SPA from DLNR-OCCL and reconfirming the Section 404 permit exemption with USACE.					
(Taro Stream)				Wailoa	W-18 191.6	Hanehoi (Huelo intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				New Hamakua	NH-17 264.6	Hanehoi (Huelo intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				New Hamakua	NH-17a	West Hanehoi (Puolua)	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	SPA issued	NA	No
				Lowrie	L-5 240.6	Hanehoi (Huelo #1 intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Lowrie	L-6 242.6	Hanehoi (Huelo #2 intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Lowrie	L-5a	East Hanehoi	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	SPA issued	NA	No
				Lowrie	L-5b	Hanehoi West #1	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	SPA issued	NA	No
				Lowrie	L-5c	Hanehoi small	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	SPA issued	NA	No
				Haiku	H-3	East Hanehoi (Pancho intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	NA	SMA Exemption	No
Huelo (Puolua)	Full	n/a	Downstream of Haiku Ditch					Flow and continuity have been restored to the extent feasible pending completion of work requiring permits. All diversions to be abandoned.	O&M work on Category 1 diversions completed; SDWP application for formal abandonment of these diversions is pending with CWRM. CWRM has approved SDWP for abandonment of Category 3 diversions, but the permit has not yet been received. Once issued, the permit will require development of a BMP Plan in consultation with DOH, submittal of construction plans to CWRM, and consultation with the County of Maui Department of Planning and with USFWS. Additionally, revised stream overpass plans for two diversions will require reconfirming the Section 404 permit exemption with USACE.					
(Taro Stream)				Lowrie	L-7 155.6	Hanehoi (Huelo #3 intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Lowrie	L-7a	Hanehoi (Roseapple intake)	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	NA	NA	No
				Lowrie	L-7b	Hanehoi West #2	Minor	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	NA	NA	No
				Haiku	H-4 225.6	West Hanehoi (School intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	NA	SMA Exemption	No
Honopou	Full	n/a	Below Hana Highway					Flow and continuity have been restored to the extent feasible pending completion of work requiring permits. All diversions to be abandoned.	O&M work on Category 1 diversions completed; SDWP application for formal abandonment of these diversions is pending with CWRM. CWRM has issued SDWP for abandonment of Category 2 diversions; work is pending development of a BMP Plan in consultation with DOH and submittal of construction plans to CWRM (in progress). CWRM has approved SDWP for abandonment of Category 3 diversions, but the permit has not yet been received. Once issued, the permit will require development of a BMP Plan in consultation with DOH, submittal of construction plans to CWRM, and consultation with the County of Maui Department of Planning and with USFWS. Additionally, revised stream overpass plans for two diversions will require reconfirming the Section 404 permit exemption with USACE.					
(Taro Stream)				Wailoa	W-22 152.6	Honopou	Major	Concrete over diversion grate, remove sluice gate.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				Wailoa	W-22a	Honopou - Lupi long intake	Minor	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Wailoa	W-22b	Honopou - Wailole intake	Minor	Concrete over diversion grate.	Cat 2 issued	No	Confirmed	SPA issued	NA	No
				New Hamaku	NH-22 247.6	Honopou	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				New Hamaku	NH-23 246.6	East Honopou Stream (Wailole intake)	Major	Work necessary to permanently halt water diversion completed.	Yes-Cat 1	Yes	Confirmed	SPA issued	NA	No
				Lowrie	L-15 266.6	East Honopou (Honopou long strainer intake)	Major	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	NA	NA	No
				Lowrie	L-16 257.6	East Honopou (Honopou siphon intake)	Major	Construct stream overpass over ditch.	Yes-Cat 3	No	Need to reconfirm	NA	NA	No
				Lowrie	L-17 210.6	Honopou (Honopou side ditch intake)	Major	Permanently close control gate, permanently remove sluice gate.	Cat 2 issued	No	NA	NA	NA	No
				Haiku	H-8 189.6	Honopou	Major	Concrete over stream grate and also concrete downstream windows. Also, extend west wingwall to prevent water from flowing back to the ditch.	Yes-Cat 3	No	Confirmed	NA	SMA Exemption	No

Draft Work Plan to Comply with Interim Instream Flow Standards (Case No. CCH-MA13-01) - All Streams (September 26, 2019)														
Per June 20, 2018 Decision and Order				Approvals Required/Current Status of Approvals										
Stream Name	Restoration Status	IIFS Value (cfs)	IIFS Location	Ditch	Diversion ID #	Diversion Name	Diversion Type	Current Status of the Stream/ Modifications Completed or Preliminarily Proposed to Meet IIFS	CWRM SDWPA	CWRM O&M Determination	USACE 404 Exemption	OCCL Conservation District Approval	County SMA Assessment	County Flood Development Permit

EXHIBIT 5

From: David Kimo Frankel davidkimofrankel@
Subject: Re: East Maui RP Renewal meeting
Date: September 10, 2019 at 2:38 PM
To: Weston, Amanda J Amanda.J.Weston@i
Cc: Chow, Linda L Linda.L.Chow@i



Unfortunately, not all the Sierra Club folks who would want to attend can attend on the 19th. Nevertheless, at least two of us will show up on September 9 at 2 p.m. Let us know where.

To reiterate, I think it is unfair that you are willing to meet behind closed doors with representatives of A&B and Mahi Pono, but you refuse to extend the same courtesy to the Sierra Club.

We would like to ask that you ask representatives from DOFAW and DAR to attend the meeting as well. There is far too little information sharing and coordination among DLNR's divisions.

Here are some of the topics we wish to address:

1. Reasonable and beneficial uses. BLNR should incorporate into the permit a requirement that A&B/EMI submit monthly reports that show how water is being used on average daily. It should report monthly as to how the water is being used on average daily precisely, by whom, broken down into separate categories that include, but are not limited to: water taken from the east Maui RP area, water used by Maui County for domestic uses, Maui County's agricultural park, diversified agriculture (identifying the location, crop/commodity and user), reservoirs, and seepage/leakage. The report would resemble the table that is part of A&B's First Amended Response to Plaintiff's Second Request for Answers to Interrogatories, but with more detail as to how much water each of the "historical/industrial" uses are using and which crops are being watered.

1a. Reasonable and beneficial uses. BLNR/DLNR should investigate whether water taken from east Maui streams is being used in a reasonable and beneficial manner (consistent with CWRM's and BLNR's order) when it is being used by HC&D LLC and Maui Paving for concrete batching and restrooms. (Nothing in CWRM's order suggests that using water for industrial purposes is a reasonable and beneficial use.) And DLNR should find out how much water taken from east Maui streams HC&D and Maui Paving are using.

2. Invasive species. BLNR should incorporate into the permit a requirement that either A&B/EMI deposit \$500,000 into the forest stewardship fund, HRS 195F-4, for the control of invasive species in the east Maui watershed, or contribute \$500,000 to the East Maui Watershed Partnership to hire two additional staff members to reduce the spread of invasive species within the RP area. DOFAW staff can confirm what Sierra Club members have observed: the steady degradation of the watershed as invasive species take over.

3. Garbage. Before the next BLNR meeting on the RP, DLNR should send staff to inspect and document the degree to which unused man-made structure, equipment and debris are within the RP area, including unused pipes, concrete, wood etc.

4. Diversion structures. BLNR should incorporate into the permit a requirement that A&B/EMI prepare a study within 11 months that assesses the degree to which each diversion structure

prepare a study within 11 months that assesses the degree to which each diversion structure impedes the migration of native aquatic species and/or entrains them. The study would rank the structures in the order that pose the greatest threat to native aquatic species. The study should also evaluate those structures that pose a safety risk, facilitate mosquito breeding, take water from a stream (even if not removed from the ahupua'a), and are aesthetically inappropriate in a natural setting.

5. Restoration status. Before the next BLNR meeting on the RP, DLNR shall ask A&B to report on the degree to which the flow of each stream has been restored. In addition, the report shall describe in detail the degree to which artificial structures that impede or entrain native aquatic species have been removed. This question is separate and distinct from plans to remove structures in the future.

6. Ho'olawa stream. BLNR shall ask A&B to prepare a report within 30 days that describe various means of stopping the diversion of water from Waipio and Hanehoi streams that is then dumped into Ho'olawa Stream.

7. 12 streams. BLNR shall incorporate into the permit conditions that provide some level of protection to the 12 streams that are not part of the CWRM order.

8. Deadlines. Given CWRM's inability to issue orders to remove diversion structures from streams, BLNR needs to incorporate conditions mandating the removal of those structures that pose the greatest threat to native species within a specific deadline.

9. Cap. BLNR should incorporate into the permit a limit as to how much water A&B/EMI can take out of the RP area for 2020.

EXHIBIT 6



September 30, 2019

Ian Hirokawa, Special Projects Coordinator
Land Division
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawai'i 96809

RE: Updates on KIUC Activities per RP No. S – 7340 and Water Lease Application

Dear Mr. Hirokawa:

This letter provides a summary of Kaua'i Island Utility Cooperative's ("KIUC") activities at the diversion facilities located on the North Fork River and Waikoko Streams that it manages and operates through Revocable Permit No. S – 7340, and KIUC's progress on the Water Lease application for these same diversions. We are also requesting an opportunity to present these updates directly to the Board of Land and Natural Resources ("BLNR") at the October 2019 meeting.

As you know, at the December 2018 BLNR meeting, the Department of Land and Natural Resources ("DLNR") Land Division staff submittal recommended approval of a holdover for RP No. S-7340 with two conditions:

1. An adjustment to the permit rent from \$3,110.00 per month to \$4,315.76 per month; and
2. An imposed limitation on the amount of water that can be diverted under the RP based on the proposed amended IIFS ("Interim Instream Flow Standards") developed by Commission on Water Resource Management ("CWRM") staff. At median stream flow, the amount available to be diverted from North Fork Wailua River (Wai'ale'ale Stream) would be 8 million gallons a day (mgd) and the amount available to be diverted from Waikoko Stream would be 1.6 mgd. At times of higher stream flow more water could be diverted provided that a sufficient amount of water, as determined by the proposed amended IIFS, remains in the streams.

At this same meeting, RP No. S-7340 was approved as staff recommended for holdover by the BLNR with an amendment as outlined below according to the BLNR meeting minutes approved on April 26, 2019:

1. The holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative ("KIUC"), as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia'i Wai O Wai'ale'ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together, the "Working Group"), to participate in a facilitated discussion regarding their respective positions of KIUC's request to use State water for its hydroelectric plants in the permit area, as well as any other relevant matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

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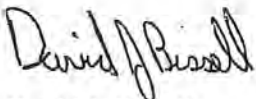
KIUC has met all the conditions for the 2019 RP holdover through the actions described below:

- In January and February of 2019 KIUC made further modifications to the ditch structures, similar to the work performed in early 2018, to ensure diversion limitations of 8 mgd at North Fork Wailua and 1.6 mgd at Waikoko at median stream flow. This work involved increasing the openings at the bottom of both sluice gates and reducing the ditch inlet openings at both headgates. Also, the steel pani boards at the Waikoko diversion was removed in order to lower the spillway crest.
- On March 18, 2018 KIUC submitted a report on the Working Group meetings facilitated by Robbie Alm to DLNR and the report was presented to the BLNR at the April 2019 meeting.

Pursuant to the first bullet above and included with this letter is a chart that shows the daily average of the volume of water in the North Fork Wailua River at the CWRM gage and the daily average of the volume of water diverted at the North Fork Wailua River Diversion for the months of January through July 2019. August and September diversion data has not been collected because Loop Road is closed and alternate access has taken time to resolve. We anticipate being able to retrieve diversion data for August and September within the next few weeks. As indicated by this chart, there was only one period in January of 2019 when the volume of water in the stream at the CWRM gage was below the CWRM staff proposed IIFS amount of 4 mgd (6.2 cfs). As noted above, in early 2019 KIUC made adjustments at the sluice and head gates and since that time the volume of water left in the North Fork Wailua River at the CWRM gage has equaled or exceeded the proposed IIFS.

In addition, on October 1, KIUC submitted a draft Environmental Assessment to the Office of Environmental Quality Control for publication on October 8. KIUC has provided all the requested information to DLNR regarding its Water Lease application and is continuing to work closely with Land Division and Department Of Fish And Wildlife (“DOFAW”) on next steps in the lease process. KIUC is also consulting with the associated regulatory agencies regarding plans and associated permitting requirements.

Thank you for your consideration,



David J. Bissell
President and Chief Executive Officer
Kauai Island Utility Cooperative

Cc: L. Loo - Shiramizu, Loo, & Nakamura, LLP
D. Huff – Joule Group

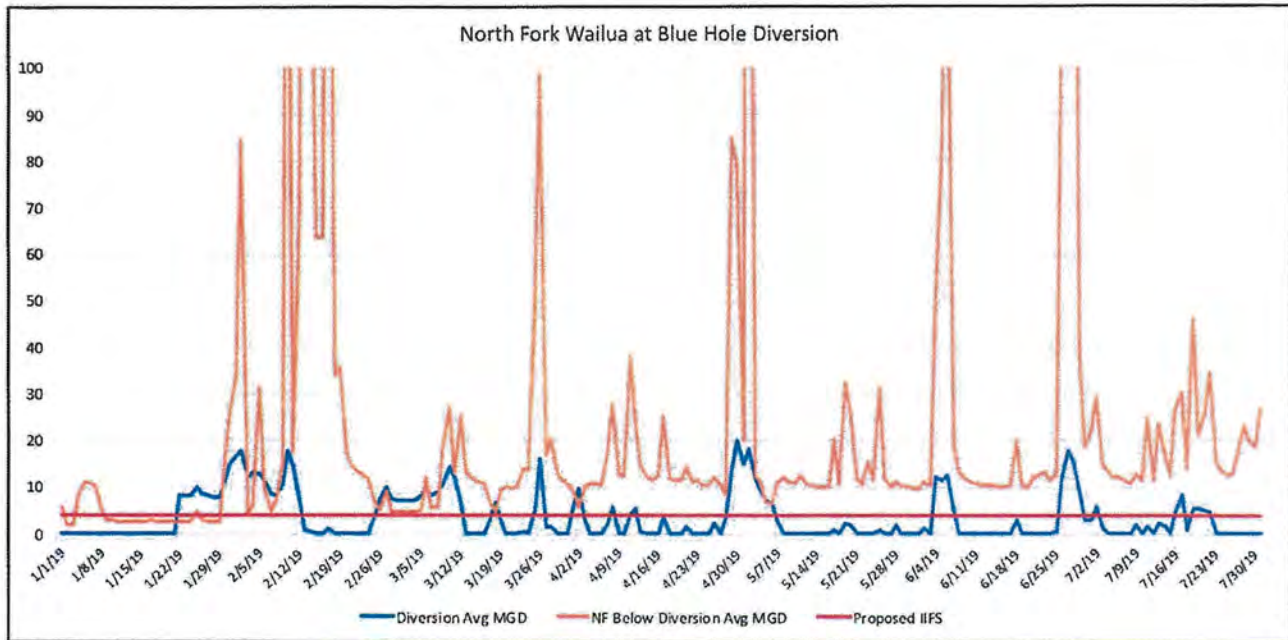


EXHIBIT 7



**East Kauai
Water Users' Cooperative**

4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
Phone: 808-246-6962
Fax: 808-245-3277

September 18, 2019

**To: Suzanne Case
Chairperson, Department of Land and Natural Resources**

**Re: Notice of Intention to Not Renew Revocable Permit #S-7310 for the East
Kauai Irrigation System**

Aloha, Chairperson Case:

At a meeting of the members of the East Kauai Water Users Cooperative on September 3, 2019, a formal decision was made by majority vote to not renew RP #S-7310 for the East Kauai irrigation system in the Wailua/Kapaa area. The Coop will cease to maintain the system as of December 31, 2019, at which time responsibility will revert to DLNR.

It is with great regret that we do so. However, it has become clear that there simply is no viable way forward for the operation of the system after the legislature failed last session to pass SB223 transferring operation to the Department of Agriculture. It had always been the intent of the Coop since 2001 to be an interim operator until such time as DOA could step in. It is unfortunate that a state-owned system capable of irrigating several thousand acres of agricultural land will be lost.

The system includes Wailua Reservoir, fed by a diversion on the North Fork of the Wailua River, Upper Kapahi Reservoir, fed by Kapaa Stream, and all related lateral ditches. It also includes the ditches on the ADC Kalepa lands which are fed by Hanamaulu Ditch under an agreement with Grove Farm for water delivery.

East Kauai Water Users' Cooperative

JERRY ORNELLAS
Its President

cc:
Robert Masuda, First Deputy, DLNR
Russell Tsuji, Administrator, Land
Division, DLNR
Kevin Moore, Land Division, DLNR
Ian Hirokawa, Land Division, DLNR
Wesley Matsunaga, Kauai Land
Agent, DLNR
Sandi Kato-Klukte, Chair, ADC

James Nakatani, Director, ADC
Myra Kaichi, ADC
Ron Kouchi, State Senate President
Jimmy Tokioka, Representative,
District 15
Nadine Nakamura, Representative,
District 14
Members, East Kauai Water Users
Cooperative

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