

APT Committee

From: Dick Mayer <dickmayer@earthlink.net>
Sent: Wednesday, October 6, 2021 5:22 PM
To: Dick Mayer
Subject: East Maui Water Leases
Attachments: East Maui Water Lease Conditions 10-7-2021.docx; East Maui Water Lease Conditions 10-7-2021.pdf

Aloha,

The lease(s) for much of the water from the East Maui watershed will soon be a very important element in Maui Island's future. It has to be done correctly. Although the Final-EIS was adopted by the BLNR, there remain many concerns and questions.

The **attached document** (in both PDF and DOCX formats) goes beyond the Final-EIS to highlight many of the important issues concerning the license(s), the auction, prices for the water, management of the leases, lease transfers, timeline, etc.

Hopefully, DLNR will respond to the concerns and provide answers to the questions.

Mahalo for looking over the attachment,

Dick Mayer dickmayer@earthlink.net

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October 7, 2021

Aloha Mr. Hirokawa,

I first would like to thank you for DLNR's comments on the 9,000 page A&B Final EIS. Although in the end you recommended approval of the EIS, I very much appreciated your pointing out a number of significant deficiencies in the Final EIS document.

I'm emailing you regarding the East Maui water licenses that are expected to be put up at auction. I realize that you are now awaiting to see whether there is a challenge to the BLNR approval of the Final EIS. However, I am more interested in determining the "conditions" that will be included within the auctioned license documents.

The following are some of my concerns and questions regarding the licenses,

CONCERNS

1. Not a subject in the Final EIS document, but a very important consideration, are the conditions contained within the December-2018 sales agreement between A&B and Mahi Pono, owned by the Canadian pension fund PSP. If the license is obtained by A&B/EMI, it will require an immediate \$2.7 million payment by Mahi Pono, and then all of EMI's interests (lands, licenses, and assets) will be transferred to Mahi Pono/PSP.
2. Traditionally, the HC&S sugar plantation did not have to pay any additional fee for the water above the very low cost that the State charged EMI for a license or permit. All of that water went to grow sugarcane, a product that did not compete with any other Maui farm operation or product. At the same time EMI charged Maui County DWS six cents per thousand and the County in turn charged farmers \$1.05/1,000 gallons for the water, and considerably more (\$3.00+) to families and businesses in the upcountry area.
Now since sugar is no longer being grown those same HC&S lands are being utilized for diversified agriculture by a foreign entity which will be competing directly against the existing local farmers both in central and upcountry Maui.
3. A very real concern regards the financial viability of Mahi Pono's farming plan. The final A&B EIS states that they are operating on agricultural land that is rated IAL, and therefore even if Mahi Pono is not farming the land someone else will. This is hardly reassuring since we know of the high cost of conducting farming operations in Hawai'i in comparison to agricultural crops grown elsewhere. There may be no long-term, viable farm plan and there is a concern as to what will happen or be required if, perhaps after 10 years, Mahi Pono decides not to farm.

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QUESTIONS

AUCTION

4. Who will be allowed to bid at the auction? What requirements must any bidder have to be able to bid and to win the auction?
5. In the event that Maui County wishes to bid at the auction, or exercise a right of *eminent domain* over the East Maui Aqueduct System, what provision can be made to facilitate its assumption of the lease(s)?

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LICENSE(S)

6. Will there be one auctioned master license, or four licenses?
7. How often will there be reviews of the lease, its operations and its conditions during the long lease period? Every 5 years? 10 years? Is the DLNR considering to recommend modifying the term of the lease(s) to less than 30 years to allow for a periodic “check-in”?
8. Who will have responsibility and are they staffed adequately to enforce lease conditions? DLNR? Someone on Maui? Maui Department of Water Supply? CWRM?
9. In the license what are the penalties for non-compliance with the conditions? For example: If too much water is taken from a stream? Or if some of the water is sold for non-agricultural uses? Or the watershed is not being properly maintained?
10. What will be the relationship between the auction winner and the Maui County Department of Water Supply?
11. Will the auction winner be required to supply adequate water to UpCountry residents and farmers, even in times of drought? Especially in times of draught?
12. Will the water that is sold be allowed to be used for any other uses besides:
a) agriculture; b) Hawaiian Homelands; c) the Maui County Department of Water Supply for UpCountry residents and farmers, as well as the Kula Agriculture Park?
13. Will the lessee be required to receive approval of a plan for restoration of each watershed, before the full lease is in effect?
14. Will the lessee be required to install gages in the streams above and below all diversions, and in the aqueducts at the boundaries of each watershed?
15. Will the lessee be required to modernize the diversion works so that they do not impede the IIFS flows, and take only water in excess of that amount?

16. Will the lessee be required to replace the open ditches and tunnels in the aqueduct system with pipes, to prevent transfer of plant and animal species from one watershed to another, and to minimize leakage and seepage?
17. Will the winner of the auction be required to improve and line the many reservoirs on the Mahi Pono owned land? Bring the water wastage rate down from 22% to some predetermined reduced amount?
18. Will the lessee be required to justify annually or periodically how much water it will need for the next year(s)?
19. Is DLNR considering recommending that the area to be leased be reduced, as has been suggested by DOFAW and other State agencies?

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WATER PRICES

20. When some entity gains the licenses, what will be the limitations and latitude on the price that they will be able to sell the water that the license will allow them to accumulate from the State watershed? For example, at present there are different rates being assessed to different consumers?
21. What rates will be charged Mahi Pono's large plantation-scale operation and to the many small farmers who are competing against it? The same or a different rate?
22. What rates will the County need to pay to get the water for the upcountry families and businesses and the Kula Agricultural Park? And who will set those rates? Will it be a neutral party such as the PUC, or will the County need to enter into tough negotiations with the license owner? How much will HHL need to pay the license holder for its present and future water needs?
23. What prices will the licensee be allowed to charge for the water? Who will regulate the rates over the lease's long-term period? PUC? DLNR? BLNR? Perhaps, a lease condition needs to require the PUC to monitor and regulate water rates, as they already do for many existing private water purveyors. Will the license establish this requirement?

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MAHI PONO

- 24. Will the license agreement allow for its transfer to an entity that did not win the bid?
 - a) Will the license agreement allow for a transfer to an entity that did not win the bid?
 - b) Since A&B may prevail at the auction, will PSP/Mahi Pono be required to be certified as a legitimate holder of a license?
 - c) Will PSP/Mahi Pono be able to further transfer the license(s), and with what conditions and obligations?
 - d) If PSP “flips” *Mahi Pono Holdings LLC* by selling its majority interest in Mahi Pono to another party, will the license transfer to this new licensee without any further action needed from BLNR?

- 25. What conditions, restrictions and limits are in place regarding a sub-lease of part of East Maui leased area to a third party?

TIMELINE

- 27. Please clarify as to when the next steps will be taken. **What is the timeline?**
 - Certifying those who can bid.
 - Setting the auction date.
 - Announcing exactly what will be auctioned.
 - Listing the license conditions.
 - At what stages will the general public be able participate/testify?

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CC: Maui Mayor Michael Victorino
 Mr. Jeffery Pearson, Director, Maui Dept. of Water Supply
 Ms. Alice Lee, Chair, Maui County Council
 Ms. Keani Rawlings-Fernandez, Vice-Chair, Maui County Council
 Mr. Shane Sinenci, Maui Councilmember
 Mr. Michael Molina, Councilmember
 Ms. Kelly King, Maui Councilmember
 Ms. Tamara Paltin, Maui Councilmember
 Ms. Yuki Lei Sugimura, Maui Councilmember
 Mr. Gabe Johnson, Maui Councilmember
 Ms. Tasha Kama, Maui Councilmember
 Senator Lynn DeCoite
 Representative Kyle Yamashita
 Representative Linda Clark
 Director Suzanne Case, Department of Land and Natural Resources