

## Notes/Questions on Draft Environmental Impact Statement

### EMI Water System EACP-22 Meeting Monday, October 7, 2019

#### Testimony:

- Please provide a clear chain of land title under Hawaiian Kingdom law from the enactment of the Kuleana Act of 1850 to the present 'ownership' of the Crown Lands claimed by the applicant.
- Under who's authority was the land contained within the DEIS purchased, sold, or leased?

#### Simon Russel:

- Please provide verification that the current IIFS are being met by providing monthly records of stream flow for the streams contained in the IIFS requirements.
- Please provide a detailed description of the governance structure, decision making ability, and ownership with regard to EMI, Mahi Pono, and A&B.
- The landowner is the one who is supposed to do the EIS. In this case, the landowner is the State of Hawaii, therefore the State DLNR should be submitting the EIS.
- Provided that a for profit, foreign owned entity will own the EMI system, what assurance is there that the water will be adequately managed as a public trust?
- What is the dollar value of 65.86 million gallons per day if sold at the County of Maui rates for:
  - o Agriculture
  - o Drinking water

#### Tom Bacon

- Please provide a phased plan and year by year timeline detailing each proposed activity by Mahi Pono and each activities' water use needs
- Provide 'performance indicators' and associated benchmarks within the plan.
- Pg 62 states: The amount of water awarded by the Water Lease is subject to all applicable requirements under HRS § 171-58. HRS § 171-58(c), (d), and (e) articulate terms for the disposition of the Water Lease. HRS § 171-58(e) requires that any new lease of water rights "shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan." The EMI system traverses approximately 38 individual watershed, and under this provision will require a watershed management plan be conducted for each one.
- The proposed "The parameters of a watershed management plan are not known at this point",

#### Chris Gardner

- The farm plan does not adequately justify the water needs put forth in the DEIS, and the farm plan does not provide sufficient detail to adequately assess its merits
- 10-12 years required to 'remediate' the land. What water is needed for this to occur?

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From Committee Chair

- The DEIS does not adequately integrate climate change scenarios
- What percentage of the total amount of water being asked for does each of the following represent?
  - o Kula agriculture park
  - o Nahiku residents
  - o Upcountry Maui domestic
  - o DHHL projects

**Panelists:**

**Luceanne De Nae:**

- EMI has limited Domestic needs, agriculture needs, and traditional and cultural practices were not addressed for each of the ahupua`as impacted by the lease.
- Representatives from Huelo shared their mana`o with the social impact assessment.
- Can the document only be utilized by A&B, or could this EIS be utilized by the Maui County Water Department, an independent water utility, or other entity that would like to put forth a bid for the water lease at public auction?
- Is this EIS only for 1 bidder? It isn't an open bidding process if there is only one bidder.

**Missing information:**

- The EIS assumes that the "natural stream conditions" are those that have been in existence following the diversion of 40-50 streams over a 100 year period. There is no data represented on pre diversion conditions. Impacts cannot be adequately assessed without this data. There is a shifting baseline where conditions are assumed as normal when in fact they represent degradation of the natural ecosystems over time. Streams are deemed biologically unimportant based on their current post diversion conditions, not on what their conditions should be assuming a more connected and functional pre diversion ecosystem. (prior to the 1870s)
- The DEIS assumes that the 22 streams with IIFS addresses all cultural and environmental concerns
- 13 Streams were left out of the IIFS process, and the impacts of these areas and the communities who live along them is completely unknown.
- The impacts of dams and diversion structures have not been assessed for fish passage.
- DHHL's allocation will belong to EMI until DHHL needs it. DHHL lands are legally entitled to this, and this water needs to be set aside.
- The DEIS states that a management plan will come at a later date. EMI is waiting for the state to conduct this watershed management plan. There is no assurance that this will happen within a reasonable time frame. This plan is an essential component of mitigating potential impacts associated with the spread of invasive species, and loss of sensitive native habitat.
- Old agreements (1940s and 50s) included management plans
- The East Maui Watershed partnership has left out the local community
- Repurposing of reservoirs and water storage infrastructure is touted in the DEIS as being impossible due to cost constraints. This option needs to be explored and outlined in the DEIS.

- There are massive high flow storm events due to climate change, and these events need to utilize the existing infrastructure effectively.
  - The “ownership change” alternative was dismissed because it is speculative, and the change in ownership will “not enhance environmental quality”. This is not true.
  - There needs to be a truthful analysis of ownership options.
  - There is no assessment of the current conditions of the 100 year old system and how it could be redesigned for the current century, or if aspects of it are even necessary.
  - The future wastewater plant planned for Central Maui was not included in the DEIS as a potential water source to the central valley
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- Please provide a detailed inventory of all available water sources to the Central Valley
  - Provide detailed EMI infrastructure water loss/leakage statistics.

**Albert Perez:**

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

**Other:**

- Please provide stream gauge measurements of stream flows upstream and downstream of each diversion for each stream contained within the area of the draft EIS.
- The EIS refers to “Base Conditions” as those that occurred during full diversion during sugar cane cultivation.
- Annually ~26% of the upcountry water supply is being provided by the water contained in this diversion (Kamole and the East Maui Lease areas)
- There are Development tunnels that are counted as groundwater not surface water.
- Climate appropriate crops are not put forth as an alternative.
- What is the exact area that is going to be served by the water in this diversion (including parcels, CPRs,)
- Is the diverted water going to be supplied to A&B owned properties and CPRs in the Central Valley?

**Shay Chan Hodges: (See her testimony) Board of Water Supply TIG (see: Freshwater Blueprint for action document):**

- They got no response from Mahi Pono.
- Will Mahi Pono commit to ensuring that the County water needs are met?
  - o 1.5 mgd – 8 mgd are needed upcountry

**Missing from the DEIS:**

- Conservation, recharge, stream restoration, and water production has not been taken into consideration.
- There are no reference to contracts between the Hawaiian Kingdome and HC&S
- 5.4 million dollars is the price paid for the EMI system by Mahi Pono. (only paid half)
- The DEIS says says it costs 2.5 million/year to run the system
  - o Does this include restoration, conservation, watershed protection?
  - o Personnel?
- This seems like a very small estimate.
- 65 million gpd if the county owned it, and sold it at agriculture rates = 26.5 million/year
- If a public entity owned the system, grants would be available.
- The water that goes to MDWS is charged at 6 cents per gallon. This will go up to 10 cents per gallon.
  
- Please include different ownership options in the DEIS (public, private, partnerships, etc.)

**Norman Franko (Water Board):**

- Looked at comprehensive alternatives to what is the present system:
- Once example is from Arizona where a farmer makes a request for a certain number of gallons, and the system releases that exact amount to the farmer.
- There is a huge amount of waste and not good management of the resource that we have. The DEIS does not make note of any of this wastage, or provide options for better management of the EMI system to increase conservation and better optimize the valuable water resource.
- It's important to note that the ditch is an "easement". You're buying the easement, not the land that A&B owns. The cost should be understood by an appraisal when considering purchasing the system.

**Eva Blumenstein:**

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

**Caleb Row (current and past litigations):**

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

**Per corp council:**

- Attach the transcript to the comments

**Additional questions:**

- The DEIS states: “The Water Lease does not involve new construction within the License Area.” (pg xii) Yet the EMI system is over 100 years old, and ostensibly requires maintenance. Please provide a detailed yearly maintenance schedule for the EMI system, noting long term capital improvements, and general operation and maintenance requirements.
- The DEIS states: “In some cases, the diversions may be on smaller tributaries that do not appear in the DAR GIS data.” (pg 41) If there are unaccounted for tributaries and content of the DEIS is based on incomplete or inaccurate GIS data, how can an adequate assessment of environmental impact be assessed?
- The DEIS states: “Mahi Pono’s farm plan is based on the amount of water that will be available through the Water Lease. However, if more water were available, more crop options would also be available.” (pg xii) Please include High, medium, and low water use Farm Plan Alternatives in the alternatives section.
- Rain fall and land use models used to calculate stream flow volumes are not as accurate as in stream measurement. Please provide the following:
  1. A list of every stream contained within the EIS area of impact
  2. A list of pre diversion flow volumes
  3. Current amount of water being diverted from each stream
  4. Stream flows above and below the diversions.