

§13-169-44 Interim instream flow standard for East Maui.
The Interim Instream Flow Standard for all streams on East Maui, as adopted by the commission on water resource management on June 15, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

(1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.

(2) The commission reserves its authority to modify the standard or establish new standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.

(3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:

(A) Create a substantial hardship on a use existing on the effective date of this standard; or

(B) Impermissibly burden a right, title, or interest arising under law.

(4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard.

[Eff. OCT 8 1988] (Auth: HRS Sec. 174C- 8) (Imp: HRS Sec. 174C-2, 174C-3, 174C- 5, 174C-71)