

In 2001 the Native Hawaiian Legal Corporation (NHLC), on behalf of Na Moku ‘Aupuni o Ko’olau Hui (Na Moku), petitioned CWRM to amend the Interim IFS for 27 East Maui streams. In 2008 and 2010, CWRM approved amendments to the Interim IFS for about half the streams and established measurable IIFS of status quo conditions for the remaining streams; only 6 of the 27 streams had flow restored. The County DWS and the NHLC, on behalf of Na Moku, filed petitions for a contested case hearing before the CWRM. Na Moku appealed the CWRM’s decision contending that the CWRM erred in concluding that Na Moku had no right to contest the case hearing and in reaching its underlying decision regarding IIFS amendment for the nineteen streams. The Intermediate Court of Appeals remanded to the CWRM and the contested case hearing began on March 3, 2015. Na Moku asserted the right to sufficient stream flow to support the exercise of their traditional and customary native Hawaiian rights to grow kalo, gather, and exercise other rights for religious, cultural, and subsistence purposes. The petition also alleges that the Commission had not carried out its obligations under public trust by failing to require HC&S and EMI to prove: 1. Their actual need; 2. That there are no feasible alternative sources of water to accommodate that need; and 3. The amount of water diverted does not harm a public trust purpose or any potential harm does not rise to a level that would preclude a finding that the requested use is nevertheless reasonably-beneficial.

The Hearing Officer’s proposed Decision and Order of January 2016 in the East Maui Contested Case was not adopted by CWRM and subsequent to HC&S announcing cessation of sugar cane cultivation by the end of the year, CWRM ordered re-opened hearings to address HC&S current and future use of surface water and the impact on the groundwater; the impact on DWS’s use of surface water due to cessation of sugar operations; the County’s position on future use of sugarcane fields; and issues concerning management of the EMI ditch system. In a September 2016 Minute Order, the CWRM Hearings Officer reiterated the requirement that CWRM weigh competing instream and offstream uses, including economic impact on offstream uses, in amending the IIFS. The contested case hearing is currently scheduled for January 2017. Should the contested case decision be unfavorable to certain parties, appeals may prolong the case for months or even years.

The table below shows registered or permitted diversions, whether the IIFS for the stream is subject to the East Maui Contested Case, whether A&B stated in April 2016 that it will restore 100% of streamflow as stated in the “Status” column, and whether the County DWS has a diversion or service located within the hydrologic unit.

Surface Water Hydrologic Units, Diversions, Interim Instream Flow Standard, and MDWS Diversion or Service

Hydrologic Unit Code	Hydrologic Unit Name	Aquifer System	No. of Diversions	Interim Instream Flow Standard (IIFS)	Status of IIFS	Co DWS Diversion	Co DWS Service
6027	Maliko	Haiku	10	HAR §13-169-44			
6028	Kuiaha	Haiku	30	HAR §13-169-44			
6029	Kaupakulua	Haiku	15	HAR §13-169-44			
6030	Manawaiiao	Haiku	3	HAR §13-169-44			
6031	Uaoa	Haiku	6	HAR §13-169-44			
6032	Kealii	Haiku	4	HAR §13-169-44			
6033	Kakipi	Haiku	21	HAR §13-169-44			
6034	Honopou	Honopou	23	9-25-2008 - 2.31mgd below Haiku Ditch and 1.49 below taro diversions	Contested Case CCH-MA13-01, A&B to restore 100% streamflow*		Kamole WTF, Kula Ag Park
6035	Hoolawa	Honopou	37	HAR §13-169-44			
6036	Waipio	Honopou	15	HAR §13-169-44			
6037	Hanehoi	Honopou	12	9-25-2008 - 0.09 below Haiku Ditch on Huelo trib, 0.69 below Haiku Ditch, 0.74mgd above community pipe, 2.21mgd at terminal waterfall	Contested Case CCH-MA13-01, A&B to restore 100% streamflow to Hanehoi (Puolua)*		Kamole WTF, Kula Ag Park
6038	Hoalua	Honopou	4	HAR §13-169-44			
6039	Hanawana	Honopou	5	HAR §13-169-44			
6040	Kailua	Honopou	6	HAR §13-169-44			

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6041	Nailiilihaele	Waikamoi	12	HAR §13-169-44			
6042	Puehu	Waikamoi	1	HAR §13-169-44			
6043	Oopuola	Waikamoi	15	HAR §13-169-44			
6044	Kaaiea	Waikamoi	3	HAR §13-169-44			
6045	Punaluu	Waikamoi	1	HAR §13-169-44			
6046	Kolea	Waikamoi	8	0.13mgd at Hana Hwy	Contested Case CCH-MA13-01		
6047	Waikamoi	Waikamoi	11	5-25-2010 -1.81mgd at Hana Hwy	Contested Case CCH-MA13-01, A&B to restore 100% streamflow*	Olinda and Piiholo WTFs	Kamole WTF, Kula Ag Park
6048	Puohokamoa	Waikamoi	8	5-25-2010 -0.26mgd at Hana Hwy	Contested Case CCH-MA13-01	Olinda and Piiholo WTFs	Kamole WTF, Kula Ag Park
6049	Haipuaena	Waikamoi	5	5-25-2010 -0.06mgd at Hana Hwy	Contested Case CCH-MA13-01	Olinda and Piiholo WTFs	Kamole WTF, Kula Ag Park
6050	Punalau	Waikamoi	3	5-25-2010 -HAR §13-169-44	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6051	Honomanu	Waikamoi	8	5-25-2010 -0.00mgd at Hana Hwy	Contested Case CCH-MA13-01	Piiholo WTF	Kamole WTF, Kula Ag Park
6052	Nuaailua	Waikamoi	2	5-25-2010 -2.00mgd below Kookau Ditch	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6053	Piinaau	Keanae	14	HAR §13-169-44	Contested Case CCH-MA13-01, A&B to restore 100% streamflow to Piiinaau & Palahulu*		Kamole WTF, Kula Ag Park
6054	Ohia	Keanae	1	2.97mgd at Hana Hwy	Contested Case CCH-MA13-01		
6055	Waiokamilo	Keanae	18	3.17mgd below Koolau Ditch	A&B to restore 100% streamflow (has not been diverted since 2007 (CCHMA1301-20141230-HC&S-WL)*)		
6056	Wailuanui	Keanae	8	4.03mgd at Hana Hwy	Contested Case CCH-MA13-01, Streamflow restored by A&B		Kamole WTF, Kula Ag Park
6057	W. Wailuaiki	Keanae	1	2.46mgd (wet) and 0.40mgd (dry) seasonal at Hana Hwy	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6058	E. Wailuaiki	Keanae	1	2.39mgd (wet) and 0.13mgd (dry)	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6059	Kopiliula	Keanae	2	HAR §13-169-44. Temporarily amended to include SCAP MA-352 on Kopiliula Stream for the implementation of a Land Restoration Plan (11/20/2002).	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6060	Waiohue	Keanae	3	2.07mgd at Hana Hwy	Contested Case CCH-MA13-01		
6061	Paakea	Keanae	2	0.97mgd at Hana Hwy	Contested Case CCH-MA13-01		

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6062	Waiaaka	Keanae	1	0.00mgd at Hana Hwy	Contested Case CCH-MA13-01		
6063	Kapaula	Keanae	2	0.13mgd at Hana Hwy	Contested Case CCH-MA13-01		
6064	Hanawi	Keanae	6	0.06mgd at Hana Hwy	Contested Case CCH-MA13-01		Kamole WTF, Kula Ag Park
6065	Makapipi	Keanae	3	0.60mgd at Hana Hwy	Contested Case CCH-MA13-01		
6066	Kuhiwa	Kuhiwa	0	HAR §13-169-44			
6093	Kukuiula	Kipahulu	1	HAR §13-169-44			
6094	Kaapahu	Kipahulu	0	HAR §13-169-44			
6095	Lelekea	Kipahulu	0	HAR §13-169-44			
6096	Alelele	Kipahulu	0	HAR §13-169-44			
6097	Kalepa	Kipahulu	2	HAR §13-169-44			
6098	Nuanuaaloa	Kipahulu	3	HAR §13-169-44			
6099	Manawainui	Kipahulu	3	HAR §13-169-44			
6100	Kaupo	Kaupo	1	HAR §13-169-44			
6101	Nuu	Nakula	0	HAR §13-169-44			
6102	Pahihi	Nakula	0	HAR §13-169-44			
6103	Waiopai	Nakula	0	HAR §13-169-44			
6104	Poopoo	Nakula	0	HAR §13-169-44			
6105	Manawainui Gulch	Nakula	0	HAR §13-169-44			
6106	Kipapa	Lualailua	0	HAR §13-169-44			
6107	Kanaio	Lualailua	0	HAR §13-169-44			

Interim Instream Flow Standard for East Maui, HAR §13-169-44 (HAR- Hawai'i Revised Statutes). Registered and/or permitted stream diversions.

*A&B announced April 20, 2016 it will permanently restore 100% of streamflow.