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East Maui Water Diversion Permits Ruled Illegal Environmental Court imposes strict conditions on continued water diversions until due process, public trust issues resolved

HONOLULU, HAWAI'I – The Environmental Court today invalidated the Board of Land and Natural Resources' decision authorizing PSP Investments (dba Mahi Pono) to take 41.72 million gallons of water per day from East Maui streams in 2026.

In its ruling, the court found that the Board breached its public trust duties, by failing to independently assess impacts to constitutionally protected Native Hawaiian traditional and customary practices. The Board had also improperly disregarded evidence that weighed against the stream diversions it had authorized, and failed to apply a presumption in favor of public use when rendering its decision.

The court also found that the Sierra Club of Hawai'i's due process rights were violated, when it was denied an opportunity to present and cross examine evidence regarding these and other issues in an administrative hearing, called a "contested case."

"This decision is a vindication not just of the people's water rights, but of how the law is supposed to work," said Wayne Chung Tanaka, Sierra Club of Hawai'i executive director. "The Land Board ignored clear case law and direct orders by the Environmental Court when it rendered its decision last December, and its attorneys once again decided to waste everybody's time and our taxpayer dollars defending a patently defective decision."

"I hope that the court's ruling can finally break the Board's decades-long habit of ignoring water waste and corporate water hoarding, at the expense of East Maui's watersheds, estuaries, farmers, cultural practitioners – and our very constitution."

The Environmental Court's decision follows a series of judicial rulings chastising the Board for its actions impacting East Maui streams. These include the [court's preliminary decision](#) on this case in March, noting a high likelihood that the Board had violated Sierra Club's due process rights; an [Environmental Court decision](#) in January, finding that a contested case hearing should have been held for the 2025 East Maui stream diversion permit; a [Hawai'i Supreme Court ruling](#) last fall, finding the same for a permit issued in 2020; another [Environmental Court ruling](#) finding a breach of the Board's public trust duties for the 2022 permit, and imposing conditions on future permits; and the Hawai'i Supreme Court's "[stinging rebuke](#)" of the Board's attempt to allow more water to be diverted from East Maui through the submission of false claims regarding the 2023 Maui wildfires, among others.



As part of its decision today, the court ordered the Board to hold a contested case hearing over the East Maui stream diversion permit for 2026, which must also incorporate the issuance of the anticipated 2027 permit.

Citing “the repeated violations of due process and/or the public trust with respect to prior renewals of [the stream diversion permit],” as well as the “history of delays” in resolving these past issues, the court also imposed a number of conditions on the Board’s actions, including by:

- Establishing concrete milestones and deadlines for the contested case hearing process;
- Limiting the amount of water that can be diverted from East Maui to 31.5 million gallons of water per day, a roughly 25% reduction from what the board had authorized, to also include the provision of 6.5 million gallons of water per day to Maui County for Upcountry domestic water needs and the Kula Agricultural Park; and
- Ensuring that no more water than what was actually diverted in 2025 be allowed to be diverted going forward under any future permit, until the Water Commission’s 2022 stream restoration order is fulfilled.

The court’s order is attached.

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