

TIMELINE: East Maui Streams

1878: Maui's first diversion ditches are completed. They have the capacity to divert about 80 million gallons of water per day from East Maui streams for sugar production in central Maui.

1893: American businessmen orchestrate the overthrow of the Hawaiian Kingdom to protect investments in sugar plantations throughout Hawai'i.

1900-30's: 6 new ditches along the mountains of East Maui are completed, with the combined capacity to divert 450 million gallons of water everyday.

1880's to 1980's: A&B diverts billions of gallons of water from public and private land in East Maui for commercial sugar production in central Maui. Taro production in East Maui declines from several hundred acre to just 20 acres.

1980's: Commercial sugar production in Hawai'i begins to decline.

1986: A&B's last 25-year license to divert public water from state lands in East Maui expires.

1987: State of Hawai'i adopts the Water Code (Hawai'i Revised Statute 174C), which says "the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use."

1993: U.S. officially apologizes for its role in the overthrow of the Hawaiian Kingdom.

May 2000: The Board (BLNR) of the Department of Land and Natural Resources (DLNR), the state agency responsible for managing Hawai'i's public lands, issues 4 revocable permits to A&B to use approximately 33,000 acres of public land and to divert hundreds of millions of gallons of public water daily from dozens of streams flowing through East Maui for its commercial sugar operations in Central Maui. The BLNR adds a condition that the Department of the Attorney General issues an opinion regarding compliance with Chapter 343, Hawaii Revised Statutes (Hawaii's Environmental Protection Act).

May 2001: A&B requests that the BLNR issue a 30-year lease of the same public lands and stream flows covered by its 4 revocable permits and temporarily continue the year-to-year revocable permits pending issuance of the lease. East Maui taro farmers request a contested case hearing on both matters. Given extensive public opposition, the BLNR defers action on A&B's request but nevertheless gives the company what it asks for - use of 33,000 acres and the diversion of millions of gallons of East Maui stream flows - by granting an unprecedented "holdover permit" on a month-to-month basis pending the results of the contested case hearing.

May 2001: East Maui taro farmers simultaneously request a contested case hearing before the Water Commission to establish minimum stream flow standards for 27 of the dozens of East

Maui streams diverted by A&B and located in the license areas covered by the company's 4 revocable permits and long-term lease application.

2002: Before A&B's 4 holdover permits expire, BLNR once again grants a "holdover of the existing revocable permits."

2003: BLNR approves A&B's 30-year lease application. East Maui taro farmers appeal the decision to the Circuit Court arguing that BLNR must complete an environmental assessment of the impacts of A&B's stream diversions, including impacts on traditional and customary native Hawaiian rights.

October 2003: Judge Hifo rules in favor of the taro farmers and prohibits the BLNR from issuing the 30-year lease to A&B without first conducting an environmental assessment of the impacts of the company's proposed use of public lands and water. Taro farmers demand BLNR immediately restore some water to give them temporary relief from depleted streams.

2004-2005: The U.S Geological Survey conducts stream studies to establish the minimum amount of water that should be in each of the 27 petitioned streams.

2005-2013: BLNR annually renews revocable permits for A&B to continue the historic diversion of hundreds of millions of gallons of water from public land in East Maui for less than a penny per gallon and without conducting any environmental impact analysis. On average, A&B diverts more water from East Maui streams than is consumed by the entire island of O'ahu (160 million gallons of water daily)

2007: BLNR grants interim relief to taro farmers by ordering A&B to restore just 6 million gallons of water to only one of the 27 streams. BLNR also directs DLNR "to take all administrative steps necessary to . . . prepare an EA in accordance with HRS Chapter 343" concluding that "[a]ll parties now concede that an EA (and potentially an environmental impact statement ('EIS') must be prepared".

2008: Water Commission rules that an additional 4.5 million gallons of water per day (MGD) should be restored among 8 streams in East Maui.

2009: Taro farmers file legal action to enforce BLNR's 2007 order to restore water.

May 2010: Water Commission sets minimum flow standards for some streams thereby restoring some seasonal stream flows. Taro farmers challenge the minimum stream flow standards for 12 of the 27 streams as insufficient by requesting a contested case.

October 2010: Water Commission denies the taro farmers' request for a contested case hearing.

2012: Taro farmers petition BLNR to restart the contested case hearing process on A&B's 2001 long-term lease application. BLNR does not act on the taro farmers' request.

November 2012: The Intermediate Court of Appeals rules the taro farmers have a right to a contested case before the Water Commission on the stream flow standards established in 2010.

2014: Taro farmers appeal to the Circuit Court to compel the BLNR to act on their 2012 request to restart the contested case process on A&B's 2001 long-term lease application.

December 2014: BLNR again approves 4 revocable permits for A&B to access 33,000 acres of public land and divert hundreds of millions of gallons of water daily, as they had been doing for years. A&B confirms 30,000 acres of agricultural land are cultivated in sugar and irrigated with public water diverted from East Maui, of which 17,000 acres can be irrigated with A&B's private wells. The taro farmers appealed the BLNR's approval of A&B's revocable permits to the Circuit Court.

2015: Water Commission finally convenes the contested case hearing on minimum flow standards for the 27 East Maui streams petitioned for in 2001.

December 2015: BLNR approves A&B's 4 revocable permits for access to public lands and water on a "hold over basis."

January 6, 2016: A&B announces they will close their last sugar plantation (30,000 acres in central Maui operated by HC&S) by the end of 2016.

January 8, 2016: Judge Nishimura ruled that state law does not authorize BLNR to "hold over" A&B's revocable permits for more than a dozen-plus years because that does not meet the common sense definition of "temporary."

January 15, 2016: Dr. Lawrence Miike, hearing officer in the contested case, recommends restoring a total of 18 MGD among the 27 petitioned East Maui streams, and finds that A&B can irrigate 17,000 acres of its Central Maui fields with 83 MGD pumped from its own private wells.

January 2016: A&B helps legislators draft HB2501, authorizing BLNR to issue revocable permits on a "hold over basis" for long-term lease applicants. As initially drafted, the hold over status would last until the "process is completed" - a clear attempt to continue this authority indefinitely without undertaking or completing an environmental analysis of the impact of diverting most of the water from East Maui streams.

January - May 2016: Over 2,500 people submit testimony and sign petitions urging legislators to vote down HB2501. After 5 hearings, the bill is amended to mitigate some of the risks to natural resources and cultural practices.

May 3, 2016: Despite broad public opposition, Hawai'i's Legislature passes HB 2501. It authorizes BLNR to issue annual revocable permits on a "hold over basis" for up to 3 years while a long-term lease applicant awaits a decision.

June 27, 2016: HB2501 is signed into law as Act 126 by Governor Ige.

July 2016: Water Commission issues an interim order in the contested case hearing on minimum flow standards for the 27 East Maui streams petitioned for in 2001, directing that "the streams that are no longer being diverted shall remain undiverted unless and until further ordered." As a result, BLNR orders that 10 streams remain undiverted and that A&B "permanently abandon or remove" all diversion structures on 5 additional streams.

August 18, 2016: As a result of A&B's closing of its commercial sugar plantation (Hawaiian Commercial & Sugar Company), the Water Commission re-opens the contested case hearing on minimum flow standards for the 27 East Maui streams for the limited purpose of determining how much water is needed for diversified agriculture and to rebalance instream and offstream uses.

December 9, 2016: A&B requests from BLNR a one-year extension on its 4 revocable permits to continue diverting East Maui stream water. The BLNR receives hours of testimony in opposition because A&B has no clear plan for using the diverted stream flows. Hawai'i law requires that diverted state water resources serve a specific use and purpose to protect against waste and water-banking.

BLNR approved the request imposing certain important conditions, including capping extraction from East Maui streams at 80 MGD (HC&S wanted 116 MGD!). In addition, the BLNR adopted the Water Commission's July interim order, and further ordered A&B to cease diverting Honomanu Stream and to remove diversion structures impeding the health and migration of native stream species.

February 6-9, 2017: Water Commission held re-opened contested case hearing on the limited issues ordered in August 2016.

February 2017: A&B publishes a Notice of Preparation for the long-awaited Environmental Impact Statement (EISPN) on its proposal to lease for 30-years the lands and streams covering 33,000 acres of public lands in East Maui. An EISPN defines the issues which will be covered in the EIS.

February 22 and 23, 2017: Public scoping meetings held to receive comments on the EISPN before work on the EIS begins. [MORE TO BE ADDED SOON]