

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 10, 2021

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Denial of Petitions for Contested Case Hearing filed by Kia`i Wai`o Wai`ale`ale and Friends of Maha`ulepu on December 19, 2020, Regarding December 11, 2020 Agenda Item D-5, Continuation of Revocable Permit S-7340 to Kauai Island Utility Cooperative for Water Use.

Pursuant to Section 92-5(a) (4), Hawaii Revised Statutes (HRS), the Board may go into Executive Session in order to consult with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

BACKGROUND

At its meeting on December 11, 2020 under agenda item D-5, the Board approved as amended the continuation of revocable permits for the use of water for the islands of Hawaii and Kauai. Included in the approval was a revocable permit, S-7340 to Kauai Island Utility Cooperative (KIUC) to divert water from the North Fork Wailua River and Waikoko Stream to operate two hydroelectric plants. An application for a long-term lease of water was previously filed by KIUC. A Draft Environmental Assessment (DEA) was published in the Office of Environmental Quality Control Environmental Notice on October 8, 2019.

The Board received extensive written testimony beforehand and heard oral testimony at the meeting. During the meeting, verbal requests for contested cases were made by Mr. Liko Martin, and Kia`i Wai`o Wai`ale`ale and Friends of Maha`ulepu collectively through Ms. Bridget Hammerquist. Mr. Martin also requested a contested case in testimony submitted prior to the meeting. Following an executive session, the Board voted to deny all requests for contested case and proceeded to approve as amended the continuation of the revocable permit to KIUC for one year. On December 19, 2020, the Department received two written petitions for contested case from Kia`i Wai`o Wai`ale`ale and Friends of Maha`ulepu (Petitioners) filed by Ms. Bridget Hammerquist. Copies of the contested case petition are attached as Exhibits A and B. No petition for contested case has been received from Mr. Martin.

DISCUSSION

An administrative agency must only hold a contested-case hearing when it is required by law, which means that the contested-case hearing is required by (1) statute, (2) administrative rule, or (3) constitutional due process. *Mauna Kea Anaina Hou v. BLNR*, 136 Hawai'i 376, 390, 363 P.3d 224, 238 (2015). When a contested-case hearing is required by statute or administrative rule, the analysis is simple. Whether a contested-case hearing is required by constitutional due process is a much more complicated analysis. The petitions identifies Article XI, Sections 1, 7 and 9 of the Hawaii State Constitution, Hawaii Revised Statutes (HRS) Section 171-58 and Chapters 183 and 343 and "any other relevant statutes that may apply to the waste of waters of Wai'ale'ale and Waikoko streams" as the basis for Petitioners being entitled to a contested case. HRS Section 171-58 does not have a contested case requirement, and the petition does not identify any specific provisions of Chapters 183 and 343, HRS that entitles Petitioner to a contested case. The Petitioner also relies on constitutional due process, specifically via Article XI, Sections 1, 7 and 9.

There is a two-step process in determining whether a person is entitled to a contested-case hearing under constitutional due process. First, a court must consider "whether the particular interest which claimant seeks to protect by a hearing is 'property' within the meaning of the due process clauses of the federal and state constitutions." *Flores v. BLNR*, No. SCAP-17-59, 2018 WL 3751294, at *11 (Haw. Aug. 8, 2018) (citation and internal brackets omitted). Second, if a court "concludes that the interest is 'property,' th[e] court analyzes what specific procedures are required to protect it." *Id.*

Step one merely requires the court to determine whether an appellant seeks to protect a constitutionally cognizable property interest. *Flores*, 2018 WL 3751294, at *12. To have such a property interest, a person "must clearly have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Sandy Beach Def. Fund v. City & Cnty. of Honolulu*, 70 Haw. 361, 377, 773 P.2d 250, 260 (1989). Legitimate claims of entitlement that constitute property interests "are not created by the due process clause itself. Instead, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law[.]" *Flores*, 2018 WL 3751294, at *11 (citation and internal brackets omitted).

If step one of the analysis is satisfied, then step two analyzes how the government action would affect that interest with and without procedural safeguards. With respect to the step two, the Hawai'i Supreme Court has been careful to emphasize that "[d]ue process is not a fixed concept requiring a specific procedural course in every situation." *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. Due process "is flexible and calls for such procedural protections as the particular situation demands." *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). The touchstone of due process is "notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." *Id.*

In determining what procedures are necessary to satisfy due process, the administrative agency must examine and balance three factors:

- (1) the private interest which will be affected;

- (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and
- (3) the governmental interest, including the burden that additional procedural safeguards would entail.

Flores, 2018 WL 3751294, at *12.

Step One: Petitioners Fail to Identify a Constitutionally Cognizable Property Interest

HAR § 13-1-29(b) provides that a formal petition for a contested-case hearing must include, among other things, a statement of “[t]he nature and extent of the requestor’s interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case[.]”

Both petitions state that their members “have been deprived of their rights to enjoy Wai’ale’ale Stream, its natural flow and beauty and are being deprived of their ability to enjoy traditional and cultural practices in the Blue hole area and Wailua-a-hoanu. All members have a right to a clean and safe environment on these State land streams in the Forest Conservation District.” Furthermore, the Petitioners assert that as KIUC ratepayers, they are paying the highest electric bills in the State, and that water diverted by KIUC then flows to Grove Farm who then sells the water to the County of Kauai which is ultimately paid for the ratepayers. Petitioners claim that such action is in direct violation of the revocable permit. Additionally, Petitioners provide declarations from members who claim to be Hawaiian Home Lands beneficiaries, and further state that the revocable permit may threaten “federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai”.

Recreational, aesthetic, and environmental interests, standing alone, are not constitutionally cognizable property interests. *Sandy Beach*, 70 Haw. at 377, 773 P.2d 250 (1989) (aesthetic and environmental interests do not rise to the level of ‘property’ within the meaning of the due process clause). This falls squarely into the *Sandy Beach* category of interests that merely express an abstract need or desire of the claimant.

An interest asserted by Petitioners that would require substantial analysis is the claim that its members have a property interest in a clean and healthful environment pursuant to Article XI, Section 9 of the Hawai’i Constitution. However, based upon the specific issues in this case, and the lack of specific claims of injury, Petitioners do not have a property interest in a clean and healthful environment in this instance and, indeed, does not even assert an actual claim seeking to vindicate that interest.

In the Hawai’i Supreme Court case of *In re Application of Maui Electric Company, Ltd.*, 141 Hawai’i 249, 408 P.3d 1 (2017), the Court determined that a substantive right to a clean and healthful environment existed because, in that particular instance, the right was defined by a law relating to environmental quality, specifically that pursuant to HRS § 269-6, the Public Utilities Commission was required to consider the impact of the State’s reliance on fossil fuels on the

level of greenhouse gas emissions and the need to reduce reliance on fossil fuels in its decision-making.

The present issue relates to a revocable permit for the use of water, which are granted pursuant to HRS § 171-58. Chapter 171, HRS, is entitled: "Public Lands, Management and Disposition of." Looking at the provisions of Chapter 171, it is clear that its provisions relate to the internal management of the Department of Land and Natural Resources, the technical methods of encumbering lands, and appraisal processes. Chapter 171 is not a chapter concerning the control of pollution or the conservation, protection, and enhancement of natural resources—a law relating to "environmental quality."

Looking closely at the actual statute at issue here, HRS § 171-58 provides the Board with the power to issue permits for the temporary use of state water on a month-to-month basis for no more than one year and the authority to continue permits for additional one-year periods. HRS § 171-1 defines "land" as including "all interests therein and natural resources including **water**, minerals, and all such things connected with land, unless otherwise expressly provided." Therefore, this is a statute relating to technical land management, not environmental quality.

While traditional and customary practices are recognized as a constitutionally cognizable property interest; the Petitioners do not identify any such practices as being affected nor present any specific claims of injury to traditional and cultural practices or the development of Hawaiian home lands on Kauai as a result of the Board's action. Additionally, Petitioners provide no information as to how the Board's continuation/holdover of the revocable permit results in higher electricity costs for ratepayers. Furthermore, in *Keahole Def. Coalition, Inc. v. BLNR*, 110 Hawai'i 419, 432, 124 P.3d 585, 598 (2006), the Hawaii Supreme Court ruled that economic interests are not a constitutionally protected property interest.

Step Two: Even if Petitioners Identified a Constitutionally Cognizable Property Interest, Petitioners Are Not Entitled to a Contested-Case Hearing Based Upon the Specific Factual Situation at Issue

For the sake of argument, even if Petitioners established that their members are seeking to vindicate a constitutionally cognizable property interest, Petitioners are not entitled to a contested-case hearing. Again, if a petitioner asserts a constitutionally cognizable property interest, that is not the end of the inquiry as to whether a contested-case hearing is required. The touchstone of due process is "notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." *Sandy Beach*, 70 Haw. at 378, 773 P.2d at 261. To determine what process is due, the administrative agency must examine and balance three factors:

- (1) the private interest which will be affected;
- (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and
- (3) the governmental interest, including the burden that additional procedural safeguards would entail.

Flores, 2018 WL 3751294, at *12.

Regarding the potential private interests that may be affected by the Board's action (a clean, healthful environment and deprivation of the ability to enjoy traditional and cultural practices in the Blue Hole area and Wailua-a-hoanu), the potential interest is either not substantial in character compared to more significant actions, or the specific injury to that interest is not clearly articulated in the petition. A revocable permit is a temporary month-to-month permit for the use of water. Furthermore, any long-term disposition of water is subject to the instream flow standards (IIFS) as established by the Commission on Water Resource Management (CWRM). CWRM staff brought a proposed IIFS to the Commission for review and approval on August 21, 2018. However, the IIFS itself is currently the subject of a contested case. The Board imposed a limit on the amount of water allowed to be diverted under the revocable permit, based on the proposed amended IIFS developed by CWRM staff, as a temporary measure to restore stream flows while the parties resolve the contested case petitions and an amended IIFS can be ultimately approved by CWRM. Additionally, Petitioners do not articulate how their members ability to engage in traditional and cultural practices are adversely affected by the continuation of the revocable permit.

Second, staff recommends that the Board find that the risk of an erroneous deprivation of such an interest through Sunshine Law procedures is minimal and that a contested-case hearing would not add significant value. The Petitioners were provided notice of the meeting, including the staff submittal, and submitted substantial testimony in opposition to the agenda item. Additionally, Petitioners' representatives testified in person at the meeting and was not prevented from making any point. The Petitioners' were afforded a substantial opportunity to be heard by providing written and oral testimony. It is unlikely that the Petitioners would gain significant value in being allowed to participate in a full contested-case hearing.

Third, staff recommends that the Board find that the governmental interest, including the burden that holding a contested-case hearing would entail, weighs very heavily in favor of rejecting the contested-case petition. Contested-case hearings are expensive and time-consuming endeavors for the staff of the Department of Land and Natural Resources and the Board. The Thirty Meter Telescope contested-case hearing obviously sets the standard for time and expense, as it took many weeks and cost over \$500,000 in direct costs, including fees, travel costs, transcripts, meals, venue, and lodging, not counting the time spent by staff of Land Division, OCCL, DOCARE, and the Department of the Attorney General. The cost for retaining hearing officers and court reporters can be thousands of dollars for even one-day contested-case hearings and may go into the many tens-of-thousands of dollars, once again not counting staff and attorney time. Even in this one instance, Petitioners have failed to justify why the Department of Land and Natural Resources should bear such costs and spend many hours of staff time on a contested-case hearing of relatively limited import.

Finally, staff notes that the revocable permit is a temporary interim measure while KIUC completes the water lease application requirements. The water leasing process is extensive, with multiple opportunities for public review and comment. The applicants have prepared a draft environmental assessment has been published and afforded the public the opportunity to

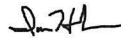
comment. The final EA is subject to acceptance by the Board in an open, sun-shined meeting allowing for further public input. Finally, approval of the water lease itself is determined by the Board in an open, sun-shined meeting, allowing for a further opportunity for public review and testimony.

Therefore, staff recommends the Board find that even if Petitioners asserted a constitutionally protected property interest, after examining and balancing the three Sandy Beach factors, Petitioners are not entitled to a contested-case hearing.

RECOMMENDATION:

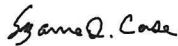
That the Board deny the Petitions for a Contested Case Hearing filed by Kia'i Wai'o Wai'ale'ale and Friends of Maha'ulepu on December 19, 2020.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT

EXHIBIT A



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390
2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Kia'i Wai 'o Wai'ale'ale	2. Contact Person Bridget Hammerquist	
3. Address [REDACTED]	4. City Koloa	5. State and ZIP HI 96756
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax [REDACTED]

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested BLNR renewal of RP7340	
18. Board Action Date 12/11/2020	19. Item No. Agenda Item D-5
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case Hawaii State Constitution Article XI Sections 1, 7, 9, HRS Sections 171-58, 183, 343 and other relevant statutes that may apply to the waste of the waters of Wai'ale'ale and Waikoko Streams.	
21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection Our members have been deprived of their rights to enjoy Wai'ale'ale Stream, its natural flow and beauty and are being further deprived of their ability to enjoy Traditional and Cultural practices in the Blue Hole area and Wailua-a-hoanu. All members have a right to a clean and safe environment on these State land streams in the Forest Conservation District. Further, Petitioners are ratepayers whose electric bills are the highest in the State, ratepayers are members of the Coop, Kauai Island Utility Company, and are also paying high water bills for water that KIUC passes through its tail raceways then delivers to Grove Farm where the ditch water is further treated and sold to the County for sale to ratepayers, a direct violation of the conditions of RP7340.	
22. Any Disagreement Petitioner May Have with an Application before the Board As stated on the record, Petitioner objected to the Board's renewal of KIUC's RP7340. In addition, Petitioner objects to the fact that the motion to renew was made by Board member Tommy Oi who previously recused himself from this matter once it was revealed that one of the principle clients of his survey business is Grove Farm, an entity that uses the water diverted by KIUC. As the record reflects and as others have also offered abundant evidence in support, the dam diversion permit 7340 is not needed, is not regulated, is in gross disrepair and KIUC has totally violated the conditions of the permit, one of the most egregious, transferring the water to others without permits, in violations of the BLNR requirement that the waters diverted under 7340 are limited to hydro power production.	
23. Any Relief Petitioner Seeks or Deems Itself Entitled to Revocation of KIUC's RP7340 with satisfaction of the terms and conditions of the RP, to include among others, removal of the dam diversions, cleaning and resotation of the area and the natural flow of the streams.	
24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest All people of Hawaii have a right to a clean safe environment under the Hawaii State Constitution. Their right to enjoy stream flow in its natural state and experience the aesthetic benefit streams offer is a protected right for all the people of the State. Many of the members of Kia'i Wai 'O Wai'ale'ale are cultural and traditional practioners, who have and can address and speak to the public trust protections intended for the waters of Wai'ale'ale and Waikoko which are being ignored. See testimony filed with BLNR on Agenda Item D-5 and the declarations filed herewith.	

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

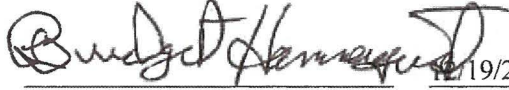
Please see attached declarations and testimonies already offered to the Board on this Agenda Item.

☒ Check this box if Petitioner is submitting supporting documents with this form.

☒ Check this box if Petitioner will submit additional supporting documents after filing this form.

Bridget Hammerquist

Petitioner or Representative (Print Name)



Signature

12/19/2020

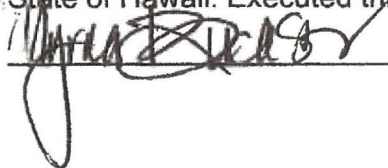
Date

DECLARATION OF MYRNA BUCASAS

I, Myrna Bucasas, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential and agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I am the President of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as the President of WKHHA, am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Myrna Bucasas, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 19th day of December 2020.



1 of 2

Myrna Bucasas

2 of 2

DECLARATION OF LIBERTA L. ALBAO

I, Liberta L. Albao, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Kapaa, HI 96746.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential homestead and agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the national board of directors of the Association of Hawaiians for Homestead Lands (AHHL), an advocacy organization representing the interests of more than 28,000 native Hawaiians on the State of Hawaii waitlist for Hawaiian Home Lands;
5. AHHL is governed by a 7-member board of directors, wherein I represent the interests of waitlist native Hawaiians on the island of Kauai;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the AHHL board of directors and am in full support of the effort to restore the natural stream flow of Wai`ale`ale and Waikoko streams and we strongly object to any disrepair, damage and reduction in flow at the following, TMK (4) 3-9-1, as actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai.
7. I have been a member of Kia`i Wai o Wai`ale`ale since 2017 and I am in strong support of our mission to restore and preserve natural stream flow. I offer this declaration as a member of Kia`i Wai o Wai`ale`ale and support our mission to preserve water, prevent waste and protect natural stream flow and aquafer recharge, without which there is a significant impact to myself as a Hawaiian beneficiary and presents a very real threat to my federally and constitutionally protected superior right to water. RP7340, TMK(4) 3-9-1, diverts water and reduces flow that could be directed to the parcel awaiting water for development of beneficiary homes via Stable Storm or its neighboring ditch. These designated homelands in Wailua have been sitting idle far too long.
8. Kia`i Wai o Wai`ale`ale seeks to protect Kaua`i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities

on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai'ale'ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a natural Heiau.

9. Caring for our 'āina is deeply ingrained in Hawaiian culture. One definition of "pono" is be to be in harmony with the ancestors, the 'āina and with each other as Kānaka. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports mandate that this water be restored to the streams and the dam diversions removed to stop the waste and destruction.

10. I learned from my kupuna to commune and appreciate the sounds and life in the forested lands where KIUC's hydropower plant and diversions exist, as well as on lands now dewatered as a result of the diversions. Communion and appreciation of these forested areas is a cultural and religious practice. The sounds, dam detritus, and removal of water from these areas harms my cultural and religious practice.

11. Family members taught me to revere and appreciate native birds, such as Koloa duck, Hawaiian petrel, Newell's shearwater, band rumped petrel, Hawaiian stilt, Hawaiian moorhen, Hawaiian coot, Hawaiian nene goose, including those found on and near the areas affected by KIUC's diversions as part of our cultural practices. Dewatering these birds' habitat harms my ability and the beneficiaries I speak for to gather their fallen feathers, observe their behaviors and thereby read weather and other patterns, and otherwise impacts my cultural practices.

I, Liberta L. Albao, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



Liberta L. Albao

DECLARATION OF ROBIN DANNER

I, Robin Puanani Danner, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Anahola 96703.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778.
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for an agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I am the elected Chairwoman of the national Sovereign Council of Hawaiian Homestead Associations (SCHHA), dedicated to protecting the interest of federally defined native Hawaiian beneficiaries and Hawaiian Homestead Associations eligible for lands and resources under the Hawaiian Homes Commission Act, 1920 (HHCA);
5. The SCHHA, founded in 1987, is governed by a SCHHA Governing Council, elected by Island Moku, of Kauai, Oahu, Maui/Lanai, Molokai and Hawaii Island, wherein I was elected from the SCHHA enrolled members from the island of Kauai in 2015;
6. The SCHHA is registered with the federal Department of Interior as a Hawaiian Homestead Association, as defined in the Code of Federal Regulations;
7. I am a resident of Kauai, born on Kauai, and acting in my personal capacity and in my capacity as a member of the SCHHA Governing Council, am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams and we strongly object to any disrepair, damage and reduction in flow at the following, TMK (4) 3-9-1, as actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai.
8. I am a member of Kia'i Wai o Wai'ale'ale and support its mission to preserve water, prevent waste and protect natural stream flow and aquafer recharge;
9. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in its mission is the preservation and

restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai`ale`ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical recognition of the Blue Hole as a natural Heiau.

I, Robin Puanani Danner, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



Robin Danner, as an individual and as,
Council Member and Chair of the Sovereign Council of Hawaiian Homestead Associations
[REDACTED] Anahola 96703

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DECLARATION OF ADAM ASQUITH, PhD

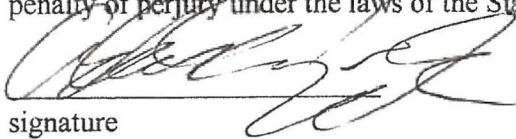
I, Adam Asquith, attest to the following facts of my own personal knowledge:

1. I live on, and am a longtime resident of, Kauai. My address is [REDACTED] Kapaa, HI 96746
2. I received a Master's degree in Biology and Doctorate degree in Entomology and worked for University of Hawaii in their research and extension programs for 10 years.
3. I also worked for the US Fish and Wildlife Services as a conservation biologist in Hawaii and on Kauai for over 5 years. Among the duties that I carried out, I was the author of the document that resulted in the protected species designation of the Newcomb's snail.
4. As another part of my work with US Fish and Wildlife, I did daily counts and monitored the Koloa duck, another endangered species on Kauai.
5. During my first 15 years on Kauai I hiked along Wai'ale'ale and Waikoko streams, hiking for miles mauka to makai, at least twice monthly. During those hikes I observed many animal and plant species and was saddened by their habitat disruption caused by the dam diversions on two State land streams, Wai'ale'ale and Waikoko. I still make those hikes several times each year.
6. In hiking Wai'ale'ale and Waikoko I have personally observed the dry streambeds that were created by the dam diversions operated under KIUC RP7340. Over the years, I have observed wear and tear that KIUC has not addressed. Sluice gates rotted and were removed without replacement, the dam structure itself has experienced decay of the concrete without repair. There is open and exposed rebar and wire from the crumbling dams which KIUC has not repaired.
7. I can personally attest to the fact that I observed and counted many Koloa ducks along the banks of the Wai'ale'ale and Waikoko streams. They nest along the bank where the river flows. Ponds have been built for the Koloa duck to compensate for the interruption in stream flow that still exists in Waikoko and until 2018 was a regular occurrence in Wai'ale'ale. Ponds have been created for the Koloa duck on managed and protected lowlands. However, encouraging pond use allows crossbreeding with the introduced Mallard, a pond bird not a stream bird, thereby reducing this native protected species. One of the earliest scientific publications describing the Koloa duck's stream habitats on Kauai was Swedburg, G. E. 1967. *The koloa: A preliminary report on the life history and status of the Hawaiian duck*.
8. In addition to observing the stream birds and the impact to their habitat, I was impressed by the change in the migration of several species of o'opu and even of the hardier aquatic migratory species, the opae.
9. I have been a member of Kia'i Wai 'o Wai'ale'ale since 2017 and fully support the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams, as many native biota desperately need the flow restored. Over the years, I have personally observed, with great sadness, the aesthetic damage to these streams in the interrupted mauka to makai flow.

1 of 2

10. Kia'i Wai 'o Wai'ale'ale's mission is to protect and restore the stream environment and the people's right to the enjoyment of these streams in their natural state.
11. One of Kia'i Wai 'o Wai'ale'ale's purposes is to protect this natural resource, including our streams and native aquatic and plant life as well as to support and preserve people's right to the cultural and traditional practices I have personally observed along the streams during my hikes.
12. Kia'i Wai 'o Wai'ale'ale and its members seek to preserve and enjoy free-flowing streams, and protected uses.
13. I have a sharpened ability as a trained and experienced biologist to recognize the ongoing detriment to the stream's environments. As an individual who has hiked these streams for well in excess of 15 years, I am deeply saddened that these stream diversions have been allowed to persist even when KIUC admits they have been losing the waters diverted from Wai'ale'ale and Waikoko since May of 2019 because of significant ditch disrepair after the Waikoko diversion that prevents KIUC from diverting the water through its normal 5 mile course to their Waiahi hydro power plants. Despite operating for more than a year and half without any productive use of the waters being diverted for hydro power, KIUC claims they "need" this water. The massive waste that has been ongoing must be stopped and the streams restored to their natural flow.

I, Adam Asquith, PhD, do hereby declare the foregoing of my own personal knowledge and so state under penalty of perjury under the laws of the State of Hawaii. Signed this 18th day of December 2020.



signature

DECLARATION OF JOSEPH KEKAULIKE KAMA'I

I, Joseph KeKaulike Kama'i, am a resident of the island of Kauai and my address is

██████████ Anahola, HI 96703 in the ahupua'a of Anahola, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna and the 20 years of training I've had from my elders to be a practitioner also a cultural gatherer.
2. I am Kanaka Maoli, a citizen of the Hawaiian Kingdom, Ko Hawai'i Pae 'Aina.
3. I have been a member of Friends of Maha'ulepu since 2014 and Kia'i Wai 'o Wai'ale'ale since 2017. I am in strong support of our missions to restore and preserve the environment of Kaua'i. I offer this declaration as a member of Friends of Maha'ulepu and Kia'i Wai o Wai'ale'ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and damaged by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts water and reduces flow that impacts our enjoyment of the streams, the cultural practices, hunting and gathering. I am a cultural practitioner and hike often in the areas surrounding Wai'ale'ale and Waikoko.
4. I have lived on Kaua'i since 1979. Since then I have regularly hiked from Kokee to Hanalei. It was my routine to hike Wai'ale'ale, Waikoko and other streams as I made the six mile trek through the Alakai swamp and did the Chief's trail referred to as "circling the globe." That was the path used by the high chiefs to check on all the ahupua'as. In one of my hikes I've found evidence of an ancient Hawaiian village. I found trails lined with tea leaf which marked the path to the village. I found pillars of stone and archways made by trees and lauhala lining the stream of Waikoko that was used for village houses to make their walls, mats for floors and beds.
5. Friends of Maha'ulepu and Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai'ale'ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of

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our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana. Over the years of my visits to the area I have watched the decay in the condition of the stream diversions, I have seen swimming holes disappear, medicinal plants, like kava, kaunaoa and mamaki, all but disappear. The hunting and gathering has been severely compromised. I have made video of the trash left by the people tending to the dam diversions and shown areas of pesticide use and severe burn to the vegetation. At least one of my videos was filed with testimony to the BLNR in 2018 and again in 2019. The BLNR has ignored the trashy conditions around these diversions and the clear danger to the public by the exposed rebar. In my video I told the BLNR that ongoing damage to the sacred area was a violation of the States duty to protect the water and preserve the plant and animal life that was being visibly impacted in a bad way by KIUC's neglect. I pointed out the rotting of the sluice gates which they didn't replace but rather just hammered in a few boards with rocks to try and control the water. I told them this was not pono and would not work and now there has been major damage to the ditch system with landslides and large volumes of water flowing down uncontrollably and being wasted.

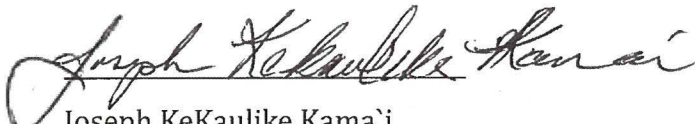
6. My family lineage is from Hawaiian royalty. I am 64 and still walk the trails and the passages of my elders. I have and continue to use plants from Wai`ale`ale for medicinal purposes. I also use the waters to purify my system. What KIUC has done on the mountain in the last 15 years should never have been allowed. Now that I'm older, I visit the Blue Hole area to do my prayers. Today, I still connect with Wai`ale`ale Stream and carry an ongoing concern for the opai, o`opu and prawns as well as our protected and loved water birds, the Koloa duck, the Nene, the stilt, the Hawaiian coot, moorhen, all suffering because of the damage and reduced flow to the streams. It just doesn't seem right when KIUC is often not able to operate the hydro power plants. KIUC reports taking an average of 14 million gallons daily from Wai`ale`ale and Waikoko which they used to transport in the Ili`ili`ula ditch system on a five mile journey to their Waiahi hydro power plants. All this for 1% of the island total power production before its damage in 2019. Since then the waters of Wai`ale`ale and Waikoko have not been restored even though KIUC has been unable to use them because of massive damage to the Ili`ili`ula ditch system. I still am deeply saddened when I consider the damage to those streams whether I'm there or not.

7. The renewal of RP7340 and the take of millions of gallons of water daily,

1 of 3

which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports, mandates that this water be restored to the streams and the dam diversions removed to stop the waste and destruction. This proves that the water isn't needed to run the hydro power plants. There's no more sugar production and the lease that was on these diversions, covered by RP7340, ended in 1999 by its own terms. Thereafter, all the diverted water should've been restored to natural stream flow. No one seems to be caring for the water and trying to assure the natural flow and natural restoration of our island aquifers. The diversions at Wai`ale`ale and Waikoko are particularly offensive because those diverted waters are now not even able to be used. There is a further ongoing violation of the law because these diverted waters have never been returned to the streams of origin. KIUC began operating these diversions in 2001 with no permits at all. KIUC is not meeting the terms of their lease. They have failed to make the repairs required under their RP. KIUC and BLNR are causing much suffering by their total failure to require KIUC to comply with the conditions of their RP.

I, Joseph KeKaulike Kama`i, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.


Joseph KeKaulike Kama`i

DECLARATION OF JAMES K. TORIO

I, James K. Torio, am a resident of the island of Kauai and my address is [REDACTED] Anahola, HI 96703 in the ahupua`a of Anahola, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna and the 25 years of training I've had from my elders and 28 years as a practitioner and cultural gatherer. As a cultural practitioner I often hike the areas surrounding Wai`ale`ale and Waikoko.

2. I am Kanaka Maoli and have been a member of Friends of Maha`ulepu since 2014 and Kia`i Wai`o Wai`ale`ale since 2017. I am in strong support of our missions to restore and preserve the environment of Kaua`i. I offer this declaration as a member of Friends of Maha`ulepu and Kia`i Wai`o Wai`ale`ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and damaged by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts 100% of base flow in Waikoko Stream (the entire stream flow is taken by the diversion on days it is not raining and even with rain the dam leaves 300 ft of dry streambed to this day). From Wai`ale`ale there was also a 100% base flow diversion until sometime in late 2017 when decay of the dam allowed water to begin flowing mauka to makai. In December 2018, BLNR required KIUC to restore stream flow in Wai`ale`ale and Waikoko, 4 MGD to flow in Wai`ale`ale and 0.8 MGD in Waikoko. I am aware that Wai`ale`ale has mauka to makai flow again but until 2018 there was as much as a ¾ mile stretch of dry stream. The mauka to makai flow in Waikoko is interrupted by a 300 ft. segment of dry stream bed. That dry area stops the migration of the aquatic opae, o`opu and wi which I have hunted and gathered for all my adult life. In the last 20 years it has become harder and harder to find these to gather for food, significantly impacted the cultural practices I enjoyed with my elders and my children and grandchildren.

3. Over the years, I was one of the people who found the Newcomb's snail in the "Blue Hole" area and reported finding a snail I had not seen elsewhere under the rocks at the edge of Wai`ale`ale Stream. I shared photos I had taken and worked with USFWS as they studied the snail and its habitat. The Newcomb's snail was found to be indigenous to Kauai and was found to be an endangered species. Later, USFWS designated a protected habitat for the protected snail, the

upper reaches of which include the dam diversion.

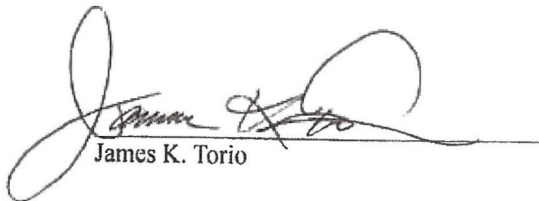
4. Friends of Maha`ulepu and Kia`i Wai o Wai`ale`ale seeks to protect Kaua`i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua`i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai`ale`ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana. It has been customary practice of my family to take our children to "Blue Hole" to celebrate their first birthday. In the many times I have visited and hiked this area I have seen offerings of leis, haku and other woven plant arrangements. Sometimes they have been so beautiful, I have taken pictures of them. Over the years of my visits to the area I have watched the decay in the condition of the stream diversions, I have seen swimming holes, medicinal plants, like kava, kaunaoa and mamaki become impossible to find. My hunting and gathering is not what it used to be and is nowhere close to what I enjoyed with my elders.

5. Even though I'm older now, I still hike to "Blue Hole". What KIUC has done on the mountain in the last 15 years should never have been allowed. I visit the "Blue Hole" area to pray. Today, I still connect with Wai`ale`ale Stream and carry an ongoing concern for the Newcomb's snail, opai, o`opu and prawns as well as our protected and loved water birds, the Koloa duck, the Nene, the stilt, the Hawaiian coot, moorhen, all suffering because of the damage and reduced flow to the streams. It just doesn't seem right when KIUC often does not operate the hydro power plants or doesn't use the water it's taking from Wai`ale`ale and Waikoko because of damage to the ditched they don't maintain. KIUC reports taking an average of 14 million gallons daily from Wai`ale`ale and Waikoko. This water had been transported in the Ili`ili`ula ditch system on a five mile journey from Wai`ale`ale Stream to their Waiahi hydro power plants until major damage to the ditch system in 2019. KIUC reports that the Waiahi hydro power plants generate less than 1% of their total revenue from power sales. My sadness over the damage to these streams is the reason I write this declaration.

6. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power

production, is proof that the dam diversions should be removed and natural stream flow restored. KIUC has told us that, at capacity, the two hydros cannot produce more than 1.5 megawatts. KIUC's magazine, *Currents*, informed the public that the two Waiahi hydros can only produce about 1% of the power needed on Kauai. So for 1% of our power, KIUC is wasting millions of gallons of fresh water every day, removing it from our streams and never returning it to the streams it is taken from. I attended a hearing on Kauai before the Commission on Water Resource Management in August 2018. At that meeting, I heard the Commissioners ask Mr. Bissell, KIUC CEO, how the rate payers would be impacted if the waters of Wai'ale'ale and Waikoko were no longer diverted to support the Waiahi hydro power plants. Mr. Bissell answered that the monthly increase to ratepayers would be something near the cost of a cup of coffee. The commissioner asked, "a Starbucks cup?", and Mr. Bissell said, "less than that." No one seems to be caring for the water and trying to assure the natural flow and natural restoration of our island aquifers. The diversions at Wai'ale'ale and Waikoko are particularly offensive because those diverted waters are now running down the hillside, being wasted.

I, James K. Torio, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



James K. Torio

DECLARATION OF PUANANI ROGERS

I, Puanani Rogers, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Kapaa, HI 96746 in the ahupua`a of Kealia, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna, research on the internet and rely on spiritual guidance as well.

2. I am Kanaka Maoli, aka Hawaii National and indigenous to the Sovereign nation of the Hawaiian Kingdom, Ko Hawai'i Pae `Aina.

3. I have been a member of Friends of Maha`ulepu since 2014 and Kia`i Wai `o Wai`ale`ale since 2017. I am in strong support of our missions to restore and preserve natural stream flow. I offer this declaration as a member of Friends of Maha`ulepu and Kia`i Wai o Wai`ale`ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and negatively impacted by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts water and reduces flow that impacts our enjoyment of the streams, the cultural practices, hunting and gathering and the collection of water as ho`okupu, an offering and have carried the sacred waters from Wai`ale`ale's for ceremony as far away as the I`olani Palace.

4. Friends of Maha`ulepu and Kia`i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai`ale`ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana.

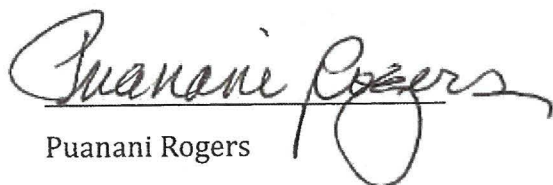
5. I am now 81 and when younger I hiked with my children to Wai`ale`ale regularly, participated in ceremony, festivals, hula practices, plant and sacred water gathering. I have and continue to use plants from Wai`ale`ale for medicinal purposes and hula adornments. For years, the dam diversions have been falling into greater and greater disrepair. Rebar and wire began sticking out of the dam making the crossing almost impossible. Today, I still connect with Wai`ale`ale Stream. We don't have to be there in

person to make the connection. I go to Poli`ahu Heiau to do ceremony, to chant and I am once again connected to Mt. Wai`ale`ale and her streams even though I can no longer go in person because of health issues. Many argue that we have to be there in person to exercise our cultural and traditional practices. That is not true. I still am deeply saddened when I consider the damage to those streams whether I'm there or not.

6. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports, mandates that this water be restored to the streams and the dam diversions removed to stop the waste and destruction. This proves that the water isn't needed to run the hydro power plants. This is only an excuse to continue diverting the water. There's no more sugar production and the lease that was on these diversions, covered by RP7340, ended in 1999 by its own terms. There should never have been an RP after that. KIUC began operating these diversions in 2001 with no permits at all. KIUC is not meeting the terms of their lease, they face extensive repairs but thus far have not done them and the whole scheme of taking this water is a farce causing insult and injury to me and many on Kauai and an otherwise beautiful environment. Its wasted and should be dismantled.

7. I have personally walked the entire area and I have personally been to visit each of the Waiahi hydro power plants. I have read the KIUC data reported in their *Currents* magazine and am aware of the minimal power produced. Their operation causes so much damage to the environment and harm to our people, it does not make any sense to continue this travesty.

I, Puanani Rogers, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.


Puanani Rogers

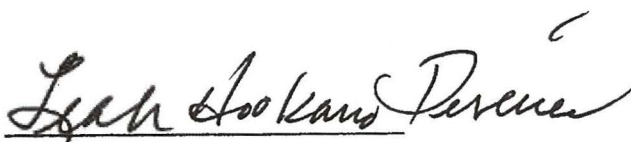
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DECLARATION OF LEAH HO'OKANO PEREIRA

I, Leah Ho'okano Pereira, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a pastoral homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Leah Ho'okano Pereira, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



Leah Ho'okano Pereira

DECLARATION OF KEITH K. CASTANEDA

I, Keith K. Castaneda, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
4. WKHHA is governed by an elected board of directors of its members;
5. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai`ale`ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
6. A project initiated by KIUC unrelated to the stream flow of Wai`ale`ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
7. Kia'i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Keith K. Castaneda, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



Keith K. Castaneda

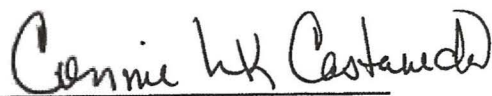
DECLARATION OF CONNIE L.K. CASTANEDA

I, Connie L.K. Castaneda, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for an agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai`ale`ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai`ale`ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Connie L.K. Castaneda, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



Connie L.K. Castaneda

DECLARATION OF PAULINE A KUPO

I, Pauline A. Kupo, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Pauline A Kupo, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.

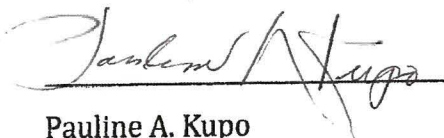

Pauline A. Kupo

EXHIBIT B



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390
2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
5. All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Friends of Maha'ulepu	2. Contact Person Bridget Hammerquist	
3. Address [REDACTED]	4. City Koloa	5. State and ZIP HI 96756
6. Email [REDACTED]	7. Phone [REDACTED]	8. Fax [REDACTED]

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested BLNR renewal of RP7340	
18. Board Action Date 12/11/2020	19. Item No. Agenda Item D-5
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case Hawaii State Constitution Article XI Sections 1, 7, 9, HRS Sections 171-58, 183, 343 and other relevant statutes that may apply to the waste of the waters of Wai'ale'ale and Waikoko Streams.	
21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection Our members have been deprived of their rights to enjoy Wai'ale'ale Stream, its natural flow and beauty and are being further deprived of their ability to enjoy Traditional and Cultural practices in the Blue Hole area and Wailua-a-hoanu. All members have a right to a clean and safe environment on these State land streams in the Forest Conservation District. Further, Petitioners are ratepayers whose electric bills are the highest in the State, ratepayers are members of the Coop, Kauai Island Utility Company, and are also paying high water bills for water that KIUC passes through its tail raceways then delivers to Grove Farm where the ditch water is further treated and sold to the County for sale to ratepayers, a direct violation of the conditions of RP7340.	
22. Any Disagreement Petitioner May Have with an Application before the Board As stated on the record, Petitioner objected to the Board's renewal of KIUC's RP7340. In addition, Petitioner objects to the fact that the motion to renew was made by Board member Tommy Oi who previously recused himself from this matter once it was revealed that one of the principle clients of his survey business is Grove Farm, an entity that uses the water diverted by KIUC. As the record reflects and as others have also offered abundant evidence in support, the dam diversion permit 7340 is not needed, is not regulated, is in gross disrepair and KIUC has totally violated the conditions of the permit, one of the most egregious, transferring the water to others without permits, in violations of the BLNR requirement that the waters diverted under 7340 are limited to hydro power production.	
23. Any Relief Petitioner Seeks or Deems Itself Entitled to Revocation of KIUC's RP7340 with satisfaction of the terms and conditions of the RP, to include among others, removal of the dam diversions, cleaning and resotation of the area and the natural flow of the streams.	
24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest All people of Hawaii have a right to a clean safe environment under the Hawaii State Constitution. Their right to enjoy stream flow in its natural state and experience the aesthetic benefit streams offer is a protected right for all the people of the State. Many of the members of Friends of Maha'ulepu are cultural and traditional practioners, who have and can address and speak to the public trust protections intended for the waters of Wai'ale'ale and Waikoko which are being ignored. See testimony filed with BLNR on Agenda Item D-5 and the declarations filed herewith.	

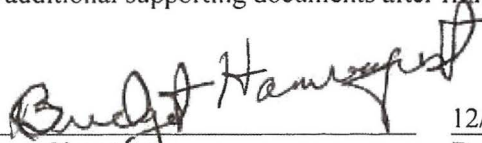
25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Please see attached declarations and testimonies already offered to the Board on this Agenda Item.

- ☒ Check this box if Petitioner is submitting supporting documents with this form.
- ☒ Check this box if Petitioner will submit additional supporting documents after filing this form.

Bridget Hammerquist

Petitioner or Representative (Print Name)


Signature

12/19/2020

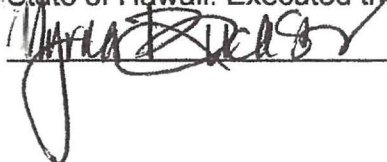
Date

DECLARATION OF MYRNA BUCASAS

I, Myrna Bucasas, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential and agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I am the President of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as the President of WKHHA, am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Myrna Bucasas, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 19th day of December 2020.



1 of 2

Myrna Bucasas

2 of 2

DECLARATION OF LIBERTA L. ALBAO

I, Liberta L. Albao, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kapaa, HI 96746.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential homestead and agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the national board of directors of the Association of Hawaiians for Homestead Lands (AHHL), an advocacy organization representing the interests of more than 28,000 native Hawaiians on the State of Hawaii waitlist for Hawaiian Home Lands;
5. AHHL is governed by a 7-member board of directors, wherein I represent the interests of waitlist native Hawaiians on the island of Kauai;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the AHHL board of directors and am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams and we strongly object to any disrepair, damage and reduction in flow at the following, TMK (4) 3-9-1, as actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai.
7. I have been a member of Kia'i Wai o Wai'ale'ale since 2017 and I am in strong support of our mission to restore and preserve natural stream flow. I offer this declaration as a member of Kia'i Wai o Wai'ale'ale and support our mission to preserve water, prevent waste and protect natural stream flow and aquafer recharge, without which there is a significant impact to myself as a Hawaiian beneficiary and presents a very real threat to my federally and constitutionally protected superior right to water. RP7340, TMK(4) 3-9-1, diverts water and reduces flow that could be directed to the parcel awaiting water for development of beneficiary homes via Stable Storm or its neighboring ditch. These designated homelands in Wailua have been sitting idle far too long.
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities

on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai'ale'ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a natural Heiau.

9. Caring for our 'āina is deeply ingrained in Hawaiian culture. One definition of "pono" is be to be in harmony with the ancestors, the 'āina and with each other as Kānaka. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports mandate that this water be restored to the streams and the dam diversions removed to stop the waste and destruction.

10. I learned from my kupuna to commune and appreciate the sounds and life in the forested lands where KIUC's hydropower plant and diversions exist, as well as on lands now dewatered as a result of the diversions. Communion and appreciation of these forested areas is a cultural and religious practice. The sounds, dam detritus, and removal of water from these areas harms my cultural and religious practice.

11. Family members taught me to revere and appreciate native birds, such as Koloa duck, Hawaiian petrel, Newell's shearwater, band rumped petrel, Hawaiian stilt, Hawaiian moorhen, Hawaiian coot, Hawaiian nene goose, including those found on and near the areas affected by KIUC's diversions as part of our cultural practices. Dewatering these birds' habitat harms my ability and the beneficiaries I speak for to gather their fallen feathers, observe their behaviors and thereby read weather and other patterns, and otherwise impacts my cultural practices.

I, Liberta L. Albao, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



Liberta L. Albao

DECLARATION OF ROBIN DANNER

I, Robin Puanani Danner, am a resident of the island of Kauai and my address is [REDACTED]

[REDACTED] Anahola 96703.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778.
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for an agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I am the elected Chairwoman of the national Sovereign Council of Hawaiian Homestead Associations (SCHHA), dedicated to protecting the interest of federally defined native Hawaiian beneficiaries and Hawaiian Homestead Associations eligible for lands and resources under the Hawaiian Homes Commission Act, 1920 (HHCA);
5. The SCHHA, founded in 1987, is governed by a SCHHA Governing Council, elected by Island Moku, of Kauai, Oahu, Maui/Lanai, Molokai and Hawaii Island, wherein I was elected from the SCHHA enrolled members from the island of Kauai in 2015;
6. The SCHHA is registered with the federal Department of Interior as a Hawaiian Homestead Association, as defined in the Code of Federal Regulations;
7. I am a resident of Kauai, born on Kauai, and acting in my personal capacity and in my capacity as a member of the SCHHA Governing Council, am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams and we strongly object to any disrepair, damage and reduction in flow at the following, TMK (4) 3-9-1, as actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai.
8. I am a member of Kia'i Wai o Wai'ale'ale and support its mission to preserve water, prevent waste and protect natural stream flow and aquafer recharge;
9. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in its mission is the preservation and

restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai`ale`ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical recognition of the Blue Hole as a natural Heiau.

I, Robin Puanani Danner, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



Robin Danner, as an individual and as,
Council Member and Chair of the Sovereign Council of Hawaiian Homestead Associations
[REDACTED] Anahola 96703

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DECLARATION OF ADAM ASQUITH, PhD

I, Adam Asquith, attest to the following facts of my own personal knowledge:

1. I live on, and am a longtime resident of, Kauai. My address is [REDACTED] Kapaa, HI 96746
2. I received a Master's degree in Biology and Doctorate degree in Entomology and worked for University of Hawaii in their research and extension programs for 10 years.
3. I also worked for the US Fish and Wildlife Services as a conservation biologist in Hawaii and on Kauai for over 5 years. Among the duties that I carried out, I was the author of the document that resulted in the protected species designation of the Newcomb's snail.
4. As another part of my work with US Fish and Wildlife, I did daily counts and monitored the Koloa duck, another endangered species on Kauai.
5. During my first 15 years on Kauai I hiked along Wai'ale'ale and Waikoko streams, hiking for miles mauka to makai, at least twice monthly. During those hikes I observed many animal and plant species and was saddened by their habitat disruption caused by the dam diversions on two State land streams, Wai'ale'ale and Waikoko. I still make those hikes several times each year.
6. In hiking Wai'ale'ale and Waikoko I have personally observed the dry streambeds that were created by the dam diversions operated under KIUC RP7340. Over the years, I have observed wear and tear that KIUC has not addressed. Sluice gates rotted and were removed without replacement, the dam structure itself has experienced decay of the concrete without repair. There is open and exposed rebar and wire from the crumbling dams which KIUC has not repaired.
7. I can personally attest to the fact that I observed and counted many Koloa ducks along the banks of the Wai'ale'ale and Waikoko streams. They nest along the bank where the river flows. Ponds have been built for the Koloa duck to compensate for the interruption in stream flow that still exists in Waikoko and until 2018 was a regular occurrence in Wai'ale'ale. Ponds have been created for the Koloa duck on managed and protected lowlands. However, encouraging pond use allows crossbreeding with the introduced Mallard, a pond bird not a stream bird, thereby reducing this native protected species. One of the earliest scientific publications describing the Koloa duck's stream habitats on Kauai was Swedburg, G. E. 1967. *The koloa: A preliminary report on the life history and status of the Hawaiian duck*.
8. In addition to observing the stream birds and the impact to their habitat, I was impressed by the change in the migration of several species of o'opu and even of the hardier aquatic migratory species, the opae.
9. I have been a member of Kia'i Wai 'o Wai'ale'ale since 2017 and fully support the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams, as many native biota desperately need the flow restored. Over the years, I have personally observed, with great sadness, the aesthetic damage to these streams in the interrupted mauka to makai flow.

1 of 2

10. Kia'i Wai 'o Wai'ale'ale's mission is to protect and restore the stream environment and the people's right to the enjoyment of these streams in their natural state.
11. One of Kia'i Wai 'o Wai'ale'ale's purposes is to protect this natural resource, including our streams and native aquatic and plant life as well as to support and preserve people's right to the cultural and traditional practices I have personally observed along the streams during my hikes.
12. Kia'i Wai 'o Wai'ale'ale and its members seek to preserve and enjoy free-flowing streams, and protected uses.
13. I have a sharpened ability as a trained and experienced biologist to recognize the ongoing detriment to the stream's environments. As an individual who has hiked these streams for well in excess of 15 years, I am deeply saddened that these stream diversions have been allowed to persist even when KIUC admits they have been losing the waters diverted from Wai'ale'ale and Waikoko since May of 2019 because of significant ditch disrepair after the Waikoko diversion that prevents KIUC from diverting the water through its normal 5 mile course to their Waiahi hydro power plants. Despite operating for more than a year and half without any productive use of the waters being diverted for hydro power, KIUC claims they "need" this water. The massive waste that has been ongoing must be stopped and the streams restored to their natural flow.

I, Adam Asquith, PhD, do hereby declare the foregoing of my own personal knowledge and so state under penalty of perjury under the laws of the State of Hawaii. Signed this 18th day of December 2020.

signature

DECLARATION OF JOSEPH KEKAULIKE KAMA'I

I, Joseph KeKaulike Kama'i, am a resident of the island of Kauai and my address is [REDACTED] Anahola, HI 96703 in the ahupua'a of Anahola, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna and the 20 years of training I've had from my elders to be a practitioner also a cultural gatherer.
2. I am Kanaka Maoli, a citizen of the Hawaiian Kingdom, Ko Hawai'i Pae 'Aina.
3. I have been a member of Friends of Maha'ulepu since 2014 and Kia'i Wai 'o Wai'ale'ale since 2017. I am in strong support of our missions to restore and preserve the environment of Kaua'i. I offer this declaration as a member of Friends of Maha'ulepu and Kia'i Wai o Wai'ale'ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and damaged by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts water and reduces flow that impacts our enjoyment of the streams, the cultural practices, hunting and gathering. I am a cultural practitioner and hike often in the areas surrounding Wai'ale'ale and Waikoko.
4. I have lived on Kaua'i since 1979. Since then I have regularly hiked from Kokee to Hanalei. It was my routine to hike Wai'ale'ale, Waikoko and other streams as I made the six mile trek through the Alakai swamp and did the Chief's trail referred to as "circling the globe." That was the path used by the high chiefs to check on all the ahapua'as. In one of my hikes I've found evidence of an ancient Hawaiian village. I found trails lined with tea leaf which marked the path to the village. I found pillars of stone and archways made by trees and lauhala lining the stream of Waikoko that was used for village houses to make their walls, mats for floors and beds.
5. Friends of Maha'ulepu and Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai'ale'ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of

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our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana. Over the years of my visits to the area I have watched the decay in the condition of the stream diversions, I have seen swimming holes disappear, medicinal plants, like kava, kaunaoa and mamaki, all but disappear. The hunting and gathering has been severely compromised. I have made video of the trash left by the people tending to the dam diversions and shown areas of pesticide use and severe burn to the vegetation. At least one of my videos was filed with testimony to the BLNR in 2018 and again in 2019. The BLNR has ignored the trashy conditions around these diversions and the clear danger to the public by the exposed rebar. In my video I told the BLNR that ongoing damage to the sacred area was a violation of the States duty to protect the water and preserve the plant and animal life that was being visibly impacted in a bad way by KIUC's neglect. I pointed out the rotting of the sluice gates which they didn't replace but rather just hammered in a few boards with rocks to try and control the water. I told them this was not pono and would not work and now there has been major damage to the ditch system with landslides and large volumes of water flowing down uncontrollably and being wasted.

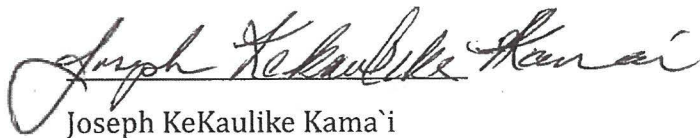
6. My family lineage is from Hawaiian royalty. I am 64 and still walk the trails and the passages of my elders. I have and continue to use plants from Wai`ale`ale for medicinal purposes. I also use the waters to purify my system. What KIUC has done on the mountain in the last 15 years should never have been allowed. Now that I'm older, I visit the Blue Hole area to do my prayers. Today, I still connect with Wai`ale`ale Stream and carry an ongoing concern for the opai, o`opu and prawns as well as our protected and loved water birds, the Koloa duck, the Nene, the stilt, the Hawaiian coot, moorhen, all suffering because of the damage and reduced flow to the streams. It just doesn't seem right when KIUC is often not able to operate the hydro power plants. KIUC reports taking an average of 14 million gallons daily from Wai`ale`ale and Waikoko which they used to transport in the Ili`ili`ula ditch system on a five mile journey to their Waiahi hydro power plants. All this for 1% of the island total power production before its damage in 2019. Since then the waters of Wai`ale`ale and Waikoko have not been restored even though KIUC has been unable to use them because of massive damage to the Ili`ili`ula ditch system. I still am deeply saddened when I consider the damage to those streams whether I'm there or not.

7. The renewal of RP7340 and the take of millions of gallons of water daily,

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which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports, mandates that this water be restored to the streams and the dam diversions removed to stop the waste and destruction. This proves that the water isn't needed to run the hydro power plants. There's no more sugar production and the lease that was on these diversions, covered by RP7340, ended in 1999 by its own terms. Thereafter, all the diverted water should've been restored to natural stream flow. No one seems to be caring for the water and trying to assure the natural flow and natural restoration of our island aquifers. The diversions at Wai'ale'ale and Waikoko are particularly offensive because those diverted waters are now not even able to be used. There is a further ongoing violation of the law because these diverted waters have never been returned to the streams of origin. KIUC began operating these diversions in 2001 with no permits at all. KIUC is not meeting the terms of their lease. They have failed to make the repairs required under their RP. KIUC and BLNR are causing much suffering by their total failure to require KIUC to comply with the conditions of their RP.

I, Joseph KeKaulike Kama'i, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.


Joseph KeKaulike Kama'i

DECLARATION OF JAMES K. TORIO

I, James K. Torio, am a resident of the island of Kauai and my address is [REDACTED] Anahola, HI 96703 in the ahupua`a of Anahola, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna and the 25 years of training I've had from my elders and 28 years as a practitioner and cultural gatherer. As a cultural practitioner I often hike the areas surrounding Wai`ale`ale and Waikoko.

2. I am Kanaka Maoli and have been a member of Friends of Maha`ulepu since 2014 and Kia`i Wai`o Wai`ale`ale since 2017. I am in strong support of our missions to restore and preserve the environment of Kaua`i. I offer this declaration as a member of Friends of Maha`ulepu and Kia`i Wai`o Wai`ale`ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and damaged by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts 100% of base flow in Waikoko Stream (the entire stream flow is taken by the diversion on days it is not raining and even with rain the dam leaves 300 ft of dry streambed to this day). From Wai`ale`ale there was also a 100% base flow diversion until sometime in late 2017 when decay of the dam allowed water to begin flowing mauka to makai. In December 2018, BLNR required KIUC to restore stream flow in Wai`ale`ale and Waikoko, 4 MGD to flow in Wai`ale`ale and 0.8 MGD in Waikoko. I am aware that Wai`ale`ale has mauka to makai flow again but until 2018 there was as much as a ¾ mile stretch of dry stream. The mauka to makai flow in Waikoko is interrupted by a 300 ft. segment of dry stream bed. That dry area stops the migration of the aquatic opae, o`opu and wi which I have hunted and gathered for all my adult life. In the last 20 years it has become harder and harder to find these to gather for food, significantly impacted the cultural practices I enjoyed with my elders and my children and grandchildren.

3. Over the years, I was one of the people who found the Newcomb's snail in the "Blue Hole" area and reported finding a snail I had not seen elsewhere under the rocks at the edge of Wai`ale`ale Stream. I shared photos I had taken and worked with USFWS as they studied the snail and its habitat. The Newcomb's snail was found to be indigenous to Kauai and was found to be an endangered species. Later, USFWS designated a protected habitat for the protected snail, the

upper reaches of which include the dam diversion.

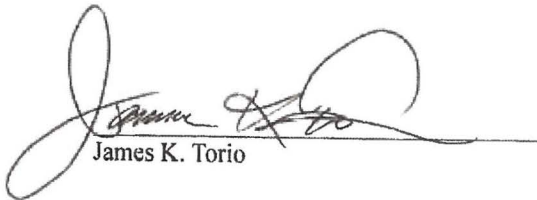
4. Friends of Maha'ulepu and Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai'ale'ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana. It has been customary practice of my family to take our children to "Blue Hole" to celebrate their first birthday. In the many times I have visited and hiked this area I have seen offerings of leis, haku and other woven plant arrangements. Sometimes they have been so beautiful, I have taken pictures of them. Over the years of my visits to the area I have watched the decay in the condition of the stream diversions, I have seen swimming holes, medicinal plants, like kava, kaunaoa and mamaki become impossible to find. My hunting and gathering is not what it used to be and is nowhere close to what I enjoyed with my elders.

5. Even though I'm older now, I still hike to "Blue Hole". What KIUC has done on the mountain in the last 15 years should never have been allowed. I visit the "Blue Hole" area to pray. Today, I still connect with Wai'ale'ale Stream and carry an ongoing concern for the Newcomb's snail, opai, o'opu and prawns as well as our protected and loved water birds, the Koloa duck, the Nene, the stilt, the Hawaiian coot, moorhen, all suffering because of the damage and reduced flow to the streams. It just doesn't seem right when KIUC often does not operate the hydro power plants or doesn't use the water it's taking from Wai'ale'ale and Waikoko because of damage to the ditched they don't maintain. KIUC reports taking an average of 14 million gallons daily from Wai'ale'ale and Waikoko. This water had been transported in the Ili'ili'ula ditch system on a five mile journey from Wai'ale'ale Stream to their Waiahi hydro power plants until major damage to the ditch system in 2019. KIUC reports that the Waiahi hydro power plants generate less than 1% of their total revenue from power sales. My sadness over the damage to these streams is the reason I write this declaration.

6. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power

production, is proof that the dam diversions should be removed and natural stream flow restored. KIUC has told us that, at capacity, the two hydros cannot produce more than 1.5 megawatts. KIUC's magazine, *Currents*, informed the public that the two Waiahi hydros can only produce about 1% of the power needed on Kauai. So for 1% of our power, KIUC is wasting millions of gallons of fresh water every day, removing it from our streams and never returning it to the streams it is taken from. I attended a hearing on Kauai before the Commission on Water Resource Management in August 2018. At that meeting, I heard the Commissioners ask Mr. Bissell, KIUC CEO, how the rate payers would be impacted if the waters of Wai'ale'ale and Waikoko were no longer diverted to support the Waiahi hydro power plants. Mr. Bissell answered that the monthly increase to ratepayers would be something near the cost of a cup of coffee. The commissioner asked, "a Starbuck's cup?", and Mr. Bissell said, "less than that." No one seems to be caring for the water and trying to assure the natural flow and natural restoration of our island aquifers. The diversions at Wai'ale'ale and Waikoko are particularly offensive because those diverted waters are now running down the hillside, being wasted.

I, James K. Torio, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.



James K. Torio

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DECLARATION OF PUANANI ROGERS

I, Puanani Rogers, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kapaa, HI 96746 in the ahupua`a of Kealia, Puna district.

1. The following facts are offered and based on my own personal knowledge, oral history of my Kupuna, research on the internet and rely on spiritual guidance as well.

2. I am Kanaka Maoli, aka Hawaii National and indigenous to the Sovereign nation of the Hawaiian Kingdom, Ko Hawai'i Pae `Aina.

3. I have been a member of Friends of Maha`ulepu since 2014 and Kia`i Wai `o Wai`ale`ale since 2017. I am in strong support of our missions to restore and preserve natural stream flow. I offer this declaration as a member of Friends of Maha`ulepu and Kia`i Wai o Wai`ale`ale in support of our missions to preserve water, prevent waste and protect natural stream flow and aquifer recharge as well as to malama the aina affected and negatively impacted by the "Blue Hole diversions". RP7340, TMK(4) 3-9-1, diverts water and reduces flow that impacts our enjoyment of the streams, the cultural practices, hunting and gathering and the collection of water as ho`okupu, an offering and have carried the sacred waters from Wai`ale`ale's for ceremony as far away as the I`olani Palace.

4. Friends of Maha`ulepu and Kia`i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i and for generations to come. Included in our mission is the preservation and restoration of stream flow, particularly in areas markedly damaged as the areas of the Wai`ale`ale and Waikoko stream diversions which prevents the natural enjoyment of the stream, impacting hunters, gathers and other cultural practices of our community which also includes the sacred historical practices and recognition of the Blue Hole as a sacred wahi pana.

5. I am now 81 and when younger I hiked with my children to Wai`ale`ale regularly, participated in ceremony, festivals, hula practices, plant and sacred water gathering. I have and continue to use plants from Wai`ale`ale for medicinal purposes and hula adornments. For years, the dam diversions have been falling into greater and greater disrepair. Rebar and wire began sticking out of the dam making the crossing almost impossible. Today, I still connect with Wai`ale`ale Stream. We don't have to be there in

person to make the connection. I go to Poli`ahu Heiau to do ceremony, to chant and I am once again connected to Mt. Wai`ale`ale and her streams even though I can no longer go in person because of health issues. Many argue that we have to be there in person to exercise our cultural and traditional practices. That is not true. I still am deeply saddened when I consider the damage to those streams whether I'm there or not.

6. The renewal of RP7340 and the take of millions of gallons of water daily, which, for the past 18 months, have been totally wasted and have not been used by KIUC for hydro power production by their own reports, mandates that this water be restored to the streams and the dam diversions removed to stop the waste and destruction. This proves that the water isn't needed to run the hydro power plants. This is only an excuse to continue diverting the water. There's no more sugar production and the lease that was on these diversions, covered by RP7340, ended in 1999 by its own terms. There should never have been an RP after that. KIUC began operating these diversions in 2001 with no permits at all. KIUC is not meeting the terms of their lease, they face extensive repairs but thus far have not done them and the whole scheme of taking this water is a farce causing insult and injury to me and many on Kauai and an otherwise beautiful environment. Its wasted and should be dismantled.

7. I have personally walked the entire area and I have personally been to visit each of the Waiahi hydro power plants. I have read the KIUC data reported in their *Currents* magazine and am aware of the minimal power produced. Their operation causes so much damage to the environment and harm to our people, it does not make any sense to continue this travesty.

I, Puanani Rogers, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 18th day of December 2020.


Puanani Rogers

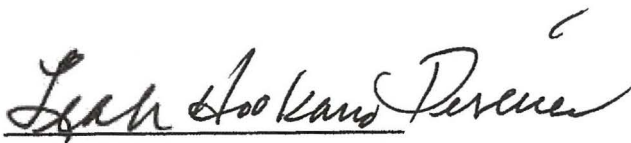
2 of 2

DECLARATION OF LEAH HO'OKANO PEREIRA

I, Leah Ho'okano Pereira, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a pastoral homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Leah Ho'okano Pereira, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



Leah Ho'okano Pereira

DECLARATION OF KEITH K. CASTANEDA

I, Keith K. Castaneda, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
4. WKHHA is governed by an elected board of directors of its members;
5. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai`ale`ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
6. A project initiated by KIUC unrelated to the stream flow of Wai`ale`ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
7. Kia'i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Keith K. Castaneda, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



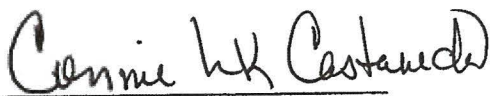
Keith K. Castaneda

DECLARATION OF CONNIE L.K. CASTANEDA

I, Connie L.K. Castaneda, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for an agricultural homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai'ale'ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai'ale'ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai'ale'ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Connie L.K. Castaneda, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.



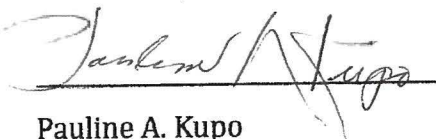
Connie L.K. Castaneda

DECLARATION OF PAULINE A KUPO

I, Pauline A. Kupo, am a resident of the island of Kauai and my address is [REDACTED]
[REDACTED] Kekaha, Hawaii 96752.

1. The following facts are offered and based on my own personal knowledge.
2. I am native Hawaiian as defined in the Hawaiian Homes Commission Act, 1920 and descended from the aboriginal inhabitants of the Hawaiian Islands before 1778;
3. I am on the State of Hawaii, Department of Hawaiian Home Lands (DHHL) waiting list for a residential homestead award on the island of Kauai through the Hawaiian Homes Commission Act, 1920, wherein access to water is a continual challenge stated by government officials as a reason for not issuing land awards;
4. I serve on the board of directors of the West Kauai Hawaiian Homestead Association (WKHHA) representing the interests of native Hawaiians defined in the HHCA, and our members include native Hawaiians from Kekaha, Waimea, and Hanapepe;
5. WKHHA is governed by an elected board of directors of its members;
6. I am a resident of Kauai, and acting in my personal capacity and in my capacity as a member of the WKHHA board of directors and am in full support of the effort to restore the natural stream flow of Wai`ale`ale and Waikoko streams especially since these actions may threaten our federally and constitutionally protected superior right to water for homelands that are waiting to be developed on Kauai;
7. A project initiated by KIUC unrelated to the stream flow of Wai`ale`ale and Waikoko streams, however potentially relevant, is the intent of KIUC and the State of Hawaii to construct a hydro plant on our trust lands in West Kauai;
8. Kia'i Wai o Wai`ale`ale seeks to protect Kaua'i's natural and cultural resources, cultural practices, and the environment that these practices depend on for all communities on Kaua'i.

I, Pauline A Kupo, declare the forgoing under penalty of perjury under the laws of the State of Hawaii. Executed this 20th day of December 2020.


Pauline A. Kupo