

From: ladyoftheeighty81@gmail.com
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] KIUC to fix stream flow
Date: Tuesday, December 6, 2022 2:17:49 PM

Dec. 6 2022

BLNR Suzann Case Chair
POBox 621 Honolulu, Hawaii 96809
Re: Dec. 8 2022 agenda D-3

Aloha Chair person

I write today to let this letter be the last I every write about this situation of water flow, there is some much problems with this diversion where this place is pure the purest of all water ways and it's human error that makes this not right I sit here looking at our river that's located North Wainiha our flow comes from mount Waialeale the wetlands the feeds all streams the vains to the west east south and north after natural disasters we had in 2018 March and April there is change in the bed of our river it not full it half water and half stones well anyway I'm write this testimony to make sure that KIUC fix the hewa the wrong that has been done to this life force of water things need to be Pono cause this is our home our island our Life depends on our water our wetlands the resource it gives everyone the lives here.

So I ask you Chair person Suzann Case do do the right move the right words the thing to do is to order KIUC TO
FIX THE FLOW OF THE STREAMS

Aloha mea kealoha
Nancymae Chandler
808 7200374

Sent from my iPhone

From: [Roslyn Cummings](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] D-3 inherent superior rights
Date: Wednesday, December 7, 2022 10:09:23 AM

Declaration of Roslyn Cummings
to State Of Hawaii Board of Land and Natural Resources (Notice to Agents is Notice to
Principle, Notice to Principle is Notice to Agent)

I Roslyn Nicole Manawaiakea: Malama mare Cummings noho ao Kalaheo Ahupua'a, Kona
Moku, Kaua'i Mokuupuni

A lineal descendant as per documented in your agency (B.O.C) a memorandum served and
filed recorded by SHPD

Heir, ku'u my undivided interest to LCA 1093, 1948, 1949, 10096:1-3, RP 4664
In the Waioli, Hanalei Ahupua'a, Moku of Halalea
Through my tutu Kane Kaaloa who at the time was the Kanawai of Halalea (Private Waters,
Roads) held in trust by King Kamehameha III in perpetuity.
LCA 7714-B and all lands held under Moses Kekuiaiwa through his hanai father
Kaikioewa, Hoona Keikioewa and his son, Waikaka Kakanui Kauai Kauaiiki Kauhi
Abrehama
LCA 5362, Royal Patent 8137, 8138
B. Naumu heir of Kaumualii III Aarona Kealiihonui LCA 11215 and all lands under claimant
as heir.

A wahine moali given by tutu Kane Paiea Kamehameha I, Kanaka Maoli as written in 1846
p.58, Mokuna 5 Haawina 1, Pauku 1&3

I claim all inherent sovereignty, rights of Āina (Mauka to Makai) as a Kanaka Maoli subject of
Ko Hawaii Pae 'Aina, the Hawaiian Kingdom as constituted in 1840. Recognized in our
Kanawai. Ke Ku Nei Kanawai the law stands, Pae Āina all the land. Ke Ku Nei Pelakana it
stands protected.

Hawaii Revised Statute (Hrs 7-1 Hrs 1-1) and all laws under the constitution of the Kingdom
of Hawaii shall apply.

I am not a Native Hawaiian a "slave term" used by the United States Code 42. In the attempt
to unlawfully change my ethnicity, with no superiority. Claims as a American Citizen

The term "Native Hawaiian" is a contemporary definition / label / designation created by the
United States Congress to be used as a justification for, or qualification, to exercise
commercial authority over the Kingdom of the Hawaiian and the indigenous people (kanaka
maoli) who are subject to the laws of the Hawaiian Kingdom.

Native Hawaiian

(6) The term "Native Hawaiian" means any individual who is— (A) a citizen of the United
States; and (B) a descendant of the aboriginal people, who, prior to 1778, occupied and
exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced
by— (i) genealogical records; (ii) verification by kupuna (elders) or kama'aina (long-term

community residents); or (iii) birth records of the State of Hawaii.

Whenever any person shall die intestate, within this Kingdom, his property both real and personal, of every kind and description, shall descend to and be divided among his heirs, as hereinafter prescribed, according to Hawaiian Civil Codes 1859; Descent of Property, Section 1447. It shall not be requisite that the intestate shall have been in actual possession of the property; it is sufficient if he had a good claim to it at the time of his death, according to Hawaiian Civil Codes 1859; Miscellaneous Laws, Section 1461. If the intestate leaves no kindred, his estate shall escheat to the Hawaiian Government, according to Hawaiian Civil Codes 1859; Miscellaneous Laws, Section 1451.

The United States, State of Hawaii, County of Kauai Agents and Agencies own Oath to uphold U.S. Constitution, Laws and Treaties, makes them legally LIABLE through 42 USC §1983 for VIOLATIONS of the 1949 Geneva IV, 1907 Hague Conventions IV, USC 5 §1331, USC 18 §956, §957, §1623, §1651, §1652, §1653, §1660, §1661, §1091, §2441, §1654, Article 1 §8 and Article 6 §2 of the United States Constitution that are being committed here in the Hawaiian Islands / Sandwich Islands by use of:

- 1) (TMK) Tax Map Key Numbers to identify Location
- 2) (TMK) Tax Map Key Numbers to determine Title
- 3) (TMK) Tax Map Key Numbers to collect Taxes
- 4) (TMK) Tax Map Key Numbers to retain Jurisdiction over Internationally Protected Persons and Internationally Protected Property
- 5) (TMK) Tax Map Key Numbers to Pillage, Destruct, and Appropriate Protected Persons and Private Real Property not needed by Military Necessity
- 6) (TMK) Tax Map Key Numbers to authorize the carrying of deadly weapons such as Small Arms and Light Weapons.

Therefore, committing the act of PILLAGING, DESTRUCTION AND APPROPRIATION under Rules of War 1949 Geneva IV under 18 U.S. CODE §2441 and Violating his Majesty the King of the Hawaiian Islands Kamehameha III 1850 self executing ratified Treaty with the United States of America under U.S. Constitution Article 1 §8 and under U.S. Constitution Article 6 §2.

Agents and Agencies mentioned above must comply and are subject to Kamehameha III Treaty, Constitution, Laws, Civil and Penal Codes of the Hawaiian Islands once within three miles from the low water mark near the shore of the Hawaiian Islands.

Again,

This permits on the agenda D-3 is in protection against your unlawful use of

1. Failure to show FACTS, PROOF of the State of Hawaii's Land and Water interest from the Hawaiian Kingdom held in Trust by Kamehameha III.
2. State of Hawaii Perpetual Rights, claims over natural resources along with the County of Kauai who has no claim or authority as a private entity as listed under their Dun & Bradstreet number
3. Placing the interest of non Kanaka Maoli above the rights of Kanaka Maoli which is a direct effect to thousands, if not hundred of thousands who have inherent sovereignty rights

Who stands on superior rights
Land is common law

Property, equity, and rights

All property shall be described meets and bounds
All property shall be passed in GRANT DEED

Held in Title
Held in Trust
Held in Contract

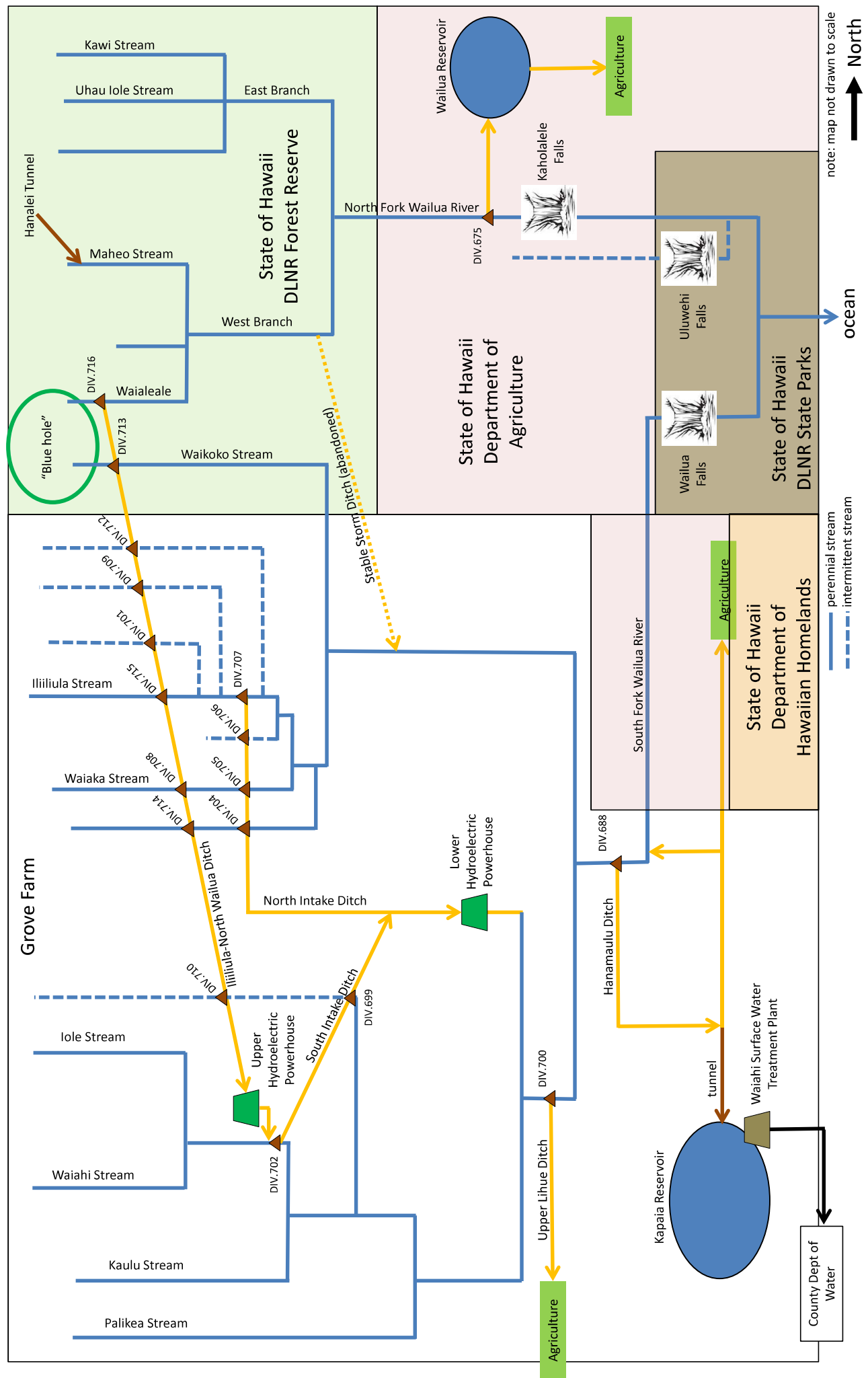
All nations are held in trust law, nations are created under trust records are held in DLNR

4. This agency and its agents fail to prove the protection and preservation of our natural resources especially, the protection over our wai

5. Please provide a plan to replenish our natural resources that is being used, destroyed, and displaced by foreign interests

Every agent and agencies who contract shall be held liable under oath, penalty and perjury as notice has been given. An obligation to not only protect my ku'u home recognized superior rights against injurious acts. I command a contested case be heard

Aloha No,
Roslyn Cummings a Wahine Maoli, Kanaka Maoli



REPORT ON THE FACILITATED DISCUSSION KAUAI ISLAND UTILITY COOPERATIVE (KIUC) REVOCABLE PERMIT S-7340

At its December 14, 2018 meeting, the Board of Land and Natural Resources approved a revocable permit for KIUC with the following in its minutes:

Holdover of Revocable Permits for Water Use on the Islands of Hawaii and Kauai. See Exhibit 3 for list of Revocable Permits. APPROVED AS AMENDED. The Board considered the holdover requests for the Hawaii and Kauai water revocable permits in three phases. First, the Board approved the holdover of Revocable Permit No. S-7340 to Kauai Island Utility Cooperative ("KIUC") as amended. The Board included a condition that KIUC is to invite Earthjustice, Kia'i Wai O Wai'ale'ale, Sierra Club, Grove Farm and the Department of Hawaiian Home Lands (together "The Working Group"), to participate in a facilitated discussion regarding their respective positions on KIUC's request to use State water for its hydroelectric plants in the permit area as well as any other matters they choose to discuss. The Working Group may invite other individuals or organizations to participate in the discussion. KIUC shall report back to the Board on the progress of the discussions in three months.

KIUC approached the Collaborative Leaders Network (CLN) about facilitating these discussions. CLN agreed to undertake this work with the understanding that for the initial meetings CLN would cover any of its own costs in the spirit of encouraging collaborative problems solving.

The Discussions

Three meetings were held on Kauai between January and March,

The first meeting was held with all the parties named above and every party expressed their basic sense of the issues involved, how they would like to have this work proceed from a process standpoint, and who else should be part of the process. The Kia'i Wai O Wai'ale'ale, Sierra Club, Earthjustice, HAPA, and Department of Hawaiian Homelands specifically asked if they could meet separately from the others to discuss their concerns (The others were interested in continuing to meet together but deferred to this request).

The second meetings were, as requested, held separately. Joining the morning session was the Office of Hawaiian Affairs. In that session, there were concerns raised on the environmental review process being undertaken by KIUC, KIUC's adherence to the stream flow numbers set by the Board, the relationship between this process and the larger questions of water use in the region, the value of the two hydro plants involved to Kauai, the larger economic interests involved, how the water lease and IIFS processes will work together, as well as a discussion of the sacredness of the water in the two streams specifically at issue here and how (or if) that can be reconciled with the other uses of the streams. The group also asked that a set of specific questions that they wanted KIUC to answer.

In the afternoon session, Kauai County Managing Director Michael Dahilig, the Kauai County Planning Department, the Kauai Department of Water Supply, and Kauai Backcountry Adventures also joined the conversation. In that session there were concerns raised about making sure that all interests including agricultural and other community public purposes and recreational were included in the decision-making, that all of these water systems are interconnected and therefore making changes to one portion affects many others (cumulative impacts), that this area (Lihue) is the major area for the housing needs on Kauai in the 21st century and water decisions need to be made with that in mind, and that Grove Farm has accumulated a lot of knowledge about this system as well as maintained it for the benefit of the island. The group also believes that the interests of all of the parties are not mutually exclusive and would like to work together to come to an understanding.

In addition to these meetings, there were a number of conversations and emails, as well as numerous pages of prior correspondence, documents, photographs, and diagrams provided on the issues involved.

The third set of meetings looked at the messages that the parties wanted to convey to the Board about the handling of the issues in this case.

The Questions to KIUC

1. It is the view of the morning parties that the BLNR had ordered KIUC to release 1.6 MGD in the stream at Waikoko and 4.0 at Wai'ale'ale Stream. Are these amounts of water actually being released?

KIUC believes that it is in compliance with the BLNR order.

KIUC believes the amount required to be release at Waikoko is 0.8 MGD.

(Both sides believe they have it right. There are a couple of ways to move forward on this one. One is to take this dispute to the Board and it will likely be sent to staff who will then report back to the Board on compliance. The other way is to have each side designate one person who will together review the situation including going up to the sites to make sure that they at least understand each other's views of this situation and hopefully agree on a shared understanding of what is going on or at a minimum narrow the dispute as much as possible.)

2. What specific environmental review process is KIUC undertaking in connection with this application.

KIUC has been conducting an Environmental Assessment (EA) with the DLNR as the accepting agency. KIUC expects to complete it and submit it this month or as soon thereafter as possible.

3. How much water does KIUC need to operate the hydro plants at an efficient level?

KIUC needs up to 25 MG in the upper forebay of the Upper Hydro and 42 MG in the lower forebay of the Lower Hydro.

Additionally, there was a desire to know from where the waters for these amounts came from.

For the Upper Hydro, KIUC uses water from these two streams (Wai'ale'ale and Waikoko), the Ililiula diversion (located on Grove Farm land but operated by KIUC as part of the Ililiula North Wailua Ditch System) and some small seasonal contributions during high rains. For the Lower Hydro, KIUC uses water diverted from Waiahi Stream (downstream of the tailrace discharge of the Upper Hydro), Ililiula Stream and some small seasonal streams that contribute during high rains. The amount of water discharged into Waiahi Stream from the Upper Hydro tailrace directly impacts how much water is available for the Lower Hydro.

The original Revocable Permit for Blue Hole and Waikoko diversions combined allowed up to an annual average of 14.2 MGD though through KIUC's diversion history they have been taking more like 13 and under current orders are taking a combined about of 9.6 MGD unless stream flow is above median flows. Overall 50% to 65% of the water used come from the diversion of these two streams.

The Wisdom of the Groups

While there are clearly very divergent views on a significant number of issues, there were commonly held views that are worth setting forth.

First, all the waters in the Lihue region are interconnected and the combinations of streams and diversions/ditches has and continues to have a very significant impact on the environment of the area, the Native Hawaiian culture and its practices in the area, and the economy and quality of life in the area.

Second, there are very strong and divergent views about what the right answers are in terms of (1) the amount of water that needs to be left in the streams, (2) the continuation of total or substantial diversions of water anywhere in the system, and (3) the impact that any significant changes to the current water system will have on the overall social, economic and environmental health of the region.

Third, all parties agree that the Waikoko and Wai'ale'ale issues are just the start of a much broader and more complex conversation and processes about the Lihue region. There are likely to be many more disputes coming with greater and greater consequence to the people of Kauai.

Fourth, the way in which the BLNR's revocable permit/lease processes and the Water Commission's IIFS process will (or won't) work together in a coordinated matter is not at all clear to these parties. Any discussion has a tendency to get to both issues very quickly and in an overlapping manner.

Fifth, all parties agree that some form of formal dispute resolution would be better for Kauai as a community and would want to engage in such a process.

Sixth, all parties are concerned that the tone of the discussions sometimes assumes a level of animosity that is not good for Kauai overall and a process more conducive to community building is very much in Kauai's interest.

Specific Recommendation Based on the Discussions

There needs to be a formal process in which the parties can participate. That process can be a contested case process, a contested case process with a mediation effort at the outset or during it, or some other process, (The parties do believe that any exchange of information and views is useful, but at this stage a formal setting for those discussions and exchanges is critical.)

The most available starting point is the IIFS process at the Water Commission involving the Wai'ale'ale and Waikoko Streams in which a contested case has already been requested.

In the longer term, the issues in the region significantly overlap and intersect, and that as challenging as it may be, consideration needs to be given to having a process examine all of the streams and waters in the Lihue area if that can be done.

Finally as the State moves more and more into the IIFS and water lease processes, it would be helpful if there is as much transparency as possible in how the two processes will coordinate with each other.

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

MEMO

Date: 8/1/22

To: Bridget Hammerquist, Kia`i Wai o Wai`ale`ale

Re: 7/3/22 site visit to Wai`ale`ale and Waikoko Stream diversions

Aloha Bridget,

This memo provides a summary of the site visit to the Ili`ili`ula-North Wailua Ditch diversions on Wai`ale`ale and Waikoko Streams that I performed on 7/3/22 along with Joe, Kamal, Uncle Liko, and Kainoa. For me, the objective of the site visit was to make a streamflow measurement near the CWRM gaging station on Wai`ale`ale Stream and to make general observations in this area to better understand current operations and maintenance status of the diversion and ditch system. In addition to the streamflow measurement, I also collected photos and GPS data during the site visit, some of which are presented here. And I got some video footage at both the Wai`ale`ale and Waikoko Stream diversion areas which I am sharing with you via Google Drive.

It has been a dry year on Kaua`i so far, with all of the NWS rain gages on the island recording well under 100% of average rainfall as of the end of June ¹. The NWS North Wailua Ditch rain gage station, located at the Wai`ale`ale Stream diversion is at 69% of its long-term average rainfall during the first half of 2022. Streamflows have been low all around Kaua`i this summer, and even with some recent rainfall, we observed low flow levels in Wai`ale`ale and Waikoko Streams on the day of this site visit.

Because the Ili`ili`ula-North Wailua Ditch has not been diverting water down-ditch to the Upper Waiahi Hydropower Plant for the last several years because of a break in the ditchline, the CWRM gaging station 2-191 'NF Wailua blw Bluehole Intake' has recently been producing a record of the total (undiverted) streamflow available in the North Fork Wailua River (aka Wai`ale`ale Stream). This dataset may prove to be extremely valuable in the establishment of a new Interim Instream Flow Standard (IIFS) for this stream. For this reason, I wanted to make a flow measurement at the CWRM gage station site as a spot check on its accuracy. The measurement was made using a Sontek FlowTracker2 acoustic velocity meter at a cross section approximately 20 feet upstream of the gage station's water level sensor (see inset photo). The staff gage readings during the measurement were 2.30 – 2.34 feet. The measurement was performed between 10:00 and 10:40am on 7/3/22, and the resulting flow value was 25.7 cfs. The CWRM gage station website reported a streamflow value of 25.3 cfs for this time period, which is in remarkable agreement with the field measurement I made. Based on this, I conclude that the gage station is well-



¹ https://www.weather.gov/images/hfo/hydrosum/kauai_ytd_0622.gif

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

calibrated, and the records from it should be considered high in quality, for flows in this range. I shared my streamflow measurement with Dr. Ayron Strauch, the CWRM hydrologist who manages this gage station, and he was appreciative of the data-sharing and the good agreement in records. For reference, the measured flow on this day (25.7 cfs) is very close to the median flow (50% exceedance) estimated by the USGS for this location (26 cfs), while the recent lower flows in the range of 17 cfs recorded at the CWRM gage station are more in-line with the Q95 (95% exceedance) estimated by the USGS.²



The Ili'ili'ula-North Wailua Ditch was filled in with sediment near the intake at Wai'ale'ale Stream during the site visit (see inset photo), so no measurable flow was being diverted from the stream into the ditch. The headgate in the ditch was fully boarded just down-ditch of the return flow "throw-out" which means that any water diverted from the stream into the ditch at higher flow should be blocked by the headgate and re-routed back to the stream channel through the

throw-out. Because no water was passing the headgate at this diversion, no water was overtopping the flow measurement weir just down-ditch from the headgate. On this day, no water was being diverted from Wai'ale'ale Stream into the Ili'ili'ula-North Wailua Ditch.

At the Waikoko Stream point of diversion, rocks had been stacked in an apparent attempt to limit the amount of water captured into the ditch, but this was largely ineffective (see inset photo, at right). I estimate that over 97% of the combined flow from the two branches of Waikoko Stream was being captured by the ditch intake, with less than 3% spilling past the diversion dam via a small pipe through the dam and cracks in the dam structure. This resulted in



only a trickle of flow in the Waikoko Stream channel between the diversion dam and the point roughly 300 feet downstream at the confluence with the throw-out channel (see inset photo, at left). Just like at the Wai'ale'ale Stream diversion site, the headgate just down-ditch of the throw-out was well-boarded to prevent flow from passing further down the ditch to the south. Instead, all of the flow from Waikoko Stream captured by the ditch was being returned

² Low-Flow Characteristics of Streams from Wailua to Hanapēpē, Kaua'i, Hawai'i. Scientific Investigations Report 2020-5128

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

to the stream through the throw-out on this day. Although some rocks had been stacked in the ditch intake to limit water capture by the ditch, most of the stream water was still being taken into the ditch intake. It seems a headgate could be installed without too much cost or effort at the intake section that would allow for the ability to “turn off” this diversion. Flashboards could be used in steel channels mounted to the ditch’s concrete sidewalls, and when fully closed, this control would allow the full streamflow of Waikoko Stream to pass over the dam face, rather than being routed through the ditch to the throw-out channel. This would result in a much more natural flow pattern and improve conditions for passage of native aquatic species in this stream reach.



No measurements of flow in Waikoko Stream or the ditch were made. At the first tunnel approximately 100 feet down-ditch of the Waikoko headgate, there is a short weir in the ditch channel with a stilling well made of a vertical steel pipe on the ditch bank. This set-up is clearly intended as a water level / flow measurement station, but it is unclear if this station is operated by CWRM or the water diverter, or if it is functional at this time.

Following the Ili’ili’ula-North Wailua Ditch for a ways in a southerly direction (towards Ili’ili’ula), I generally observed poor conditions of the ditch itself and it’s access trail, which I expect is due to a lack of regular maintenance since the ditchline break in 2019. In some places where the ditch crossed small, ephemeral stream channels, spillway notches have been left open to allow stream water to bypass the ditch channel. In others, there is no spillway notch, meaning that the ditch will continue to capture and transport water during rainfall events that produce runoff. This means that even though the ditch is not actively diverting water from Wai’ale’ale and Waikoko streams, it is still capturing water from other small streams in this area. This is resulting in reduced flows in some of these feeder streams and increased flows in others at ditch spillway points. So, although the ditch might be considered “inactive” in it’s current operational status, it continues to impact the hydrology of several headwater streams in this area.



At one site along the ditch, I observed a spillway at a location where there was no natural stream channel upslope of the ditch, but there was a deep gully eroded immediately downslope of the ditch (see inset photo at left). I estimate this gully to be 10 feet deep, and it was clearly formed by water flowing through the spillway notch in the concrete ditch wall. The notch has slots for a wooden “pani board” or flashboard, but without the board in

North Shore Hydrological Services

Matt Rosener, MS, PE, Principal

place, this location serves as an overflow spillway during high rainfall events. It is not known how much of the gully erosion observed at this site is due to recent storm events, but judging by the vegetation on the gully walls, the erosion in this area appears to be active.

My understanding has been that the siphon break in the ditchline between Waikoko and Ili'ili'ula Streams was caused by a large Albizia tree falling on the siphon and a subsequent landslide in the same area in 2019. This is confirmed by the transcript of the 12/10/21 BLNR meeting (on Items D-1 and D-2) and the KIUC letter to the BLNR requesting renewal of Revocable Permit No. S-7340 dated 11/19/21. I am not surprised after walking the segment of the ditchline south of Waikoko Stream as there are countless large



and small Albizia trees growing in the area, with many having branches hanging above open ditch sections (see inset photo at left, showing the area around the Waikoko diversion). This suggests to me that even if repairs were eventually made to the broken siphon, there would be substantial and perpetual maintenance and repairs needed in this area to keep the ditch functional, as debris loading from the Albizia overgrowth is problematic now and can be expected to become much worse in

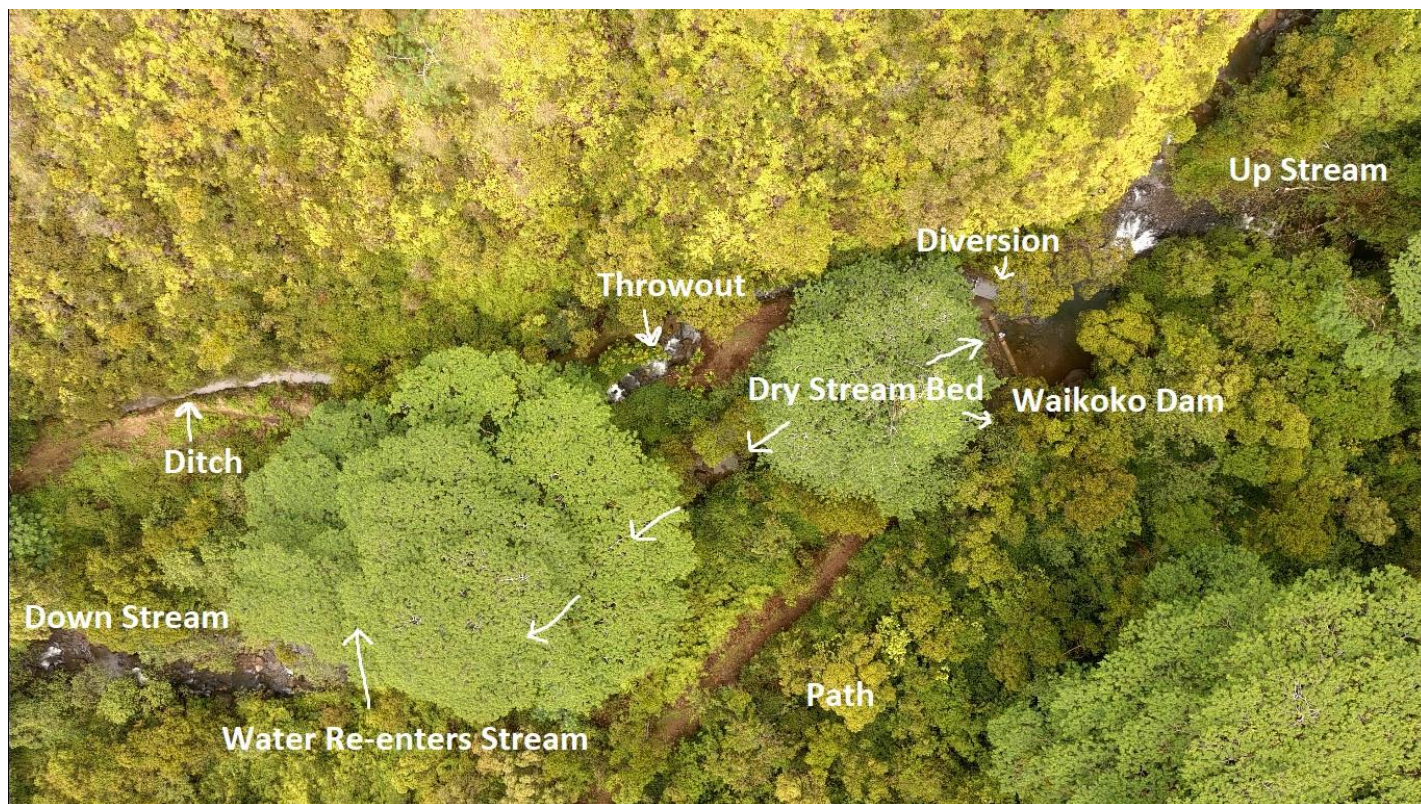
the future due to the prodigious growth rate of this tree species in this environment. On the day of this site visit, I observed several open ditch segments where piles of organic debris from falling Albizia branches was clogging the ditch.

These are my observations from the site visit to the Ili'ili'ula-North Wailua Ditch in the vicinity of Wai'ale'ale and Waikoko Streams on 7/3/22. I am sharing all of my photos and videos from the site visit via Google Drive. If you have any questions or need any clarification on any of the information presented here, please do not hesitate to contact me.

Wai`ale`ale and Waikoko Diversions - RP S-7340, 8/11/2003



Above: Waikoko dam and diversion, Nov. 27, 2022

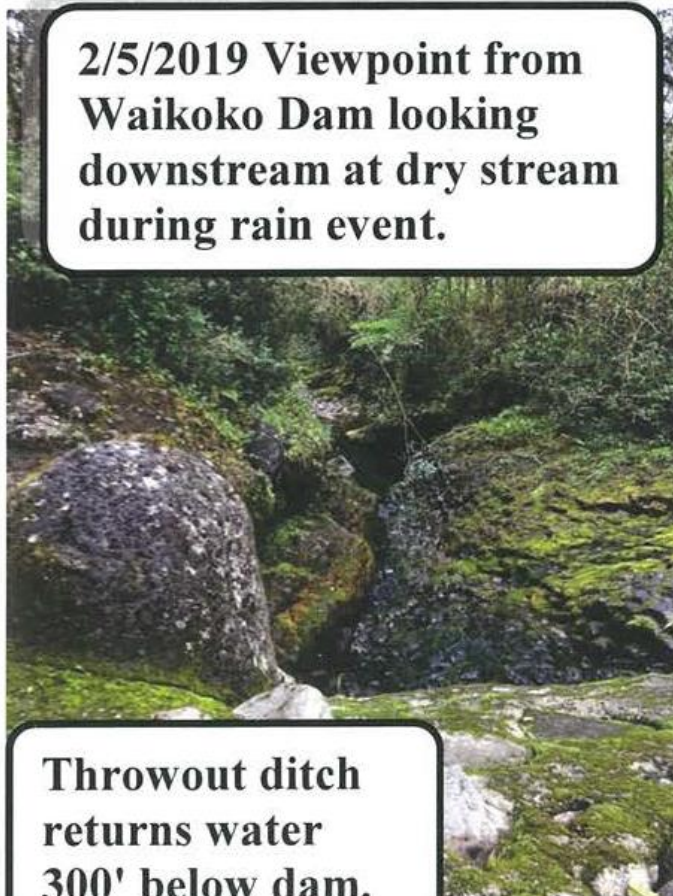


Above: Aerial Photo of Waikoko dam and diversion, July 03, 2022



2/5/2019. Waikoko Dam. Streamflow not restored.

**2/5/2019 Viewpoint from
Waikoko Dam looking
downstream at dry stream
during rain event.**



**Throwout ditch
returns water
300' below dam.**

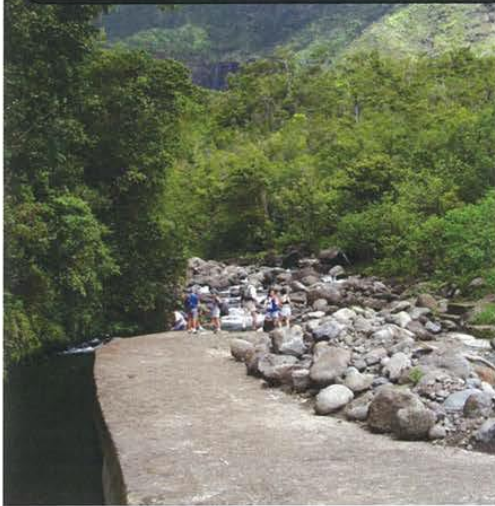


Above: Ili`ili`ula Ditch 7/3/2022

“At one site along the ditch, I observed a spillway at a location where there was no natural stream channel upslope of the ditch, but there was a deep gully eroded immediately downslope of the ditch (see inset photo at left). I estimate this gully to be 10 feet deep, and it was clearly formed by water flowing through the spillway notch in the concrete ditch wall. The notch has slots for a wooden “pani board’ or flashboard, but without the board in place, this location serves as an overflow spillway during high rainfall events. It is not known how much of the gully erosion observed at this site is due to recent storm events, but judging by the vegetation on the gully walls, the erosion in this area appears to be active.” North Shore Hydrology report by Matt Rosener 8/1/2022

Wai`ale`ale Stream: ditch safety and operational features, gate valves, removed, recently replaced with boards, contrary to Land Board directive and maintenance requirements of RP 7340 (A) and (B).

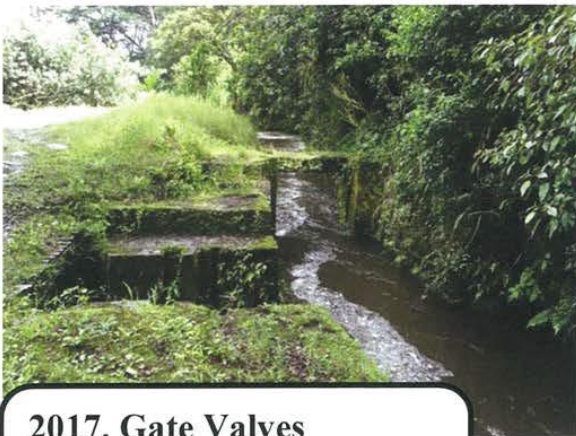
2000. Wai`ale`ale Dam conditions when KIUC assumed control from Kauai Electric.



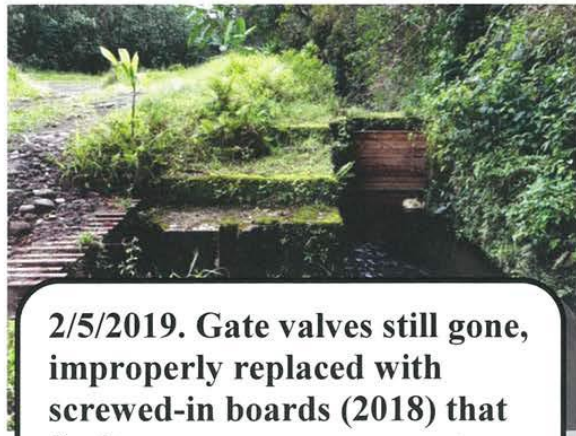
4/30/2000. Wai`ale`ale, intake ditch and throwout with operational control valves, condition when KIUC assumed diversion operations.



2017. Gate Valves Removed. No way to regulate flow or prevent damage from storm events.



2/5/2019. Gate valves still gone, improperly replaced with screwed-in boards (2018) that limit emergency response to storm events, and continue baseflow diversion from Wai`ale`ale.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCABLE PERMIT NO. S-7340

KNOW ALL MEN BY THESE PRESENTS:

This Agreement is executed this 11th day of August 2003, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and KAUAI ISLAND UTILITY COOPERATIVE, a Hawaii non-profit cooperative electric company, hereinafter called the "Permittee," whose mailing address is 4463 Pahee Street, Lihue, Hawaii 96766. The parties agree that commencing on the 1st day of January, 2003, ("commencement date"), Permittee is permitted to enter and use, on a month-to-month basis only, pursuant to section 171-58, Hawaii Revised Statutes, water emanating from, and the water transmission system situate at, Lihue-Koloa Forest Reserve, Wailua, Lihue, Kauai, tax map key no. (4) 3-9-1, as indicated on the map attached hereto, if any, and made a part hereof, also known as the "Blue Hole" diversion which is hereinafter referred to as the "Water Resources."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Use the Water Resources for the following specified purposes only:
To divert, take, draw off, conduct away and dispose of government-owned water emanating from the Blue Hole diversion (which consists of both of the stream diversions located at Blue Hole on the North Fork of the Wailua River and the diversion at the Waikoko Stream above USGS Gage 612 all of which are collectively referred to as the "Blue Hole" diversion) and use, operate, repair and maintain a portion of an existing government-owned water transmission infrastructure system including the Blue Hole diversion all for the purpose of generating hydroelectric power with the Permittee's two hydroelectric plants.
2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in the sum of THREE THOUSAND ONE HUNDRED TEN DOLLARS AND NO/CENTS (\$3,110.00) payable in advance by the first of each and every month.

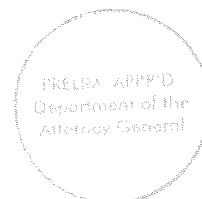


The interest rate on any unpaid or delinquent rentals shall be at one percent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraph 2, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep the government-owned improvements that are part of the Water Resources insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and shall be filed with the Board. In the event of loss, damage, or destruction of those improvements, the Board shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before ceasing use of the Water Resources.
6. Pay all applicable real property taxes assessed, if any, from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at



any future time during the term of this Permit applicable to the Water Resources including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. Repair and maintain all buildings or other improvements now or hereafter part of the Water Resources.

9. Obtain the prior written consent of the Board before making any major improvements.

10. Keep the Water Resources and improvements in a clean, sanitary, and orderly condition.

11. Pay all charges, assessments, or payments relating to the Water Resources including utilities.

12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Water Resources.

13. At all times with respect to the Water Resources, use due care for public health and safety.

14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, commercial general liability insurance, in an amount acceptable to the Chairperson with an insurance company or companies licensed to do business in the State of Hawaii. The policy or policies of insurance shall name the State of Hawaii as an additional insured. The insurance shall cover the Water Resources, including all grounds and all roadways on or adjacent to the Water Resources in the use or control of the Permittee.

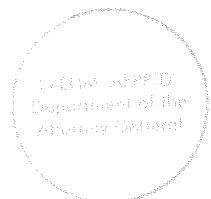
Prior to use of the Water Resources or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire Permit term, and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after sixty (60) days written notice has been given to the State.



The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks that exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. Pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Water Resources, or in the collection of delinquent rental, taxes, and any and all other charges.
17. Use of the water taken from the Water Resources shall be limited to the areas presently or formerly served. Expansion is not permitted.
18. The Permittee shall record and report monthly water use from the surface water diversions in accordance with Section 13-168-7, Hawaii Administrative Rules.
19. This permit shall cease and be void if the Board issues a lease pursuant to Section 171-58, Hawaii Revised Statutes for the Water Resources or portion thereof.



20. The State reserves the right to withdraw water from this revocable permit to meet the following requirements as the State in its sole discretion may determine:

Constitutionally protected water rights, in-stream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes.

21. Prior to any expansion or modification of any diversion works applicable to this project, Permittee shall document all proposed modifications to the hydropower plant and diversion works, and submit such documentation to the Commission on Water Resource Management ("CWRM"), and obtain, if necessary, approvals from CWRM.

22. It is in the State's best interests to have its water returned to State land for irrigation purposes after its initial diversion for hydroelectric purposes, as previously existed when the prior lessee managed the system. To that end:

a. The amount of water diverted into the ditch system at Blue Hole on an annual basis shall not exceed the average annual amount diverted as measured for the period from years 1992 to 2002.

b. Any applicable service charge to the cooperative members, by Grove Farm, shall be for the upkeep of the delivery system, not for the water.

23. Within six (6) months form the date of Board approval, Permittee shall submit to the Board a report concerning the following matters:

a. Permittee shall provide data concerning the amount of water diverted into the ditch system at Blue Hole: on an annual basis on average for the period from years 1992 to 2002, and for all prior months operated by the Permittee.

b. Permittee shall provide data and recommendations concerning the allocation of water during low volume periods (e.g. drought) between the Blue Hole diversion, the Stable Storm diversion, the Wailua Reservoir diversion, and Aahoaka diversion.



c. The water allocation proposal based upon Permittee's study and as agreed to by the Board is to be incorporated as a condition of this Permit upon Board approval.

B. Additional Conditions:

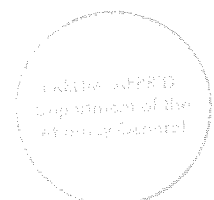
1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Water Resources or continues to use the Water Resources.

2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.

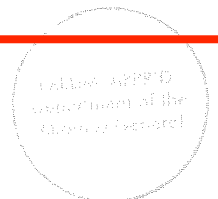
3. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.

4. If the Permittee fails to cease the use of the Water Resources upon revocation or termination of the Permit, the Board, by its agents, or representatives, may, without notice, seize, remove and dispose of all vehicles, equipment, materials, or any personal property associated with the Water Resources, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.



6. Any major improvements erected on or in the Water Resources by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Water Resources; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter and inspect the Water Resources and use of the Water Resources at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Water Resources and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Water Resources shall not be in support of any policy that discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Any and all disputes or questions arising under this Permit shall be referred to the Chairperson of the Board and his determination of these disputes or questions shall be final and binding on the parties.
13. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials onto or into the Water Resources except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto or released into the Water Resources any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials

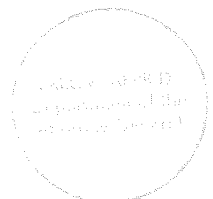


and upon the Board's consent which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on or in the Water Resources placed or released by Permittee.

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the permit.

For the purpose of this permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

14. Permittee shall indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, or officers under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Water Resources, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.



16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above. Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.
17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally. _____



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

By [Signature]
Chairperson of the Board of Land and
Natural Resources

Approved by the Board of
Land and Natural Resources
at its meeting held on
December 13, 2002.

SW

PERMITTEE

KAUAI ISLAND UTILITY COOPERATIVE,
a Hawaii non-profit cooperative
electric company

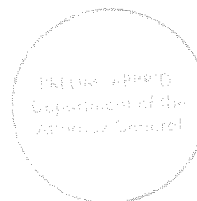
By [Signature]
Alton H. Miyamoto
Its President - CEO

APPROVED AS TO FORM:

And By _____

Its _____

[Signature]
Deputy Attorney General
Dated 3/7/03



STATE OF HAWAII

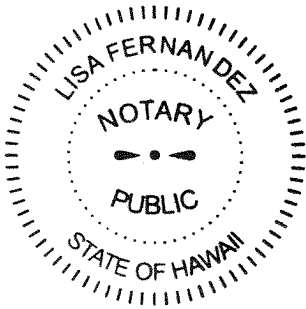
)

) SS.

COUNTY OF KAUAI

)

On this 28th day of March, 2003, before me appeared ALTON H. MIYAMOTO, to me personally known, who, being by me duly sworn and affirmed, did say that he is the President & CEO of KAUAI ISLAND UTILITY COOPERATIVE, a cooperative association formed pursuant to the provisions of Chapter 421C of the Hawaii Revised Statutes, and that said instrument was signed on behalf of said association by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said association.



A handwritten signature of Lisa Fernandez in black ink, written over a horizontal line.

Name:

Lisa Fernandez

Notary Public, State of Hawaii

My commission expires: 8-11-06



Testimony/Comment to the Board of Land and Natural Resources, Regular Meeting, December 8-9, 2022, Item D-3 pertaining to KIUC's decision to not seek renewal of RP S-7340.

Aloha Chair Case and Board Members,

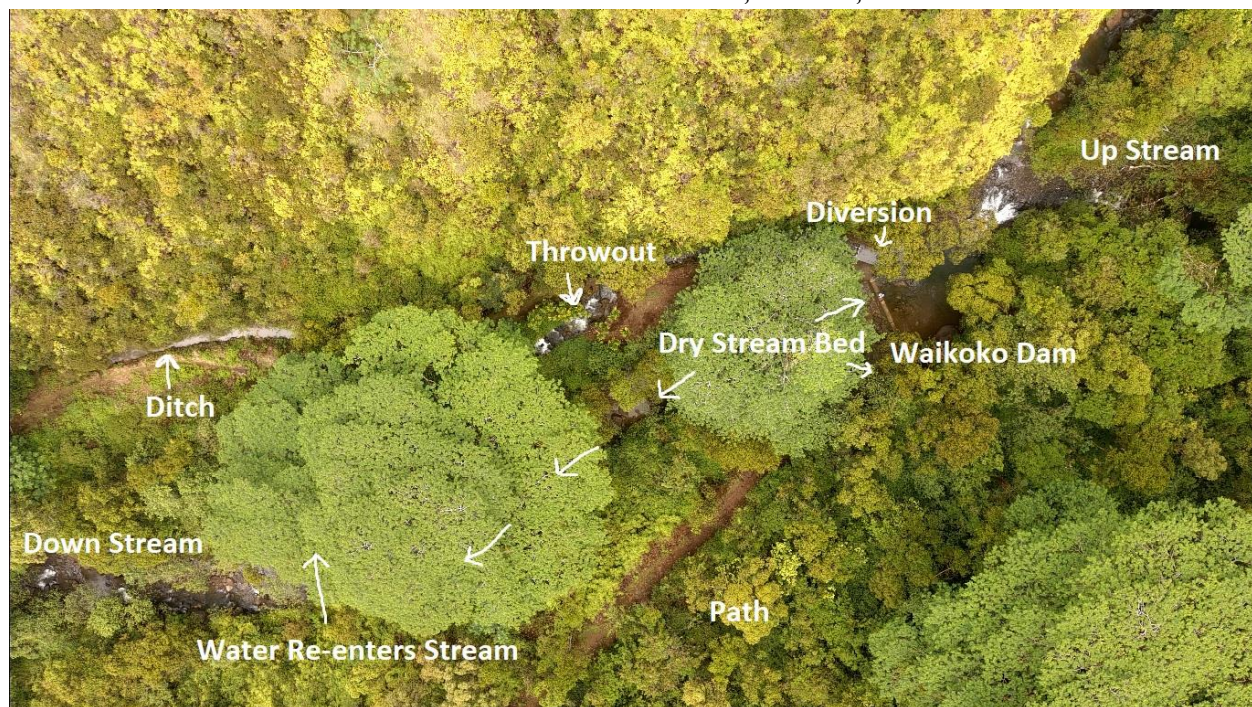
This Comment is filed on behalf of myself as a ratepayer, Coop member and the more than 1000 members of Friends of Māhā'ulepū, a non-profit corporation and Kia'i Wai o Wai'ale'ale, an unincorporated association, (collectively, "FOM"). We are writing to oppose the staff recommendation regarding the intent to work on terms of an access permit for KIUC as their decision not to reapply affectively terminates Revocable Permit (RP or "permit") S-7340. The full text of S-7340 is contained in the attached supplement to this Comment. S-7340 clearly provides that the permittee, Kaua'i Island Utility Cooperative (KIUC) is already obligated to do that which they seek under the creative vail of an access permit.

1. KIUC continues to divert Waikoko stream and as of December 10th lacks a permit to do so.

Board staff recommend "work[ing] with KIUC on an appropriate disposition" for KIUC to "access and to maintain the current infrastructure, without the right to divert and use water, to address public health and safety issues." D-3 Submittal at 4. This recommendation is premised on KIUC's statements that "no water is currently being diverted at North Fork River and Waikoko Stream[.]" *Id.* As we raised in our testimony to you on December 10, 2021, this statement was incorrect and continues to be. Please see attached report of North Shore Hydrology confirming the ongoing diversion at Waikoko and the persistence of a dry streambed below the Waikoko Dam that KIUC has failed to correct in violation of the Board's order of December 14, 2018. At that time the Board granted KIUC's application to renew RP S-7340 on the condition that stream flow would resume in response to extensive testimony objecting to the dry streambeds in both Wai'ale'ale and Waikoko Steams. Since that meeting, KIUC added rocks closing off the Wai'ale'ale Stream diversion and boards were added to the ditch further obstructing any water that overtops the rocks, directing those high flows into the throw-out ditch re-entering the stream approximately 100 yards below the dam. These measures at Wai'ale'ale resulted in nearly all flow overtopping the dam. Unfortunately, these measures were not successfully carried out at the diversion of Waikoko Stream allowing for continued diversion and a persistent dry stream bed as demonstrated in the following photographs. See attached report of North Shore Hydrology for specific details.



Above: Waikoko dam and diversion, Nov. 27, 2022.



Above: Aerial Photo of Waikoko dam and diversion, July 03, 2022.

The persistence of a dry stream bed and ongoing detriment to the stream biota was clearly not the intent of the Board decision December 14, 2018:

Attached is a copy of the report prepared by the community meeting facilitator, Robbie Alm, also order December 14, 2018. KIUC reported that through 2017 KIUC's 2 hydro power plants have never produced more than 1.9% of Kauai island's daily power production. As of 2018, another 20 megawatts of renewal energy via solar panels with battery backup

came online on Kauai substantially lowering the percentage of power production from these 2 sites. Further evidence of the questionable beneficial use of the Waiahi power plants is the fact that there was no hydro power produced for more than one year between Nov. 2009 and Dec. 2010. As the Board noted December 14, 2018, hydro power is not a public trust use for the diverted waters of Wai'ale'ale and Waikoko. Consequently, any renewal or approval of an application of hydro power production should balance the quantity of stream diversion proposed against the intended beneficial use and only after the instream flow standard is determined as Chair Case stated at that meeting. A link to the audio testimony follows with pertinent portions set out below.

BLNR Meeting KIUC D13 12-14-2018

https://drive.google.com/open?id=1R3gb_vmQoD3E7jOwuoW2V1d-Fl2Nt8x0

2:44:20 Chair Case: "This is an overall comment, which is that the right sequencing of this is you, statewide, is that you establish your meaningful Instream Flow Standards, so that you have a detailed process on the Water Commission side, to evaluate Instream values, and offstream legitimate uses, and do all that evaluation. Set the standards, and that tells you how much water there is to divert." BLNR Audio Link

2:48:01 "OK, so far they said, Wai'ale'ale you put back in 4 million gallons per day. Any other streams you're gonna put water back in?"

2:48 "Dean Uyeno: Waikoko"

2:48 "Director Roehrig: And how much for Waikoko?"

2:48 "Dean Uyeno: So the proposal, or per the, um, Land Division submittal, 1.6 million gallons per day for Waikoko Stream." BLNR Audio Link

3:12 Director Yuen: "... I'm making a motion to approve the renewal of the permit, with the conditions set by the Staff Recommendation which is to involve putting back 4 million gallons per day into Wai'ale'ale Stream and a million plus gallons, I don't remember exactly, per day into Waikoko Stream..." BLNR Audio Link

Consequently, while we strongly support and applaud KIUC's decision not to renew RP S-7340 we ask this Board to mandate KIUC to comply with the conditions of RP S-7340 because their non-renewal does not constitute relief from those contractual conditions which among others include the obligation to maintain a policy of insurance at the sole cost of the permittee to ensure the structures from any loss damage or destruction are adequately maintained and repaired. From June 2019 to present damage to the ditch system from multiple causes resulted in KIUC's inability to use the waters diverted from Wai'ale'ale and Waikoko Streams. Despite their inability to support any beneficial use from the waters that continued to be diverted from Waikoko Stream, KIUC sought and obtained renewal of RP S-7340 in December 2020 and December 2021. There has never been any mention of the insurance obligation set out in several of the conditions of RP S-7340. See full text of RP S-7340 in the attached Comment Supplement. They have also not taken the steps necessary to repair the structures they are specifically obligated to maintain under RP S-7340. Their letter of request to this Board for an "access permit" allegedly to repair and maintain the ditch structures in RP S-7340 is as disingenuous as their Director's testimony last December when he strongly objected to our testimony citing KIUC's failure to comply with the Board's order of 2018 requiring restoration of stream flow at Waikoko. Our testimony then was as accurate as it is today and this Board should not issue any "permit" of any kind to KIUC but should rather mandate KIUC's compliance with contractual conditions that they are not relived of because of their decision to non renew.

Because of the KIUC testimony to this Board in December of 2021, FOM members accessed the Ili'ili'ula-North Wailua ditch diversions on Wai'ale'ale and Waikoko streams with hydrologist Matt Rosener of North Shore Hydrological Services. See NSH attached report. They observed rocks stacked in the Waikoko ditch, which did not deter approximately 97% of combined flow from the two branches of Waikoko stream from entering the ditch. There is also a small pipe through the Waikoko dam, and cracks in the dam structure, permitting some water to flow through at a trickle, leaving the majority of the stream bed dry. Rosener at 1-2. Also see above photos. The lions' share of Waikoko is still being diverted into

KIUC's ditch. More recently, community members hiked to this area and observed a similar situation. See photograph above. KIUC's dam and diversion do not allow full use of the stream by native biota, cultural practitioners, or for aesthetic and recreational purposes, a complete violation of the public trust doctrine.

Unless it removes its dam or blocks the diversion ditch, KIUC will soon be unlawfully withdrawing water from Waikoko Stream.¹ The Board should take immediate action to ensure KIUC's compliance by ordering KIUC to prevent stream waters from entering its diversion and/or remove its dam over Waikoko stream such that stream waters can freely flow. Further, the Board should require its staff to follow-up, investigate, and affirmatively document changes to the KIUC diversion structures to ensure those structures are no longer preventing full flow of Waikoko stream.

2. KIUC's disrepaired ditch structures are collecting and wasting stream waters.

Further past the Waikoko and Wai'ale'ale diversion structures, KIUC's broken ditch system is capturing waters from Ili'ili'ula stream and leaking it into a ravine, away from the stream's natural courses. North Shore Hydrology reported on the condition of the area in July 2022. That report also noted that in some places where the [Ili'ili'ula- North Wailua] ditch crossed small, ephemeral stream channels, spillway notches have been left open to allow stream water to bypass the ditch channel. In others, there is no spillway notch, meaning that the ditch will continue to capture and transport water during rainfall events that produce runoff. This is resulting in reduced flows in some of these feeder streams and increased flows in others at ditch spillway points. So, although the ditch might be considered "inactive" in its current operational status, it continues to impact the hydrology of several headwater streams in this area. "At one site along the ditch, I observed a spillway at a location where there was no natural stream channel upslope of the ditch, but there was a deep gully eroded immediately downslope of the ditch [see photograph below]. I estimate this gully to be 10 feet deep, and it was clearly formed by water flowing through the spillway notch in the concrete ditch wall. The notch has slots for a wooden "pani board" or flashboard, but without the board in place, this location serves as an overflow spillway during high rainfall events. It is not known how much of the gully erosion observed at this site is due to recent storm events, but judging by the vegetation on the gully walls, the erosion in this area appears to be active."

NSH Report at 3-4. Rosener additionally described invasive albizia growth along lengths of the ditch, which would need to be removed to prevent clogging of the ditch.



¹ This Board approved KIUC's current RP 7340 on December 10, 2021, with a term to expire within a year. BLNR Regular Meeting, Submittal Item D-2 (Dec. 10, 2021).

All of the above clearly shows that little or no maintenance has been done to the structures that KIUC is contractually obligated to maintain.

As a public trustee, the Board has an obligation to affirmatively investigate KIUC's water wasting and to require them to repair or remove their structures such that stream water will no longer be wasted. The Board is also required to ensure KIUC complies with permit conditions. The Board's revocable permit (RP) S-7340 to KIUC, dated Aug. 11, 2003, includes conditions A.8 and A.10. RP Condition No. A.8 requires KIUC to "[r]epair and maintain all buildings or other improvements now or hereafter part of the Water Resources." *Id.* at 3. Likewise, Condition No. 10 requires the permitholder to "[k]eep the Water Resources and improvements in a clean, sanitary, and orderly condition." KIUC's disrepaired diversion structures are wasting stream water and the Board has an obligation to prevent wasting of public trust resources.

KIUC has not complied with RP 7340. Board staff should not be authorized to convey any permit to KIUC without specific, enforceable plans, timetables, and funding to prevent ongoing water waste from its broken ditches.

3. *KIUC assertions of "vandalism" do not establish KIUC's eligibility to a right of access.*

HRS §171-13, titled "Disposition of public lands" provides in relevant part:

No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof

Id. As discussed *supra* No. 2, KIUC is not compliant with RP 7340 permit conditions requiring maintenance. For at least the past three years, KIUC has also violated Condition A.1, which required KIUC to use the Water Resources (i.e., water transmission system) on for specified purposes, including to "use, operate, repair, and maintain a portion of an existing government-owned water transmission infrastructure system including the Blue Hole diversion all for the purpose of generating hydroelectric power with the Permittees two hydroelectric plants." KIUC has not been generating hydroelectric power with the diverted waters for at least three years. Instead, diverted waters are being used for non-hydroplant purposes because other entities are using the diverted waters for "Kaua'i Backyard Country Adventures", to fulfill contracts with KDOW (Grove Farm), and for waste as water flowing into eroding areas.²

In its October 25, 2022 letter, KIUC stated: "As recently as last month, vandalism occurred at the North Fork diversion that involved the complete destruction of the gaging station installed in the ditch for purposes of monitoring ditch flow just down-ditch of the diversion." D-3 Submittal, Exh. B. It is unclear which gage KIUC references, but the CWRM gaging station 2-191 on the North Fork Wailua River below the Bluehole Intake and USGS stations No. 16068000 and No. 16060950 continued to report flows. However, we understand the stilling well for the ditch gage near Wai'ale'ale stream was removed in recent months. This does not constitute "complete destruction of the gaging station" and in any case has little bearing on KIUC's non-compliance with RP S-7340 and contradicts KIUC's claim that no diversion of Waikoko stream is occurring.

At this point, KIUC is ineligible for any permit. Instead, the Board should direct its staff to obtain KIUC's compliance with RP terms and prevent ongoing diversion of Waikoko stream as part of a Board order of violation or enforcement action.

4. *Board action, if any, must be to first assure KIUC's compliance with the prior Board decision of 2018 and their contractual terms and conditions of RP S-7340.*

² Additionally, RP-S7340 Condition No. 22.b provides: (b) any applicable service charge to the cooperative members, by Grove Farm, shall be for the upkeep of the delivery system, not for the water." The Board's permit condition both recognizes that Grove Farm has a role under the permit and in charges, or potential charges, to KIUC. This condition is violated because Grove Farm charges KDOW, not only for water delivery, but also for energy/ power charges for the Waiahi surface water treatment plant. Grove Farm's charges to KDOW are a factor in the amounts billed to KDOW customers, most of whom are also KIUC ratepayers.

We urge the Board to take affirmative action to obtain proper environmental review in accord with its obligations as a public trustee. For two decades, KIUC has sheltered in a pretense of “temporary operations”, first under revocable permits and now under an amorphous non-permit “work . . . on an appropriate disposition.” D-3 Submittal at 4. KIUC must be held accountable for its ongoing and actual actions and not potential plans premised on its half-hearted draft environmental assessment, which has been pending for more than 3 years.

Should the Board solely adopt the staff’s recommendation of taking no action and allowing staff to “work with KIUC” on a disposition, KIUC will effectively be permitted to divert Waikoko waters, even without a permit to do so. Such action would trigger HRS chapter 343 environmental review.

KIUC further represents it will not conduct maintenance and repairs necessary to meet conditions of RP 7340 unless and until it obtains a long-term water lease. D-3 Submittal, Exh. B. That violates RP S-7340. They do not have that option under their contract with the State. First, as discussed *supra* No. 2, this degradation is *caused by* KIUC’s own broken ditch structures. Second, KIUC’s prevention of degradation and maintenance of current structures is necessarily connected to KIUC’s longer-term proposal for diversion. Therefore, they must be considered together as “phased actions” to be reviewed under a single environmental disclosure document. HAR §11-200.1-10. As the accepting agency for KIUC’s environmental assessment, the Board should require KIUC to revise its draft environmental assessment to include the actions KIUC is presently taking. That is, KIUC’s long term lease proposal must also include past, present, and ongoing disrepaired ditch structures, herbicided ditch areas,³ diversion, and water wasting. All of these actions are connected to KIUC’s effort to keep its place in line for a long term lease.

Please contact me with any questions.

Bridget Hammerquist
President, Friends of Māhā‘ulepū
Co-founder, Kia‘i Wai o Wai‘ale‘ale
P.O. Box 1654
Koloa, Hawai‘i 9675

³ Kia‘i Wai members who have been accessing diversion areas on public lands for many years have observed repeated use of herbicides along ditch areas to restrict vegetation and debris. Constant herbicidal use has changed the composition of the vegetation. Where native ferns used to flourish, clidemia now dominates. Mechanical removal of vegetation would restrict the growth and development of invasive, herbicide resistant plants in this area.

From: [Noelani JOSSELIN](#)
To: [DLNR.BLNR.Testimony](#)
Cc: [DLNR.CO.PublicDLNR](#)
Subject: [EXTERNAL] Waikoko Dam/Ditch Lihue Forest Reserve. P Attention Darlene! Please make copies and present to board members, Mahalo!
Date: Tuesday, December 6, 2022 3:52:48 PM

Chairperson

Suzanne Case

DLNR Main Office
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813
Ph: (808) 587-0400
dlnr@hawaii.gov

Agenda D3 - December 8, 2022

KIUC/BISSELL request for maintenance access to Waikoko ditch.

Aloha Chairperson Suzanne Case,

I am writing to you because I am concerned about a letter that the president of KIUC , Mr. David Bissell wrote in regards to requesting Waikoko Stream maintenance access.

KIUC Mr. Bissell claims that there is no stream diversion when in fact all of the water from Waikoko stream ends up in KIUC ditch! The only water that reaches the waikoko stream comes from a 3 inch pipe and a throughout 100 ft down ditch 200 ft. Down stream. The dam spillway are completely dry.

KIUC should be required to restore 100% of Waikoko water back to waikoko stream. 200 ft. of dry stream bed and Dam prevents our native aquatic species from migrating throughout its natural stream system.

KIUC has not been properly maintaining the trails and ditchline. Herbicides are widely used throughout the Lihue Forest Reserve, roads, trails and waterways. This is not acceptable! Our aquatic marine species and fauna are being poisoned and invasive

plants are taking over.

Waikoko is a sacred and culturally significant valley/stream. Practitioners have been gathering in this areas for many reasons for generations!

The use of herbicides by KIUC to maintain the forests have drastically reduced the native plants population. and KIUC should be required to manually maintain our forests ditches and trails without the use of chemicals.

As a native it is troublesome that KIUC continues to disregard Native cultural concepts and environmental concerns and should remove Waikoko dam and restore its stream.

Mahalonuinui ,

Noelanijosselin808@gmail.com

2022 December 3

Suzanne Case, Chair
Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
blnr.testimony@hawaii.gov

Re: Dec. 8, 2022 Agenda Item D-3

Aloha e Chair Case and BLNR:

I would like to address the testimony provided by KIUC¹ regarding the Revocable Permits for Kauai and the non-renewal of RP 7340 because I believe Waikoko Stream is being diverted into the KIUC ditch, contrary to the testimony provided this Board and the IIFS is not being met.

I would like to address:

1. KIUC alleging to use stream diversions through sluice gates as stream restoration, while alleging no diversion of Waikoko Stream.
2. Herbicide use on Public Trails and cultural gathering areas.
3. Lack of stream/ditch gaging and allegations of vandalism to ditch gaging equipment

In 2018, the Commission of Water Resources Management set Interim Instream Flow Standards of 6.9 mgd for Wai`ale`ale Stream and 0.8 mgd to remain in Waikoko stream. The IIFS for Waikoko has never been met since 2018. Currently, there is no way to re-establish streamflow over Waikoko dam. All Waikoko Streamflow is diverted into the KIUC `Ili`ili`ula/North Wailua ditch for over 100 feet until the water reaches the throwout or sluice gate. The throwout is about 6 inches lower than the dam, as the water flows down the ditch. There is no way to stop the streamflow from entering the ditch and throwout system, except when rocks are deposited in the ditch, like Wai`ale`ale ditch current conditions. The diversion of stream water into the ditch and throwout leaves Waikoko Stream dry for 200 feet downstream of KIUC's Waikoko dam.

KIUC maintains they have restored Waikoko Stream flow. There is no flow over the dam. The only water is leaking through a 3" pipe through the dam at about 0.09 million gallons per day (90,000 gallons per day). This is not IIFS restoration.

¹ <https://files.hawaii.gov/dlnr/meeting/submittals/120824/D-Land-Submittals-D13.pdf>.

There is no mauka to makai flow remaining in Waikoko Stream as mandated by CWRM in 2018 only 90,000 gallons per day through the dam, 1/10th of the IIFS.

There is no reason for Waikoko Stream to be diverted by a power agency not producing hydropower from this water. There is no excuse for failing to restore 0.8 mgd of streamflow as approved by CWRM and this Board. Drying up Waikoko Stream for 200' is contrary to the Hawaii Water Code.

If KIUC had installed stream monitoring gauges as required, this diversion could be easily proved or disproved. KIUC has failed to install stream gauging stations on either Waikoko or Wai`ale`ale, so they can allege restoration of Waikoko²

Since the last renewal of RP 7340 in November 2021, KIUC has not diverted water from North Fork Wailua River or Waikoko Stream, referred to collectively as "Blue Hole." As we have previously reported, in 2019 significant damage occurred in the transmission system downstream of the North Fork Wailua River and Waikoko Stream diversions and upstream of the 'Jli'ili'ula diversion. Because of the significant estimated cost of repairs, KIUC will not undertake the work prior to obtaining a long-term lease. KIUC continues to pursue a water lease pursuant to HRS Chapter 343 and HRS 171-58.

This picture of Waikoko Dam taken Nov 27, 2022 shows **no mauka-to-makai** streamflow over Waikoko Dam. Water is leaking through 3" pipe in dry dam face. There is not 800,000 gallons per day flowing in Waikoko Stream, no matter what KIUC alleges, only 90,000 gallons flowing through the dam.



² Dec. 8, 2022 BLNR Submittal Exhibit B, page 11. KIUC letter of Oct 25, 2022.

At a public meeting of the Wailua-Kapaa Neighborhood Association on February 23, 2019, KIUC presented a powerpoint slideshow³ highlighting their Waiahi Hydropower Plant Update including their ideas on stream restoration of Wai`ale`ale and Waikoko streams by using “Sluice Gate Release”. KIUC alleges that release of water through the “sluice gate” or throwout is stream restoration of Waikoko Stream.

5

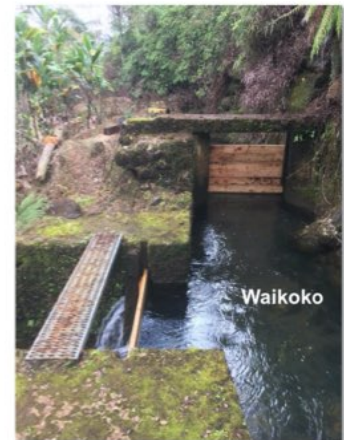
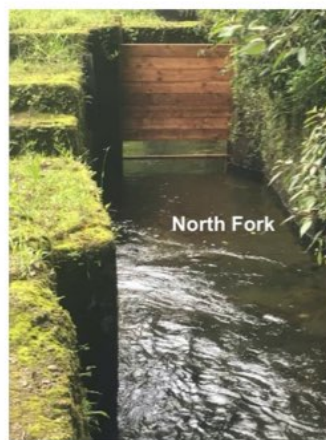
Stream Flow – Sluice Gate Release



18

KIUC alleges they have reduced ditchflow on Wai`ale`ale and Waikoko by ditch intake restriction. This configuration of dam boards captures lowest baseflows.

Ditch Intake Restriction at North Fork & Waikoko



19

³ <https://kiuc.coop/sites/default/files/documents/WKNA%20Waiahi%20Hydro%20informational%20update%202.23.2019%20FINAL.pdf>

Stream Restoration at Waikoko

Followed up
by this
allegation:

This is not
stream
restoration,
this is
release
from a ditch
into a ditch,
joining a dry
stream bed



Stream Restoration at Waikoko



This spillage over
Waikoko dam is from
inflow from `Ili`ili`ula/
NF Wailua ditch
transporting
Wai`ale`ale Stream
water to Waikoko, not
from Waikoko Stream
water.

**This is Waikoko Stream
May 23, 2019.
There is no flow
as mandated
by Commission on
Water Resources
Management.**

**Fish cannot migrate
a dry stream.
They die.**



Where is the 800,000 gallons in Waikoko Stream? There hasn't been flowing water in Waikoko since the IIFS was established. These pictures were taken May, 2019, just 3 months after KIUC's powerpoint, showing a dry Waikoko Stream, not restored as KIUC still alleges. Only the 3" pipe is carrying 90,000 gallons of water per day through the dam. This is unacceptable.

Current condition of Waikoko Stream diversion into throwout or “sluice gate stream restoration” yet KIUC maintains no diversion of Waikoko.



2019 Condition



If there was no diversion of Waikoko Stream, these ditches should be dry.

2022 The dam boards are not being maintained in a safe, operable condition.

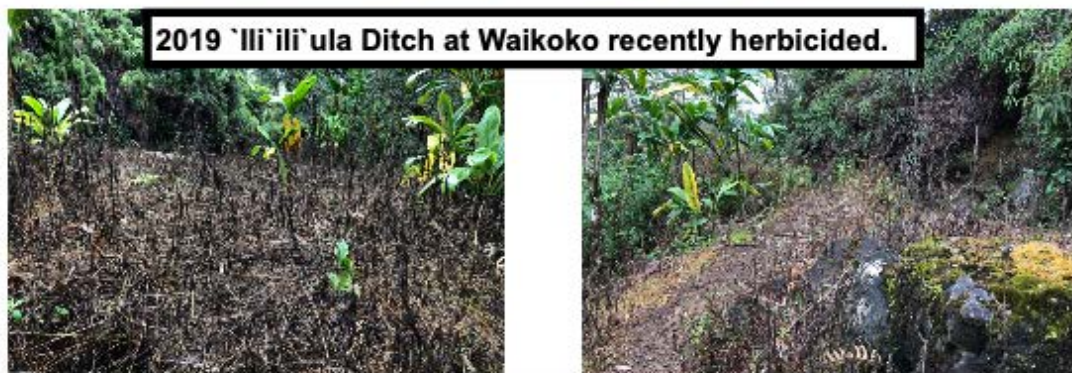
2019 Dam Boards in place



KIUC has failed to maintain this 5 mile ditch system in a safe, operable manner during the 20 years of Revocable Permit 7340. Why should we expect maintenance to be improved under an access agreement?

KIUC's excessive use of herbicides along public trails in the Conservation District of the Lihue-Koloa Forest Reserve has been previously brought before this Board in 2019:

2019. The area around Waikoko dam and ditch has recently been sprayed with herbicide. Water from this ditch is delivered to Grove Farm, diverted through the Hanamaulu Ditch to Kapaia Reservoir, where it is processed into potable water at the Waiahi Surface Water Treatment Plant by Grove Farm, before being sold to the Kauai Department of Water for drinking water.



KIUC's herbicide use along the ditchway and trail has killed native fern species, mamaki and understory plants are replaced with herbicide-resistant Clidemia, or Koster's Curse. **November 27, 2022.**



Herbicide Resistant

Clidemia





Herbicide- resistant Clidemia

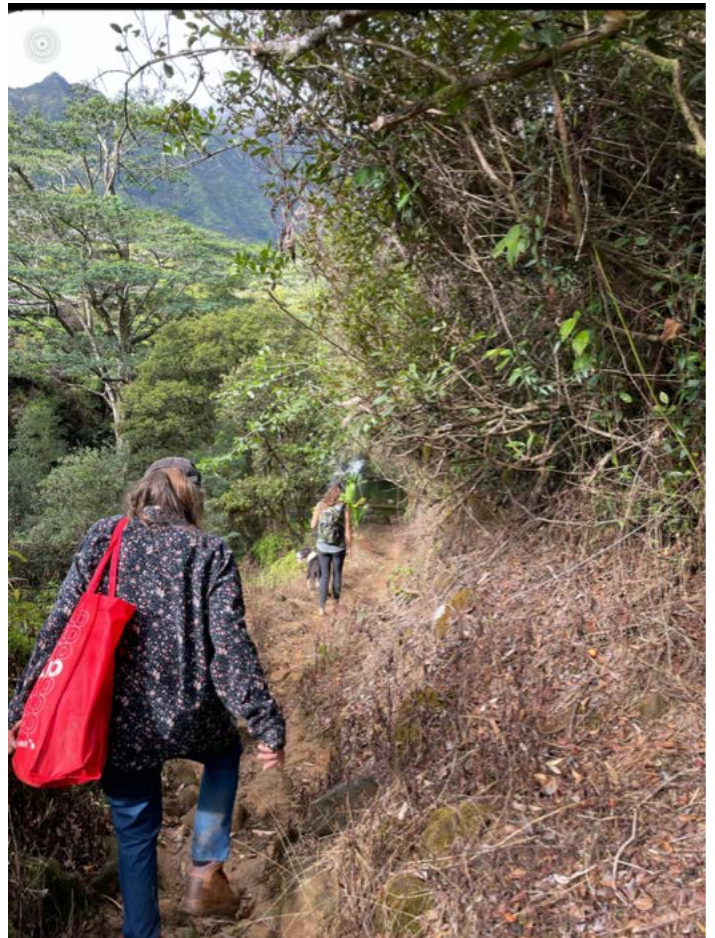


This trail along a 5 mile ditchway is a very significant accessway for cultural practitioners and lei makers. This area should be maintained with weedeaters, not spray poison. Any access easement consideration must not include the use of herbicides along drinking water ditches in gathering areas. It is not in the best interest of the state to poison our public trails and gathering places.

2000 Trail to Waikoko



2022 Same Trail to Waikoko after 22 years of herbicide use.



The 65 year water lease application that KIUC is pursuing contains substantial errors that make it unable to be processed as presented. KIUC alleges their water use is non-consumptive. This was contested immediately by OHA, along with public trust violations and lack of cultural considerations. In 2004, by House Concurrent Resolution 124, H.D 1, KIUC was granted authorization for a water lease for **non-consumptive purposes**⁴.

The DLNR corrected this non-consumptive error in their submittals to the BLNR in 2016⁵ stating:

Permittee applied for a water lease on 07/20/01 for hydroelectric purposes. Use considered consumptive because water is not returned to the stream from which it was drawn.

KIUC must correct this error for this 65 year water lease application to progress. The Draft Environmental Assessment, released 3 times by KIUC in 2019, has never been completed. Community comments and concerns have not been addressed yet.

A primary concern is the proposed construction of two new dams in the forest Conservation District under the 65 year water lease, one on Wai`ale`ale Stream and one on Waikoko Stream, both in sacred hi`uwai pools. The proposed Wai`ale`ale dam is in federally-designated Critical Habitat for the endangered Newcomb's snail.

These dams have never been presented to the public or this Board for consideration, except in the incomplete, unanswered EA. Both proposed dams are located in active trail areas, yet both dams do not provide for public access. This is unacceptable.

Both of these proposed dams would have great negative impact on cultural practices and popular recreational use of the area, but KIUC has denied any cultural use by traditional practitioners.

⁴<https://files.hawaii.gov/dlnr/meeting/submittals/120824/D-Land-Submittals-D13.pdf>. Exhibit C. Pages 15-18.

⁵<https://dlnr.hawaii.gov/wp-content/uploads/2016/01/Exhibit-3-D-3.pdf>

Figure 21. Rendering of Overhead View of Modified North Fork Wailua River Diversion



Figure 24. Rendering of View from Footpath of Modified Waikoko Stream Diversion

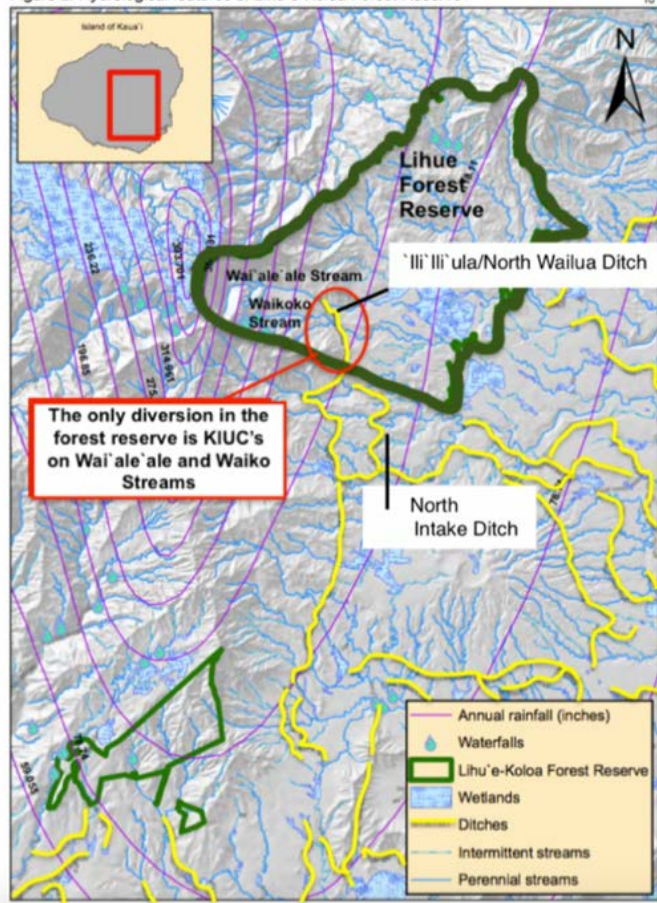


This would be evident to KIUC if they had ever performed an accepted Cultural Impact Assessment on the impact of this proposed 65 year water diversion. Two CIA have been contracted and rejected by OHA as failing to address cultural impacts. The Supplemental Report performed by Cultural Surveys Hawaii has never been presented to OHA for approval yet. The 2017 Supplemental report consists of two interviewees discussing the impact of no diversions to invasive species like albizia, not the impact to cultural folks on the diversion of their sacred waters for a tiny amount of replaceable power production. Cultural impacts of the diversion of Wai`ale`ale and Waikoko Streams for 65 years have not been considered **yet**. The community feels it's concerns have not been heard, especially about access to sacred headwater streams. Continued access to these headwater streams is of primary concern.

We are blessed with a relatively good road into the heart of our forest, making public access to these special places a cultural priority. These 2 commercial ditches put a different feel to our forest as they are the only ditches in the Lihue-Koloa Forest Reserve.

Ditches highlighted. Only 2 streams are diverted from the Lihue Forest Reserve, Wai`ale`ale and Waikoko by the `Ili`ili`ula/North Wailua Ditch..

Figure 2: Hydrological features of Lihue'e-Koloa Forest Reserve



In the October 25, 2000 letter to the BLNR⁶, Mr. Bissel alleges:




Regular maintenance also helps to identify and address vandalism at the diversions and ensures that the headgates remain closed preventing diversion of water into the ditch system. Vandalism continues to be a problem at both diversions. As recently as last month, vandalism occurred at the North Fork diversion that involved the complete destruction of the gaging station installed in the ditch for purposes of monitoring ditch flow just down-ditch of the diversion.

I believe this
obsolete
standpipe is what
Mr. Bissel is
referring to:



⁶ <https://dlnr.hawaii.gov/wp-content/uploads/2022/12/D-3.pdf>. Page 11.

There was no KIUC or USGS gaging station in the `Ili`ili`ula/NF Wailua ditch. There hasn't been an operable gage in the ditch since USGS gauge 160610000, reporting since 1932, went inoperable in 1985⁷.

National Water Information System: Web Interface

USGS Water Resources

Data Category:

Geographic Area:

Surface Water

United States

Click to hide News Bulletins

See the [Water Data for the Nation Blog](#) for the latest news and updates.

USGS Surface-Water Monthly Statistics for the Nation

The statistics generated from this site are based on approved daily-mean data and may not match those published by the USGS in official publications. The user is responsible for assessment and use of statistics from this site. For more details on why the statistics may not match, [click here](#).

USGS 16061000 North Wailua Ditch nr Lihue, Kauai, HI

Available data for this site Time-series: Monthly statistics

Kauai County, Hawaii
Hydrologic Unit Code 20070000
Latitude 22°03'44.71", Longitude 159°28'03.88" NAD83
Gage datum 1,105.45 feet above LMSL

Output formats
[HTML table of all data](#)
[Tab-separated data](#)
[Reset/exit output format](#)

00060, Discharge, cubic feet per second.												
Monthly mean in ft ³ /s (Calculation Period: 1932-07-01 ~> 1985-08-31)												
YEAR	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1932							29.5	28.4	24.4	26.1	18.3	17.2
1933	7.32	7.85	12	20.2	17.9	17.8	23.2	20.5	26.3	21.5	19.1	22.5
1934	20.8	18.9	16	26.2	24.6	25.3	28	23.9	29.2	21.8	20.7	20
1935	18.4	19.6	18.1	24.5	25.7	27.7	29.1	23.9	22.7	18.0	17.6	17.3
1936	18	19	16.8	21.2	26	21.4	28.3	25.2	21.3	21.6	19.7	19.8
1937	19.2	19	19.8	24.9	15.7	25	30.3	26.2	25.6	26.5	19	21.4
1938	20.6	18.6	18.3	15.2	28	20.2	28.5	23.2	22.6	25	19.2	23
1939	20.5	21.8	19.1	18.6	19.6	17	19.8	24.6	22.9	24	23.7	19.5
1940	19.5	23.5	19.2	24.3	24.3	23.8	18.8	2.96	12.1	12.5	13.7	15.7
1941	15.1	18.1	14.3	18.2	20.2	23.5	18.2	19.4	7.35	5.63	13.5	15.9
1942	16.9	18.1	15.1	12.4	15.4	14.1	17.3	17.6	17.1	20.1	20	8.63
1943	12.6	18.2	15	17.1	14.2	10.7	14.4	16.5	14.9	16.6	16.6	16
1944	16.5	15.5	11.1	18.3	29.3	20.2	14	21.6	18	19.8	20	16.8
1945	17.5	19.1	24.9	14.5	17.3	22.4	19	17.4	18.8	18.3	17.5	16
1946	18.2	13.7	16.8	13.4	16.7	19.8	18.9	16.3	19.1	17.5	16.3	10.2
1947	16.7	15.2	23.1	17	20.7	18.1	18.9	16.6	18.4	20.5	16.6	18.2
1948	14.1	18.4	9.98	13.7	11.7	14	14.7	11.1	18	21.1	16.9	4.7
1949	6.56	14.1	15.8	20	21.2	22.9	20.8	23.6	18.8	21.1	23.2	19.3
1950	14.9	17.6	20.7	22.1	20.5	21.7	21.7	20.6	19.7	18.9	17.8	18
1951	21	18.2	17.8	17.4	17.4	17.5	21.1	22.6	19.3	19.5	16.7	10.4
1952	7.85	16.9	14.4	19.5	20.8	16.3	15.9	20.2	19.5	20.5	16.8	18.9
1953	19.2	19.1	19	18.3	21	22.4	21.1	22	18.3	18.6	21.3	23.3
1954	16.5	19.9	16.8	19	21.2	17.1	18.9	14.8	15.2	15.6	16.7	15
1955	14.9	18.6	15.2	20.4	17.8	17.5	17.6	17.6	14.7	17.8	11.6	14.3
1956	12.5	14.2	15.4	15.4	17.3	17.7	18.4	17.5	16.7	16.7	14.4	17.1
1957	18.9	18.5	18.5	21.2	20.7	18	19.8	19.6	18.7	17.8	20.4	17.6
1958	17.2	17.5	17.1	18.3	18.9	21	23.2	21.7	21.4	21.5	20.9	20.2
1959	20.6	19.3	18.5	20.1	20.2	18.1	21.5	18.5	20.5	17.4	18.5	19
1960	17.3	17	17	20.6	18.9	18.4	18.8	19.1	19.8	20.6	20.3	19.9
1961	18.1	18.6	19.1	19.4	18.5	21.2	20.7	19.2	18.9	20.1	19	16
1962	16.9	18.7	17.7	19.5	19.5	20	19.5	20.4	19.7	18.4	19.7	19.4
1963	19.9	16.6	17.5	11.3	2.43	20.4	20.1	21.6	14.2	10.6	20.5	18.8
1964	20.5	20.7	20.8	21.9	20.1	18.5	19.4	21	24.1	20.2	18.4	9.5
1965	19.4	20.3	19.9	21.4	18.1	19.1	20.9	22.3	21.7	19.6	18	21.4
1966	21	21.6	20.3	17.4	19.7	23.8	19.7	22.3	21.6	19.3	21.7	19.5
1967	19.5	21.1	22.6	19.6	14.4	16.8	18.2	14.1	22.1	21.3	21.2	17.7
1968	20.7	21	22.2	17.4	19.8	23	24.8	22.9	21.7	21.3	21	19.1
1969	19.3	23.9	22.5	23.8	22.3	21.2	26.3	25.1	26.7	23	25.5	23
1970	25.8	18.3	17.3	25.8	23.4	24.4	22.2	19.5	22.1	20.1	21.9	14
1971	20.5	15.8	22.6	23.8	18.3	18.9	19.7	18.2	19.2	19.5	21.2	16
1972	16.5	16.4	15.3	19.8	19.1	19.2	18.3	20.4	20	19.2	20.8	17.3
1973	17.2	19	20	22.9	22.4	20.3	18.5	16.5	15.9	16.8	16.6	16.2
1974	15.5	14.9	15.5	16.4	16.3	15.8	15.6	16.6	17.1	16.6	14.9	17.5
1975	19	11.7	19.9	22.7	21.8	20.6	19.8	18.3	15.8	18.3	16.7	15.5
1976	17.7	16.3	16.4	18.2	16.9	17.7	16.9	15.3	15.8	17.4	16.8	17.4
1977	17.5	16.8	22.7	20.8	17.2	17.7	17.1	17.3	20	19.5	17.7	17.3
1978	16.4	13.6	16.6	21.1	20.7	19.8	20.2	17.6	16.8	16.8	19	18.5
1979	17.2	19.9	17.6	17.5	19	20.4	17	17	17.2	18.6	20.7	18.6
1980	16.1	15.1	21	18.7	17.9	19.6	17.8	16.8	16.8	11.3	19.5	19.1
1981	17.3	18.9	19.2	20.7	19.1	18	19.2	21.6	20.1	21	21.3	22.9
1982	24	20.8	20.5	8.91	23	24.9	21.2	18	21	22.2	2.45	0.044
1983	0.007	11.8	17.3	21.5	23.4	23.9	24	19.6	23.1	24.5	22.5	17
1984	23.5	22.2	17.7	18.8	15.8	21.6	17.9	17.5	18.1	16.5	20	23.6
1985	20.2	21.9	23.4	22.5	22.7	17.5	18.1	21.5				
Mean of monthly Discharge	17	18	18	19	19	20	20	20	19	19	19	17

** No Incomplete data have been used for statistical calculation

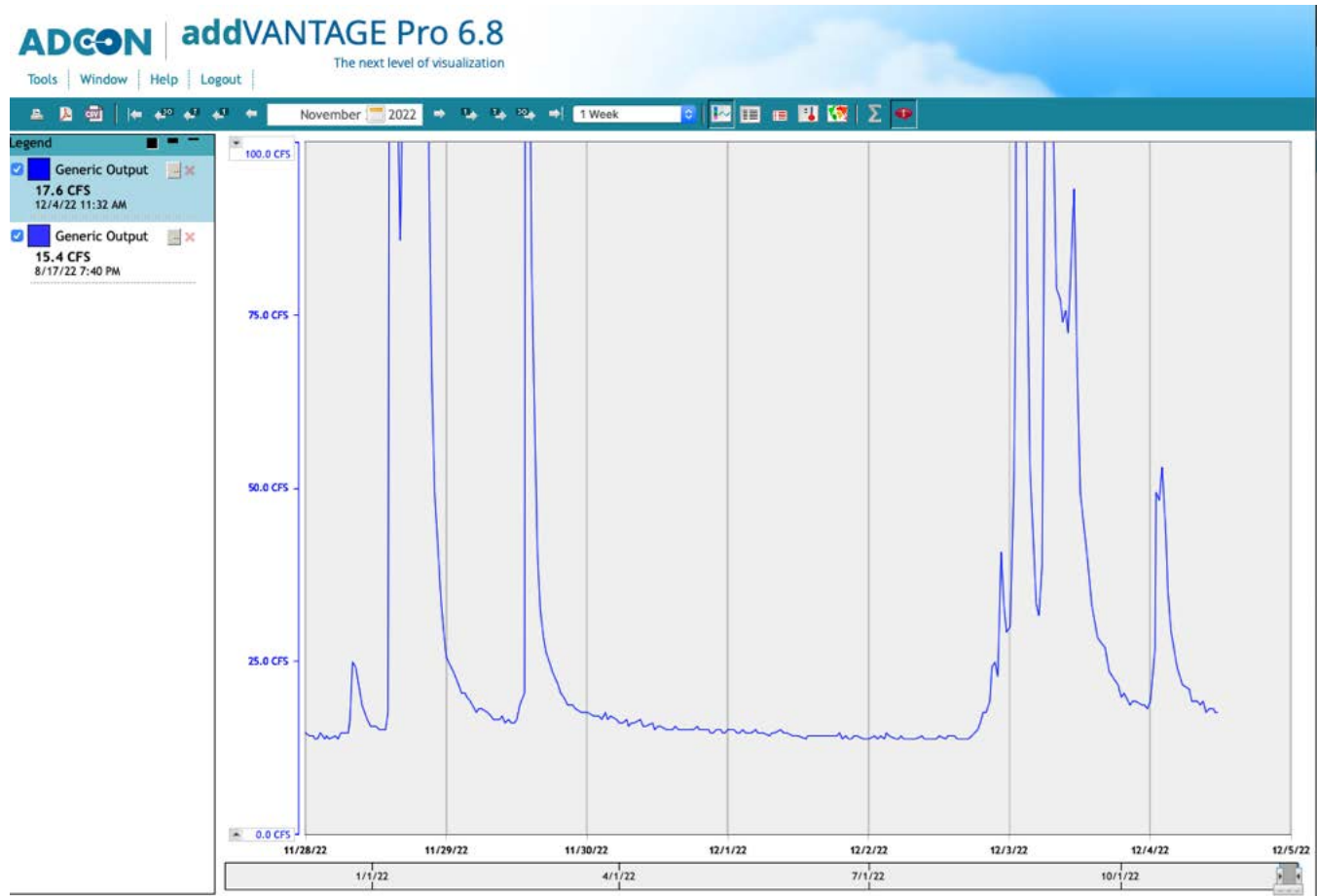
** No Incomplete data have been used for statistical calculation

The allegation of the “complete destruction of the gaging station installed in the ditch for purposes of monitoring ditch flow just down-ditch of the diversion” needs to be corrected.

⁷ [https://waterdata.usgs.gov/nwis/monthly?](https://waterdata.usgs.gov/nwis/monthly?referred module=sw&site no=16061000&por 16061000 40826=2643302,00060,40826,1932-07,1985-09&format=html table&date format=YYYY-MM-DD&rd compression=file&submitted form=parameter selection list)

[referred module=sw&site no=16061000&por 16061000 40826=2643302,00060,40826,1932-07,1985-09&format=html table&date format=YYYY-MM-DD&rd compression=file&submitted form=parameter selection list](https://waterdata.usgs.gov/nwis/monthly?referred module=sw&site no=16061000&por 16061000 40826=2643302,00060,40826,1932-07,1985-09&format=html table&date format=YYYY-MM-DD&rd compression=file&submitted form=parameter selection list)

The failure of KIUC to install stream monitoring gauges as required resulted in CWRM installing a stream gauge on Wai`ale`ale Stream⁸ about 1,000' below the Wai`ale`ale dam. It is still operable and reporting as of Dec. 3, 2022.

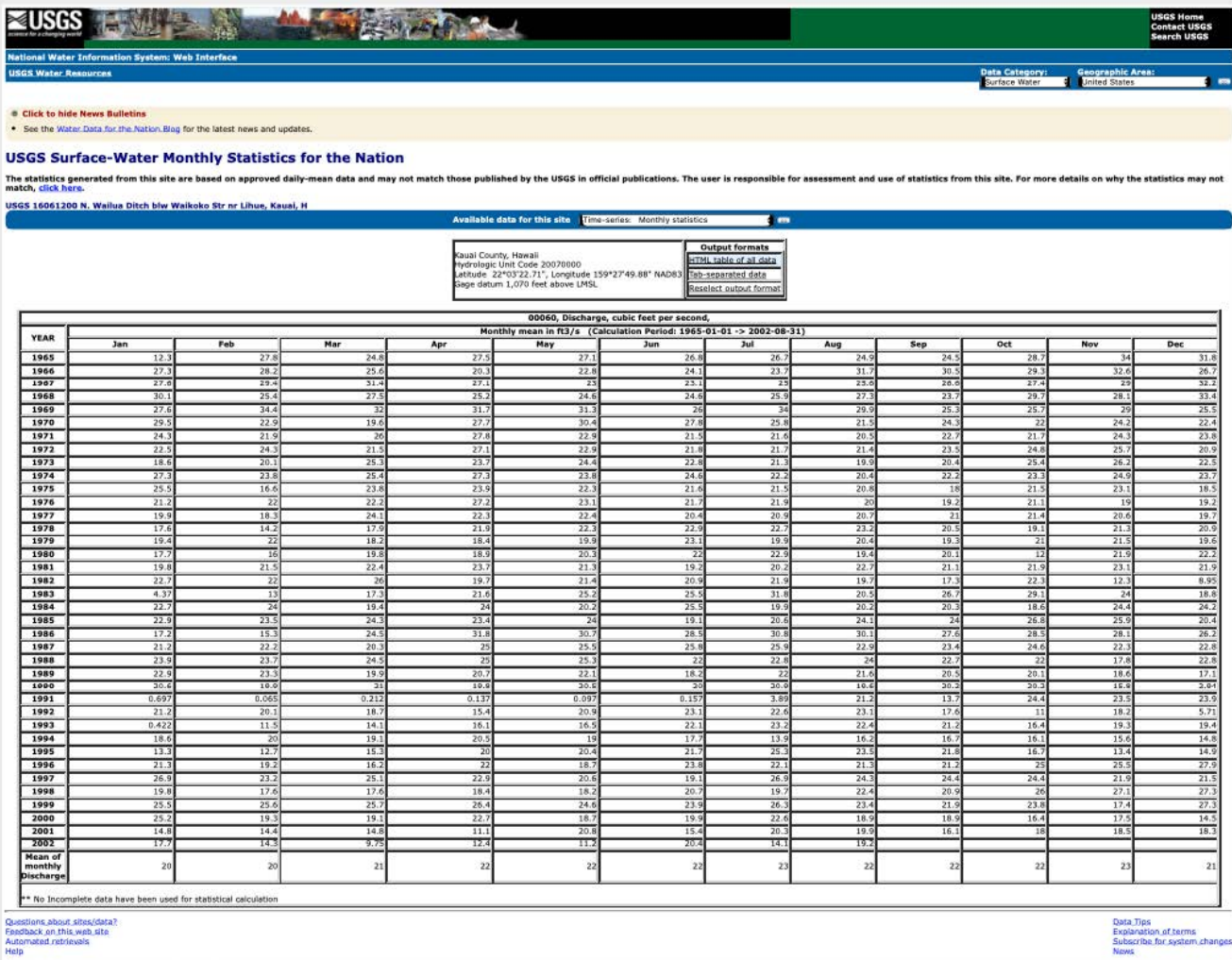


KIUC has never installed gaging equipment on the ditch below Waikoko, even though there was an operable, reporting USGS gauge 16061200⁹ when they took over from Kauai Electric in 2000 with daily data from 1965 to 2002.

Water diversions were closely monitored and recorded during plantation era. There is no excuse for removing ditch gages and not replacing them.

⁸ <http://fc01.mccrometer.net/secure/explorer.do?panel=8a0018df6945ba8a016a80b1fa1b36e8>

⁹ https://waterdata.usgs.gov/nwis/monthly?referred_module=sw&site_no=16061200&por_16061200_40827=2643303,00060,40827,1965-01,2002-09&format=html_table&date_format=YYYY-MM-DD&rdb_compression=file&submitted_form=parameter_selection_list



If KIUC is truly intrested in a 65 year lease, the errors in the lease application must be corrected. The application must be truthful or there should be no access easement considerations. The diversions of Waikoko and Wai`ale`ale waters are a 100% consumptive use, as DLNR found in 2016. No water can be returned upslope 5 miles. This fraudulent application must be corrected to continue.

KIUC is still diverting water from Waikoko Stream into the `Ili`ili`ula/North Wailua ditch, leaving the stream dry for 200'. This must stop and the lie corrected. Sluice gate diversion is not stream restoration. The Waikoko IIFS is for 0.8 million gallons of water daily to remain in Waikoko Stream bed, not in the KIUC ditch and sluice gate. KIUC must stop denying the diversion of Waikoko. If there were operable stream and ditch gages, this would be obvious. This lie to the Board must be corrected.

Herbicide use along trails and gathering areas should stop. I have not been able to find what kinds of herbicides have been applied on these Conservation District lands, how much, how often and cautionary posting requirements. This is not in the best interest of the public to have poison in the headwaters of our forests and must be seriously considered for an access easement.

The public should not be blamed for random allegations of vandalism. The public cannot be punished or held accountable for random acts by unknown people. Every instance and allegation should show KIUC the cultural significance and recreational importance of this area, which should have been fully vetted by an Environmental Impact Statement, not just an incompleted EA.

KIUC has known about the requirements of a Watershed Management Study, IIFS, an accepted Cultural Impact Assessment and an EA/EIS for 20 years. There is no excuse for these studies not to be complete.

There is also no excuse for this Board not to have been provided with cost estimates and repair timeline for the repair of siphon, broken since 2018 and these facts to have been omitted from the EA. All of these matters are of great concern with this water lease consideration. Since the siphon break is on Grove Farm land, will KIUC be getting an access easement from Grove Farm to repair the landslide and siphon break?

I look forward to the BLNR thoroughly considering this access easement as a separate agenda item. I am grateful the request for water diversion is pau. I look forward to the Waikoko diversion to cease.

Mahalo for your time and consideration,

Hope Hamilton Kallai
Kia`i Wai o Wai`ale`ale
lokahipath2@live.com



SIERRA CLUB OF HAWAII
KAUA'I GROUP

MALAMA I KA HONUA

Cherish the Earth

December 6, 2022

Honorable Suzanne Case, Chair
State Board of Land & Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

(via email: blnr.testimony@hawaii.gov)

SUBJECT: KIUC Request for Access Agreement - North Fork Wailua (RP #7340)

Aloha BLNR Chair and Members:

Kaua'i Group of the Hawai'i Chapter of Sierra Club opposes the Kaua'i Island Utility Cooperative (KIUC) request for an Access Agreement in the State Conservation District without addressing significant environmental conditions first.

A streamflow standard of 0.8 MGD is not being met, as required in Revocable Permit #7340. That standard must be established and confirmed by CWRM before awarding an access agreement.

Two Hundred feet of Waikoko Stream between the diversion and the throw-out is dry stream bed. KIUC has allowed ruinous environmental impacts from this neglect for the nineteen years it has been granted a Revokable Permit. The actions of members of the public to restore natural flow have been branded as vandalism by KIUC, who prefers to shift blame away from their own maintenance failures regarding the gauging station in this remote weather challenged place.

KIUC has been granted an annual RP's for nineteen years with no serious attempt to secure a long term lease. KIUC's promise to correct two decades of failure to maintain in good repair its diversion and ditch systems rings hollow. It is ample reason to deny them an Access Agreement.

Abuse of the land and waters in and around the Blue Hole, which is a recreational, environmental and cultural treasure, dates back more than a century. There has never been an Environmental Assessment or Environmental Impact Statement prepared for this site. We urge the BLNR to correct this injustice, and to do so before granting KIUC any access rights to State Lands.

Mahalo for your consideration,

Kip Goodwin
On behalf of the Executive Committee



October 25, 2022

Honorable Suzanne Case, Chair
Board of Land and Natural Resources
State of Hawai'i
P. O. Box 621
Honolulu, Hawai'i 96809

RE: Request access agreement for North Fork Wailua ongoing maintenance

Dear Chair Case and Board members:

Aloha and mahalo for your support of previous requests for renewal of Kaua'i Island Utility Cooperative's Revocable Permit No. 7340 (RP7340). By way of this letter, we are notifying you that we are not requesting renewal of this permit for 2022. Instead, we are requesting an access agreement for portions of the water transmission system located on State land as identified in RP7340: for purposes of maintenance only and no diversion.

The access agreement would allow KIUC to conduct maintenance activities in the area while continuing to pursue a long-term lease. Specifically, our intent is to maintain the diversions, ditch infrastructure and gaging equipment associated with RP7340 as reasonably practicable given road access limitations, extreme weather events, and other unforeseen variables. This will avoid or minimize further degradation of the system and improve public safety related issues that occur with degradation. Regular maintenance also helps to identify and address vandalism at the diversions and ensures that the headgates remain closed preventing diversion of water into the ditch system. Vandalism continues to be a problem at both diversions. As recently as last month, vandalism occurred at the North Fork diversion that involved the complete destruction of the gaging station installed in the ditch for purposes of monitoring ditch flow just down-ditch of the diversion.

Since the last renewal of RP7340 in November 2021, KIUC has not diverted water from North Fork Wailua River or Waikoko Stream, referred to collectively as "Blue Hole." As we have previously reported, in 2019 significant damage occurred in the transmission system downstream of the North Fork Wailua River and Waikoko Stream diversions and upstream of the 'Ili'ili'ula diversion. Because of the significant estimated cost of repairs, KIUC will not undertake the work prior to obtaining a long-term lease. KIUC continues to pursue a water lease pursuant to HRS Chapter 343 and HRS 171-58.

We would be happy to answer any questions you or the Board may have regarding this request. Mahalo for your consideration.

Best regards,

A handwritten signature in blue ink that reads "David Bissell".

David Bissell
President and Chief Executive Officer

Cc: Mr. Ian Hirokawa, DLNR
Laurel Loo, McCorriston Miller Mukai MacKinnon LLP
Dawn Huff, Joule Group

From: [Toi Pua La`a](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] KIUC DIVERSION WAIKOKO D-3
Date: Wednesday, December 7, 2022 11:31:59 AM

STOP WATER DIVERSION.

Allow water flow to return to steam natural course.

.
Sovereign Kingdom of Hawaii, under seige. Water is precious resource. Not to be privatized, controlled, diverted.

Restore natural flow streams and waterways.

Sincerely,
Ms. T. PUALAA NORWOOD

PO Box 1543
Hanalei, 96714

From: [Anais Werkmeister](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Waikoko Dam- Testimony
Date: Monday, December 5, 2022 10:56:21 PM

December 5, 2022

Susanne Case, Chair
Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
Blnr.testimony@hawaii.gov

Re: Dec. 8 2022 Agenda Item D-3

To the Chair and BLNR,

I recently visited the Waikoko Dam at the fork of the Wai'ale'ale. In past years I remember this dam to be overflowing and maintaining a wide flow into the river downstream. I noticed recently in the past couple weeks that the water has not been flowing as it once was. It seems to be going into the fork towards a ditch and split into the smaller stream that then leads back into the main river. I am confused as to why this is? It appears to be a man-made diversion that is not following the natural river flow. It is also very narrow and not ideal for the native fish species living in that river. My understanding is this issue was meant to be restored; however, as I just saw on November 22, 2022 it had not been restored and there was no water going over the dam. It is also my understanding that there is a mandate for at least 2 inches of water to be going over the spillway, which was clearly not happening.

On a second note, I am concerned about the amount of herbicide being used along the waterways. There was a large 10 foot wide area, right alongside the water line, that was treated. The evidence was clear as all the plants were dead to a crisp. I am a horticulturalist and environmental scientist, by law there are usually set backs in place for how close herbicides can be applied near waterways, especially for drinking water. It seems this island does not have a set-back in place? Is it legal to generously apply herbicide along waterways where endemic fish, birds and plants live? There seems to be a lot of negligence when it comes to the care of this, once, pristine ecosystem. I keep trying to look up the set back regulations for herbicide and pesticide application near water ways and all that comes up are debates and very little information.

I am writing this because I feel like many are unaware of the situation happening in this location. I care about this land, the ecosystem and the safety of our drinking water.

Thank you for your time and I am hoping you will resolve these issues.

- Anais Werkmeister
Environmental Scientist / Horticulturist
808 278 8357