

From: [Mary Alexander](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] D-3: please restore the stream flow to Waikoko Stream.
Date: Tuesday, December 6, 2022 5:05:37 PM

To whom it may concern:

Please restore the stream flow to Waikoko Stream. As shown in the photo below, KIUC is not meeting the IIFS requirement of 800,000 gallons remaining in the stream— the tiny amount dribbling through this pipe is not cutting it. A stream is an ecosystem that cannot be bifurcated like this without killing its inhabitants, such as the endemic ‘o’opu who migrate up and down the stream to spawn.

Thank you for listening.

Mary Alexander
5905 Ahakea Street
Kapaa HI 96746
808-635-0178



Waikoko Stream does not flow over the KIUC dam. It is diverted into the KIUC ditch. The only water flows through the dam in a 3" pipe. This is not stream restoration. There are not IIFS of 800,000 gallons of water remaining in Waikoko Stream. Waikoko Stream needs the water to remain in Waikoko Stream, not to be diverted into a ditch and pipe.

From: [Kuulei Andrade](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Urgent Testimony
Date: Thursday, December 8, 2022 2:22:01 PM
Attachments: [Outlook-ew0vgndf.png](#)

Aloha Board of Land and Natural Resources,

I hope this email finds you all well.

My name is Ku'ulei Angelena Andrade, I am born and raised in the moku of Puna and in the Ahupua'a of Wailuanuiahoano. I am writing to you to ask that you stop granting revocable permits to continue diversions of the Waikoko and Waiahi streams. In recent research, I have learned that KIUC has never produced a justifiable amount of renewable energy to be granted the privilege to divert ALL of the water of Waikoko stream. Why is this being allowed? What purpose does diverting the water serve? How is this benefiting the future of Kaua'i? This is not an example of responsible stewardship on our 'aina. The decisions that you make today have reaching implications in all directions of Kauai's future. We all must consider how these systems of diversions will impact our lahui in a much broader perspective. We are the future of this 'aina, and we have faith in you, BLNR, that you will make the best decisions for Kaua'i.

As a maka'ainana of Wailuanuiahoano, I am requesting that you, BLNR, DO NOT approve the renewal of any revocable permits for the two upper diversions of Wai'ale'ale and Waikoko streams, which are located in a state conservation district. Please demand that KIUC restore the water flow to the Waikoko stream!

E Ola I Ka Wai a Kane!

Me Ke Aloha Pumehana,
Ku'ulei Andrade
Residence Club Manager



Main: 808.320.7400 | Direct: 808.320.7417 | Mobile: 808.652.2587

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BLNR
Testimony Re: Agenda Item D-3
Malia K. Chun
P.O. Box 680
Kekaha, Hi. 96752
December 7, 2022

Aloha mai e Board of Land and Natural Resources,

My name is Mālia Kahaleinia Chun and I was born and raised in the moku of Puna and the ahupua'a of Wailuanuihoano. I have written testimony to your board for over 5 years asking you to STOP granting KIUC revocable permits to continue the diversions of the Waikoko and Waiahi streams. KIUC's outdated, broken Waiahi hydro has NEVER produced a justifiable amount of renewable energy to be granted the privilege to divert all the water of Waikoko stream. Wasn't your board established to protect valuable natural resources that are vital to survival in Hawai'i? To protect a PUBLIC TRUST? If so, why is KIUC continually granted RP's when the only water that flows into Waikoko stream comes from a 3' pipe in the dam? Is this an example of responsible stewardship? Has your board actually gone up to the dam and seen with your own eyes the theft that is happening??

As a maka'ainānā of Wailuanuihoano, I am requesting that **BLNR NOT approve the renewal of ANY RP's** for the two upper diversions of Wai'ale'ale and Waikoko streams, which are located in a state conservation district. Please demand that KIUC restore water flow to the Waikoko stream!

The truth is, the decisions you make today have far reaching implications in all directions, beyond the 21st century...the future of infrastructure and housing, DHHL, ADC lands and Native Rights...we must consider systems of diversions from a much broader perspective and how these decisions will impact our future, our keiki. BLNR, you have a huge kuleana ahead of you and I believe that each of you can and must do better to right the wrongs of over a century of diversions and water theft and ensuring that this public trust is adequately protected, before the interests of public lease. By denying KIUC renewal of RP, I believe you can set KIUC's hydro diversions on a more just and sustainable path for the twenty first century. As seen in water decisions in East and West Maui, great strides have been made in righting the historic injustices of water right violations in Hawai'i, we have faith that you will offer Kaua'i the same respect.
E ola I ka wai a Kāne!

Mālia Kahale'inia Chun

From: [Patricia Lau](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Bag limits on Uhu
Date: Wednesday, December 7, 2022 8:45:47 PM

My name is Boysie Lau born and raised on the island of Oahu. The first method that I was taught to catch fish was throwing net from my dad. Through this method of fishing it has provided our family of 10 to have food on our table. I still use this method today to provide food for my family and our Kupuna. I support a bag limit of 2 uhus for recreational fishermen I also support a reasonable bag limit of 80 to a 100 lbs for commercial fishermen. Uhu and Kala has been on our family table for generations so I humbly ask you to support the local fishermen

Sent
from my iPhone

From: [Laura](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] No to D-3 and D-4
Date: Thursday, December 8, 2022 9:14:31 AM

No to D-3 and D-4. Stop diverting water to dry up streams, like Waikoko stream.

Sincerely,
Laura Dillman

Sent from my iPhone



December 7, 2022

Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawai'i 96813
Blnr.testimony@hawaii.gov

Re: December 8, 2022, Agenda Item D-3: Holdover/Continuation of Revocable Permits For Water Use on the Islands of Hawai'i and Kaua'i

Dear Chair Case and Members of the Board:

Earthjustice submits this testimony on behalf of Hui Ho'opulapula Nā Wai o Puna and in **support of terminating Revocable Permit S-7340 ("RP 7340")** which authorizes Kaua'i Island Utility Cooperative ("KIUC") to divert water from Wai'ale'ale and Waikoko Streams for the purpose of generating electricity at the Waiahi hydro plants.

Now that KIUC admits that it cannot use the diverted stream water because of a break in the ditch system, this Board lacks any legally valid justification to continue RP 7340 under Hawai'i Revised Statutes ("HRS") chapter 171 or the public trust doctrine. However, as part of terminating the RP, the Board must ensure that Waikoko ditch is blocked off to prevent diversion of streamflow and waste of water through the broken ditch system. Additionally, the Board must consider the replacement access permit proposed in the staff submittal at a publicly noticed meeting before it is finalized, to allow the community further opportunity to comment on KIUC's future use and maintenance of the ditch system as it relates to the effects of the system on Wai'ale'ale and Waikoko Streams.

1. Termination of RP 7340 is Necessary Because KIUC Lacks Any Justification for a Revocable Water Permit Under HRS § 171-55 and the Public Trust

As the Hawai'i Supreme Court recently explained, when issuing revocable water permits pursuant to HRS § 171-55, the Board is acting in its capacity as "trustee of the public trust" and must "demonstrate that it properly exercised the discretion vested in it by the constitution and the statute." *Carmichael v. Bd. of Land & Nat. Res.*, 150 Hawai'i

547, 564, 506 P.3d 211, 228 (2022). Under the permitting statute, the Board must determine that a revocable water permit serves the “best interests of the State.” *See id.*; HRS § 171-55. As *Carmichael* explains, the legislative history of HRS § 171-55 “demonstrates the legislature’s intent that temporary permits without public auction should be issued only in cases of ‘overriding public interest’ and subject to *annual review* by the BLNR.” 150 Hawai‘i at 566, 506 P.3d at 230 (emphasis added). The purpose of annual review under HRS § 171-55 is to “constrain the use of revocable permits” and ensure the Board is “narrowly exercis[ing]” its powers under the statute. *Id.* at 564-65, 506 P.3d at 228-29.

Likewise, under the constitutional public trust, the Board “is duty-bound to place the burden on [KIUC] to justify the proposed water use in light of the trust purposes.” *Kaua‘i Springs, Inc. v. Planning Comm’n*, 133 Hawai‘i 141, 173, 324 P.3d 951, 983 (2014). Specifically, under the public trust framework:

- a. Permit applicants must demonstrate their actual needs and the propriety of draining water from public streams to satisfy those needs.
- b. The applicant must demonstrate the absence of a practicable alternative water source.
- c. If there is a reasonable allegation of harm to public trust purposes, then the applicant must demonstrate that there is no harm in fact or that the requested use is nevertheless reasonable and beneficial.
- d. If the impact is found to be reasonable and beneficial, the applicant must implement reasonable measures to mitigate the cumulative impact of existing and proposed diversions on trust purposes, if the proposed use is to be approved.

Id. at 174–75, 324 P.3d at 984–85 (footnotes omitted). A “proposed use must be denied if the applicant does not show that there is no practicable alternative water source.” (emphasis added). *Id.* at 173, 324 P.3d at 983.

Under the public trust doctrine and the permitting statute, this Board must terminate RP 7340 because diverted water from Wai‘ale‘ale and Waikoko Streams is not actually needed for a reasonable-beneficial use, and in fact cannot reach the Waiahi hydro plants to be put to any use at all. Without such an end use, a permit does not satisfy the statutory “best interests” test or the first step of the public trust analysis. Moreover, KIUC has never shown that diversion is consistent with the exercise of traditional and customary practices in Wai‘ale‘ale and Waikoko Streams, that it lacks

practicable alternative energy and water sources, and that appropriate measures are in place to mitigate the impacts of diversion on the streams. Therefore, because KIUC has not met the appropriate statutory and constitutional standards, termination of RP 7340 is warranted.

2. The Board’s Public Trust Duties Also Require The Board Ensure That Water from Waikoko Is Not Being Diverted Into the Ditch

While termination of RP 7340 is required by the underlying circumstances, the Board must still ensure that Waikoko Stream is protected, consistent with its underlying public trust duties. Community testimony and documentation make clear that some portion of the streambed between 200 and 300 feet below the dam¹ on Waikoko Stream is regularly dry because the dam and ditch system divert nearly 100% of stream flow.



Waikoko Stream Past Dam, Nov. 27, 2022 (Photo: Hope Kallai)

As part of terminating RP 7340, the Board should ensure that measures are in place to prevent ongoing diversion of water from Waikoko Stream absent a valid and

¹ Some of the diverted water is returned to Waikoko stream bed through the throw out located 200 to 300 feet below the dam.

effective RP. Immediate remedies to prevent diversion include blocking the ditch entrance with sandbags (mimicking what naturally occurs at Wai‘ale‘ale with rocks that are flushed into the ditch during heavy rains) or otherwise sealing off the ditch entrance. Furthermore, the Board should ensure KIUC’s compliance with any existing permit conditions before terminating RP 7340.

3. The Access Permit or Easement Needs to Be Heard in a Publicly Noticed Meeting to Preserve Public Rights and Interests

Over the years the public has raised many concerns with KIUC’s maintenance of the ditch including dangerous conditions at the diversion sites (exposed rebar) and use of pesticides near the streams that poison plants gathered for traditional practices and may potentially contaminate stream waters. Because KIUC’s maintenance activities still affect the public interest in using and accessing public trust resources, it is critical that the Board consider any future access permit or easement in a publicly noticed hearing to ensure the community of streams users has an opportunity to provide input into the Board’s decision before any new permit is granted.

Mahalo for this opportunity to submit testimony.



Leinā‘ala L. Ley
Isaac H. Moriwake
EARTHJUSTICE

6 December 2022

To the members of the Board of Land and Natural Resources:

Aloha mai kākou,

I am writing to testify that I support the cancellation of RP S-7340. As a Kanaka Maoli, a lineal descendent of Wailua (where I still live today), an educator, and a mother, I am very distressed with how KIUC has been managing the waters of Wai'ale'ale and Waikoko streams.

These two streams feed various ahupua'a on the island of Kaua'i. They are sources of life and value for our island. Wai'ale'ale is regarded as one of Hawai'i's most sacred sites, and its waters are celebrated in numerous mo'olelo (stories) and mele. Our kūpuna knew that continuous streamflow was necessary for a healthy environment. Even when we "diverted" water to feed our lo'i, only a small portion of that water was taken from the stream/river, and then returned to that same stream/river. As we have seen, when we stop water from continuous flow, we disrupt a whole ecosystem.

As a cultural practitioner, I have accessed the area where the stream should be flowing for specific hula adornments and implements, and wai for ceremonies and other purposes. Again, it speaks to the sacredness of this water that we were tasked with collecting natural resources, or performing significant taks, from this specific area.

There should be no use of pesticides from KIUC to poison plants along the stream bed. This could have severe consequences on how we use and access these streams. Nor should KIUC be diverting water and leaving the stream bed completely dry for approximately 300 feet; again, this severely impacts our native ecosystems. Our Kaua'i community needs to know what's happening in these areas that hold significant value, both recreational and cultural, and allow us adequate notice to testify on any land access permit for KIUC to conduct maintenance on the diversion and ditch system for these streams.

Mahalo nui for your time.

Me ka ha'aha'a (humbly),

Puali'i Rossi-Fukino

A handwritten signature in black ink, appearing to be the initials 'PRF' with a stylized flourish.

From: [Juan Gomez](#)
To: [DLNR.BLNR.Testimony](#); [Bryn Butolph](#); [Jeremy Aros](#); [Renee R](#)
Cc: [Juan Gomez](#)
Subject: [EXTERNAL] Testimony for Waikoko Diversion December 2022
Date: Tuesday, December 6, 2022 11:20:51 PM

2022 December 5

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.

I would like to address:

1. KIUC alleging to use stream diversions through sluice gates as stream restoration, while alleging no diversion.
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 downditch. 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. This is not stream restoration. There is no mauka to makai flow remaining in Waikoko Stream as mandated by CWRM in 2018.

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

There is no reason for Waikoko Stream to be 100% 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 '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.

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.

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 Waihi 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. KIUC alleges they have reduced ditchflow on Wai`ale`ale and Waikoko by ditch intake restriction. This

configuration of dam boards captures lowest baseflows.

3 [https://urldefense.com/v3/https://kiuc.coop/sites/default/files/documents/...!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSe_nMiE1\\$WKNA%20Waiahi%20Hydro%20informational%20update%202.23.2019%20FINAL.pdf](https://urldefense.com/v3/https://kiuc.coop/sites/default/files/documents/...!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSe_nMiE1$WKNA%20Waiahi%20Hydro%20informational%20update%202.23.2019%20FINAL.pdf)

Followed up by this allegation:

This is not stream restoration.

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.

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. 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:

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.

This trail along a 5 mile ditchway is a very significant accessway for cultural practitioners and lei makers. This area should be maintained with weed eaters, 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.

Nov. 27, 2022

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 purposes⁴.

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. 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

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

15-18.

[5https://dlnr.hawaii.gov/wp-content/uploads/2016/01/Exhibit-3-D-3.pdf](https://dlnr.hawaii.gov/wp-content/uploads/2016/01/Exhibit-3-D-3.pdf)

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.

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. Bissell is referring to:

[6 https://dlnr.hawaii.gov/wp-content/uploads/2022/12/D-3.pdf](https://dlnr.hawaii.gov/wp-content/uploads/2022/12/D-3.pdf). Page 11.

There was no KIUC 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.

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://urldefense.com/v3/_https://waterdata.usgs.gov/nwis/monthly?_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSTeUvyzT\\$referred_module=sw&site_no=16061000&por_16061000_40826=2643302,00060,40826,193-2-07,1985-09&format=html_table&date_format=YYYY-MM-DD&rdb_compression=file&submitted_form=parameter_selection_list](https://urldefense.com/v3/_https://waterdata.usgs.gov/nwis/monthly?_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSTeUvyzT$referred_module=sw&site_no=16061000&por_16061000_40826=2643302,00060,40826,193-2-07,1985-09&format=html_table&date_format=YYYY-MM-DD&rdb_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 https://urldefense.com/v3/_http://fc01.mccrometer.net/secure/explorer.do?panel=8a0018df6945ba8a016a80b1fa1b336e8_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSVHosYfr\\$](https://urldefense.com/v3/_http://fc01.mccrometer.net/secure/explorer.do?panel=8a0018df6945ba8a016a80b1fa1b336e8_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSVHosYfr$)

[9 https://urldefense.com/v3/_https://waterdata.usgs.gov/nwis/monthly?_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSTeUvyzT\\$referred_module=sw&site_no=16061200&por_16061200_40827=2643303,00060,40827,196-5-01,2002-09&format=html_table&date_format=YYYY-MM-DD&rdb_compression=file&submitted_form=parameter_selection_list](https://urldefense.com/v3/_https://waterdata.usgs.gov/nwis/monthly?_!!LIYSdFfckKA!2gU5k8-ciErew6se8tHN3QtI3H8Ea77AKQL0ZsPsGxgQS3tZ0TUmKIni_2UDDbeWBuS6uZI2adHvSTeUvyzT$referred_module=sw&site_no=16061200&por_16061200_40827=2643303,00060,40827,196-5-01,2002-09&format=html_table&date_format=YYYY-MM-DD&rdb_compression=file&submitted_form=parameter_selection_list)

If KIUC is truly interested 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. We 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 incompleated 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 attention,

Juan Gomez

Hanalei Taro Farmer

Polynesian Voyaging Society Crew Member

Halau Ha'a Hula O Kekau'lani Na Pau Hala O Kailua: Mokopuni O Kaua'i

Sent from my iPhone

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INVOICE

BILL TO

COMPASS

INVOICE # 1921

DATE 11/30/2022

DUE DATE 12/30/2022

TERMS Net 30

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
11/18/2022	Kilauea Compass Office	Weekly Cleaning	1	110.00	110.00T
11/25/2022	Kilauea Compass Office	Weekly Cleaning	1	110.00	110.00T

SUBTOTAL	220.00
TAX	10.37
TOTAL	230.37
BALANCE DUE	\$230.37

From: [Alison Lewis](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Agenda item D3
Date: Wednesday, December 7, 2022 7:28:52 AM

7 Dec 2022

Testimony regarding agenda item D3, at the 8/9 December meeting of the Hawaii Board of Natural Resources:

To BLNR:

For December 8, 2022. Regarding agenda item D3, under land division issues, i submit the following:

The state has a duty to deny KIUC its request to have a continuing access permit to the diversion ditches associated with their revoked permit #7340. KIUC has year after year demonstrated its utter failure to repair or maintain the diversion gates and ditches. This makes it clear that their true motive in requesting this “maintenance permit” from the state is so that they can continue diverting water that they do not have a right to. The state has a duty to remove the man-made structures that continue to shunt water from the stream into the KIUC ditch. It is well past time for the state to follow its own laws and stop the blatant pandering to the KIUC/Grove Farms millionaires. It is no secret that top DLNR administrators are in business-relations with KIUC through Grove Farms and A&B, and that this complex of government/corporate incest (driven by real estate development and land speculation), violates the natural resource interests of every resident/citizen of Kaua‘i the state government is supposed to SERVE, and whose public resources the state government is supposed to preserve and PROTECT.

Every time dlnc/blnc circumvents, delays enforcement of, or outright ignores the state water protection laws in order to pander to the false-cooperative “KIUC,” dlnc/blnc administrators walk themselves closer and closer to a federal title 18 lawsuit.

Alison Lewis
Kaua‘i resident

From: [Nākai'elua Villatora](#)
To: [DLNR.BLNR.Testimony](#)
Subject: [EXTERNAL] Testimony Agenda Item D3
Date: Thursday, December 8, 2022 5:16:36 PM

To BLNR,

My name is Shawn Nicole Nākai'elua Villatora, born and raised on the mokupuni of Kaua'i in Ko Pae Aina Hawai'i. I am a Wahine Maoli, Kanaka 'Oiwi and I am testifying against the renewal of the revocable permits in Agenda Item D3. As a declared Kanaka Maoli I have the right to protect and preserve our kumu waiwai (natural resources) for the next generations. If the BLNR continue to deny the Kanaka Maoli people of our vested interest in lawful property and mineral rights to our 'Āina it is in violation to a Humanitarian Law for the right to a clean, healthy environment and ecosystem. To continue to grant a fictitious corporation who is depleting our wai from the natural ecosystem ahupua'a that requires a perfect balance for Hawai'i unique and one of a kind environment is detrimental to the future of Hawai'i and its peoples. I command the BLNR to DENIED these corporate entities to dictate the continuation of genocide in our natural systems.

Mahalo.