

November 7, 2019

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Subject: Comment of the Friends of Māhā'ulepū and Kia'i Wai o Wai'ale'ale on the Draft Environmental Assessment and Anticipated Finding of No Significant Impact for Waiahi Hydropower Long-Term Water Lease, TMK Nos. (4) 3-9-001: 001; 3-8-001: 001, 002, and 003

To whom it may concern,

Please consider these comments respectfully submitted by the Friends of Māhā'ulepū and Kia'i Wai o Wai'ale'ale on Kaua'i Island Utility Cooperative's (KIUC) Draft Environmental Assessment (DEA) and Anticipated Finding of No Significant Impact (FONSI) for Waiahi Hydropower Long-Term Water Lease, TMK Nos. (4) 3-9-001: 001; 3-8-001: 001, 002, and 003.

Introduction

KIUC's proposed action will irrevocably commit to the destruction of natural resources and protected habitat, endangering the species therein by diverting large volumes of surface water from Wai'ale'ale¹ and Waikoko streams for at least 65 years. In that time, native biota that would otherwise be nourished by the stream will suffer, perhaps never to return. Diversion of the lion's share of two streams towards privately held lands would also facilitate sprawling development in otherwise agricultural and rural areas of Southeast Kaua'i. These are significant impacts that prohibit any acceptance of the DEA-FONSI unless the no-action alternative is selected.

The preferred action in the DEA-FONSI must be rejected; the "no action" alternative pursued; and the project must either reconfigured to truly avoid any potential significant impacts. At minimum, an environmental impact statement must be prepared. See Hawai'i

¹ Throughout their DEA, KIUC refers to Wailua as the stream from which surface water is to be diverted. As more fully discussed below, the State land diversions for which a 65 year lease is sought are on Wai'ale'ale and Waikoko Streams.

Revised Statutes (HRS) chapter 343-2 and Hawai'i Administrative Rules (HAR) §11-200.1-2 (defining "significant impact"). KIUC's lease application is for water diverted from State land, and the development of the diversion is to have public funding which mandates an EIS, particularly where endangered species are part of the biota. HRS §171-58(c) clearly requires that an environmental impact statement, and not an environmental assessment, for any water lease in the state of Hawai'i.

1. *The DEA's description of the project is overly narrow and misleading as to its purpose and environmental impacts.*

The "project" or "action" reviewed is misleadingly characterized as the Kaua'i Island Utility Cooperative's (KIUC) application for a long term water lease for operation of two hydroelectric facilities in the Wai'ale'ale and Waikoko streams to generate power for KIUC members. Description of the proposed "action" as "leasing" both under-describes the successive, potentially permanent physical changes to the streams, while also presuming that those changes will occur as part of the leasing action. The problem is that the very definition of the lease as an "action" forecloses meaningful consideration of feasible alternatives to the steps described as part of the "project summary." These steps include: operating the upper and lower hydroelectric facilities; keeping them in Wai'ale'ale and Waikoko streams, dewatering the streams of all but 3.5 mgd (Wai'ale'ale) and 0.8 mgd (Waikoko) at the diversion points; and "mak[ing] permanent modifications to the diversion structures" to ensure this state of dewatering continues indefinitely. DEA at i.

The inadequacy of the scope reviewed is apparent in the DEA's discussion of cultural, water resource, biological, recreational, and socioeconomic impacts. Specifically, the DEA generally restricts its discussion of impacts to those of construction and maintenance activities. Part of the issue is that KIUC restricts its disclosure of environmental impacts to those that have already been occurring for decades as a diversion legacy begun with the Lihue Plantation and East Kaua'i Water Company.

The narrow focus of KIUC's environmental review reflects the Board of Land and Natural Resources' repeated, improper issuance of temporary revocable permits for over a decade. Even if KIUC is only responsible for the last 18 years of the significant impacts to the stream dewatering, it is in a unique position whereby it could honestly disclose the environmental impacts of the Blue Hole diversions. The scope of review for the action is not the difference between the day before and after BLNR grants a lease. To disclose the impacts of KIUC's proposal, environmental disclosure documents should consider baseline conditions existing prior to the installation of the diversions as compared to the present and, or alternatively, compare existing conditions with those that could exist if the diversions were removed and Wai'ale'ale and Waikoko streams flowed through their natural courses for 65 years.

2. *The project improperly claims a purpose in delivering water to support diversified agriculture on Agribusiness Development Corporation lands*

On the one hand, if the purpose of the project is to produce power for KIUC members, the alternatives section failed to identify other feasible alternatives as discussed in our comment

No. 3. On the other, if the purpose of the project is to divert water from State lands to “diversified agricultural” tenants on Grove Farm lands, then the DEA fails to adequately describe the reasonably expected indirect, secondary, and cumulative impacts of furthering dependence on the diverted waters. There is no description of the kinds of agriculture supported or whether and how other water source alternatives could be procured for these agricultural tenants on ADC lands. DEA at 72.

3. *Disclosure of the interbasin transfer of water accomplished by “hydropower” diversions that take water from State lands to Grove Farm lands is absent from the DEA.*

Under the proposed “action,” KIUC will take at least 8.0 mgd, more than twice of Wai’ale’ale stream’s baseline flow, and 1.6 mgd of Waikoko stream, which is twice as much as will ever be left in the stream under the proposal. The DEA is further silent on alternatives or impacts consequent to the state Water Commission’s potential changes to the interim instream flow standards for Waikoko and Wai’ale’ale.

The DEA fails to disclose impacts consequent to the main, although unarticulated, purpose and action underlying the KIUC water lease. The “Blue Hole” diversions at issue take water from Waikoko and Wai’ale’ale (tributary to the North Fork Wai’ale’ale river) on state lands and deposit them at hydroelectric plants on Grove Farm Company, Inc. (Grove Farm) lands. These waters are taken by ditch for five miles before reaching KIUC’s hydropower plants.

At the outset, KIUC improperly asserts it is diverting the “North Fork Wailua stream [*sic* Wai’ale’ale],” which does not exist until approximately a mile below the KIUC diversion on state lands. The Blue Hole diversions dewater Waikoko and *Wai’ale’ale* streams, and not North Fork “Wailua.” This misnaming downplays the traditional and cultural significance of Wai’ale’ale Stream on which their 100% base flow diversion created a dry stream bed for almost a mile until the Land Board ordered the return of stream flow in 2018.

Diversion of streams from state to private lands is also legally meaningful. The Department of Land and Natural Resources (DLNR) governs water emanating from public and private lands differently. The latter are not required to obtain seek revocable permits or leases from the state for consumptive uses of water. Under the cover of KIUC’s “hydropower” uses of diverted waters, Grove Farm lands receive millions of gallons per day.

The DEA’s only recognition of Grove Farm’s extensive landholdings that benefit from the diversions is in Appendix F, which reviews socioeconomic impacts. Yet, the conclusion of that study solely highlights supposedly beneficial impacts. DEA Appx. F at 25 (“The economic impacts of KIUC’s request for a long-term water lease go far beyond the utility and its customers to multiple sectors of the economy that have a vested interest in the systems that are directly impacted by it for both present and future uses.”). Certainly, the impacts of diverting streams from state to private lands go “far beyond” KIUC. However, those impacts are not solely beneficial and environmental review cannot consist in a mere recitation of benefits. HAR §11-200.1-1(c).

Grove Farm’s use of diverted water includes not only consumptive use at its Waiahi surface water treatment plant, but also prospective developments that will rely on this water. In 1994, the Līhu’e-Hanamā’ulu Master Planned Community (Līhu’e Development Plan), proposed by Amfac/JMB Hawai’i, Inc. received approval and the successor-in-interest to the planned

community, Grove Farm, is now required to participate in the funding and development of water sources, storage, and transmission facilities for the Līhu‘e Development Plan. The average and maximum daily demand of the planned 1,800 units under the plan is 1.75 mgd and 2.68 mgd respectively. The Līhu‘e Development Plan proposed that the Grove Farm master planned community would be served by the County’s Puhi- Līhu‘e -Hanamā‘ulu-Kapa‘a water system (Līhu‘e water system), which is a public water system utilizing groundwater and surface water sources and treated water from the Waiahi Surface Water Treatment Plant.

Environmental assessments must determine whether a proposed action has significant effects, which effects may be “primary, secondary, or cumulative, whether immediate or delayed.” HAR §11-200.1-2. Further, component actions or phases of a total, larger program, must be assessed together. HAR §11-200.1-10. The DEA fails to examine impacts consequent to the diversion of water towards Grove Farm planned developments and further failed to assess that development together with the hydropower operations as part of a larger program.

4. The DEA failed to account for significant, direct environmental impacts.

The DEA nowhere acknowledges that the two hydroelectric facilities require more water than those taken at the diversions from Waikoko and Wai‘ale‘ale streams. The ditches that flows to the hydroelectric plans take water from Ili‘ili‘ula, leole, and Waihai streams in addition to waters from Waikoko and Wai‘ale‘ale streams.

5. KIUC forecloses feasible project alternatives by improperly defining the scope of the action.

An “action” is defined as a “program or project,” and a “project” means: “a discrete, planned undertaking that is site and time specific, has a specific goal or purpose, and has potential impact to the environment.” Hawai‘i Administrative Rules (HAR) §11-200.1-2. By defining the “project” as one of obtaining a long term water lease for two hydroelectric facilities that will take specifically everything more than 3.5 mgd and 0.8 mgd from Wai‘ale‘ale and Waikoko streams respectively, the DEA forecloses many feasible alternatives that would not require dewatering streams. By defining the scope of the action as water leasing for its specific hydroelectric plants, KIUC admits of only two alternatives - “no action” and “the proposed action.” DEA at 37.

The DEA is required to consider alternatives to the proposed project. Those alternatives are generally limited to those that effect the purpose and need for the action. The purpose of the proposed action is “to continue to operate the two hydropower, plants on Waiahi Stream: the Upper Waiahi Hydropower Plant and the Lower Waiahi Hydropower Plant.” DEA at 51. However, KIUC describes the need for the proposed action as including the provision of “reliable” 1.5 MW of power to KIUC’s 33,000 members and KIUC’s renewable portfolio, and to “support diversified agriculture in Central Kaua‘i.”

Only the last “need” specifically requires water diversions from the Wai‘ale‘ale and Waikoko streams. In that case, the DEA insufficiently identifies its purpose in diverting water to Grove Farm tenants and should be rewritten to explicitly assess the impacts of doing so. Where

agricultural support is mentioned, the DEA merely recites the benefits of diversified agriculture and does not expand on the cost of diversion from other areas of the Wai'ale'ale watershed.

The hydroelectric plants produce a *maximum* of 1.5 MW and often do not meet this capacity. In 2017, KIUC reported the plants were operating at 37.5% of capacity. Overall, the two plants produce approximately 1 percent of total KIUC energy production. By contrast KIUC's newer renewable energy operations, including industrial solar, are generating 20 MW daily. A plethora of feasible alternatives could allow KIUC to produce up to 1.5 MW daily. These include optimizing its other projects such that they operate at a fuller capacity, embarking on energy conservation awareness campaigns, and expanding other renewable energy grid projects by a fraction to make up for the removal of the two hydroplants from service.

KIUC diverts at least 40 million gallons daily into its two hydroplants that, at max capacity, can only produce 1 percent of the island daily power needs. For 1 percent of our island's power, is diverting so much of Mauna Wai'ale'ale water environmentally prudent? How can we know what is being impacted when the U.S. Geological Survey's study of low flow characteristics is incomplete? How can KIUC reasonably conclude that none of its diversions have significant impacts when their diversions have entirely reshaped native biota, the public's recreational practices, Hawaiian traditional and customary practices throughout the watershed, and, indeed, the entire landscape of Southeast Kaua'i.

6. The diversion structures themselves have adverse impacts that are unreviewed.

The diversion structures themselves obstruct migration of native species and interrupt the continuity of the streams. Water released into the tailrace is so super saturated with nitrogen that fish and other species are unable to live in it. The cumulative impacts of the adverse impacts of the diversion structures are undisclosed in the DEA.

7. The DEA failed to review impacts consequent to dewatering areas of the Wai'ale'ale watershed and transferring water across basins.

The DEA does not disclose significant environmental impacts consequent to dewatering Wai'ale'ale and Waikoko streams for five or six miles downslope 500-600 feet, nor the consequence of reducing flows to the Wai'ale'ale river where the water is returned. DEA at 78. Rather, the DEA impermissibly recites again the benefits of increasing water resource availability to users of the upper and lower Lihu'e and Hanama'ulu ditches. *Id.*

The baseline for impacts to dewatered areas of Waikoko and Wai'ale'ale are pre-diversion impacts. Kaua'i councilmember Felicia Cowden pointed out that photographs of the area from 100 or more years ago show that the area above Lydgate Park "used to all really abundant and wet. And we saw verdant lo'i and a lot of deep abundance in that area." Such historical information shows that the diversions are bringing capacity away from Wai'ale'ale and taking that potential over to the Lihu'e area.

C.S. Handy also described the vibrant baseline condition for areas mauka of the confluence of South and North Fork Wai'ale'ale streams in *The Hawaiian Planter* (1940):

Along the lower 2 miles of Wailua River, above the sandy coastal plain, are many broad, open, level areas, formerly in terraces, now mostly in sugar. . . The large area of terraces below the falls is now planted mostly in rice, a few of the upper terraces being used for sweet potatoes, while the uppermost are pasture. There are terraces in the canyon of the north fork of the Wailua River; presumably there are terraces also in the flatlands along Kawi, Keahua, and Iole Streams, which form the headwaters of this fork of the river. There were sizable terrace areas on both sides of the south fork of the river above the junction with the north fork.

There were sizable terrace areas on both sides of the south fork of the river above the junction with the north fork. Extensive areas of terraces fill the valley immediately above Wailua Falls and along the river for 3 miles above Waikoko, Iliiliula, Waiaka, Waiahi, Kaulu, Palikea, and Kalii Streams, which form the headwaters of the south fork of the Wailua River, undoubtedly all had small terraces along their lower courses.

Id. (emphasis added). In part relying on this historical evidence, Commission on Water Resources Management staff reported:

Due to the abundance of surface water supply and the archeological evidence of terracing in the valleys, the Wailua Hydrologic Unit probably supported wetland taro, with the greatest concentrations in the lower reaches along the stream channels in the valleys and the upper headwater streams between the North and South Fork tributaries. This is consistent with conversations staff have had with current cultural practitioners in the area.

CWRM, Wailua IFSAR at 78. Hawaiian cultural practitioners of the area note that many of the ancient auwai are dry now in Wai'ale'ale and that if more water flowed through Wai'ale'ale streams, they could restore lo'i by their homes. As it is, the water flowing is stagnant, too warm to sustain lo'i kalo.

KIUC's diversions do not return 100 percent of the water back to Wai'ale'ale stream. The lessened flow has impacts on water temperature and the streams ability to feed nearshore ecosystems. Community residents report increased incidents of staph infections received near the rivermouth on lower flow days. Wai'ale'ale freshwater is needed to provide habitat for juvenile fish and for corals in the nearshore area. These impacts are unreviewed and merely mentioned as a "cultural concern."

8. The DEA failed to disclose significant cultural impacts.

As discussed *supra* Comment No. 2, the very nomenclature employed in the DEA attempts to minimize the cultural significance of diverting Waikoko and Wai'ale'ale streams. As recognized by the state Water Commission:

The fundamental importance of freshwater in its natural state is embodied in the names of these places: Wai'ale'ale (rippling water), Wailua (two waters, and Kawaikini (numerous waters). Kaipuha'a (low gourd), is the name of the caldera at the base of Wai'ale'ale, evoking the shape of Kāne's ipu, the water gourd that provides everlasting

life (Kekua and Alapai 2010). It is sacrilege to Hawaiian culture that streamflow has been impaired for so long.

CWRM, Wailua IFSAR at 77. The DEA fails to disclose these impacts and further fails to propose adequate mitigation for the impacts.

Instead, the DEA relied on an update to a 2017 Cultural Impact Assessment. The CIA Update reported that a pedestrian survey led to findings of “no evidence of terracing or relics of taro along the North Fork of the Wailua River [*sic* Wai’ale’ale]” and that the river’s gradient at the “diversion project area and to *mauka* and approximately ½ mile *makai* is steep with few flood terraces of minimal size in the valley bottom.” CIA Update at viii. This conclusion is uninformed by C.S. Handy’s more reliable observation, “There are terraces in the canyon of the north fork of the Wailua River; presumably there are terraces also in the flatlands along Kawi, Keahua, and Iole Streams, which form the headwaters of this fork of the river. There were sizable terrace areas on both sides of the south fork of the river above the junction with the north fork.”² Kawi, Keahua, and Iole streams are mauka of the diversion, but attest to the extensive mauka reach of traditional lo’i kalo cultivation in Wai’ale’ale.

The August 2018 Instream Flow Standard Assessment Report for Wailua, approved by the Water Commission included the following findings of significant impacts consequent to the diversions that were not disclosed in the DEA and render a FONSI inappropriate:

The gathering of native plant species of important cultural, spiritual, and medicinal uses takes place along and between streams at high elevations (Figure 12-3). Plants gathered for cultural purposes identified by cultural practitioners include Ohia lehua (*Metrosideros polymorpha*), kukui (*Aleurites moluccana*), makai (*Pipturus spp.*), Ohelo (*Vaccinium reticulatum*), and papala (*Charpentiera obovata*). Further, pohaku, or sacred stones) are gathered from particular places of importance in the higher elevations. Traditional and cultural practices continue to take place in the Wailua watershed, although they are impaired by the diversion of streamflow. Additional cultural information related to the Wailua ahupua’a can be found in Kekua and Alapai (2010).

CWRM, Wailua IFSAR at 77. The DEA does not disclose these significant impacts and its minimization and mitigation measures do not address the *impairment of* native gathering practices and the sacrilege consequent to the impairment of the streams, but rather seek to minimize the impact on burials, historic properties, and stream and terrestrial biota. DEA at 92.

The CIA update includes critical information that Hawaiian cultural practitioners are seeking to restore auwai and lo’i kalo in areas where flow is reduced consequent to the diversions to Grove Farm lands, even though these areas are below the rejoining of South and North Fork streams. Hawaiian cultural practitioners are currently attempting to restore ‘auwai below Opaeka’a Falls, which would receive more water without the diversions.

Other Hawaiian cultural practitioners have commented that they *would* be able to restore lo’i in traditional areas, but that North Fork Wailua stream is flowing far too slowly and too warm to sustain them. Instead of fishing in the streams for subsistence consumption,

² Handy, *The Hawaiian Planter* (1940) (emphasis added).

Hawaiian cultural practitioners have had to go fishing on golf courses where they throw the fish back so as not to consume too much of what little is left. The diversions are causing cultural significant impacts and an EIS must be prepared to review impacts of determining that they may continue for another 65 years.

9. The DEA does not review impacts to critical habitat and potential critical habitat for listed and native species.

The DEA improperly represents a minimal impact on listed and native species by failing to characterize or address the ways that restoring full flow to Wai'ale'ale stream would impact critical habitat and potential critical habitat for these species. For instance, merely reporting that no Newcomb's snails were observed in dewatered areas below the diversions does not adequately describe the significant environmental consequences of continuing those diversions for another 65 years. The DEA does not review or disclose whether critical habitat would be produced through the re-watering of these areas of the Wai'ale'ale stream basin.

In assessing the "no action" alternative on terrestrial biota, the DEA concludes there would be no impact consequent to restoring the stream. This conclusion discloses a fundamental failure to consider the interaction between water and the land it nourishes. Stream restoration over 5-6 miles and the resulting increase in makai flow needs to be studied and disclosed in order to make a proper assessment of the "no action" alternative.

10. Impacts of proposed mitigation for stream and terrestrial biota are not adequately disclosed or assessed.

The DEA only seeks to minimize impacts during maintenance construction phases and not during the life of the 65 year lease. DEA at 89. Mitigation measures should at least address the impacts of the proposal as compared to the "no action" alternative, which would require removal of the structures and restoration of Wai'ale'ale and Waikoko streams. Because its proposed mitigation measures will only address construction and maintenance, their impacts cannot "mitigate" the actual impacts of *not* selecting the no-action alternative.

The DEA acknowledges that there are thousands of acres of critical habitat for dozens of listed and native species, yet its mitigation provides only for a single biological monitor and only during construction times. DEA at 89. The DEA does not review the procedures to be followed for assessing woody plant trimming operations that may impact 'ōpe'ape'a and also does not indicate when and why such trimming would be required. *Id.*

11. Impacts to recreational resources in dewatered areas and consequent to diminution of Wai'ale'ale stream flow are unreviewed and "no action" alternatives improperly reviewed.

The DEA recites the beneficial impacts of the diversions on what are now commercialized tubing recreational activities in diverted flows. Additionally, the DEA improperly concludes that diversion abets recreational resources because people have been encouraged to make unpermitted stream channel alterations to induce further flow into diversion pools. DEA at 95. These disclosures show that the diversions are attractive nuisances that encourage unsupervised

damage to areas surrounding stream channels and disturbances of these culturally important areas.

Review of recreational resource impacts under the “no-action” alternative is further flawed because it assumes that KIUC would be permitted to leave its structures in the stream and disrepaired such that “exposed rebar would continue at both sites creating a negative impact on public safety[.]” DEA at 96. The cumulative, long term, secondary and indirect impacts of the no-action alternative reasonably include the removal of structures that KIUC has been operating in the streams as part of a commercial enterprise.

Once removed, waters of Wai‘ale‘ale would flow through the presently dewatered five mile stretch and increase flows to the North Fork Wailua stream below. As discussed *supra* Comment No. 6, the diminution in Wai‘ale‘ale river’s flow impacts the health of the streams makai of the diversion and the nearshore areas. Restoration of five to six miles of dewatered stream would provide a health, historically and culturally meaningful recreational resource. These impacts were unreviewed and undisclosed in the DEA.

12. The DEA lacks information on low-flow characteristics of Wai‘ale‘ale and Waikoko streams

The DEA does not discuss how it will integrate or otherwise adapt the proposed action and mitigation to conform to information concerning the low flow characteristics of the streams both above and below the diversions. The U.S. Geological Service is conducting studies that will both quantify the amount of water available under natural, low-flow conditions upstream of existing surface-water diversions; and characterize the low flows at selected sites downstream of diversions.³

The DEA does not explain how it concludes that significant diversion of surface water from one basin to another in the Wai‘ale‘ale watershed has “no significant impact” where even the state Commission on Water Resources Management and the U.S. Geological Survey determined more study is needed. In its Scope of investigations, *Low-Flow Characteristics for Streams in Southeast Kauai, Hawaii*,” the U.S. Geological Survey observed:

Competition for limited water resources has been and continues to be a major issue in Hawaii. With increasing water demands, it is critical to effectively manage the State's water resources for current and future needs The proper management of the water resources requires an understanding of the current hydrologic conditions of the surface-water flows. Unfortunately, existing data that capture the recent hydrologic conditions of the study area are scarce. Additional scientific information, especially streamflow data, is needed to establish technically defensible instream flow standards that will support equitable, reasonable, and beneficial allocation of the water resources in the State.

³ See “Quantifying the availability of surface water in the area is critical to understanding how current and future changes in water demand will affect natural resources and the community.” Chui Ling Cheng, U.S. Geological Survey, Prospectus for *Low-Flow Characteristics for Streams in Southeast Kauai, Hawaii* (release date 2020).

Id. The DEA does not address the lack of actual information about how IIFs will impact the stream, and instead DEA concedes, “[t]here are no streamflow records for the North Fork Wailua River or Waikoko Stream in the vicinity of the diversion locations” and that records exist only for flows through Iliiliula North Wailua Ditch below the Wai’ale’ale and Waikoko diversions. DEA Appx. B at 2.

The DEA further concedes, “[u]se of this ditch flow data to understand natural stream flow at the point of diversion is problematic because natural flows which are above ditch capacity pass over the diversion spillway and all leakage or sluiced flows which are not diverted are not recorded.” Instead, KIUC used modeling data to determine *impact to ditch flow*. The critical information lacking is how KIUC’s proposal for implementing the proposed IIFs will impact the hydrological resource of the *stream* and underlying aquifers, instream and terrestrial biota, nearshore waters, and the cultural practices that depend on these ecosystems.

13. *The “no action” alternative is improperly assessed.*

Whereas the DEA solely recites speculative benefits of the proposed action, it invents myriad significant impacts consequent to a “no action” alternative. First, the DEA posits that the Department of Land and Natural Resources would become responsible for the deteriorating structures that comprise the diversions and hydroelectric plants, including their removal, and that there would be negative impacts to groundwater recharge rates in the area, without describing what those areas are. The DEA improperly defines the “no action” alternative as one in which KIUC merely disclaims any responsibility for its diversions. The owner of any stream diversion works wishing to abandon or remove such works is required to first obtain a stream diversion permit issued or caused to be issued by the Water Commission. HAR §13-168-35. Further, the applicant cannot abandon the diversion until the application is issued. *Id.*

KIUC’s assumption is incorrect as the terms of the existing revocable permit, RP No. S-7340, prohibits creation of any nuisance, compliance with all laws, and specifically, standard condition no. 6 provides:

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.

BLNR has required other stream diverters to permanently abandon and remove diversion structures. These are within the scope of the “no action” alternative and the latter must be assessed in this way. The DEA does not review the direct, indirect, secondary, and cumulative impacts of the “no action” alternative.

The DEA does not explore beneficial cultural and ecological impacts of restoring the Wai’ale’ale stream, which include keeping a historically and culturally important waterbody

intact and operational. There is no review or disclosure of the many beneficial impacts of un-diverting waters from Grove Farm lands. Hundreds of public testimonies have supported fully restoring the natural flow of Wai'ale'ale stream and raised the adverse consequences of failing to do so. The DEA should fully disclose these beneficial impacts in assessing the no-action alternative.

This failing is compounded by the DEA's wholly obstinate approach to the environmental review process, which restricts the scope of review to a leasing "action." *See supra* Comment No. 1. The purpose of environmental review in "ensur[ing] environmental concerns are given appropriate consideration in decision-making" is entirely obstructed by this approach. This is evident in the DEA's conclusion that the only "irretrievable and irreversible commitment of resources" entailed by the preferred action involves "the financial resources, fuel, and other consumable materials required for construction." DEA at 97. KIUC's diversions have incredibly significant impacts that must be honestly reviewed and disclosed before letting them continue for another 65 years.

We appreciate this opportunity to comment and correct the Draft Environmental Assessment for KIUC's proposal to obtain a 65 year lease. Please contact me with any questions.

Mahalo nui loa,

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