

**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 21<sup>st</sup> 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.