



WAILUA-KAPA'A
NEIGHBORHOOD
ASSOCIATION

[via email: ian.c.hirokawa@hawaii.gov]

November 7, 2019

Mr. Ian Hirokawa
Department of Land and Natural Resources
1151 Punchbowl Street, Room 220
Honolulu, HI 96813

RE: KIUC's Waiahi Hydropower Long-Term Water Lease Draft EA

Aloha Mr. Hirokawa:

The Wailua-Kapaa Neighborhood Association (W-KNA) appreciates the opportunity to provide comments on the applicant's Draft EA and its deficiencies. Most importantly, a Draft Environmental Impact Statement (EIS) should be required.

KIUC is not an existing lease-holder. The water diversion lease was formerly held by the East Kaua'i Water Company, and that lease terminated in 1995. KIUC, the RP permittee since 2002, should not be exempted from preparing an EIS.

KIUC is seeking a 65-year lease to divert the majority of the waters of Wai'ale'ale (North Fork Wailua) and Waikoko Streams (collectively known as the Blue Hole Diversion) to produce electricity from its century-old Upper and Lower Waiahi hydropower plants. They produce only 1% of the island daily power needs, yet divert 30-40 million gallons daily into those hydroplants.

Inadequate Alternatives Provided in the DEA

The environmental review process needs to include a broader range of alternatives including the increased or full restoration of these two streams, bearing in mind that the process for Interim Instream Flow Standards (IIFS) is underway by the Commission on Water Resource Management for Wai'ale'ale and Waikoko Streams specifically.

The DEA's sole two alternatives will have significant impacts: (1) keeping the existing plantation era diversions "as is" (no action alternative) or (2) modifying the diversions to take over 2/3 the natural flow of the stream. First, the two century-old diversions take 100% of the stream base flow, and therefore, this cannot be used as an accurate baseline from which to start. Second, the proposed take of over 2/3 the natural streamflow to a severely degraded stream environment is unacceptable.

KIUC's total "take" of waters may also be inaccurate, and fails to consider the many streams which are diverted into the hydroplants, other than Wai'ale'ale and Waikoko.

Impacts to Stream Environment and Protected Species are Minimized

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The DEA analysis is insufficient regarding impacts to native and protected species such as 'o'opu, 'ōpae and others. Their limited numbers are also indicators of impacted health of the larger ecosystem. And, impacts from herbicide use for ditch maintenance are also inadequately analyzed.

The need to conduct an EIS is indicated since the DEA specifies that:

- a) Critical habitat for 18 special-status species is located in the proposed lease area mauka (upslope) of the aqueducts, and portions of the aqueducts transect wet cliffs and other suitable habitat for these species.
- b) It is possible that threatened and endangered species could or do exist in these areas, particularly on steep cliffs, streamsides, and gulches inaccessible to grazing ungulates.

While the current dam may divert less than 50% of the annual average stream flow when high flooding days are included, it is diverting all of the water and leaving the stream bed dry many days out of the year.

Impacts from Historic Diversions to Cultural Resources

Hawaiian traditional and cultural practices mauka and makai, depend on instream flows and freshwater flows to the coastal environment. The sacred significance of Wai'ale'ale -- the *piko* of all state streams, has not been assessed sufficiently in the DEA.

Why isn't the study commissioned by KIUC titled "A Cultural Study: Native Hawaiian Traditions, Customary Practices and Perspectives of the Natural and Cultural Resources of Puna, Kaua'i Island, Waiahi Hydropower Systems," (April 2010) by Kehaulani Kekua and A. 'Aikane Alapa'i, Native Kaua'i, LLC included in the DEA?

The Cultural Impact Assessment (May 2019) by Cultural Surveys Hawai'i, Inc. is presented as Appendix E. Yet, Exhibit E is labeled "*Update to 2017 Cultural Impact Assessment*". Where is the 2017 CIA? Why isn't it included in the DEA?

The 2006 Memorandum of Agreement (MOA) between KIUC and the Office of Hawaiian Affairs (OHA) was issued with the condition that a cultural impact study be conducted for the issuance of the long-term lease. Has OHA accepted this CIA?

The traditional and cultural significance of Wai'ale'ale Stream is intentionally minimized by focusing on the North Fork Wailua River despite the knowledge that North Fork Wailua does not exist until the confluence of Wai'ale'ale Stream and another tributary approximately one-mile downstream.

As documented in the CIA, multiple sources state that Hawaiians never took more than half of the water from a stream channel (Nakuina, Tong 2014).

Public Trust Uses

KIUC's water interest (although minimally beneficial) is not constitutionally protected by the

Public Trust Doctrine. According to the Hawai'i Supreme Court "private commercial use, including commercial agriculture, is not a public trust purpose" under *Waiola O Molokai, Inc.* (Haw. 2004). Therefore, commercial water uses should not infringe on Hawai'i's four public trust uses of water:

- 1) water resource protection, which includes "the maintenance of waters in their natural state";
- 2) domestic use protection, particularly drinking water;
- 3) the exercise of native Hawaiian and traditional and customary rights; and
- 4) reservations of water to the Department of Hawaiian Home Lands.

Ditch diversions for hydropower and/or agriculture must not compete with public trust uses. The burden of proof is on the applicant for commercial uses of public trust resources to establish that non-public trust water uses will not harm traditional and customary native Hawaiian rights.

The Waiahi Hydroplant diversions also "export" Wai'ale'ale waters from the North Fork Wailua to the South Fork Wailua where Grove Farm's Hanamaulu Ditch transports it for other commercial uses, without water use permits or monitoring. These facts are not addressed in the DEA and warrant thorough research.

A Pending Contested Case

At the August 2018 Commission on Water Resource Management (CWRM) public hearing, the Commission was preparing to enter a ruling on the minimum flow standard they believed should be maintained in Wai'ale'ale and Waikoko Streams. However, KIUC's attorney stopped the process with a request for a contested case hearing. The CWRM contested case is still pending and has not been resolved. Taking action on the DEA before resolving the contested case regarding Interim Instream Flow Standards for the Wailua Hydrologic Unit 2040 is unwise.

Furthermore, would KIUC's proposed permanent modifications to the diversion structures ensure that any future interim IFS established by CWRM, even if set as high as 80% or 90%, would remain in the stream channel at all times?

Seeking a long-term water lease before Interim Instream Flow Standards are set is a piecemeal approach to managing our precious water resources.

Conservation District Impacts

Wai'ale'ale Stream and Waikoko Stream which are located in the State Forest Reserve deserve the highest degree of protection.

Uses in the Conservation District require a higher level of scrutiny. The amount of water KIUC releases into the streams is less than what is needed for mauka to makai flows! The greatest attempt should be made to pursue the natural state of the 'aina in this watershed.

Watershed Impacts

To understand the impacts of this proposed water lease, an examination of all of the streams and waters in this watershed is needed, with accurate calculations reflective of the entire watershed and available water.

A Watershed Management Plan (WMP) is required for a long-term water lease. It should be recognized that a less than adequate DEA, is not acceptable when a more thorough EIS is warranted. An EIS is generally used to develop a Watershed Management Plan as required by HRS 171-58.

Should the long-term lease be approved, W-KNA is not confident that the requirement for, and implementation of a subsequent Watershed Management Plan will materialize.

Climate Change is Not Considered in the DEA

The decline of rainfall and stream flows will accelerate due to climate change. Why was this discussion omitted from the DEA?

Due to climate change, alternatives for a long-term lease of shorter duration should have been considered; possibly no more than a 20-year period.

The statement (on page 105) that continued operation of these hydropower plants reduces greenhouse gas emissions is misleading in scope since these plants provide a mere 1% of daily power.

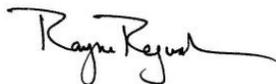
Use of Federal Funds Requires an EIS

Although the current proposed action may not include the use of federal funds, part of a \$60M Federal loan was used to repair/upgrade these two power plants recently. Compliance with Federal law requires an EIS where Federal funding is involved.

In Closing

The applicant should not be exempted from preparing an EIS. Based on the comments presented herein, we ask that the DEA be denied and an EIS be required. On behalf of the Wailua-Kapa'a Neighborhood Association (W-KNA) board, thank you for your consideration.

Sincerely,



Rayne Regush,
W-KNA Chair

cc: Consultant - SSFM International, Inc. (jscheffel@ssfm.com)
Applicant - Kaua'i Island Utility Cooperative (dhuff@joulegroup.com)