



**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003

January 29, 2024

VIA ELECTRONIC MAIL

State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai'i 96809
lwalani.hr.kaaa@hawaii.gov

Re: January 30, 2024 Meeting of the Commission on Water Resources
ACTION ITEM B.1. Approval of Stream Channel Alteration Permit Application
(SCAP.6002.2) and Special Conditions, Kaua'i Island Utility Cooperative, Kōke'e Ditch
Diversion Modifications and Installation of Monitoring Stations; and
ACTION ITEM B.2. Approval of Stream Diversion Works Permit Application
(SDWP.6001.2) and Special Conditions, Kaua'i Island Utility Cooperative, Kōke'e Ditch
Diversion Modifications.

Dear Chair and Members of the Commission:

The Kekaha Agriculture Association appreciates the opportunity to offer testimony on the above-referenced Action Items B.1 and B.2 concerning Stream Channel Alteration Permit and Stream Diversion Works Permit applications for the proposed diversion modifications on the Kōke'e Ditch. KAA has significant concerns regarding the proposed design of the diversion modifications and recommends that the Commission deny the Applications.

The diversion modifications described in the Applications are designed to utilize Kōke'e Ditch water for the WKEP. In early December 2023, however, the Kauai Island Utility Cooperative announced that it was terminating the part of the project involving Kōke'e Ditch water. This major change to the project necessitates corresponding changes to the proposed diversion modification plans and thus denial of the Applications.

In addition to this fundamental change to the WKEP, it appears KIUC no longer has access to the diversions because its prior license terminated. Site access is a threshold requirement for work on the diversions, and lack of access should provide a basis for denying the Applications. It is also appropriate that KIUC no longer has access to Kōke'e Ditch diversions, given that the WKEP no longer relies on Kōke'e Ditch water.

Finally, the Applications should also be denied to allow additional time for collaborative discussions in the Waimea Watershed Agreement working group process. Since 2017, the WWA process has established a proven track record for resolving hydrological and technical issues, including agreed-upon diversion modification designs for the Kekaha Ditch. Currently, the group process is actively addressing the interim diversion modification design to be implemented upon agreement. Granting the Applications for outdated modification designs would be counterproductive and will likely necessitate the future submission of alternate SCAP applications. Consistent with the spirit of the WWA, the Commission should support the parties in continued efforts to resolve these types of issues through the ongoing WWA collaborative process.

Sincerely,

Joshua Uyehara
President of the Board of Directors

KEKAHA AGRICULTURE ASSOCIATION

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JOSH GREEN, M.D.
Governor

SYLVIA LUKE
Lt. Governor



WENDY GADY
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

HUI HO'OULU AINA MAHIAI
235 S. Beretania Street, Room 205
Honolulu, HI 96813

TESTIMONY OF WENDY L. GADY
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

Tuesday, January 30, 2024
9:00 a.m.

REGARDING MEETING AGENDA ITEM B1
RELATING TO THE APPROVAL OF KAUAI ISLAND UTILITY COOPERATIVE'S
STREAM CHANNEL ALTERATION PERMIT APPLICATION

Chair Chang, Acting Deputy Director Uyeno, and Members of the Commission:

Thank you for the opportunity to provide testimony before the Commission on Water Resource Management (Commission) regarding agenda item B1 relating to the approval of Kauai Island Utility Cooperative's (KIUC) stream channel alteration permit application. As the State agency responsible for the Kokee Ditch under Governor's Executive Order No. 4287, the Agribusiness Development Corporation (ADC) respectfully requests that the Commission *defer or deny* this request for approval in light of the recent notice provided by KIUC of the termination of the flow-through hydro portion of the West Kauai Energy Project (Project) (Exhibit "A") and the present lack of certainty regarding the Project's future and scope. As a consequence of the termination of the flow-through hydro portion of the Project, KIUC has committed to completing the phase 1 modifications required under the landmark Waimea Watershed Agreement, but has not committed to completing the phase 2 modifications. At present, ADC is uncertain if the completion of phase 1 of the stream and ditch modification without the completion of phase 2 of the stream and ditch modification is in the best interest of ADC, our tenants, and the State of Hawaii.

Additionally, ADC observes that KIUC's license for the Kokee Ditch, which includes the application sites, is expired (Exhibit "B") as of August 27, 2023 and that KIUC no longer has site control. Given the current uncertainty surrounding the future and scope of the Project, ADC does not anticipate renewing or extending the license, or otherwise providing a right-of-entry to KIUC to complete the modifications until such time as we have a complete and thorough understanding of the amended scope of the Project and the impact(s) to ADC, our tenants, the watershed, and the community.

Lastly, we would note that the Waimea Watershed Agreement working group is presently working to better understand the implications of KIUC's changes to the Project and actively discussing potential changes to the phase 1 modifications related to those changes. Hydrologists representing the Commission, Earthjustice, and Kekaha Agriculture Association have already met to discuss those implications and potential changes to the phase 1 modifications, and those discussions are ongoing. We would urge the Commission to allow the working group the opportunity to work through these concerns in a collaborative manner with the various parties to the agreement.

For these reasons, ADC respectfully requests that the Commission *defer or deny* approval of KIUC's application until a better understanding of the impacts of the phase 1 modifications being completed without the phase 2 modifications being completed can be ascertained.

Thank you for your consideration of our testimony.

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Project Delays Jeopardize West Kaua'i Energy Project

December 13, 2023

Kaua'i Island Utility Cooperative and its partner AES will discontinue active development of the flow-through hydroelectric portions of its West Kaua'i Energy Project (WKEP) due to litigation-caused delays, project uncertainty, and cost increases.

KIUC will consider the feasibility of a scaled-back design including only the solar pumped storage hydro portion of the proposed renewable project, but that portion of the more than \$250 million project is also at risk of cancellation. The fallback project would reduce power production by roughly 25% and eliminate water delivery for agriculture on lands owned by the Department of Hawaiian Home Lands (DHHL) and the Agribusiness Development Corporation (ADC). It would also significantly slow KIUC's movement toward its goal of 100% renewable energy production by 2033.

Delays caused by lawsuits filed by Earthjustice have resulted in critical project deadlines being missed due to continued project uncertainty. The latest lawsuit, filed in February, challenges environmental approvals obtained for the project. Previously, Earthjustice filed a lawsuit challenging the Hawai'i Public Utility Commission's approval of the purchase power agreement (PPA) related to the project.

WKEP has been studied and pursued by KIUC since 2012. It is being developed by AES, which will build and operate the project if the solar pumped storage hydro portion proceeds. Electricity produced by WKEP would be purchased by KIUC under the PPA. As originally proposed, WKEP would have used both flow-through and pumped storage hydro technology to bring KIUC to more than 80% renewable generation.

The flow-through portion of the project was dependent on diverting water from four streams in Kōke'e via a rehabilitated Kōke'e ditch irrigation system. KIUC committed to complete Phase 1 modifications to the diversions in accordance with the landmark 2017 Waimea Mediation Agreement (WMA). Those modifications at the Waiakōali, Kawaikōi, Kaua'ikinānā and Kōke'e intakes will be performed whether or not the WKEP project proceeds. However, Phase 2 diversion modifications will not be implemented.

Without the flow-through hydroelectric portion, development efforts will no longer include:

1. Rehabilitation of Pu'u Lua Reservoir, which was to provide additional storage for the project.
2. Rehabilitation of the Kōke'e Ditch System.
3. Delivery of water for irrigation and other purposes to users along the Kōke'e Ditch, including the Department of Hawaiian Homelands (Mauka Village, Mauka Pastoral tenants and Pu'u 'Ōpae tenants), ADC (Mauka and Mānā Plain tenants), and DLNR.

Whether or not the remaining solar pumped storage hydro portion of WKEP moves forward will depend on continued interest in participating in the project from DHHL and ADC, and financial feasibility based on cost increases as a result of changes in market conditions and the delayed implementation. In the reduced configuration, energy generation would be accomplished by utilizing solar to pump water uphill from Mānā Reservoir (located on ADC land) to Pu'u 'Ōpae Reservoir (located on DHHL land) during the day, allowing for controlled discharge downhill at night and during non-solar periods. A 20-megawatt powerhouse to be constructed at Mānā Reservoir would be the project's primary generation source.

"While it's unfortunate that the full potential of the environmental, social and economic benefits of WKEP will not be realized, we retain hope WKEP will still be an important piece of KIUC's renewable portfolio," said KIUC's President and Chief Executive Officer, David Bissell.

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January 8, 2023

Ms. Wendy Gady
Executive Director
Agribusiness Development Corporation
235 S. Beretania Street, Room 205
Honolulu, Hawai'i 96813

Re: Status update on License Agreements LI-K1702 and LI-K1703

Dear Ms. Gady:

Aloha, and congratulations on your appointment as ADC Executive Director.

We are writing to provide an update on the West Kauai Energy Project (WKEP) and the referenced License Agreements. As you may know, KIUC and ADC announced last month that we would no longer be pursuing the flow-through hydro portion of WKEP. This impacts the license agreements as follows:

- License Agreement LI-K1702 (Kōke'e Ditch, OCR): Due to the abandonment of the flow-through hydro portion of WKEP, KIUC is no longer pursuing a lease for the long-term operation and maintenance of Kōke'e Ditch. Therefore, KIUC does not intend to request extension of this license or execution of a lease for Kōke'e Ditch.
- License Agreement LI-K1703 (Mānā Reservoir, OCR): KIUC and AES are currently conducting an analysis of the financial feasibility of the solar pumped storage component of WKEP. We anticipate deciding whether or not a scaled-back project will be pursued within the next three months. Should we decide to move forward, KIUC and AES will make a request of ADC relative to this license and leases for Mana Reservoir and land for the solar component of the project.

Mahalo for your consideration.

Best regards,

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

David Bissell
President and Chief Executive Officer

c: Lyle Roe, Property Manager, ADC
Delanie D. Prescott-Tate, Deputy Attorney General
Wayne Watanabe, ADC Board Chair
Lyle Tabata, ADC Board Vice Chair
Laurel Loo, KIUC General Counsel