



# tgi forum

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FOUNDED IN 1902

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## Allowing for proper due diligence is time well spent

In Hawaii, water is a public trust resource. As with all of our natural resources, it must be protected, and its use must be responsibly managed. We have a robust water-management system in the state, under the guidance of the state Board of Land and Natural Resources (BLNR) and the Commission on Water Resource Management (CWRM).



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**OTHER VOICES**

David Bissell

Kauai Island Utility Cooperative (KIUC) is a member-owned, not-for-profit entity, and has worked hard since its inception in 2002 to demonstrate responsible stewardship of our community and our environment. Over the past 10 years we have increased renewable-energy generation to meet more than 50 percent of our energy needs, with a corresponding drop in the use of fossil fuels by 15 million gallons per year.

The use of water to produce hydropower is an important component of KIUC's renewable-energy portfolio. Eight hydropower plants throughout the island contribute nearly 11 percent of our energy needs. Two of those, the Upper and Lower Waiahi hydropower plants, are owned by KIUC and are by far our lowest-cost source of electricity. In order for KIUC to

continue to use these important renewable energy facilities, a state legislative proposal, House Bill 1326 HD2, must be passed.

### Background

The Waiahi hydros and the associated ditch system were built in the 1920s by Lihue Plantation primarily for agricultural irrigation purposes, and have been in operation ever since. KIUC has operated the Waiahi hydro plants since 2002 under a revocable permit (RP) issued by the state Department of Land and Natural Resources (DLNR). The RP allows KIUC to divert water from the North Fork of the Wailua River and Waikoko Stream, collectively referred to as the Blue Hole Diversion, in order to provide water flow to the plants for renewable-energy production. We are also required to provide maintenance for the ditch system.

### Why is HB 1326 HD2 important?

KIUC is one of 10 RP holders on Kauai, Maui and Hawaii Island who use diverted water for a variety of purposes, including: public drinking water, agriculture and hydropower. Currently the law requires each of these RP's to be converted to long-term leases by the end of 2019, or else they will expire without the possibility of renewal. Due to the complexity of the process and numerous other factors, it is unlikely that this deadline will be

met for any of the 10 RP holders. HB 1326 HD2 proposes simply to extend the deadline for the RP conversions. In doing so, these important beneficial uses, some of which have been in place for nearly a century, could be preserved.

### Why has it taken so long to obtain the lease?

In 2004, within two years of assuming the RP, KIUC applied for a long-term lease for the Blue Hole Diversion. Since then, the cooperative has been actively working with the DLNR and other agencies to fulfill lease-application requirements, including: conducting numerous environmental and cultural studies, resolving a contested-case hearing filed by the Office of Hawaiian Affairs, and participating in the process of setting an interim instream flow standard (IIFS) for North Fork Wailua and Waikoko. While we are very close to completing an environmental assessment for submittal to DLNR — a critical step in the lease process — it is unlikely that DLNR will complete its review and be ready to adjudicate a lease application by the end of 2019. In fact, even if KIUC were ready to submit its application today, a lease process has yet to be fully defined by DLNR.

### Is hydropower a public-trust use?

While hydropower production is not considered one of the state's four public-trust water uses, it is acknowledged as a beneficial off-stream use. To quote State Water Code, Chapter 174C, §174C-2 (c): "The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State [emphasis added] for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses."

### Will HB 1326 HD2 allow RP holders to avoid environmental compliance?

No. This bill is written simply to extend the deadline for lease conversion. All applicants will still need to complete proper due diligence as prescribed by law, including satisfying environmental compliance under Hawaii Revised Statutes Chapter 343.

### Is KIUC allowed to dewater the stream if the deadline is extended?

No. KIUC is required under terms of its RP renewal to ensure a minimum stream flow at all times. The minimum flow requirements are equivalent to CWRM's proposed IIFS of 4 million gallons for North Fork Wailua and 0.8 million gallons for Waikoko Stream. These hydro facilities are im-

portant to all of us. With adequate intake, they can generate up to two megawatts of electricity and allow us to avoid burning 675,000 gallons of diesel each year. They provide reliable power around the clock to our 33,000 members at one-third the cost of diesel. However, they cannot operate at peak efficiency without water from the Blue Hole Diversion.

The state is breaking new ground in its effort to convert these diversion RP's to long-term leases. As mentioned previously, the lease process has yet to be fully defined by the state, and the RP holders are in various stages of application readiness. We believe it is worth the additional time being proposed in HB 1326 HD2 to enable continued beneficial uses such as agriculture and hydropower, while protecting public trust uses and the ecosystem of the stream.

KIUC does not believe that the deadline should be extended indefinitely. However, a reasonable extension that will allow proper due diligence on the part of applicants, along with well-informed decision-making on the part of the BLNR, is a reasonable request. That's the essence of HB 1326 HD2.

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