

Center for Hawaiian Sovereignty Studies  
46-255 Kahuhipa St. Suite 1205 Kane'ohe, HI 96744  
Tel/Fax (808) 247-7942  
Kenneth R. Conklin, Ph.D. Executive Director  
e-mail Ken\_Conklin@yahoo.com



Unity, Equality, Aloha for All

To: WAL/OMH, FIN  
From: Kenneth R. Conklin, Ph.D.  
Re: HB509  
Date: January 29, 2013

#### TESTIMONY IN OPPOSITION

I strongly OPPOSE HB509 relating to Makua.

Some of my concerns are general; and some are specific to particular items in the bill.

#### GENERAL CONCERNS

This bill is a wolf in sheep's clothing. It is a Hawaiian sovereignty bill masquerading as a bill for environmental and cultural preservation.

I believe the single most important issue facing Hawai'i in the foreseeable future is the imminent and continuing threat that the lands, resources, government and people of Hawai'i will be divided along racial lines. Please see "Hawaiian Apartheid: Racial Separatism and Ethnic Nationalism in the Aloha State"  
<http://tinyurl.com/2a9fqa>

The Legislature has repeatedly passed resolutions favoring the

Akaka bill to create a racially exclusionary government empowered to negotiate with YOU, the legislators. It is expected that you will give away massive amounts of land, money, and jurisdictional authority.

This bill would already designate Makua Valley as the property of the Akaka tribe even before the tribe is created, and before any negotiations have started. That's absurd! No responsible negotiator gives away important concessions before the opponents even arrive at the table. Legislators have a fiduciary duty to protect the lands and resources of Hawaii on behalf of all our people, not just some.

SB 86 is also a bill to push the military out of Makua, despite a long history of military training there which has included environmental stewardship. Court decisions have repeatedly affirmed the Army's right to use Makua while making allowances for cultural activities and preservation; but this bill would over-rule those court decisions. § -12 Severability Section 2, coming at the bottom of the bill, may be insufficient to protect the rights of the Army.

I vehemently oppose the effort (1) to place Makua valley under the control of a racially and ideologically stacked "cultural reserve commission"; and (2) to single out one particular racial group and its cultural heritage as the sole source of value for historic and cultural preservation; and (3) to declare that the valley will be transferred to a future race-based government if and when that new government achieves federal/state recognition.

Makua belongs to all the people of Hawaii, and should stay that way. It has been used for a variety of agricultural, commercial, cultural, and religious purposes by people of various racial heritages. May it always be so! That's why this bill must be rejected.

## SPECIFIC ITEMS IN THE BILL

§ -3 Reservation of uses.

"(1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes"

But of course those rights are preserved throughout all of Hawaii. There's no need to reaffirm them here.

Furthermore, all other racial and cultural groups in Hawaii should also be entitled to exercise their customs, and it is improper to single out only ethnic Hawaiians for protection to the exclusion of others. If paragraph (1) is regarded as necessary to be reaffirmed so explicitly, then the rights of everyone else should also be reaffirmed explicitly.

And in particular, the rights of the Army, found at the bottom of the bill in § -12 Severability Section 2, should be moved up to this paragraph so it is clearly given equal priority with ethnic Hawaiian race-based "rights."

By failing to mention military uses, lines 1 and 2 in the bill would actually exclude the military: "The valley reserve shall be used solely and exclusively for the following purposes"

By failing to allow commercial uses, and later explicitly prohibiting such uses, this bill would deny former residents of the valley, who were evicted and whose lands were condemned, any opportunity to return and to resume their former activities including farming and ranching. The bill would also prohibit local residents from selling any fish they catch, and prohibit snorkel tours and other profit-making ocean recreational activities.

§ -5 Commission.

(a)

This section enumerates the criteria for membership on the Commission for each of its nine members. The criteria guarantee that the vast majority of members will be anti-military; and the criteria lean heavily in favor of guaranteeing a racial majority for ethnic Hawaiians. Here are six of the nine members as specified in Section 5: (1) Malama Makua, and (2) Hui Malama O Makua, and (3) families that were evicted from the valley -- these three are antimilitary and dominated by ethnic Hawaiians; (4) How is the "Waianae coast community" defined, and by what mechanism will that community choose its representative? (5) Office of Hawaiian Affairs is race-based and has a history of filing anti-military lawsuits; (9) "member shall be appointed by the governor from a list provided by native Hawaiian organizations" is clearly race-based. In addition, (8) One member shall be the chairperson of the board of land and natural resources, or the chairperson's designee -- at the present time, the DLNR chair is ethnic Hawaiian William Aila, who ran for governor on a sovereignty platform, and the vice-chair is Esther Kia'aina, who until recently was official spokesperson for OHA. Thus 7 out of 9 Commission members are either required to be, or very likely to be, ethnic Hawaiians who are politically active in sovereignty movement.

(d) "Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum to do business." Since 4 members are a quorum, the ethnic Hawaiians could call meetings and make decisions in the absence of the other members.

(e) Why is there an exemption from chapter 76 ? Furthermore, in these difficult financial times, do we really want to be expanding the size of government by hiring an executive director and other "warm bodies"?

§ -6 Responsibilities and duties of the commission.

(5) "...curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices ..." This is clearly racist, because it excludes other ethnicities, religions and cultures.

§ -10 Transfer. "Upon its return to the State, the resources of the valley reserve shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the valley reserve to the sovereign native Hawaiian entity upon its recognition by the United States and the State."

Section 10 is outrageous. Handing over a piece of Hawaii to a racially exclusionary government is both illegal and immoral. Setting aside Makua for such a fate even before the Akaka bill passes and before negotiations have begun with the Akaka tribe is a violation of the fiduciary duty of the Legislature to protect the property and rights of all the citizens of our State. Ethnic Hawaiians, or their spouses or family members, who sit as members of this legislature have a clear conflict of interest on this bill.

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 30, 2013 8:34 AM  
**To:** waltestimony  
**Cc:** kcanepa@cochawaii.org  
**Subject:** Submitted testimony for HB509 on Feb 1, 2013 08:00AM  
**Attachments:** 2.1 House WAL OMH Hearing re HB 509 (Makua Valley).pdf

**HB509**

Submitted on: 1/30/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|--------------------------|---------------------------|---------------------------|
| Charlie Ota         | Military Affairs Council | Oppose                    | No                        |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**Testimony to the House Committee on Water and Land and Ocean, Marine  
Resources, and Hawaiian Affairs  
Friday, February 1, 2013  
8:00 AM  
Conference Room 325**

**RE: HOUSE BILL NO. 509, RELATING TO MAKUA VALLEY**

**Chair Evans, Vice Chair Lowen and Chair Hanohano and Vice Chair Cullen, and members of the Committee on Water and Land and Committee on Ocean, Marine Resources, and Hawaiian Affairs.**

**My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state the Military Affairs Council's opposition to House Bill No. 509, Relating to Makua Valley.**

**The measure proposes to amend Hawaii Revised Statutes by adding a new chapter to establish the Makua Valley Reserve Commission to oversee preservation and restoration activities in Makua Valley on O`ahu. This Act is to take effect upon approval.**

**The Military Affairs Council (MAC) is an unencumbered affiliate of The Chamber of Hawaii and was established at the request of the Governor of Hawaii in 1985 to serve as the designated liaison for the state in matters relating to the military.**

**The proposal to establish a commission to oversee preservation and restoration activities at Makua Valley is premature because most of the land area in question is owned by the federal government.**

**Makua Valley consists of about 4,190 acres in total.**

**Of that total acreage, only 18% or 732 acres of the land area on the western end of the valley down to the shoreline is leased by the state to the federal government.**

**The remaining 82% of the land area, or about 3,458 acres extending up to the mauka or eastern end, is owned by the federal government. This is the location of the military training range and there are no plans to terminate training activities in the foreseeable future.**

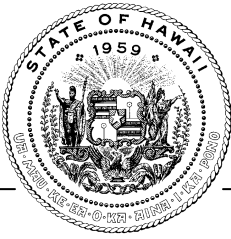
**In fact, the military plans to modernize the training range complex to meet the training requirements for the 21<sup>st</sup> century military force.**

**The use this land by the military or any other federal agency will continue until it is determined to be surplus to the needs of the federal government.**

**In light of the above, we strongly recommend that this measure be disapproved.**

**Thank you for this opportunity to testify on this important measure.**





# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
DIRECTOR  
MARY ALICE EVANS  
DEPUTY DIRECTOR  
JESSE K. SOUKI  
DIRECTOR  
OFFICE OF PLANNING

## OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824

Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE WATER AND LAND  
AND  
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, AND  
HAWAIIAN AFFAIRS**  
Friday, February 1, 2013  
8:00 AM  
State Capitol, Conference Room 325  
  
in consideration of  
**HB 509**  
**RELATING TO MAKUA VALLEY.**

Chairs Evans Hanohano, Vice Chairs Lowen and Cullen, and Members of the House Committees on Water and Land and Ocean, Marine Resources and Hawaiian Affairs.

House Bill 509, Relating to Makua Valley, proposes to establish the Makua Valley Reserve Commission to oversee preservation and restoration activities in Makua Valley on Oahu. The Commission is to be placed within the Department of Land and Natural Resources (DLNR) for administrative purposes as provided in Hawaii Revised Statutes (HRS) section 26-35.

The Office of Planning (OP), gathers, analyzes, and provides information to the Governor to assist in the overall analysis and formulation of state policies and strategies. The Office's state statutory authority is derived from HRS Chapter 205, Land Use Commission, HRS Chapter 205A, Coastal Zone Management, HRS Chapter 225M, State Planning, and HRS Chapter 226, Hawaii State Planning Act. OP offers comments on HB 509 as follows:

1. HB 509 should provide justification on the proposed Makua Valley Reserve, clarify the boundary of Makua Valley Reserve, and consider potential conflicts of the bill, including jurisdictional and enforcement (of violation) issues.
2. We note that section 5(a) of HB 509 establishes a total of nine members on the Commission, while section 5(d) states that four members shall constitute a quorum. We believe that five members may be necessary to constitute a quorum for the requirement that any action taken by the Commission shall be approved by a simple majority of its members.
3. OP administers HRS Chapter 205A, Hawaii's Coastal Zone Management (CZM) law, which implements the CZM Act passed by the U.S. Congress in 1972. The special management area (SMA) permitting system is part of the federal and state approved Hawaii CZM Program. The purpose of HRS Chapter 205A, is to "provide for the effective management, beneficial use, protection, and development of the coastal zone." L. 1977, c 188, § 1. The planning department of the various counties is charged with administering SMA permits, which includes application assessments, holding public hearings, and managing contested cases. Final decision-making is vested in county planning commissions, or the city council of the city and county of Honolulu.

Pursuant to section 6 of HB 509, the proposed Commission will become another entity that (1) would be the designated authority over SMA permits in the Makua Valley Reserve; (2) could set new SMA boundaries provided that changes in boundaries are subject to compliance with the CZM objectives and policies, and any guidelines enacted by the legislature; (3) would be required to report (likely through DLNR) on activity regarding the SMA within the Makua Valley Reserve; and (4) the Commission would become part of the CZM network program.

Thank you for the opportunity to provide testimony on this measure.

## lowen2-Anosh

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 30, 2013 2:24 PM  
**To:** waltestimony  
**Cc:** nanakulibill@hotmail.com  
**Subject:** Submitted testimony for HB509 on Feb 1, 2013 08:00AM

### **HB509**

Submitted on: 1/30/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

| Submitted By              | Organization | Testifier Position | Present at Hearing |
|---------------------------|--------------|--------------------|--------------------|
| William "Punini" Prescott |              | Oppose             | No                 |

Comments: FROM: William "Punini" Prescott (Spokesman for Hawaii's VFW) TO: WAL/OMH, FIN HEARING: February 1, 2013 HEARING NR: HB 509 Hawaii's Veterans of Foreign Wars strongly oppose HB 509. Why? Because should it pass our Hawaii's sons and daughters will have to train off island separated from family doing what could simply be done here at home in Makua. And when the additional and tremendous expense is included to taxpayers to move personnel, equipment, supplies, vehicles, helicopters, etc. to off island training areas one has to conclude it's foolish and unjustified. Our late US Senator Dan Inouye's article "Let Army resume training at Makua," appeared in the Advertiser on June 7, 2009. And Hawaii's National Guard's Major General Robert Lee wrote (Advertiser, Jul 26, 2009) of our soldiers having to train in Texas during their previous deployments to Kuwait and Iraq. Training he said could have been done here in Makua preventing additional separation time from families and cost to taxpayers. We of the Veterans of Foreign Wars know what it's like to be separated from family and children. We ask that you prevent this added burden on our military by not passing this bill. The following which you may not be aware of was published in the Star Bulletin & Advertiser, Honolulu, August 1, 1976 "Makua – a study in land exchange" by Advertiser staff writer Bunky Bakutis. He writes in part: A new twist of land control and fee title appeared when Hawaii became a State, "Under the Statehood Act, all ceded lands that had not been set aside formally for Federal use prior to statehood were to be returned to the new State." BUT – AND THIS IS where Makua comes in – the act said that any lands held by the federal government prior to statehood "either by permit, licenses, or permission" from the Territory of Hawaii may at any time during the five years following admission of Hawaii into the Union be set aside by act of Congress or executive order of the president for Federal use. And because the land is ceded land, it will become available to the State should the Federal Government ever find the land in surplus of its needs. In 1964, President Lyndon Johnson set aside more than 7,000 acres of land in Hawaii for Federal use by signing an executive order. SOME 3,286 ACRES of that total were located in the middle and upper parts of Makua Valley. A strip of land along the present road of land along the present road – about 1,500 went back to the State. The State then agreed to lease that land, at no charge, to the military for 64 years beginning in 1964.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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FROM: William "Punini" Prescott (Spokesman for Hawaii's VFW)  
TO: WAL/OMH, FIN  
HEARING: February 1, 2013  
HEARING NR: HB 509

Hawaii's Veterans of Foreign Wars strongly oppose HB 509. Why? Because should it pass our Hawaii's sons and daughters will have to train off island separated from family doing what could simply be done here at home in Makua. And when the additional and tremendous expense is included to taxpayers to move personnel, equipment, supplies, vehicles, helicopters, etc. to off island training areas one has to conclude it's foolish and unjustified.

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*A new twist of land control and fee title appeared when Hawaii became a State, "Under the Statehood Act, all ceded lands that had not been set aside formally for Federal use prior to statehood were to be returned to the new State."*

*BUT - AND THIS IS where Makua comes in - the act said that any lands held by the federal government prior to statehood "either by permit, licenses, or permission" from the Territory of Hawaii may at any time during the five years following admission of Hawaii into the Union be set aside by act of Congress or executive order of the president for Federal use.*

*And because the land is ceded land, it will become available to the State should the Federal Government ever find the land in surplus of its needs.*

*In 1964, President Lyndon Johnson set aside more than 7,000 acres of land in Hawaii for Federal use by signing an executive order.*

*SOME 3,286 ACRES of that total were located in the middle and upper parts of Makua Valley. A strip of land along the present road of land along the present road - about 1,500 went back to the State. The State then agreed to lease that land, at no charge, to the military for 64 years beginning in 1964.*



**HB509**  
RELATING TO MAKUA VALLEY  
House Committee on Water and Land  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs

February 1, 2013

8:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) Committee on Beneficiary Advocacy and Empowerment (BAE) **SUPPORTS WITH AMENDMENTS** HB509, which would establish the Mākua Valley Reserve to be administered by a Mākua Valley Reserve Commission within the Department of Land and Natural Resources.

**This bill will facilitate the rehabilitation, protection, and management of cherished Mākua Valley on the Wai'ānae coast of O'ahu.** Mākua Valley is a site of great historic, cultural, and environmental significance, whose protection has been the subject of substantial community activism for nearly two decades. The valley historically hosted a thriving Native Hawaiian population that cultivated and lived off of the abundant resources in the region. The valley was also historically used as a port of landing for voyaging canoes, and was the location of a number of cultural institutions, including reknowned hālau lua and hālau hula. In addition, a number of native plants and animal species have and continue to live in Mākua valley, many of which are currently considered threatened or endangered with extinction.

Unfortunately, since the early twentieth century, Mākua Valley has suffered continuous desecration by extensive military training and weapons testing, which has destroyed or damaged many of the natural and cultural resources and sites formerly contained within the area. Thanks to nearly 20 years of community efforts, including lawsuits by cultural groups and environmental organizations, military live-fire training has ceased in the valley. However, there continue to be concerns regarding the existence of toxins, unexploded ordinance, and other hazards that may remain from nearly 100 years of military occupation.

By establishing a reserve to be overseen by cultural and biological experts, with appropriate government and community representatives, OHA believes that this bill will accordingly help the state and its residents, including Native Hawaiian historians and cultural practitioners, take a significant step forward in the immense task of rehabilitating, protecting, and managing the land and resources in cherished Mākua Valley.

To more appropriately reflect the administrative structure of the OHA, OHA requests that lines 20-21 of page 3 be replaced with the following:

(5) One member shall be the chief executive officer of the office of Hawaiian affairs, or the chief executive officer's designee;

OHA urges the committee to **PASS WITH AMENDMENTS** HB509. Mahalo for the opportunity to testify on this important measure.



REPRESENTATIVE CINDY EVANS, CHAIR  
REPRESENTATIVE NICOLE E. LOWEN, VICE-CHAIR  
HOUSE COMMITTEE ON WATER & LAND

REPRESENTATIVE FAYE P. HANOHANO, CHAIR  
REPRESENTATIVE TY J.K. CULLEN, VICE-CHAIR  
HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

TESTIMONY RE: HOUSE BILL NO. 509  
RELATING TO MĀKUA VALLEY

February 1, 2013, 8:00 a.m.  
Conference Room 325

Good morning Chairs Evans and Hanohano, Vice-Chairs Lowen and Cullen, and members of the Committees:

My name is David Henkin, and I am an attorney with Earthjustice. We appreciate the opportunity to offer this testimony regarding House Bill No. 509. Earthjustice strongly supports the basic intent of this bill, which is to start planning for the return of Mākuā, Kahanahāiki and Ko'iahi to the people of Hawai'i, so these sacred lands can once again be put to productive and appropriate use.

While we support the bill's fundamental intent, we have concerns about specific provisions, which should be addressed in an amended draft:

1. Among its other responsibilities, the Mākuā valley reserve commission would be entrusted to negotiate with the U.S. Army to facilitate the expedient return of Mākuā Military Reservation (MMR) upon the expiration of the Army's lease. See § -7. While the Army is a necessary party to those negotiations and discussions, it should not have a seat on both sides of the table. Accordingly, the commission should not include a representative of the commanding officer of the U.S. Army in the Pacific. See § -5(a)(6). Similarly, since the specified uses of the reserve do not include future military activities, the commission's membership should not include a representative of the adjutant general of the State of Hawai'i. See § -5(a)(7).

2. To avoid infringing First Amendment religious freedoms, the commission should not favor one form of spiritual practice over others through curator or stewardship agreements with Hawaiian cultural and spiritual community organizations. See § -6(5). Rather, freedom of religious and cultural practice should be guaranteed for all.

3. The Mākuā valley reserve commission should not displace the functions of the O'ahu Island Burial Council and Department of Land and Natural Resources with regard to

treatment of burial sites and human skeletal remains as many members of the commission would lack the necessary expertise to carry out those duties. See § -6(8).

4. Likewise, while the commission should advise the Board of Land and Natural Resources, Land Use Commission, and City and County of Honolulu with respect to dispositions and approvals, it should not displace their functions. See § -6(6)-(7).

5. As part of its interim activities prior to the return of Mākua, Kahanahāiki and Ko'iahi, the commission should enter into discussions with the Army to ensure the clean-up of unexploded ordnance and expansion of opportunities for cultural access. Such interim efforts will help avoid post-transfer problems like those that have affected Kaho'olawe by, among other things, making substantial progress on completing the clean-up while MMR is still under Army control.

We respectfully urge you to pass HB 509, with amendments to address the aforementioned concerns. We have attached a redlined version of the bill with suggested amendments. Thank you again for the opportunity to offer this testimony.

# Earthjustice Testimony on HB 509

## PROPOSED HB 509, HD 1

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### "Chapter

#### **Makua Valley Reserve**

**§ -1 Administration of chapter.** The Makua valley reserve commission and the department of land and natural resources shall administer this chapter.

**§ -2 Definitions.** As used in this chapter, unless the context otherwise requires:

"Commission" means the Makua valley reserve commission.

"Department" means the department of land and natural resources.

"Valley reserve" means the area designated on the island of Oahu as Makua valley, including the three ahupuaa of Kahanahaiki, Makua, and Koiahi.

**§ -3 Reservation of uses.** (a) The valley reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
- (2) Preservation and protection of the valley's archaeological, historical, and environmental resources;
- (3) Rehabilitation, revegetation, habitat restoration, and preservation; and
- (4) Education.

(b) The valley reserve shall be reserved in perpetuity for the uses enumerated in subsection (a). Commercial uses shall be strictly prohibited.

**§ -4 Powers and duties.** The department and other departments and agencies of the State shall be subject to the oversight of the commission with regard to the control and management of the valley reserve. Subject to section -6, the department shall:

- (1) Implement controls and permitted uses for the valley reserve;
- (2) Enforce this chapter;
- (3) Provide administrative support to the commission; and
- (4) Authorize its employees as it deems reasonable and necessary, to serve and execute warrants, arrest offenders, or issue citations in all matters relating to enforcement of the laws and rules applicable to the valley reserve.

**§ -5 Commission.** (a) There is established the Makua valley reserve commission to be placed within the department for administrative purposes as provided in section 26-35. The commission



shall consist of ~~nine~~ **seven** members to be appointed in the manner and to serve for the terms provided in section 26-34; provided that:

- (1) One member shall be a member of Malama Makua;
- (2) One member shall be a member of Hui Malama O Makua;
- (3) One member shall be a representative of families who were evicted from the valley reserve or whose lands in the valley reserve were condemned by the federal government;
- (4) One member shall be appointed by the governor from a list provided by the Waianae coast community;
- (5) One member shall be a trustee or representative of the office of Hawaiian affairs;
- ~~(6) One member shall be the commanding officer of the United States Army, Pacific, or the commanding officer's designee;~~
- ~~(7) One member shall be the adjutant general of the State, or the adjutant general's designee;~~
- ~~(8) (6) One member shall be the chairperson of the board of land and natural resources, or the chairperson's designee; and~~
- ~~(9) (7) One member shall be appointed by the governor from a list provided by Native Hawaiian organizations.~~

(b) The governor shall appoint the chairperson from among the members of the commission.

(c) The members of the commission shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(d) Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum.

(e) The commission, without regard to the requirements of chapter 76, may hire employees, including an executive director, necessary to carry out its duties.

**§ -6 Responsibilities and duties of the commission.** The general administration of the valley reserve shall rest with the commission. In carrying out its duties and responsibilities, the commission:

- (1) Shall establish criteria, policies, and controls for permissible uses within the valley reserve;
- (2) Shall approve all contracts for services and rules pertaining to the valley reserve;
- (3) Shall provide advice to the governor, the department, and other departments and agencies on any matter relating to the valley reserve;
- (4) Shall provide advice to the office of planning and the department of the attorney general on any matter relating to the federal conveyance of the valley reserve;
- ~~(5) May enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of Native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section 3;~~
- ~~(6) (5) Shall carry out those powers and duties otherwise conferred upon advise the board of land and natural resources and the land use commission with regard to dispositions and approvals pertaining to the valley reserve. All powers and duties of the board of land and natural resources~~

~~and the land use commission concerning dispositions and approvals pertaining to the valley reserve are transferred to the commission;~~

~~(7)(6) Shall carry out those powers and duties concerning the valley reserve otherwise conferred upon the city and county of Honolulu by chapter 205A. The powers and duties of advise the city and county of Honolulu and its agencies concerning coastal zone dispositions and approvals pertaining to the valley reserve are transferred to the commission;~~

~~(8) Shall carry out those powers and duties concerning the valley reserve otherwise conferred upon the appropriate island burial council and the department with regard to proper treatment of burial sites and human skeletal remains found in the valley reserve;~~

~~(9)(7) Shall adopt rules in accordance with chapter 91 that are necessary for the purposes of this chapter and shall maintain a record of its proceedings and actions; and~~

~~(10)(8) May delegate to the executive director or employees of the commission, by formal commission action, such power and authority vested in the commission by this chapter as the commission deems reasonable and proper for the effective administration of this chapter.~~

**§ -7 Interim activities of the commission.** Prior to the return of the valley reserve from the United States Army to the State, the commission ~~may~~ shall enter into discussions with the United States Army to:

- ~~(1) facilitate~~ Facilitate the expedient return of the valley reserve upon the expiration of the United States Army's lease;
- ~~(2) Ensure the clean-up of unexploded ordnance; and~~
- ~~(3) Ensure the expansion of opportunities for cultural access.~~

**§ -8 Penalty.** Any person who violates any provision of this chapter or any rule adopted thereunder shall be guilty of a petty misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both, for each offense. Each day of each violation shall be deemed a separate offense.

**§ -9 General administrative penalties.** (a) Except as otherwise provided by law, the commission may set, charge, and collect administrative fines, or bring legal action to recover the administrative costs of the commission or the department or to recover payment for damages, or for the cost to correct damages resulting from a violation of this chapter or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$10,000;
  - (2) For a second violation within five years of a previous violation, a fine of not more than \$15,000; and
  - (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$25,000.
- (b) In addition, an administrative fine of up to \$5,000 may be levied for each natural resource or any historic property taken, killed, injured, broken, or damaged in violation of this chapter or any rule thereunder.
- (c) A criminal penalty for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the commission from bringing a civil legal action to recover additional

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administrative fines and costs. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person.

(d) In any judicial proceeding to recover an administrative penalty imposed, the commission shall be required to show only that notice was given, that a hearing was held or the time granted for requesting a hearing has lapsed without such a request, that an administrative penalty was imposed, and that the administrative penalty remains unpaid.

(e) For the purposes of this section:

"Historic property" means any building, structure, object, districts, area, or site, including heiau and underwater sites, which is over fifty years old.

"Natural resource" includes any archaeological artifacts; minerals; any aquatic life or wildlife or parts thereof, including eggs; and any land plants or parts thereof, including seeds.

**§ -10 Transfer.** Upon its return to the State, the resources of the valley reserve shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the valley reserve to the sovereign native Hawaiian entity upon its recognition by the United States and the State.

All terms, conditions, agreements, and laws affecting the valley reserve, including any ongoing obligations relating to the clean-up of the valley reserve, shall remain in effect unless expressly terminated.

**§ -11 Makua valley rehabilitation trust fund.** (a) There is created in the state treasury a trust fund to be designated as the Makua valley rehabilitation trust fund to be administered by the department with the prior approval of the commission. Subject to this chapter:

(1) All moneys received from the federal government for the rehabilitation and environmental restoration of the valley reserve;

(2) Any moneys appropriated by the legislature to the trust fund;

(3) Any proceeds from administrative fines imposed and collected under this chapter; and

(4) The interest or profit on investments earned from moneys in the trust fund,

shall be deposited in the trust fund and shall be used to fulfill the purposes of this chapter.

(b) The commission may use moneys in the trust fund to carry out the purposes of this chapter, including hiring employees, specialists, and consultants necessary to complete projects related to the purposes of this chapter.

(c) Moneys deposited into or appropriated to the trust fund shall remain available until they are obligated or until the trust fund is repealed.

(d) The trust fund shall be repealed on July 1, 2045. The commission shall transfer to the general fund of the State, all unexpended or unencumbered balances remaining in the trust fund on June 30, 2045; provided that all unexpended or unencumbered balances of federal moneys shall be disbursed in accordance with applicable federal law.

**§ -12 Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this

Earthjustice Testimony on HB 509  
Proposed HB 509, HD 1

chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 2. This Act shall not obstruct, deny, or revoke any rights or privileges heretofore exercised by the United States Army in its use of Makua valley throughout the term of its lease.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: \_\_\_\_\_

**Report Title:**

Makua Valley; Reserve Commission

**Description:**

Establishes the Makua Valley Reserve Commission to oversee preservation and restoration activities in Makua Valley on Oahu.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



DEPARTMENT OF THE ARMY  
REGIONAL ENVIRONMENTAL AND ENERGY OFFICE - WESTERN  
US CUSTOM HOUSE  
721 19<sup>TH</sup> STREET, ROOM 427  
DENVER, CO 80202-2530

31 January 2013

Regional Environmental & Energy Office - Western

House Committees on Water and Land and  
Ocean, Marine Resources and Hawaiian Affairs  
Hawaii State Capitol, Room 311  
415 South Beretania Street  
Honolulu, HI 96813

Re: House Bill 509, Makua Valley Reserve Commission

Dear Chairpersons Evans and Hanohano:

The Army's Regional Environmental & Energy Office - Western (REEO-W) is the US Army's liaison to the states in the Western US. Our mission is to work with states on environmental and sustainability topics in order to avoid conflicts when possible, and help resolve issues efficiently. As Director of the REEO-W, I want to express our opposition to HB 509, which would establish a Makua Valley Reserve Commission under the Hawaii Department of Land and Natural Resources.

The US Army opposes HB 509, for two reasons: (1) The proposed action is premature because there are no plans to close the Makua Military Reservation (MMR); and (2) The US Army has a current need for live-fire maneuver training.

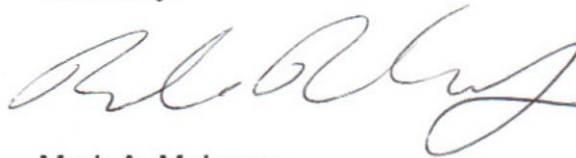
Makua Valley consists of 4,190 acres, of which 82% or 3,408 acres is ceded and fee simple lands of the US Government. The remaining 18% or 782 acres is leased by the State to the US Government and is part of the MMR under control of the US Army. This lease expires in August 2029. HB 509 is premature because there are no plans to close the training area in Makua.

National security concerns have shifted to the Pacific area of operations. These threats highlight the need for the US Army to continued access to MMR. MMR is one of the only collective training area on O'ahu that offers realistic live-fire training required to certify ground troops prior to combat deployments. Forces are forward-based in Hawaii as deterrent forces, and they are required to be held in combat ready status for immediate, no-notice deployment, a critical mission to national defense. These training and readiness requirements also apply to the Hawaii Army National Guard and Hawaii based Reserve units of the US Army and Marine Corps, which continue to be deployed to Afghanistan and other over-seas locations.

The US Army retains a professional environmental staff and continues to spend \$6 - 7 million annually to protect and restore endangered species and cultural sites in the Makua Valley. The US Government is the largest contributor to environmental and cultural preservation and restoration on the Leeward Coast and throughout the State. We continue to enjoy a very good working relationship with Hawaii state agencies, including the Department of Land and Natural Resources and its Historic Preservation Division and the Department of Health.

Thank you for the opportunity to provide our comments. The MMR plays a significant role in readiness training for our troops, and we will continue to protect and restore the species and cultural sites in Makua Valley in order to sustain this vital asset. My point of contact is Mr. Park Haney at 303-844-0957.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Mahoney', written in a cursive style.

Mark A. Mahoney  
Director, REEO-W

**Testimony to the House Committee on Water and Land and Ocean, Marine  
Resources, and Hawaiian Affairs  
Friday, February 1, 2013  
8:00 AM  
Conference Room 325**

**RE: HOUSE BILL NO. 509, RELATING TO MAKUA VALLEY**

**Chair Evans, Vice Chair Lowen and Chair Hanohano and Vice Chair Cullen, and members of the Committee on Water and Land and Committee on Ocean, Marine Resources, and Hawaiian Affairs.**

**My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state the Military Affairs Council's opposition to House Bill No. 509, Relating to Makua Valley.**

**The measure proposes to amend Hawaii Revised Statutes by adding a new chapter to establish the Makua Valley Reserve Commission to oversee preservation and restoration activities in Makua Valley on O`ahu. This Act is to take effect upon approval.**

**The Military Affairs Council (MAC) is an unencumbered affiliate of The Chamber of Hawaii and was established at the request of the Governor of Hawaii in 1985 to serve as the designated liaison for the state in matters relating to the military.**

**The proposal to establish a commission to oversee preservation and restoration activities at Makua Valley is premature because most of the land area in question is owned by the federal government.**

**Makua Valley consists of about 4,190 acres in total.**

**Of that total acreage, only 18% or 732 acres of the land area on the western end of the valley down to the shoreline is leased by the state to the federal government.**

**The remaining 82% of the land area, or about 3,458 acres extending up to the mauka or eastern end, is owned by the federal government. This is the location of the military training range and there are no plans to terminate training activities in the foreseeable future.**

**In fact, the military plans to modernize the training range complex to meet the training requirements for the 21<sup>st</sup> century military force.**

**The use this land by the military or any other federal agency will continue until it is determined to be surplus to the needs of the federal government.**

**In light of the above, we strongly recommend that this measure be disapproved.**

**Thank you for this opportunity to testify on this important measure.**



**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 2:54 PM  
**To:** waltestimony  
**Cc:** lois.h.kaneshiro@hawaii.gov  
**Subject:** Submitted testimony for HB509 on Feb 1, 2013 08:00AM  
**Attachments:** HB0509\_BUF\_02-01-13\_WAL-OMH.pdf

**HB509**

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lois Kaneshiro      | B&F                 | Oppose                    | No                        |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEES ON WATER AND LAND AND  
OCEAN, MARINE RESOURCES AND HAWAIIAN AFFAIRS  
ON  
HOUSE BILL NO. 509

February 1, 2013

RELATING TO MAKUA VALLEY

House Bill No. 509 establishes: the Makua Valley Reserve Commission (Commission) to oversee preservation and restoration activities in Makua Valley on Oahu and the Makua Valley Rehabilitation Trust Fund. The Commission would consist of nine members appointed by the Governor and confirmed by the Senate. The members will not be compensated for their service but will be reimbursed from the trust fund for necessary expenses, including travel expenses. The bill also enables the Commission to utilize the moneys in the trust fund to hire employees, including an executive director, to carry out the purposes of this new commission.

The Department of Budget and Finance (B&F) has concerns with this bill.

The establishment of a trust fund requires a significant level of accountability and financial structure to ensure that funds are managed to the fiduciary standards and trust objectives. Moreover, it is unclear if this new trust fund will generate sufficient revenues to support all of the fiduciary obligations of the Commission.

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 1:08 PM  
**To:** waltestimony  
**Cc:** momi@hawaii.edu  
**Subject:** Submitted testimony for HB509 on Feb 1, 2013 08:00AM  
**Attachments:** MakuaValleyReserveCom.pdf

**HB509**

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Momi Kamahele       | Individual          | Support                   | No                        |

Comments:

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January 31, 2013

To: Chair Representative Cindy Evans

Committee of Water and Land

Chair Representative Faye Hanohano

Committee of Ocean, Marine Resources and Hawaiian Affairs

Subject: HB 509, Relating to Mākua Valley

Testimony in Support of this bill.

Aloha,

I support this bill with the following comments. I am a long time resident of the moku of Wai'anae and currently live in the Wai'anae Valley Homestead. I am an Associate Professor at Leeward Community College teaching history and Hawaiian Studies. I have been a member of Hui Mālama O Mākua for over ten years. I am also Kumu Hula and one of several Native Hawaiian cultural practitioners who have accepted the kuleana to mālama the valley of Mākua. Twice a year, we engage in Makahiki to celebrate the rebirth of the Valley. In the month of November, we open the Makahiki season and enter the Valley engaging in the appropriate Hawaiian protocols. In the Spring, we close the Makahiki season. This is upon us now as we are about to enter the Valley to give thanks by demonstrating the cultural connection of our collective efforts.

I believe creating the Mākua Valley Reserve Commission to control, manage and provide policy oversight is the smart thing to do for this state.

- This would be a recognized state wide entity that includes the varied parties already using the Valley, such as Native Hawaiian practitioners, the US military, educational groups and government entities;
- Centralizing the kuleana of Mākua allows all parties and the general public a focal point to address issues that may arise over time;

- It is important that a formalized body such as the Mākua Valley Reserve Commission is also given the responsibility to “facilitate the expedient return of the valley reserve upon the expiration of the United States Army’s lease.”

When passed, this bill will be an investment for the future of our children and most importantly by this bill we signal our deepest and broadest commitment to Mākua, our parent.

Ke Aloha No,

Momi Kamahale

Kumu Hula

History, Hawaiian Studies

Associate Professor, Leeward Community College

**lowen1-Kyli**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 3:08 PM  
**To:** waltestimony  
**Cc:** david.w.fink@hawaii.gov  
**Subject:** Submitted testimony for HB509 on Feb 1, 2013 08:00AM  
**Attachments:** HB0509\_LNR\_02-01-13\_WAL-OMH.pdf

**HB509**

Submitted on: 1/31/2013

Testimony for WAL/OMH on Feb 1, 2013 08:00AM in Conference Room 325

| <b>Submitted By</b>  | <b>Organization</b>                      | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|----------------------|--|---------------------------|---------------------------|
| William J. Aila, Jr. | Department of Land and Natural Resources | Support                   | Yes                       |

Comments:

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NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**WILLIAM J. AILA, JR.**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the House Committees on  
WATER & LAND  
and  
OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS**

**February, 01, 2013  
8:00 AM  
State Capitol, Room 325**

**In consideration of  
HOUSE BILL 509  
RELATING TO RELATING TO MAKUA VALLEY**

House Bill 509 proposes to establish the Makua Valley Reserve Commission (Commission) to oversee preservation and restoration activities in Makua Valley on Oahu. The Department of Land and Natural Resources (Department) supports this measure.

The Department believes that Makua Valley (Valley) is rich in cultural resources and finds that the creation of a Commission provides a sensitive approach to appropriately managing the Valley.

Thank you for the opportunity to testify.