



SB450
RELATING TO NATIVE HAWAIIANS
Senate Committee on Water and Land
Senate Committee on Hawaiian Affairs

February 3, 2014

1:15 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB450, which proposes to transfer the Kaho‘olawe Island Reserve Commission (KIRC) from the Department of Land and Natural Resources (DLNR) to OHA for administrative purposes.

The intent of this bill is commendable. OHA supports efforts to protect, preserve, and restore Kaho‘olawe as a valuable natural and cultural resource for future generations. Such efforts are aligned with OHA’s strategic priorities.

However, OHA opposes the bill because transferring to OHA the KIRC and the related duties of the DLNR would present OHA with monumental financial costs, demands on Native Hawaiian trust funds, administrative responsibilities, legal liabilities, and resource protection and enforcement challenges. The bill represents an unfunded mandate from the state. It would undermine OHA’s ability to fund millions of dollars to other critical Native Hawaiian educational, social, and cultural programs. And fundamentally, the bill would seriously infringe upon OHA’s independence and on the widely recognized discretion of the OHA trustees to determine how the trust funds will be used.

In her Report No. 13-06 (July 2013), the State Auditor stated: “After 18 years and \$51 million, the [KIRC] has partially restored approximately 13 percent of its planned restoration area, but is a long way from its vision of returning the island and surrounding waters to pristine conditions.” The Auditor also stated that the Kaho‘olawe Rehabilitation Trust Fund, which began with \$44 million, was likely to be depleted by 2016. It would be unfair and unjust to OHA and its beneficiaries to force OHA to inherit the unfinished work and depleted finances of the KIRC.

In its 2013 audit of OHA, the State Auditor criticized OHA for having an unbalanced real estate portfolio whose commercial properties are unable to offset the expenses from legacy land holdings. While OHA believes that the State Auditor’s findings regarding our land holdings did not properly consider the deep spiritual connection Native Hawaiians have for our ‘āina, OHA is moving towards improving the balance of our real estate portfolio and growing our current

commercial land holdings to provide greater financial returns to ensure self-sufficiency. Further, OHA is developing land policies to improve our land management infrastructure. Transferring KIRC to OHA without providing OHA with significant additional resources to offset this new kuleana would complicate the progress OHA has made towards addressing the State Auditor's recommendations.

Therefore, OHA urges the Committees to **HOLD** SB450. Mahalo for the opportunity to testify on this matter.



KŪKULU KE EA A KANALOA

KAHO‘OLAWE ISLAND RESERVE COMMISSION

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C. KALIKO BAKER, PhD.
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COLETTE Y. MACHADO

Michael K. Nāho‘opi‘i
Executive Director

**Testimony of
MICHAEL K. NAHO‘OPTI
Executive Director**

Before the Senate Committees on

**WATER & LAND
and
HAWAIIAN AFFAIRS**

**Monday, February 3, 2014
1:15 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 450
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE**

Senate Bill 450 transfers administrative duties of the Department of Land and Natural Resources for the Kaho‘olawe Island Reserve to the Office of Hawaiian Affairs. The Kaho‘olawe Island Reserve Commission (KIRC) opposes this measure.

Today, the mission and responsibilities of the KIRC is more in alignment with the Department of Land and Natural Resources (DLNR) than the Office of Hawaiian Affairs (OHA). The KIRC is charged with the protection and management of the Kaho‘olawe Island Reserve’s (Reserve) natural and cultural resources and the meaningful and safe use of the Reserve for the people of Hawaii. We currently work very closely with the various divisions of the DLNR to mutually support the KIRC’s as well as the DLNR’s programs and concerns within the Maui Nui area. The KIRC’s programs reflect many of the same responsibilities of the DLNR (aquatic resources, historic preservation, conservation enforcement, land management and forestry and wildlife); we have compatible staff and equipment such as various resource specialist and work boats; and assist each other on a wide variety of projects to include maritime patrols, deployment of ocean buoys and aquatic and wildlife surveys.

The administrative transfer of the KIRC to the OHA is much more complicated than substituting “OHA” for “DLNR” within the language of HRS 6K. As a long-term endeavor, it would be worthwhile to work with the legislature, administration, DLNR, OHA and KIRC to discuss how the KIRC’s mission and kuleana might fit into the OHA’s mission, but for today, the KIRC is well served to be attached to the DLNR.

If the desire of the measure is to provide the KIRC with long-term financial support for the continuing restoration and management of Kaho‘olawe, then the current measures (SB2743 and HB2101) to transfer a portion of the conveyance tax proceeds to the Kaho‘olawe Rehabilitation

Trust Fund is a much more logical and appropriate way to achieve this goal. As we have previously testified for these measures, the mission, purpose and responsibilities of the KIRC mirrors many of the current recipients of conveyance tax funding.

As a long-term solution, finding common ground between the KIRC and both the DLNR and the OHA will be a vital component of the KIRC's current work developing a Kanaloa-Kaho`olawe 2026 Strategic Plan. It is envisioned that at some point in the future, the mission of both the KIRC and OHA will become more in alignment as we approach the eventual establishment of a state and federally recognized sovereign native Hawaiian entity, but until such time, remaining within the DLNR would be more appropriate.

PROTECT KAHO‘OLAWE ‘OHANA
P.O. Box 39
Kaunakakai, Hawai'i 96748



Testimony Presented Before the Senate Committees on
Water & Land
and
Hawaiian Affairs
Monday, February 3, 2014
1:15pm
State Capitol, Conference Room 225

By
Joshua Kaakua
Protect Kaho'olawe 'Ohana

IN OPPOSITION TO SB 450

Chairs Solomon and Shimabukuro and Vice Chairs Galuteria and Hee and members of the Senate Committees on Water & Land and Hawaiian Affairs. Aloha. My name is Joshua Kaakua and I am testifying on behalf of the Protect Kaho'olawe 'Ohana ('Ohana) **in opposition to SB 450**. Like those Senators who drafted this bill, the 'Ohana believes that the Office of Hawaiian Affairs (OHA) will play an important role in the future of the island of Kanaloa Kaho'olawe. Given its Constitutional mandate in Article XII, Section 6 "to exercise control over real and personal property set aside by state, federal or private sources and transferred to the board for native Hawaiians and Hawaiians," OHA can help to facilitate the transfer of the island to a Native Hawaiian sovereign entity.

We want to acknowledge that OHA trustees Aunty Frenchy DeSoto, Colette Machado and John Waihee IV have made significant contributions to the management of the Kaho'olawe Island Reserve during their tenure as Commissioners on the Kaho'olawe Island Reserve Commission (KIRC). The Office of Hawaiian Affairs has provided grant funding to the 'Ohana for cultural stewardship of the natural resources of the island. OHA is represented by a staff member on the Kanaloa 2026 Plan working group. The first phase of the planning process involved consultation with community members in fourteen (14) focus group meetings on six (6) islands. Tasks in the next phase of the planning process will include seeking long-term commitments from major partners engaged in Native Hawaiian cultural education, such as the Office of Hawaiian Affairs, to help fund the operations of the island as a Native Hawaiian cultural reserve and center for deep and transformative learning and training of masters in the Hawaiian culture.

Over the next six months, this will involve expanded dialog and planning by our working group and consultants with the OHA staff to develop a proposal for the OHA trustees to review and consider and hopefully support. (The working group would like the opportunity to brief the senators about the progress in developing the Kanaloa 2026 Plan.)

Given our good and close partnership with OHA in our work for Kanaloa Kaho'olawe, the Protect Kaho'olawe 'Ohana is aware of and would like to honor the assessment of the trustees that OHA does not have the operating capital at this time to take on effective overall management and administration of the KIRC. We also understand that OHA has only, within the last few years, taken on the responsibility of hiring its own staff to manage lands that it has acquired and that its priority is the management and administration of the newly acquired Kakaako makai lands. We note that the passage of SB 2743 or its companion HB 2101 would address the issue of OHA's lack of operating capital to manage the KIRC and perhaps the transfer of administration and management of the KIRC to OHA could be contingent on the passage of one of these measures. However, the passage of these measures will not provide OHA with the capacity and experience it needs to develop to take on the kuleana for Kanaloa Kaho'olawe.

A final and very important consideration for our opposition to SB 450 involves the enforcement powers that are necessary to protect the cultural and natural resources of the Kaho'olawe Island Reserve and to protect the general public from exposure to unexploded ordnance. In the drafting of HRS 6K in 1993, the major reason for placement of the KIRC under DLNR for administrative purposes was to draw upon the enforcement power and authority of that department. OHA does not have such power and authority as a quasi-state entity.

With respect, we would like to remind the senators that the U.S. Navy was adverse to returning the island to the State of Hawai'i because of the risks and liability associated with unexploded ordnance on the island. The island was used for live fire military exercises, including aerial bombing and ship-to-shore shelling for fifty years and every conventional weapon in the U.S. Navy arsenal during that time period was used on the island. The U.S. Navy did not turn over control of access to the island until after the omnibus clean up was completed in November 2003. Under Title X and the Memorandum of Understanding, which are both encumbrances on the title to the land, uses of the island were to be limited to cultural, historical, archaeological and educational purposes and the areas cleared of ordnance were for grassland or other vegetation; trails or roads; historical cultural and archaeological sites; reservoirs; heliports; and suitable human habitation. Only 9 percent of the island was cleared to a depth of 4 feet and another 68 percent of the island's surface area was cleared. In the areas cleared to 4 feet, the U.S. Navy only guarantees that it is 90 percent confident that 85 percent of the ordnance was detected and cleared. Nevertheless, the State of Hawai'i is required to

manage the risks of exposure to unexploded ordnance by managing the access to the island by the general public. This involves rule-making and enforcement powers that OHA does not have.

Thank you, senators, for the opportunity to provide this extensive testimony and for your serious consideration of our mana‘o. Aloha . . . Aloha ‘Āina

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Unity, Equality, Aloha for all



To: WTL and HWN
For hearing Monday February 3, 2014

Re: SB 450 RELATING TO THE KAHO‘OLAWE ISLAND RESERVE.
Transfers administrative duties of the department of land and natural resources for the Kaho‘olawe Island Reserve to the office of Hawaiian affairs.

Testimony in opposition

The Office of Hawaiian Affairs is regarded as an advocate for ethnic Hawaiians, representing their parochial interests which are often in opposition to the larger interests of our multiracial citizenry. But the Island of Kaho‘olawe belongs to all the people of Hawaii, not to any particular racial group. The proper agency to manage government land on behalf of our multiracial citizenry is the Department of Land and Natural Resources, not the racially partisan Office of Hawaiian Affairs.

God forbid there might ever be a partitioning of Hawaii’s lands along racial lines if a “Native Hawaiian” government achieves state and

federal recognition. But if that does happen, then that will be the time to reconsider whether Kaho'olawe should be given to the race-based government, in return for concessions from the race-based government, as part of a negotiated global settlement.



***To Protect & Promote
Sustainable Public
Hunting in Hawaii***

Testimony from The Hawaii Hunting Association

Committees on Water & Land and Hawaiian Affairs

Monday February 3, 2014, 1:15 PM

Supporting S.B. 450

Relating to Kahoolawe

The Hawaii Hunting Association supports S.B. 450 in that DLNR can focus on the many more pressing concerns it has before it and Office Of Hawaiian Affairs just seems to an available and appropriate entity to carry on.

Thank you for your time and consideration.

Sincerely,

Tom Lodge

Hawaii Hunting Association

HAWAII SPORTSMEN ALLIANCE

SUPPORTING S.B.450

RELATING TO THE KAHO'OLAWA ISLAND RESERVE

SENATE COMMITTEE ON WATER & LAND
MONDAY, FEBRUARY 3, 2014, 1:15PM, ROOM 225

*The Hawaii Sportsmen Alliance strives for balanced conservation and wise use of all
our natural resources.*

<http://www.hawaiisportsmensalliance.com/>

The Hawaii Sportsmen Alliance will support SB450. The Office of Hawaiian Affairs is much more inline with the objectives and needs of Kaho'olawe.

Please join us in support of SB450.

Mahalo,

Abraham Sylvester
614 Haihai St
Hilo, Hawaii 96720

From: mailinglist@capitol.hawaii.gov
To: [HWNTestimony](#)
Cc: sherrianwitt@aol.com
Subject: Submitted testimony for SB450 on Feb 3, 2014 13:15PM
Date: Friday, January 31, 2014 1:43:23 PM

SB450

Submitted on: 1/31/2014

Testimony for HWN/WTL on Feb 3, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sherrian witt	Individual	Support	No

Comments: Hawaiian lands should be governed by Hawaiians.

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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To: [HWNTestimony](#)
Cc: kohatsu_ryan@hotmail.com
Subject: Submitted testimony for SB450 on Feb 3, 2014 13:15PM
Date: Monday, February 03, 2014 9:22:21 AM

SB450

Submitted on: 2/3/2014

Testimony for HWN/WTL on Feb 3, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Ryan Kohatsu	Individual	Support	No

Comments: I support SB 450. I believe the DLNR is a poor manager when it comes to Hawaiian cultural issues and public outreach and sensitivity. It would be refreshing to give OHA a chance for management of Kahoolawe.

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Subject: *Submitted testimony for SB450 on Feb 3, 2014 13:15PM*
Date: Sunday, February 02, 2014 5:11:06 PM

SB450

Submitted on: 2/2/2014

Testimony for HWN/WTL on Feb 3, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Kahea	Individual	Support	No

Comments:

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Date: Sunday, February 02, 2014 8:43:56 AM

SB450

Submitted on: 2/2/2014

Testimony for HWN/WTL on Feb 3, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Tom Lodge	Individual	Support	No

Comments: It seems that the Office of Hawaiian Affairs is an available and appropriate entity to handle the affairs of Kahoolawe. DLNR has many other pressing issues that demand their attention that might benefit by this act. Much Aloha, Tom Lodge

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Date: Friday, January 31, 2014 9:53:49 PM

SB450

Submitted on: 1/31/2014

Testimony for HWN/WTL on Feb 3, 2014 13:15PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Tony Sylvester	Individual	Support	No

Comments:

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