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JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

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TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION BEFORE
THE SENATE COMMITTEES ON HAWAIIAN AFFAIRS AND WATER AND LAND
HEARING ON FEBRUARY 7, 2019 AT 1:16PM IN CR 016

**SB 1502 RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES
COMMISSION**

February 5, 2019

Aloha Chair Shimabukuro, Chair Kahele, and members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill 1502, which adds the Chairperson of the Hawaiian Homes Commission (HHC) or the Chairperson's designee to serve as an ex officio, voting member of the Commission on Water Resource Management.

The HHC approved a proposal to add the Chairman of the Hawaiian Homes Commission or the Chairman's designee to the Commission on Water Resource Management since the Hawaiian Homes Commission Act references a Chairman as opposed to Chairperson as referenced in this bill. Additionally, the HHC approved a Water Policy Plan in 2014 after conducting a series of statewide Beneficiary Consultation Meetings on the draft plan. One of the goals in the Water Policy Plan is to "aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL and the HHC to water before all relevant agencies and entities." While DHHL has been working closely with the Commission on Water Resource Management, this bill would allow for greater advocacy for beneficiaries of the Hawaiian Homes Commission Act by allowing for the Chairperson or the Chairperson's designee to serve as an ex officio voting member of the Commission on Water Resource Management similar to the Director of Health or the Director's designee.

Thank you for your consideration of our testimony.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
SUZANNE D. CASE
Chairperson**

**Before the Senate Committees on
HAWAIIAN AFFAIRS
and
WATER AND LAND**

**February 7, 2019
1:15 PM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 1502
RELATING TO THE CHAIRPERSON OF THE HAWAIIAN HOMES COMMISSION**

Senate Bill 1502 proposes to amend Section 174C-7, Hawaii Revised Statutes (HRS), to add an eighth member, the Chairperson of the Hawaiian Homes Commission or the Chairperson's designee, to serve as an ex-officio voting member on the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department). **The Department offers the following comments.**

The Commission is committed to fulfill its mandate to incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act, as provided in the State Water Code, Section 174C-101, HRS.

Towards that end, the Commission has worked closely with the Department of Hawaiian Home Lands (DHHL) and the Department's Engineering Division to update the State Water Projects Plan, focusing exclusively on DHHL's lands and water needs. Based on the preliminary findings of the 2017 pre-final draft report, DHHL submitted a reservation request for the Keauhou Aquifer System Area (Kona, Hawaii) on December 5, 2014, and on August 15, 2015, the Commission approved DHHL's full request for 3.398 million gallons per day (mgd). The 2017 pre-final draft report was also used to support DHHL's needs for surface water from the Waimea River (Kauai), and in April 2017, the Commission established its first surface water reservation for DHHL (for

6.903 million gallons per day (mgd)) as part of the mediated settlement on an amended instream flow amendment for the Waimea River. Following the Commission's May 2017 adoption of the final report, and based on the data therein, the Commission approved an additional 20 reservations for ground water from aquifer system areas statewide, totaling over 13 mgd. Currently, 25 reservations of water for DHHL have been established for each of the six major Hawaiian Islands totaling almost 28 mgd.

All Commission members have constitutional and statutory responsibilities to protect and preserve the rights of DHHL. Adding a member for this specific interest may create a perception that the other Commissioners have no obligation to consider these important rights. The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State's public trust duties. This responsibility does not rest on a single member.

Inclusion of the DHHL Chairperson or its designee may also result in conflicts of interest. DHHL is often a party before the Commission, including important contested case hearings. If a member is representing a particular organization, such as DHHL, and the organization appears before the Commission, then there may be a question of whether the member has a conflict of interest as to that organization. Active participation by both the organization and the member representing the organization on the Commission would, on its face, appear to be a conflict. The Commission has a trust duty to the general public, whereas the DHHL Chairperson has a trust duty to a specific subset of the general public. Inclusion of the DHHL Chairperson as a voting member on the Commission may result in perceived or potential conflicts between the DHHL Chairperson's trust duties to its beneficiaries versus the general public.

Thank you for the opportunity to comment on this measure.

SB-1502

Submitted on: 2/6/2019 3:07:12 AM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

WE STRONGLY SUPPORT THIS BILL.

SB-1502

Submitted on: 2/1/2019 7:14:05 PM

Testimony for HWN on 2/7/2019 1:16:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Testifying for Hawaii Farmers Union	Support	No

Comments: