

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2099, RELATING TO IRRIGATION.

BEFORE THE:

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

DATE: Monday, February 3, 2020

TIME: 1:15 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Clare E. Connors, Attorney General, or
Valerie M. Kato, Deputy Attorney General, or Christopher J.I.
Leong, Deputy Attorney General

Chair Gabbard and Members of the Committee:

The Department of the Attorney General offers the following technical correction regarding the lapsing date.

The bill, among other things, authorizes the Director of Finance to issue an unstated amount of general obligation bonds for fiscal year 2020-2021 for the purpose of assisting the agricultural resource management division with plans, designs, land acquisition, and equipment to increase state irrigation system capacity statewide. The funds are to be expended by the Department of Agriculture. "[A]ll moneys from the appropriation unencumbered as of June 30, 2023, shall lapse as of that date." See page 4, lines 4-5, of the bill.

This lapsing date may violate article VII, section 11 of the Hawai'i State Constitution. Article VII, section 11, of the Hawai'i State Constitution states: "All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods. No such appropriation shall be made for a period exceeding three years[.] . . . Any such appropriation or any portion of any such appropriation that is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse[.]"

The provision in section 11 has been interpreted to mean that the lapse date shall be no more than one year beyond the close of the biennial period. For general obligation bonds issued during the *first* year of the biennium, the lapse date is one year

after the end of the biennium, at the end of the third fiscal year after the enactment. If the bonds are issued during the *second* year of the biennium, as it is here, the lapse date is similarly one year after the end of the biennium, but at the end of the *second* fiscal year. See *attached* Attorney General Opinion 81-2, dated March 9, 1981.

In order to conform this bill to the State Constitution, we recommend that on page 4, line 5, the year “2023” be changed to “2022”.

We respectfully ask the Committee to make the recommended amendment.

GEORGE R. ARIYOSHI
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
STATE CAPITOL
HONOLULU, HAWAII 96813
(808) 548-4740

Tany S. Hong
WAYNE M. HANAU
ATTORNEY GENERAL

LARRY L. ZENKER
ASSISTANT ATTORNEY GENERAL

March 9, 1981

The Honorable Tony T. Kunimura
Chairman, Committee on Finance
House of Representatives
Eleventh Legislature
Room 306, State Capitol
Honolulu, Hawaii 96813

Dear Representative Kunimura:

This is in response to your request for our opinion as to whether the inclusion of the following lapsing provision in the General Appropriations Act of 1981 would be in compliance with Article VII, Section 11 of the State Constitution:

"(a) (A)ll appropriations made for capital investment projects for fiscal year 1981-82 which are unencumbered as of June 30, 1984 shall lapse as of that date; and (b) all appropriations made for capital investment projects for fiscal year 1982-83 which are unencumbered as of June 30, 1985 shall lapse as of that date."

We answer in the negative.

Article VII, Section 11 of the State Constitution, which was added by the 1978 Constitutional Convention, provides in pertinent part that:

Op. No. 81-2

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All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be for a period exceeding three years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse; . . .

Construing the above constitutional provision literally, it would appear that all appropriations for capital investment projects for the fiscal biennium 1981-1983 should lapse on June 30, 1983, the close of the fiscal period for which the appropriations were made.

However, in a prior opinion, dated March 9, 1979, this office concluded that funds appropriated for the fiscal biennium 1979-81, could be made lapsable at the close of fiscal year 1982, but no later than one year beyond the biennial period covered by the appropriation.

In reaching this conclusion, we stated as follows:

[Article VII, Section 11] must be read in the light of well established principles of constitutional law.

Constitutional provisions should be construed so as to effectuate their purposes. In Re Application of Pioneer Mill, 53 Haw. 496, 500 (1972); Employees' Retirement System v. Ho, 44 Haw. 154, 171 (1960); United States v. Classic, 313 U.S. 299, 317 (1941). And every provision in a state constitution must be read in the light of the entire document in order to determine its intent. Carter v. Gear, 16 Haw. 242, 244 (1904). No provision should be construed so as to nullify or substantially impair other provisions, and if

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there is an apparent conflict between different provisions, they should be harmonized, if possible. 16 A. Jur.2d, Constitutional Law, § 66.

Further, in the interpretation of an ambiguous provision, we may look to the proceedings in the convention that drafted the document. State v. Anderson, 56 Haw. 566, 577 (1976); see also Anno:- Debates, Etc. As Aids To Constitution, 70 A.L.R. 5, 19.

Section 11 is a part of Article VII, relating to taxation and finance. The principal sections in Article VII dealing with appropriation periods are Sections 8 and 9.

Section 8 provides for the submission by the Governor of a budget for legislative consideration every odd-numbered year covering the proposed expenditures of the Executive Branch, estimates of the expenditures of the Judicial and Legislative Branches of the State Government, and anticipated State receipts "for the ensuing fiscal biennium." It also provides that the Chief Justice shall submit in every odd-numbered year for legislative consideration a "complete plan of proposed expenditures to the judicial branch for the ensuing fiscal biennium."

Section 9 provides that "[i]n each regular session in an odd-numbered year the legislature shall transmit to the governor an appropriation bill or bills providing for the total anticipated expenditures for the ensuing fiscal biennium." It also provides for amending "any appropriation for operating expenditures of the current fiscal biennium" and "any appropriations for capital expenditures of the current fiscal biennium"

in a regular session in an even-numbered year. Section 9 further provides for the introduction of bills in an even-numbered year "to amend any appropriation act or bond authorization act of the current fiscal biennium or prior fiscal periods."

In summary, Section 8 requires budgeting to be made on a biennial basis, and with the exception of bills to amend appropriation acts of prior fiscal periods, Section 9 provides for appropriations being made for a biennial period--for the "ensuing fiscal biennium" or the "current fiscal biennium."

The biennial budgeting and appropriation provisions were adopted by the 1968 Constitutional Convention. The drafters of Section 9 (then Section 5 of Article VI) explained that "[T]he intent of this section is to require biennial appropriations." Standing Committee Report No. 52, Vol. I, Proceedings of the Constitutional Convention of Hawaii of 1968, p. 220, 224. See also Committee of the Whole Debates, Vol. II, Proceedings of the Constitutional Convention of Hawaii of 1968, p. 401.

* * *

The 1978 Constitutional Convention did not make any substantive change to Section 4 of Article VI (redesignated as Section 8 of Article VII) and to Section 5 of Article VI (redesignated as Section 9 of Article VII). We may, therefore, assume that the 1978 Convention did not intend to change the intent of Sections 8 and 9 of providing for budgeting and appropriations both on a "fiscal biennium" basis.

A review of the 1978 Constitutional Convention proceedings indicates that the purpose of Section 11 was not to change the two year (biennial) appropriation period, but rather to permit the expenditure of biennial appropriations one year beyond the biennial period.

Section 11 was a part of Committee Proposal No. 14 of the Committee on Taxation and Finance of the 1978 Constitutional Convention. That proposal read in part:

"All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding two years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed." (Emphasis added.)

As so worded, the clause "no such appropriation shall be made for a period exceeding two years" would provide for an appropriation period which would coincide with the budgeting period in Section 4 (now Section 8) and the appropriation period in Section 5 (now Section 9). The Committee felt that appropriations should lapse at the end of the period for which they were made. Standing Committee Report No. 66, p. 10. The Committee also stated that:

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"A longer lapsing period was considered but your Committee agreed that a two year period which corresponds with the State's biennial budgeting system was adequate. . . ." (Id., p. 11; underscoring added.)

The Committee of the Whole of the 1978 Convention changed the clause which in the proposal as submitted by the Committee on Taxation and Finance, read:

"no such appropriation shall be made for a period exceeding two years"

to read:

"no such appropriation shall be made for a period exceeding three years" (Under-scoring added.)

In support of the change, the Committee of the Whole, in Committee Whole Report No. 14, at pp. 5, 6, said:

"Recommendation: Your Committee recommends the adoption of this amendment [to Committee Proposal No. 14], which extends the lapsing period applicable to appropriations financed by general obligation bond funds or general funds from two years to three years. It does not, however, preclude the legislature from setting a shorter lapsing period for a particular appropriation. This amendment is not an attempt to weaken the lapsing provision but rather is a recognition of the practical difficulties encountered in complying with various governmental regulations and coordinating

the efforts of numerous governmental agencies. It was feared that a two-year lapsing period would result in the curtailment of funds for some worthwhile projects, particularly complex capital improvement projects. Your Committee agreed that the three-year period would provide more flexibility in the implementation of projects and programs." (Underscoring added.)

It may be seen, from the foregoing, that Committee Proposal No. 14 originally intended an automatic lapsing at the end of the biennial appropriation period. It may also be noted that the Committee of the Whole did not intend to change the appropriation period. While it did not artfully express its intent in its redraft of Committee Proposal No. 14, the Committee of the Whole intended (in the change from two years to three years) to allow the expenditure of funds up to one year beyond the end of the appropriation period.

It has been the practice of the Legislature, after the biennial budgeting and appropriation provisions took effect, to make a distinction between an appropriation period and the period within which appropriation would lapse, particularly in appropriations for capital improvements.

For example, Act 68, S.L.H. 1971, made appropriations for certain capital improvement projects "for the fiscal biennium beginning July 1, 1971 and ending June 30, 1973." Section 25 of Act 68 provided that:

"[T]he appropriations made for capital investment projects included a Part II and listed in Part III of this act shall not lapse at the end of the fiscal year for which the appropriation is made, provided that all appropriations made to be expended in fiscal year 1971-72 which are unencumbered as of June 30, 1976, and all appropriations made to be expended in fiscal year 1972-73 which are unencumbered on June 30, 1976 shall lapse on that date."

Subsequent general appropriations acts (Act 218, S.L.H. 1973; Act 195, S.L.H. 1975; Act 10, First Special Session 1977) generally provided for lapsing of appropriations for capital improvement projects three years beyond the fiscal period covered by the appropriations.

Similarly, the supplemental appropriation acts of the even numbered years appropriated funds for capital improvement projects for the second fiscal year of the biennium covered by the general appropriations acts and contained provisions which generally provided for the lapsing of unencumbered funds three years beyond the end of the appropriation period.

Implied in the foregoing practice is the legislative belief that Section 9 of Article VII permitted appropriation to be made only for the "ensuing fiscal biennium" or the "current fiscal biennium" or for "prior years," but did not preclude the expenditure of appropriations beyond the appropriation period through a lapsing provision. Such legislative determination is entitled to great weight. 16 Am. Jur.2d, Constitutional Law, § 85.

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In summary, it is our opinion that Section 11 permits the expenditure of an appropriation, if so specified in the act making the appropriation, up to one year beyond the biennial period covered by the appropriation. Thus it is permissible, in a bill making an appropriation for biennial period to provide that a specified portion of the appropriation shall be expendable during the first fiscal year and the remaining portion during the second fiscal year of the biennial and that both portions shall lapse on June 30 of the year following the end of the biennium. [Emphasis added.]

We believe that the conclusion reached by the March 9, 1979 opinion is still applicable today. We note that the lapsing provision which is being considered for inclusion in the General Appropriations Act of 1981 would specify that funds appropriated for fiscal year 1982-1983 be lapsable on June 30, 1985, or two years beyond the 1981-83 biennium. For the reasons expressed in our March 9 opinion, we feel that the longer lapsing period would contravene Article VII, Section 11 of the State Constitution.

Please feel free to call, if you have any question on the above.

Very truly yours,

Corinne K. A. Watanabe

CORINNE K. A. WATANABE
Deputy Attorney General

APPROVED:

Tony S. Hong

TANY S. HONG
Attorney General

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
AGRICULTURE AND ENVIRONMENT**

**Monday, February 3, 2020
1:15PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 2099
RELATING TO IRRIGATION**

Senate Bill 2099 proposes to transfer to the Department of Agriculture (DOA) operational authority over portions of the East Kauai Irrigation System operated and maintained by the East Kauai Water Users' Cooperative as of July 1, 2020. The measure also provides a conditional extension to acquire required permits, establishes staffing positions, authorizes general obligation bonds for a statewide irrigation system capital improvement project and appropriates funds. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

The East Kauai Irrigation System, which was formerly under the management of the East Kauai Water Users Cooperative (EKWUC) via a month to month revocable permit. On September 3, 2019, the EKWUC voted against the continuation of their revocable permit which expired on December 31, 2019. The irrigation system, including the reservoir, has since reverted to the Department's management. The Department's current oversight of the irrigation system is focused on addressing public health and safety and preserving the viability of the irrigation system for future use, but not for the continued delivery of water to various users.

Moving forward, the Department's primary objective is to work collaboratively with Kauai legislators to find an appropriate public or private entity that can assume management and operation of the system as had previously been done by EKWUC. The Department believes this measure would satisfy that objective, by ensuring the ongoing operation of the irrigation system by DOA in support of local agriculture. However, if this measure were to not pass and the primary objective cannot be met, the Department will pursue shutdown of the irrigation system, including breaching the reservoirs, as a last resort.

The Department does not have the resources and expertise to function as a water delivery provider. Additionally, this would be inconsistent with the Department's mission of natural, cultural, recreational and historical resource management of protection. A shutdown of the

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

system would be a long-term process with significant planning and studies to determine the impacts of such action, which would include public engagement. Any action to proceed with a system shutdown would be subject to the approval of the Board of Land and Natural Resources in an open, public meeting.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

FEBRUARY 3, 2020
1:15 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 2099
RELATING TO IRRIGATION

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2099. This measure transfers operational authority over portions of the East Kauai Irrigation System to the Department of Agriculture, establishes positions, and makes an appropriation. It also provides a conditional extension to acquire required permits. The Department offers the following comments and changes.

Change Page 2, section 1(c), Line 7 to read "...user' cooperative, or any other entity, to bill and collect any fees and...".

Change Page 2, Section 1(e), Line 16 to read "...extended for no more than three years, until July 1, 2023; provided...".

Add \$500,000 to the blank sum on Page 4, Section 5, Line 7.

Thank you for the opportunity to testify on this measure.



SB-2099

Submitted on: 1/27/2020 4:29:50 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nicole K Galase	Testifying for Hawaii Cattlemen's Council	Support	No

Comments:

SB-2099

Submitted on: 1/29/2020 2:19:10 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brad Seymour	Testifying for SR Hawaii	Support	No

Comments:

Aloha,

My name is Brad Seymour and I am writing in support of the SB2099. I manage SR Hawaii, we currently have the Right of Entry with DLNR for the East Kauai Irrigation system, we are currently operating and managing the system voluntarily. SR Hawaii believes that the future of agriculture as a whole now and in the future heavily rely on the long term existence of the East Kauai Irrigation system. The system that is currently in place has the ability to deliver water from the Wailua River through Kapahi. There are portions of the system that are currently not being used but could be reactivated in order to expand that systems capabilities to increase the reach and effectiveness of the system. Without this system there is no readily available water system in place to irrigate crops and livestock. Also, the Wailua reservoir is a recreational fishing area that our community enjoys on a daily basis, this is where I learned to fish, Ive taught my children to fish here, and I would like to see my grandchildren learn to fish here one day.

This system is a valuable asset to our recreational and agricultural community. Please support this bill, we cannot lose the opportunity that this system makes available to our community on the east side of Kauai.



January 28, 2020

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Senate Committee on Agriculture and Environment

Comments in Support of SB 2099 Relating to Irrigation (Transfers to the Department of Agriculture [DOA] operational authority over portions of the East Kauai Irrigation System as of 07/01/2020; provides conditional extension to acquire required permits; establishes staffing positions; authorizes general obligation bonds for a statewide irrigation system capital improvement project; appropriates funds.)

Monday, February 3, 2020, 1:15 p.m., in Conference Room 224

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and utility companies. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its **support of SB 2099**, and of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture, including important agricultural lands (IAL) in Hawaii.

SB 2099. This bill proposes to transfer portions of the East Kauai Irrigation System operated and maintained by the East Kauai Water Users' Cooperative to the DOA as of 07/01/2020. The measure also provides a conditional extension to acquire required permits; establishes staffing positions; and authorizes general obligation bonds for the purpose of assisting the agricultural resource management division with plans, designs, land acquisition, and equipment to increase irrigation system capacity statewide.

LURF's Position. The East Kauai irrigation system is one of the several irrigation systems throughout the state which are essential to Hawaii's agricultural industry. With large amounts of prime agricultural lands and irrigation systems made available for conversion to diversified agriculture as a result of the

plantation closures in the 1990s, the State presently has an opportunity to strengthen and expand Hawaii's diversified agriculture industry. Agricultural lands, however, require significant quantities of water to support and maintain productivity. In order to ensure that local agricultural producers may continue to receive a dependable supply of water for crops, as well as research and development operations, sufficient funding is necessary to improve, repair and maintain Hawaii's irrigation systems.

Local farmers and ranchers who rely on irrigation systems to service their agricultural lands consider such resources critical to conduct their agricultural operations and to sustain their businesses. These agricultural stakeholders believe measures such as SB 2099 will greatly assist by providing funding and support necessary to make improvements to irrigation systems for the long-term betterment of the State's agricultural industry, and are relying on legislation such as this to help them work toward the expansion of diversified agriculture; promote the agricultural self-sufficiency of the State; and to protect water as an important resource.

For the above reasons, LURF **supports SB 2099**, and respectfully urges your favorable consideration.

Thank you for the opportunity to provide comments in support of this matter.



Kalepa Koalition

4334 Rice Street, Suite 202
Lihue, HI 96766
Phone: 808-634-6189

January 31, 2019

TO: Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair

RE: Testimony on SB2099, Relating to Irrigation
Monday, February 3, 2020, Conference Room 312

Chairperson Gabbard and Members of the Committee:

We **strongly support SB2099**. The Kalepa Koalition is a Hawaii agricultural cooperative of the farmers and ranchers who hold long-term licenses on 6,500 acres of State land behind Kalepa Ridge on Kauai and under the administration of the State's Agribusiness Development Corporation (ADC).

The East Kauai Water Irrigation System presently services more than 300 acres of these lands actively in crops and can potentially service 1,000. In addition, it services hundreds of acres of DHHL lands makai of Kalepa Ridge and fills Reservoir 21, which sits on top of the popular tourist destination of Fern Grotto in Wailua River State Park and is essential to the health of its ferns.

As of January 1, 2020, the Revocable Permit (RP) of the East Kauai Water Users Cooperative lapsed on the system. As of this date, there has been no RP or Right of Entry issued for this section, and the system is under DLNR control.

If the system is shut off, not only will farmers be put out of business, Fern Grotto will suffer greatly as the ferns die off (as they did when the reservoir dried up in 2001) and the DHHL lands will need to find another source of water.

Either DLNR itself, ADC or the Department of Agriculture (as proposed by this bill) must take over and run this system.

We respectfully request that this bill be passed.

A handwritten signature in blue ink that reads "Laurie K. Ho".

Laurie K. Ho, President
Kalepa Koalition

Testimony Before the Senate Committee on Agriculture and Environment

By Brad W. Rockwell
President
Kūlana Association of Unit Owners
2970 Haleko Road, Suite 205, Lihue, Hawaii, 96766

Monday, February 3, 2020; 1:15 pm
Conference Room # 224

Senate Bill No. 2099 – Relating to Irrigation

To the Honorable Mike Gabbard, Chair; Russell Ruderman, Vice-Chair, and Members of the Committee:

I am writing today in support of this bill.

Kūlana Association of Unit Owners (AOUO) is an agricultural-zoned subdivision in Kapa‘a, on the island of Kaua‘i, consisting of approximately 100 lots ranging in size from one to seven acres. The Kūlana AOUO is the single largest member of the East Kaua‘i Water User’s Cooperative (EKWUC), and comprises 40% of the EKWUC voting rights.

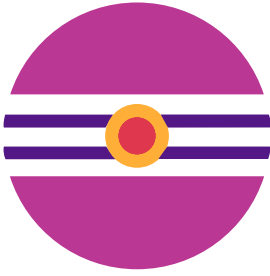
Although some agricultural activity is currently occurring within the Kūlana subdivision, the majority of lots are not currently engaged in agriculture, pending completion of the County-required subdivision improvements, which should be complete by September 2021. Once this infrastructure is complete, and owners are able to build homes within the subdivision, a significant increase in agricultural activities will occur, most of which will rely on water from the East Kauai Irrigation System. Keeping this system viable is important to the future of Kūlana, the other EKWUC members, and the County of Kaua‘i.

I appreciate your attention to this matter and would be happy to respond to any questions you may have.

Sincerely,



Brad W. Rockwell



Saiva Siddhanta Church

Kauai's Hindu Monastery
107 Kaholalele Road
Kapaa, Hawaii 96746-9304•USA
Phone: (808) 822-3012

January 31, 2019

Committee on Agriculture and Environment

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair

Testimony on SB2099, Relating to Irrigation Monday, February 3, 2020, Conference Room 312

Chairperson Gabbard and Members of the Committee:

We **strongly support SB2099**. The East Kauai Irrigation System, specifically Wailua Reservoir, is vital to our Church in Wailua Homesteads. The system has serviced our property via Lateral One Ditch for the past 100 years. It continues to be used to water our monastery gardens and dairy cows, as well as create wetland habitats within the property and marvelous scenic ponds immediately next to our nearly finished Iraivan Hindu Temple, a popular religious site for tens of thousands of Hindus visiting the island each year. Their appreciation for the monastery and temple with its charming waterfalls, ponds, wildlife and lush tropical landscaping brings a significant and growing income to the island.

Leaving aside the vital importance of the water for our property, our neighbors have been alarmed by the threat issued by the Department of Land and Natural Resources (see their press release of January 24, 2020, attached) to demolish the reservoir should, effectively speaking, SB2099 not pass. Wailua Reservoir is an important public community asset, a public fishing area, a wildlife preserve and nesting place for native birds and bats. It is inconceivable to us that the State would throw away such a resource, especially one they've spent millions of dollars on over the last ten years upgrading to meet dam safety regulations.

The East Kauai Water Users Cooperative, in which we have had an active part, was formed to manage the system—which is almost entirely owned by the State—on an interim basis after the departure of the plantation. We did so diligently for 18 years, but saw no progress on the State's part to take over the system management. With the failure of SB223 last year, the Coop regretfully but rightly decided to withdraw from management and let the system revert to DLNR, the owners.

At the end of the session last year, we heard second-hand that SB223 failed because some legislators thought it involved purchasing the system from private

owners rather than taking over management of a system—valued 18 years ago at over \$200 million—that was already the State’s property.

We plead with the legislature to not carry that misunderstanding over to this session. Wailua Reservoir, Upper Kapahi, nearly all the ditches in East Kauai as well as the system servicing the Kalepa area under the Agribusiness Development Corporation, are the State’s property. They are vital to the future of agriculture in East Kauai. Without it, farming will not only be impossible in the future, presently active farmers will be put out of business. DHHL lands will be deprived of water they are presently receiving. Fern Grotto, one of the island’s most popular tourist destinations, will suffer greatly. Reservoir 21, immediately on top of the grotto, is filled by this system and when it dries up, the ferns below it die.

We note that SB2099 provides for a period of study to evaluate such a transition. A closely related study, The Agricultural Water Use and Development Plan, was completed in 2003 and of a list of five systems in the State recommended for take over by the Department of Agriculture, the East Kauai system was number one.

We respectfully request that this bill be passed.

A handwritten signature in black ink, reading "Sadasivanatha Palaniswami". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Sadasivanatha Palaniswami
Vice-President, Saiva Siddhanta Church



Making Hawai'i a Great Place to Live!
 Department of Land and Natural Resources

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01/24/20-CLEARING UP MISINFORMATION ABOUT THE STATUS OF KAUA'I'S WAILUA RESERVOIR

Posted on Jan 24, 2020 in [Land](#), [Main](#), [Media](#), [News Releases](#), [slider](#)

DEPARTMENT OF LAND AND NATURAL RESOURCES News Release

DAVID Y. IGE
 GOVERNOR

SUZANNE D. CASE
 CHAIRPERSON

For Immediate News Release January 24, 2020

CLEARING UP MISINFORMATION ABOUT THE STATUS OF KAUA'I'S WAILUA RESERVOIR



(Honolulu) – People have expressed concerns about the future of the Wailua Reservoir, which is part of the East Kaua'i Irrigation System. Prior to Dec. 31, 2019, the reservoir was under the management of the East Kaua'i Water Users Cooperative (EKWUC) operating under a DLNR revocable permit. The EKWUC voted against continuation of the RP on Sept. 3rd last year, which resulted in the year-end expiration of the permit.

The irrigation system has now reverted to DLNR's management with current oversight focused on public health and safety and preserving the viability of the system for future use. This does not include continued delivery of water to various users. DLNR's current primary objective is to work collaboratively with Kaua'i legislators to try and find an appropriate public or private entity to assume management and operation of the system.

As a last resort, if a new operator can't be identified, DLNR will pursue shutting down the system, including breaching the reservoir. The department does not have the resources and expertise to act as a water delivery provider. Additionally, operation by DLNR, would be inconsistent with the department's mission of protection and management of natural, cultural, recreational and historical resources.

Shutting down the system would be a long-term process, only after significant studies and planning to determine possible impacts. Any shut-down will include engagement from the community and would be subject to approval by the Board of Land and Natural Resources in an open meeting.

#

Media Contact:

Dan Dennison
Senior Communications Manager
(808) 587-0396
DLNR.comms@hawaii.gov

SB-2099

Submitted on: 2/2/2020 5:35:39 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Livingston	Testifying for Kulana owners	Support	No

Comments:

Owners of 14d Kulana support sb2099--Mahalo, David and Jennifer Livingston



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 3, 2020

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 2099
RELATING TO IRRIGATION

Room 224
1:15 PM

Aloha Chair Gabbard, Vice Chair Ruderman, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

The Hawaii Farm Bureau strongly supports SB 2099, which transfers to the Department of Agriculture operational authority over portions of the East Kauai Irrigation System operated and maintained by the East Kauai Water Users' Cooperative as of 7/1/2020. SB 2099 also provides a conditional extension to acquire required permits, establishes staffing positions, and authorizes general obligation bonds for a statewide irrigation system capital improvement project.

Since the demise of plantation operations across the islands, we have seen the erosion of irrigation systems. Ditches that carried water fell into disrepair with major leaks in the system, and in cases such as Ka'u, cracks in tunnels created enough losses that there is no longer significant flow of water. The Legislature continues to advocate for increased self-sufficiency and sustainability. Agriculture must play a key role in the process and for there to be agriculture, water is important.

The East Kauai Irrigation System services more than 12,500 acres of agricultural land on Kauai. The repair and maintenance of this 21-mile irrigation systems is critical for Kauai's farmers who depend on the East Kauai Irrigation System for their operations. Water availability is a basic necessity needed by farmers and ranchers to maintain and expand their production, particularly in times of drought. Having a reliable water supply is a key factor when Hawaii's farmers and ranchers are making decisions to start new or to expand existing operations.

Thank you for this opportunity to testify on this important matter.



Email: communications@ulupono.com

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Monday, February 3, 2020 — 1:15 p.m. — Room 224

Ulupono Initiative supports SB 2099, Relating to Irrigation.

Dear Chair Gabbard and Members of the Committee:

My name is Amy Hennessey, and I am the Senior Vice President of Communications & External Affairs at Ulupono Initiative. We are a Hawai'i-based impact investment firm that strives to improve our community's quality of life by creating more locally produced food; increasing affordable clean renewable energy and transportation options; and better managing waste and fresh water resources.

Ulupono supports SB 2099, which transfers to the Department of Agriculture operational authority over portions of the East Kauai Irrigation System operated and maintained by the East Kauai Water Users' Cooperative.

Ulupono supports the affordable access to water resources for local food producers across the State. The East Kauai Irrigation System is critical for local producers on the island and directly supports Hawaii's local food production goals. Without access to water, agriculture does not exist. It is important for the State to support the operation and maintenance of irrigation systems statewide in order to meet Hawaii's food security and sustainability goals.

Thank you for this opportunity to testify.

Respectfully,

Amy Hennessey, APR
Senior Vice President, Communications & External Affairs

Investing in a Sustainable Hawai'i



**KEKAHA AGRICULTURE
ASSOCIATION**

A NON-PROFIT AGRICULTURAL COOPERATIVE
Est. 2003

January 31, 2020

Committee on Agriculture
Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
State of Hawaii Legislature
Honolulu, HI 96813

Re: Testimony in Support of Senate Bill No. 2099 Relating to Irrigation

Dear Chair Gabbard, Vice Chair Ruderman and Committee members:

On behalf of the Board of Directors of the Kekaha Agriculture Association (KAA), I am writing this letter in **strong support** of the above-referenced Senate Bill No. 2099 and the maintenance of the East Kauai Irrigation System. As you may be aware, KAA members are actively engaged in agriculture and aquaculture enterprises in West Kauai and are familiar with and interested in supporting and promoting farming activities that benefit Kauai and the State of Hawaii. KAA and its members operate and maintain significant surface water irrigation system infrastructure in West Kauai.

We support SB 2099 because it represents a sustainable, long-term approach to addressing the maintenance and operational needs of the East Kauai Irrigation System. Without this system, the current and future farming and food production capacity of the area will be significantly reduced.

Irrigation systems such as the East Kauai Irrigation System must be maintained continuously and without any long period of disruption. Maintenance and repair costs grow exponentially if the system is left inoperable for any significant length of time, quickly leading to a situation where the system will become, for all practical purposes, impossible to restore. We respectfully request your urgent action to prevent the loss of such an important and valuable historic resource.

Thank you for the opportunity to provide this testimony.

Sincerely,

Joshua Uyehara
President of the Board of Directors
Kekaha Agriculture Association

SB-2099

Submitted on: 1/27/2020 8:06:00 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Oppose	No

Comments:

SB-2099

Submitted on: 1/29/2020 3:02:49 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nora Rodli	Individual	Support	No

Comments:

My name is Nora Rodli, and I am presenting testimony in support of SB2099, which calls for appropriation of funds for the East Kauai Irrigation system operations and maintenance. I am the Statewide Coordinator at the University of Hawaii CTAHR program, GoFarm Hawaii, but please understand that this is not official University of Hawaii testimony; rather, I am presenting this testimony as a private citizen. If we are to meet increased food production goals in the state, then there are multiple sectors in need of attention and support. Among this list is collective infrastructure for farms and maintaining systems already in existence. Irrigation systems provide farmers with a consistent management tool which translates into consistent production. Providing for a seamless management transfer and continued maintenance of the East Kauai Irrigation system is such an example of invested support that will improve our chances of meeting our increased food production goals.

SB-2099

Submitted on: 1/30/2020 7:25:29 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Klayton Kubo	Individual	Support	No

Comments:

SB-2099

Submitted on: 1/31/2020 8:06:55 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Janoah Young	Individual	Support	No

Comments:

SB-2099

Submitted on: 1/31/2020 10:01:58 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Hansen	Individual	Support	No

Comments:

I am presenting testimony in support of SB2099, which calls for appropriation of funds for the East Kauai Irrigation system operations and maintenance. I am Kaua'i Program Coordinator/Farm Coach at the University of Hawaii CTAHR program, GoFarm Hawaii, but please understand that this is not official University of Hawaii testimony; rather, I am presenting this testimony as a private citizen. If we are to meet increased food production goals in the state, then there are multiple sectors in need of attention and support. Among this list is collective infrastructure for farms and maintaining systems already in existence. Irrigation systems provide farmers with a consistent management of water resources which translates into consistent production. Providing a management transfer and continued maintenance of the East Kauai Irrigation system will improve our chances of meeting our increased food production goals.

SB-2099

Submitted on: 1/31/2020 4:20:55 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Donovan Starks	Individual	Support	No

Comments:

I own property on Kauai impacted by this legislation and I support the continued viability of our irrigation system by transferring its operation to the department of agriculture.

SB-2099

Submitted on: 2/1/2020 10:20:00 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James Kevin Howey	Individual	Support	No

Comments:

I am an owner of agricultural land in the east side. We support SB2099. It is vital for our agricultural efforts.

Regards

SB-2099

Submitted on: 2/1/2020 1:33:03 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edward McVeagh	Individual	Support	No

Comments:

The East Kauai Irrigation System is a vital irrigation source for many small farms in this region of the island. Kauai strives hard and to maintain its agricultural heritage and beautiful unique reputation as "The Garden Island". Without access to this resource, many farms that rely on this irrigation system will find it difficult to maintain their farms . The small individual farms that make up the Garden Island are a significant treasure to the people of Kauai. Adoption of SB2099 is an important step in insuring these farms can continue to provide the Garden Island its special beauty and cornucopia of nutrition for the people.

Thank you

Edward McVeagh.

SB-2099

Submitted on: 2/2/2020 9:08:17 AM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jerry Ornellas	Individual	Support	No

Comments:

SB-2099

Submitted on: 2/2/2020 4:08:49 PM

Testimony for AEN on 2/3/2020 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
J Ashman	Individual	Support	No

Comments:

Please support local agriculture by passing this bill. It would be a travesty if the farmers of East Kauai were deprived of irrigation water because we were unable to figure out how to continue to manage the system, now that the East Kauai Water Users Cooperative is no longer financially able to continue its 18 years of service due to legal uncertainties and costs.

This sad state of affairs does not bode well for our State's goal to increase food self-sufficiency. I also hope that the impact on the nearly one thousand acres of state ADC lands in Kalepa and the hundreds of acres of DHHL property will be considered.

Please support this bill. Thank you.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Felicia Cowden
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 3, 2020

TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 2099, RELATING TO IRRIGATION
Senate Committee on Agriculture and Environment
Monday, February 3, 2020
1:15 p.m.
Conference Room 224

Dear Chair Gabbard and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 2099, Relating to Irrigation. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

The East Kaua'i Irrigation System is the lifeline of the agricultural industry located in East Kaua'i and has been able to provide the invaluable water resource critical to producing food crops for both island consumption and retail purposes. SB 2099 will provide the irrigation system with better management and tools to continue to expand its reach to our island farmers.

Thank you again for this opportunity to provide testimony in support of SB 2099. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in cursive script that reads "Felicia Cowden".

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:lc