



Hearing Testimony Package

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HAWAII PEST CONTROL ASSOCIATION

Century Square – 1188 Bishop St., Ste. 1003*Honolulu, HI 96813-3304

Telephone (808) 533-6404 • Fax (808) 533-2739

February 5, 2020

Testimony To: Senate Committee on Water and Land
Senator Kaiali'i Kahele, Chair

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara

Presented By: Tim Lyons, CAE
Executive Director

Subject: S.B. 2448 – RELATING TO BEES.

Chair Kahele, Chair Nishihara and Members of the Joint Committees:

I am Tim Lyons, Executive Director of the Hawaii Pest Control Association.

First of all we are not sure why this bill is even necessary however if it is going to move forward, we would note that it actually takes a license as a pest control operator, under Chapter 460J HRS to control bees and beehives that are on structures. That is the very definition of structural pest control. Our members strive however, never to destroy a beehive but, rather, to have it relocated and for that, we oftentimes call beekeepers. However, if the only alternative is for destruction then it is the licensed pest control operator who is the solution.

Based on the above, we would respectfully request that if this bill is to move forward, that it reference licensed pest control operators as licensed under Chapter 460 J HRS.

Thank you.

SB-2448

Submitted on: 2/4/2020 1:25:50 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brodie Lockard	Individual	Support	No

Comments:

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 Committees on
WATER AND LAND
And
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Wednesday, February 5, 2020
1:30 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 2779
RELATING TO THE ESTABLISHMENT OF AN ECOSYSTEM RESTORATION
COMMISSION**

Senate Bill 2779 proposes to establish an Ecosystem Restoration Commission (Commission) that would be tasked with overseeing the return of lands under federal ownership or control to the State. **The Department of Land and Natural Resources (Department) offers the following comments on this measure.**

The proposed 12-member Commission would be administratively attached to the Department and would be charged with: (1) creating and maintaining an inventory of all lands in the State where the federal government claims ownership or control, including a database of relevant leases and their expiration dates; (2) identifying and evaluating any environmental damage to and required remediation for the inventoried land; (3) identifying those lands appropriate for continued use by the federal government; (4) negotiating with the appropriate federal agencies for the return of ownership and control and environmental remediation of parcels still under the control of the federal government; (5) ensuring that administrative control over all property returned to the State is given to an appropriate State, county or other entity; and (6) making recommendations for future use and environmental remediation of each property.

The Department notes that several functions of the proposed Commission are already performed by the Department or its governing board, the Board of Land and Natural Resources (Board). For example, if the federal government desires to continue use of State lands currently under lease, it would need to apply to the Board for a lease extension or new lease. The Board would consider the request at a sunshine meeting open to the public and issue a decision on the request. If the federal government determines that any of its fee simple lands are surplus to its needs, it typically offers to convey them to the State. As part of that process, the Department conducts

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

environmental due diligence to ensure that it is not acquiring contaminated land. A Phase I Environmental Site Assessment (ESA) would need to be conducted by an independent consultant who would then prepare a report. If environmental concerns were found, a more intrusive investigation of the land be conducted through a Phase II ESA. If contamination were confirmed on the property, remediation would then be required. The Department would endeavor to have the federal government pay for the necessary due diligence and remediation, if needed. The Board also routinely makes decisions on which State or county agencies should have use of State lands by lease, Governor's executive order or other disposition.

Accordingly, the Department believes the functions of the proposed Commission would be largely redundant of the operations of the Department and Board. To the extent the Commission's functions are not redundant, they would be cost prohibitive to execute. Phase I and II ESAs are expensive. The bill does not explain who will pay for the environmental review needed to determine the status of every parcel of land the federal government owns or controls. The bill provides no budget for the Commission. Without a budget, the bill would impose an unfunded mandate on the Commission.

Finally, the Department believes the federal government recognizes its responsibility to the environment. On the specific issue of unexploded ordnance (UXO), the Department can report that the federal government has been working for many years to clean up UXO on its own lands as well as State (and private) lands that are no longer under federal ownership or control (formerly used defense sites).

Thank you for the opportunity to comment on this measure.

SB-2779

Submitted on: 2/1/2020 10:24:07 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Regina Gregory	Testifying for EcoTipping Points Project	Support	No

Comments:

SB-2779

Submitted on: 2/3/2020 5:45:12 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandy Yee	Testifying for Hawai'i Peace & Justice	Support	No

Comments:

I whole heartedly support this bill because it establishes an ecosystem restoration commission to identify lands for environmental remediation and return ownership and control of those lands to the State, a county, or other entity.

The military absolutely needs to be responsible for cleaning up pollution it has brought to our aina.



Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

PO Box 51 Honolulu HI 96810

email: info@pd-hawaii.com

February 3, 2020

To: Senator Kaiali'i Kahele, Chair,
Senator Gilbert Keith-Agaran, Vice Chair, and Members of the
SENATE COMMITTEE ON WATER & LAND

Senator Clarence K. Nishihara, Chair,
Senator Glenn Wakai, Vice Chair, and Members of the
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

Re: **SB 2779, Relating to an Ecosystem Restoration Commission**
Hearing: Wednesday, February 5, 2020, 1:30 p.m., Room 229
Position: **Strong Support**

Aloha, Chairs Kahele and Nishihara, Vice Chairs Keith-Agaran and Wakai, and Members of the Committees:

Progressive Democrats of Hawai'i strongly support SB 2779, which will create an Ecosystem Restoration Commission to negotiate with the United States Government to seek the expeditious return of as many lands and land rights as possible and to work toward the restoration of the environmental integrity of those lands.

It is long past time for us to regard U.S. Government land rights in Hawaii as unalterably fixed. The Government acquired most of those rights during territorial times when Hawaii had far less population and local government had far less power to push back against the federal government. We seriously need to recover land for our own use now, and the federal government needs to cede back a very substantial amount of land and restore it, if it has been damaged environmentally. This bill is the first step in that process.

Thank you for the opportunity to testify.

Alan B. Burdick, Co-Chair
Progressive Democrats of Hawai'i
Burdick808@gmail.com/ 486-1018

SB-2779

Submitted on: 2/3/2020 11:28:37 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robert B Huber	Testifying for Environmental Impact Committee -Democratic Caucus	Support	No

Comments:

I am in support of the clean of waste left behind by the military . Red Hill, to clean up the oily waste (bunker fuel from the cleaning of the Red Hill tanks) that remains discarded at the Honolulu Animal Quarantine site. On a hot day, the bunker fuel liquifies and looks like hot tar. As the result of military waste being left abandoned, the Green New Deal committee worked to draft SB2779 to establish an Ecosystem Restoration Commission.

The Green New Deal committee worked to draft SB2779 to establish an Ecosystem Restoration Commission to examine all military sites to identify lands for environmental remediation and return of ownership and control of those lands to the State, a county, or other entity. We are including Pohakuloa Training Area; Makua Valley Training Area; Waikane Valley Marine Training Area; He`eia Combat Training Area; and Kaho`olawe Island Reserve, in addition to the Red Hill oily waste clean-up.

As Kupuna in City & County of Honolulu to protect the Aina for future generations should be of the utmost importance .

Aloha e Mahalo Kakou , Robert Hüber RA SFR

hawaii Homes International

SB-2779

Submitted on: 2/3/2020 11:51:40 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
michael	Testifying for Human Enviromental Committee	Support	Yes

Comments:

Aloha

As a concerned citizen , Malenial and on behalf of all citizens , this bill stemmed out of Red Hill, to clean up the oily waste (bunker fuel from the cleaning of the Red Hill tanks) that remains discarded at the Honolulu Animal Quarantine site. On a hot day, the bunker fuel liquifies and looks like hot tar. As the result of military waste being left abandoned, the Green New Deal committee worked to draft SB2779 to establish an Ecosystem Restoration Commission to examine all military sites to identify lands for environmental remediation and return of ownership and control of those lands to the State, a county, or other entity. We are including Pohakuloa Training Area; Makua Valley Training Area; Waikane Valley Marine Training Area; He`eia Combat Training Area; and Kaho`olawe Island Reserve, in addition to the Red Hill oily waste clean-up.

For my generation , and the generations ahead , I strongly advicate that we protect our Aina .

Aloha e Mahalo Kakou

Micharl Vernon



AMERICANS FOR DEMOCRATIC ACTION

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Doug Pyle, Secretary	Stephanie Fitzpatrick	Dave Nagaji		

February 4 , 2020

TO: Honorable Chairs Kahele & Nishihara & WTL/PSM Committee Members

RE: SB 2779 RELATING TO THE ESTABLISHMENT OF AN ECOSYSTEM RESTORATION COMMISSION

Support for hearing on Feb 7

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support SB 2779 as it would create an Ecosystem Restoration Commission to negotiate with the federal government to seek the expeditious return of as many lands and land rights as possible and to work toward the restoration of the environmental integrity of those lands. Land issues have long plagued this state. Too much land has been taken through illegitimate means. Thus the federal government has ceded and other lands with questionable title. It is time to recover land for our own use, and the federal government should cede back a lot of land for responsible use.

Thank you for your favorable consideration.

Sincerely,^[1]_[SEP]

John Bickel President



SB-2779

Submitted on: 2/4/2020 10:11:32 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa L Yee	Testifying for Seeds of Truth	Support	No

Comments:

My name is Dr. Melissa Yee from the organization Seeds of Truth which produces community television videos on current events. The concern about Red Hill has been ongoing since 2014 when the leak occurred. Local residents have taken time to go to meetings because they are worried they are already drinking chemicals from past and present use on plantations and industrial and private properties. This bill supports the creation of a commission which will look at solutions to this problem. The Navy is unlikely to pursue this issue aggressively because it does not have the funding to do it. We the residents need and want to do something, and this commission is a start.

Living on a small island we are all at risk. The Red Hill tanks are antiquated and leaking. I would suggest that existing tanks in other locations be used instead of continuing to patch and monitor. The Board of Water Supply has brought attention to this matter and needs support from the Legislature to move forward.

Thank you,

Dr. Yee

Seeds of Truth

SB-2779

Submitted on: 2/4/2020 11:14:11 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Adrian Q.S. Chang	Testifying for Pure Water Hawaii	Support	No

Comments:

I strongly support this Bill. Urgency is required due to the continuous leakage from the Red Hill fuel tanks. I have reviewed Board of Water Supplies slide presentation which included the alternatives proposed by the military to correct the problem. None of them are really practical and economical solutions. I suggest building new tanks on the user base (e.g. Hickam & Pearl Harbor). The advantage of the Red Hill tanks was gravity feed. However, new tanks could have a pumping system with back up generators to offset this advantage. Building above ground tanks would reduce cost significantly. Using tanker trailers to transport fuel to points of need would eliminate costly piping systems. We already do it for all our service stations.

Mahalo for protecting our environment & drinking water,

Adrian Chang, Pure Water Hawaii



Wednesday, February 5, 2020

Senate Bill 2779
Testifying in Support

Aloha Chairs Kahele and Nishihara; Vice Chairs Keith-Agaran and Wakai, and Members of the Senate Committees on Water and Land; and Public Safety, Intergovernmental, and Military Affairs:

The Democratic Party of Hawaii (The Party) stands in support of SB2779 Relating to the Establishment of an Ecosystem Restoration Commission. The bill establishes an ecosystem restoration commission to identify lands for environmental remediation and return ownership and control of those lands to the State, a county, or other entity. This bill was made part of the Hawaii Green New Deal Package of the Democratic Party of Hawaii.

This bill was born out of the oily waste from the Red Hill Underground Fuel Storage Tanks and the aftermath of the Pohakuloa Training Area once training is complete. An Ecosystem Restoration Commission is necessary to: (1) create and maintain an inventory of all lands where the federal government claims ownership or control; (2) identify and evaluate any environmental damage and whether remediation efforts are required; (3) identify lands that remain appropriate for continued set-aside to the United States government; (4) negotiate for the return of ownership and control of the land and the environmental remediation required; (5) ensure that the administrative control of the property is transferred from the federal government to the appropriate state, county, or other entity; and (6) make recommendations for future use and environmental remediation of each property.

The necessity of an Ecosystem Restoration Commission is evident in Red Hill and in many of the lands leased or under the control of the Department of Defense for military training purposes.

Take Red Hill for example, in 1938, the Navy began building a fuel depot at Red Hill, which lies between Moanalua and Halawa Valleys. Twenty massive underground tanks – each having a capacity of 12.6 million gallons – were built into the hill and were used primarily to store 3 types of petroleum fuel: marine diesel for ships and 2 types of jet fuel, JP-5 and JP-8.

Starting in 1943, sludges and waste oil from the cleaning of these tanks were piped to an unlined waste pit 800 feet north of Moanalua Highway. A Navy history site describes the practices there as follows:

“Oily waste residues were pumped from the Red Hill underground fuel tanks to the site via an . . . “underground slop line” . . . From this underground slop line, the waste could either be routed into the old pit or into a bypass-type piping arrangement which led towards South Halawa Stream . . . When wastes were routed to the old pit, recoverable oil was skimmed off the fluid surface and collected in the two aboveground 8,000-gallon storage tanks located to the northeast of the old pit. Fluid could be drained from the old pit via the “look box” into the bypass piping which led to South Halawa Stream.” Between 1943 and 1945, approximately 1.3 million gallons of fuel spilled at the Red Hill fuel depot, the result of improper valve operation. The oil flowed downhill through the access tunnel, exiting near the waste pit, where it ran across the ground and into the south Halawa Stream.

According to a Navy report, “During the period of time between 1948 and 1972, it is believed that a portion of the waste sludges were trucked to a storage facility in Pearl Harbor, with the remainder being directly diverted to South Halawa Stream.

In 1972, the Navy dug a new waste pit on the same site, lining it with asphalt. Quoting again from the Navy history of the site: “The piping system for the former disposal pit apparently was not removed during construction of the new pit and it is believed that the practice of diverting water from the pit and/or directly into South Halawa [Stream] continued until the pit was taken out of service in 1987.”

Soon after the new pit was put into use, its asphalt lining began to crack. The pit was drained, and its contents were placed into 55-gallon drums. “These drums were taken a short distance from the pit,” the ERCE report notes, “and then were emptied out upon the surface soils. The pit was then reconstructed using a concrete lining.” The ERCE report goes on to say that according to one person who used to work there, “on at least one occasion following the reconstruction of the new pit, improper valve operation . . . resulted in a significant amount of sludge and water being discharged directly to South Halawa Stream.”

In the early 1980’s, “a subcontractor responsible for hauling wastes from the pit site to Pearl Harbor recycling facility was discovered dumping waste material via a hose into a heavily vegetated area located about 100 to 150 feet southwest of the new pit. The possible existence of sludge pumping to this location was also documented previously.” Since the 1960’s when the land was transferred from the Federal government to the State government, portions of the land contained an oily tar-like substance located by the Honolulu Animal Quarantine parking lot area. Over the years, this black substance continues to migrate towards the South Halawa Stream.

More recently, the Hawai`i Supreme Court affirmed the findings and order of the lower court in *Ching, et.al. v. Case, et. al.*, SCAP-18-0000432 (2019), for failing to inspect the



Pohakuloa Training Area to ensure that the U.S. Army was complying with the terms of the lease it entered into in August 1964. The lease required the Army to “make reasonable effort to . . . remove or deactivate all live or blank ammunition upon completion of a training exercise or prior to entry by the said public, whichever is sooner” and to “remove or bury all trash, garbage or other waste materials.” The Plaintiffs showed the court during the trial how unexploded ordnance and other military debris was left scattered across the training ground. The trial court Judge Gary Chang based his decision in part on the broadly understood native Hawaiian concept of “Malama `aina,” meaning the act of caring for land.

“Defendants have failed to preserve and protect the subject lands as required by their duties as a trustee of the public land trust,” Chang wrote. “Defendants have failed to Malama `aina the subject lands under the said lease. These failures constitute a breach of Defendants’ trust duties that apply to the subject lands. This failure has harmed, impaired, diminished, or otherwise adversely affected Plaintiffs cultural interests in the subject lands.”

The judge found that state officials “breached their trust duties” even though they were fully aware that live-fire training and other military training activities posed “a significant and substantial risk of harm or damage” to the state lands. The Pohakuloa Training Area is a 156-square-mile property used by the Army for combat training. 31 square miles of the military outpost are owned by the state and have been leased to the Army since 1964 for \$1.00. The lease expires in 2029.

Hawaii has numerous sites contaminated with ordnance dating back to World War II and the Cold War. In 2018, the Army began a \$3.5 million project to search for unexploded ordnance off Makua Beach in northwest O`ahu. Meanwhile the Army Corps of Engineers say it will cost \$723 million to clean up a former Navy artillery range in northwest Hawaii Island.

These are but two examples where an Ecosystem Restoration Commission can assist in restoring and preserving the natural beauty of our islands after being used for military purposes. As mentioned earlier, there are six areas used by the military that should be inventoried, identified to the extent such property has been environmentally damaged and any remediation thereof; identified which lands shall remain as set-asides for the United States government or returned to the State, County, or other entity; and if so, negotiate for the return of those lands that can be remediated and returned; and if the land cannot be returned, then it must still be remediated, including the Red Hill Underground Fuel Storage Tank field; Pohakuloa Training Area, Waikane Valley Marine Training Area; He`eia Combat training Area; Makua Valley Training Area; and Kaho`olawe Island Reserve.

For these reasons, we urge you to vote favorably on this bill to establish an ecosystem restoration commission to identify lands for environmental remediation and return of ownership and control of those lands to the State, County, or other entity for public use under the Public Trust Doctrine.

Mahalo for the opportunity to testify,



Josh Frost
Co-Chair, Legislation Committee
Democratic Party of Hawai'i



Zahava Zaidott
Co-Chair, Legislation Committee
Democratic Party of Hawai'i

<https://www.armytimes.com/news/your-army/2018/04/06/judge-hawaii-agency-failed-to-care-for-army-training-land/> (April 5, 2018)

<https://www.stripes.com/news/pacific/hawaii-judge-orders-uxo-cleanup-plan-for-army-training-range-on-big-island-1.520491> (April 4, 2018).

<https://www.hawaiinewsnow.com/story/25177462/the-halawa-tar-pit/>

<https://www.hawaiinewsnow.com/story/30060416/exclusive-5-m-gallon-oil-plume-beneath-pearl-harbor/>

<https://www.environment-hawaii.org/?p=3933> (1991)

<https://web.mst.edu/~rogersda/umrcourses/ge342/Red%20Hill%20Storage%20Tanks-revised.pdf>

<https://www.epa.gov/sites/production/files/2017-02/documents/redhillhawaii.pdf> (Feb. 2017)

SB-2779

Submitted on: 2/3/2020 10:45:15 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
William South	Individual	Support	No

Comments:

The passage of this bill is a no-brainer for Hawaii. Do the right thing and pass it!

SB-2779

Submitted on: 2/3/2020 10:50:30 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

Aloha Chairs, Vice Chairs, and Members of the Committees on Water and Land, and Public Safety, Intergovernmental and Military Affairs.

I support the intent and thoughtfulness of Senate Bill 2779, and acknowledge Senator Mike Gabbard's initiative in introducing this measure.

With respect to the mission of the US Department of Defense and Hawai'i's strategic role in Oceania, commonly called the Pacific, I believe it is incumbent on us, as humans, and as stewards, to think of our relationship to the planet.

Anti-climate change arguments in the legislature often fault we kama'aina for being too few, too powerless to stop a global problem. But species extinction is a global problem with a capital in Hawai'i. We can and must do better. I alone have held in my hands the last known *Achatinella apexfulva*--"Lonesome George," as a caretaker for some years. I do not complain that the military is responsible for *A. apexfulva*'s extinction, but brush fires and invasive species and other human impacts on other endangered species' critical habitat are linked to military activities here. Current mitigation is slowing extinctions, but not stopping them. All of our ecosystems are in decline. Tree species that the generation of botanists before me call 'common' are increasingly rare or disappearing entirely from a ridge, as the range of many species grows patchier, less resilient.

We must stop our rapacious, mindless, assault on the Earth and to those whom much is given--in land, in leeway--much responsibility rests. Ecosystem restoration is more than a slogan. It may be the way that we save our children's future. And it is within our span of control.

Please pass this bill.

Thank you very much,

Dylan P. Armstrong, MÄ• noa

SB-2779

Submitted on: 2/3/2020 12:32:26 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Blake WATson	Individual	Support	No

Comments:

SB-2779

Submitted on: 2/4/2020 7:50:31 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jeanne wheeler	Individual	Support	No

Comments:

As increasing evidence accumulates re toxicity on military bases around the nation, we need to address our own local situations as well - for the health & safety of all who are exposed/affected!

SB-2779

Submitted on: 2/4/2020 12:34:32 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Victor Muh	Individual	Support	No

Comments:

DAVID Y. IGE
GOVERNOR OF HAWAII



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
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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
WATER AND LAND

Wednesday, February 5, 2020
1:30 PM
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2911
RELATING TO BOATING REPORTS

Senate Bill 2911 proposes to require fire chiefs and ocean safety directors of each county, in addition to the Director of Public Safety and the police chief of each county, to transmit to the Department of Land and Natural Resources (Department) a copy of every report relating to boating accidents or the theft, loss, or recovery of vessels; and to require all reports submitted pursuant to section 200-27, Hawaii Revised Statutes, to be unredacted. **The Department strongly supports this Administration measure.**

Boating accident data collected by the Department becomes part of the United States Coast Guard (USCG) Boating Accident Report Database (BARD), a massive collection of statistics on incidents in all 50 states and all U.S. territories. The data allows USCG and partnering organizations to see trends in operator use of boating equipment and boating practices that increase or decrease the risk of fatalities, disappearances, and injuries. Every partner agency aims to enter the best, highest quality data possible into the BARD.

The Department believes the amendments proposed in this measure will ultimately result in improved safety for all boaters and boating communities across the country as well as ocean users who interact with those boaters. There is a longstanding misperception that incident reports relating to boating accidents are generated by county police departments. However, in reality, fire departments and ocean safety agencies are the entities that respond to these types of incidents and generate reports that are most useful to the BARD.

Each year, there are about two to three dozen incidents that constitute a "boating accident" and meeting the criteria for entry into the BARD. The Department does not anticipate a significant

addition to the workload of each of the agencies proposed to be included in this measure. With more comprehensive reporting, there is potential to decrease the number of incidents occurring each year through more informed decision-making on the subject of boating safety.

The Department highlights the openness and the spirit of cooperation exhibited by the Honolulu Fire Department (HFD) in relation to this measure. While investigating the feasibility of this measure, HFD provided direct contacts and introduced the Department to a new HFD system for requesting incident reports. The positive benefits resulting from this interaction have surpassed all of the Department's expectations.

Thank you for the opportunity to comment on this measure.

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 Committees on WATER AND LAND and PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Wednesday, February 5, 2020
1:30 PM
State Capitol, Conference Room 229

In consideration of SENATE BILL 2759 RELATING TO TRAILS

Senate Bill 2759 proposes to require government entities that engage in search and rescue operations to seek reimbursement when the rescued person required search and rescue efforts because that person acted in disregard of that person's safety, including intentionally disregarding a warning or notice. The proposal increases the penalty for unlawfully entering or remaining on a trail that has been closed to the public. **The Department of Land and Natural Resources (Department) supports this measure with comments.**

The Department is in support of any strategy that will incentivize the general public to stay within authorized managed areas and already has statutory penalties for violation of laws and rules adopted specifically for going into closed areas. While these penalties are in place, absent enforcement and citations, they are clearly not a deterrent.

It should be noted that it is a county responsibility to engage in search and rescue activities and the Department defers to the County Fire and Rescue agencies regarding the charging of people for rescue. While this may be an incentive for people to obey the rules, it could also discourage people from calling for help.

Thank you for the opportunity to comment on this measure.

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
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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

SB-2759

Submitted on: 2/1/2020 5:07:07 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

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

Comments:

Yes, people should be asked to pay.

SB-2759

Submitted on: 2/1/2020 7:49:27 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

People take unnecessary risk without thinking of the consequences and hopefully this bill will cause them to rethink taking risky trails.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 Committees on
WATER AND LAND
and
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Wednesday, February 5, 2020
1:30 P.M.
State Capitol, Conference Room 229

In consideration of
SENATE BILL 2828
RELATING TO WATER

Senate Bill 2828 proposes to specify that fire safety use is a beneficial use of water and require the Department of Land and Natural Resources (Department) to work with the county governments, Hawaii emergency management agency and owners to use reservoir water for fire safety. **The Department acknowledges the intent of this measure and provides the following comments.**

This measure proposes to amend the declaration of policy in the State Water Code, Section 174C-2, Hawaii Revised Statutes (HRS), to include the benefit to public health, safety, and welfare by maintaining available fresh water for fire safety purposes. The Department believes that fire safety is a legitimate beneficial use of water.

This measure also proposes to amend the Dam and Reservoir Safety Act, Section 179D-6, HRS, to include a requirement to work with county governments, Hawaii emergency management agencies, and dam and reservoir owners to use reservoir water for fire safety. The purpose of Chapter 179D, HRS, is to provide for the inspection and regulation of construction of all dams or reservoirs to protect the health, safety, and welfare of the citizens of the State by reducing the risk of failure of the dams or reservoirs. Over 80 per cent of the dams in Hawaii were constructed before 1940 to support the sugarcane plantations. Due to the age of these facilities, deferred maintenance, and demise of the sugar industry, many dams are in need of major improvements and pose risks to life and property should they fail. The Department believes a requirement to have reservoir owners maintain reservoir water for fire safety is contrary to the

purpose of the dam safety law. While we recognize the importance of having available sources of water for fire safety, we do not believe a requirement for dam owners to provide for this water should be inserted into Chapter 179D, HRS. Moreover, there are 131 dams regulated under Chapter 179D, HRS, which must meet certain statutorily defined size and capacity criteria. Inserting this proposed amendment into Chapter 179D, HRS, would not satisfy the intent of this bill, as it would not apply to the many smaller unregulated reservoirs.

Pursuant to Chapter 185, HRS, Land Fire Protection Law, the Department has the power to "...summon, when necessary, additional firefighting assistance, equipment, supplies, and materials needed to extinguish fires..." and "All agencies of the State or its political subdivisions shall assist in extinguishing any fire when duly summoned..." The Department suggests that a statutory amendment to allow the coordination with county governments, Hawaii emergency management agency, and reservoir owners to use reservoir water for fire safety is better suited in Chapter 185, HRS. As past practice of the Department, there are no formal agreements for obtaining water for firefighting. The Department may call the reservoir owner, if known, prior to the helicopter dipping to ask permission, or in some cases they will proceed if they feel the necessity. If there is no reservoir in the area that is accessible, the pilot will dip their buckets in the ocean.

Thank you for the opportunity to comment on this measure.



STATE OF HAWAII
DEPARTMENT OF DEFENSE
OFFICE OF THE DIRECTOR OF EMERGENCY MANAGEMENT
3949 DIAMOND HEAD ROAD
HONOLULU, HAWAII 96816-4495

STATE OF HAWAII
DEPARTMENT OF DEFENSE
HAWAII EMERGENCY MANAGEMENT AGENCY

**TESTIMONY ON SENATE BILL 2828,
RELATING TO WATER**

Before the Senate Committees on
WATER AND LAND
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

By

Thomas L. Travis
Administrator, Hawaii Emergency Management Agency (HI-EMA)

Aloha Chairs Kahele and Nishihara, Vice-Chairs Keith-Agaran and Wakai and Members of the Committee:

Senate Bill 2828 specifies that fire safety use is a beneficial use of water. Requires the department of land and natural resources to work with the county governments, Hawaii emergency management agency, and owners to use reservoir water for fire safety.

Hawaii Emergency Management Agency (HI-EMA) would like to offer **comments**.

HI-EMA feels that the Department of Land and Natural Resources would be better equipped to facilitate the requirements outlined in this measure.

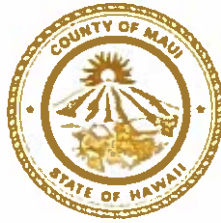
Thank you for the opportunity to testify on Senate Bill 2828.

Thomas L. Travis: Thomas.L.Travis@hawaii.gov; 808-733-4300

MICHAEL P. VICTORINO
Mayor

DAVID C. THYNE
Fire Chief

BRADFORD K. VENTURA
Deputy Fire Chief



DEPARTMENT OF FIRE & PUBLIC SAFETY
COUNTY OF MAUI
200 DAIRY ROAD
KAHULUI, HI 96732

January 29, 2020

The Honorable Kaiali'i Kahele, Chair
Committee of Water and Land
The State Senate
State Capitol, Room 213
Honolulu, HI 96813

Dear Chair Kahele:

Subject: Senate Bill (SB) 2828 Relating to Water

I am David C. Thyne, Fire Chief of the Maui Fire Department (MFD). The MFD supports SB 2828, which finds that water should be retained in reservoirs for the public's health, safety and welfare by having fresh water available for fire safety purposes.

Public safety and property protection are the primary goals for county fire departments. Our department has relied on water sources (i.e. reservoirs) in emergency situations. In 2019, West Maui was hit with a number of large wildfires. It is important that there be water in the former plantation reservoirs so that there is quicker access to fresh water to control fires. Helicopters can retrieve the fresh water in reservoirs quicker than going to the ocean. Also, using ocean water to put out fires results in damage to flora and fauna. Utilizing ocean water also requires the closure of major thoroughfares.

MFD urges your committee's support for the passage of SB 2828.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Thyne".

DAVID C. THYNE
Fire Chief

SB-2828

Submitted on: 2/4/2020 11:59:38 AM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Testifying for Maui County Farm Bureau	Support	No

Comments:



SB2828
RELATING TO WATER
Senate Committee on Water and Land
Senate Committee on Public Safety, Intergovernmental and Military Affairs

February 5, 2020

1:30 p.m.

Room 229

The Office of Hawaiian Affairs Beneficiary Advocacy and Empowerment Committee (OHA) will recommend that the OHA Board of Trustees **OPPOSE** SB2828, which would amend the state water code to prioritize “fire safety” as a beneficial use of state public trust water resources, for the stated purpose of refilling and maintaining currently unfilled reservoirs. **OHA is concerned that this measure would encourage and promote corporate and private water banking, in contravention to the public trust doctrine, in a manner that may compromise the integrity and function of our watersheds, with questionable benefits to the overall safety of the public.**

As an initial matter, OHA recognizes and appreciates concerns regarding the need for fire fighting resources, and has itself committed funds to assist affected beneficiaries in their recovery from the recent and tragic fires in West Maui. However, a statutory amendment as proposed is not necessary for the state to recognize and allocate water for fire safety uses as a reasonable beneficial use in appropriate circumstances. Additionally, there is no indication that a codified state policy that prioritizes the refilling and maintenance of currently defunct reservoirs will provide any significant benefit to the fire suppression and response needs of the state or its counties. **On the other hand, the proposed statutory amendment may promote the continued or renewed diversion of streams to fill continuously leaking and potentially dangerous reservoirs,ⁱ while impairing the aquifer recharge and climate resiliency functions of our native watersheds, including through the proliferation of invasive species that increase the risk of fires and other climate change-associated threats.**

OHA notes that private “water banking,” or the reservation and sequestration of water for private purposes, is inapposite to the public trust doctrine, the state constitution, and the state water code, which require the state to ensure the actual use and development of our limited water resources for the public benefit.ⁱⁱ **Allowing private entities to “bank” or reserve water for hypothetical future uses precludes such water from serving public trust purposes and reasonable beneficial uses prioritized under the water code and public trust doctrine, and may lead to the significant and substantial waste of our islands’ most precious and important resource.** By characterizing the refilling and maintenance of large and notoriously leaky reservoirs,ⁱⁱⁱ including privately held reservoirs, as a “beneficial” use of water, this measure may unintentionally promote

and justify private water banking, helping private landowners and developers gain the significant financial benefit of a private water source, to the detriment of the native watersheds, ecosystems, cultural practices, domestic and agricultural uses, and other public purposes and uses that would otherwise rely on water banked in such a manner.

Notably, the diversion of surface waters to maintain large reservoirs of questionable integrity may compromise the climate resiliency, water security, and overall public safety of our islands. Native forested watersheds serve critical functions including aquifer recharge, and may play a key role in our islands' climate resiliency, including in climate change-related disaster mitigation.^{iv} Diversions can significantly impair native watersheds and ecosystems,^v and may lead to the proliferation of invasive species that severely reduce aquifer recharge and water availability rates,^{vi} and that can significantly increase the risk of wildfires.^{vii} The dams and reservoirs that would be considered "beneficial" for fire safety purposes under this measure may in themselves also pose a significant risk to public safety, with "virtually every one of Hawai'i's 130 state-regulated dams [] considered high hazard . . . Of those, 59 are considered to be in poor or unsatisfactory condition."^{viii} Accordingly, any purported fire safety benefits of this measure, which may facilitate the continued or increased diversion of streams and surface waters to maintain reservoirs, may be significantly outweighed by associated water security, climate resiliency, and public safety concerns.

Finally, OHA notes that in many instances, there may be alternative sources of water that are already available and/or much better suited for fire suppression and fighting activities, including, for example, the 3 to 5 million gallons of water per day produced by the Lahaina Wastewater Reclamation Facility, currently disposed of via groundwater injection wells.^{ix} A public trust analysis under the existing state water code would enable the state to consider an analysis of such alternatives, prior to determining whether and to what extent the refilling and maintenance of potentially dangerous reservoirs for "fire safety" may be considered a "beneficial" use. The proposed statutory amendment would limit such an analysis, while unintentionally encouraging and legitimizing water banking to the detriment of the public trust.

Accordingly, OHA respectfully urges the Committees to **HOLD** this measure. Mahalo nui loa for the opportunity to testify.

ⁱ Even currently working reservoirs have extremely high water loss rates from both seepage and evapotranspiration, as admitted to even by those who own them; water loss may even be higher for defunct and non-working reservoirs. See, e.g., Staff Submittal, Agenda Item C-1, Commission on Water Resource Management, May 25, 2010 ("Of these 36 reservoirs, 31 are unlined. HC&S was unable to provide current studies documenting system loss from the reservoirs. However, they did provide data from seepage runs conducted in the 1960s which estimated loss at 23 to 31 [million gallons per day]" (emphasis added)); Colleen Uechi, *Hui files complaint over water levels from Waihee River*, Maui News, Sept. 25, 2019, <https://www.mauinews.com/news/local-news/2019/09/hui-files-complaint-over-water-levels-from-waihee-river/> ("...Waiale Reservoir can lose 6 to 8 [million gallons per day], which HC&S was candid about.").

ⁱⁱ See *Kaua'i Springs, Inc. v. Planning Commission of Kaua'i*, 133 Hawai'i 141 (2014) (citing *In re Water Use Permit Applications*, 94 Hawai'i 97 (2000)).

iii OHA is aware of arguments put forth by certain water banking proponents that leaking reservoirs may contribute to aquifer recharge and, by extension, future water availability. However, neither such arguments nor this measure indicates whether aquifers recharged by reservoirs are, in fact, necessarily used or usable for agriculture or public consumption, or whether the benefits of such future water availability outweigh the immediate loss of benefits to native watersheds and the aquifers they already serve. See e.g.; *Pineapple's Lasting Legacy: The Poisoned Wells of Maui*, ENVIRONMENT HAWAII, June 1996.,

iv See, e.g., State of Hawai'i Dashboard: Watershed Forest Area, <https://dashboard.hawaii.gov/en/stat/goals/5xhf-begg/4s33-f5iv/wtjm-96jt> (last accessed Feb. 2, 2020)

("Native forests play a critical role to provide our statewide freshwater supply by acting like a 'sponge' and absorbing rainfall and cloud moisture. When a native forest is damaged, so is its ability to capture water."); DEPARTMENT OF LAND AND NATURAL RESOURCES, THE RAIN FOLLOWS THE FOREST: HAHAI NO KA UA I KA ULULĀ'AU 8 (2011) ("Protecting forests alleviates a wide range of threats from climate change predicted to cause hotter and drier conditions, and rising sea levels that infiltrate freshwater systems").

v See HAWAII COMPREHENSIVE WILDLIFE CONSERVATION STRATEGY 4-2 (2005) ("...Alteration of hydrology, which includes watershed development, stream diversions, channelizations, and excessive water withdrawals that lower the aquifer, degrades or destroys habitat used by native fishes and invertebrates. Such activities indirectly affect terrestrial wildlife where these changes alter plant communities or the availability of drinking water.")

vi See HAWAII STATE DASHBOARD, *supra*. ("For example, widespread strawberry guava demands 27% - 53% times more water than native forests, causing extensive water loss across landscapes. In East Hawaii [sic], invasive plants have reduced estimated groundwater recharge by 85 million gallons per day. . . . Native Hawaiian plants are not adapted to wildfire, and after they are burned they are typically replaced by weeds that are more prone to re-burn. This creates a cycle of wildfires."); Hawai'i Freshwater Initiative, A Blueprint for Action: Water Security for an Uncertain Future 13 ("...[W]ater loss via evapotranspiration may rise with the continued invasion of non-native plants."). DEPARTMENT OF LAND AND NATURAL RESOURCES, THE RAIN FOLLOWS THE FOREST: HAHAI NO KA UA I KA ULULĀ'AU 3 (2011).

vii UNITED STATES DEPARTMENT OF DEFENSE, INVASIVE SPECIES CHALLENGES AND SOLUTIONS 7 (2017) ("Invasive plants . . . can make ecosystems more susceptible to wildfire. . . . For example, fountain grass is a fire-promoting invasive species that has made its way into formerly forested landscapes on the island of Hawai'i. . . This invasive grass species has increased the frequency and size of wildfires on the [Pōhakuloa] training area."); Clay Trauernicht, et. al., *The Contemporary Scale and Context of Wildfire in Hawai'i*, 69 PACIFIC SCIENCE 427, 427-28 (2015) ("These nonnative species regularly encroach into Hawai'i's native ecosystems . . . where they suppress native plant regeneration, increase ecosystem flammability and fire frequency, and accelerate rates of habitat loss.")

viii Caleb Jones, *Hawaii Officials Struggle to Keep Dams Safe*, U.S. NEWS, Nov. 10, 2019.

ix *US Supreme Court Grants Petition in West Maui Injection Well Case*, Maui News, February 20, 2019.



STATEMENT OF MAHI PONO, LLC
TO THE SENATE COMMITTEES ON WATER AND LAND AND PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Wednesday, February 5, 2020
1:30 pm
State Capitol, Conference Room 229

SB 2828
RELATING TO WATER

Chair Kahele, Chair Nishihara, Vice Chair Keith-Agaran, Vice Chair Wakai, and members of the Committees on Water and Land and Public Safety, Intergovernmental, and Military Affairs:

Mahi Pono respectfully submits testimony in support of SB2828 to specify that fire safety use is a beneficial use of water.

Drought conditions have persisted on Maui and other parts of the State for many years and, together with other unavoidable factors, including human ignitions and fire-prone vegetation, wildfires have and will continue to be a significant threat to our communities. Protecting and preserving our natural resources is a shared responsibility that we must actively work towards, including exploring new or alternative ways to meet this objective.

Water from appropriately maintained and supplied reservoirs can serve multiple purposes for the public good. Mahi Pono supports the use of water in our reservoirs for not only agricultural purposes, but also other reasonable and beneficial uses, including using water to battle wildfires and to help protect our local flora and fauna. Prioritizing water use for fire safety will help to fight against further devastation and keep our communities safe from these destructive occurrences.

Thank you for this opportunity to provide testimony in support of SB2828.



SENATOR KAIALI'I KAHELE, CHAIR
SENATOR GILBERT KEITH-AGARAN, VICE CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR CLARENCE NISHIHARA
SENATOR GLENN WAKAI
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY
AFFAIRS

TESTIMONY IN OPPOSITION TO SENATE BILL 2828

February 5, 2020, 1:30 p.m.
Room 229
State Capitol
415 South Beretania Street

Dear Chairs Kahele and Nishihara, Vice-Chairs Keith-Agaran and Wakai, and members of the Senate Committee on Water and Land and the Senate Committee on Public Safety, Intergovernmental, and Military Affairs:

Earthjustice **opposes SN 2828 to the extent that it proposes to amend the State Water Code**, HRS § 174C (“Code”), to insert the maintenance of reservoir water for fire safety purposes as a specific beneficial use under the Code’s “Declaration of Policy,” HRS § 174C-2. In short, while fire safety is certainly in the general public interest, amending the Code to justify the banking of water in former plantation reservoirs specifically or solely for such potential use is neither advisable nor necessary. Earthjustice notes that it does not oppose SB 2828’s other proposed amendment to the dam and reservoir statute, HRS § 179D-6, to direct the Board of Land and Natural Resources to work with relevant parties to use reservoirs for fire safety. Earthjustice does, however, **strongly oppose and advise against the piecemeal amendment to the Code**, as SB 2828 proposes.

Earthjustice has decades of experience in Hawai‘i water law, including the Code, and has been directly involved in the leading Hawai‘i Supreme Court cases interpreting and implementing the Code, including the seminal *Waiāhole* case, 94 Hawai‘i 97, 9 P.3d 409 (2000). As that case recognizes, the Code’s Declaration of Policy is the statutory expression of the public trust doctrine, which is more fundamentally a *constitutional* mandate. *See id.* at 145-46, 9 P.3d at 457-58. The Court found that the Code’s statutory public trust is “essentially identical” to the constitutional public trust. *See id.* This declaration of the public trust in the Code, which has remained the same since the Code was originally enacted more 30 years ago, is not the proper place for an ad hoc amendment to promote a specific use.

The proposed Code amendment is also questionable as a matter of prudent water policy. In its experience, Earthjustice is familiar with the widespread practice of successors to former plantations diverting flows from public rivers and streams in excess of actual needs and simply banking the diverted water in antiquated, unlined former plantation reservoirs, where the water is lost through seepage and evaporation, or is even dumped out of the reservoirs into drainage ditches and gulches. SB 2828's Code amendment would appear to endorse such water banking and waste, for the purported potential contingency of fire safety.

To be clear, Earthjustice does not oppose the use of reservoir water for fire control as an *ancillary* use and benefit of a reservoir that otherwise supplies actual needs for reasonable-beneficial offstream uses such as bona fide agriculture. Declaring the diversion and maintenance of fresh water reservoirs for potential fire control as a categorical beneficial use *in itself*, however, requires an additional leap that currently lacks concrete, substantive support. Such a blanket policy declaration necessitates more thoughtful and holistic analysis of the actual need for such reservoir supplies (depending on region-specific considerations), the overall benefits and costs (economic, social, and environmental) of continually maintaining them, as well as alternatives (e.g., using ocean water) and mitigation (e.g., requirements to line ditches and reservoirs to minimize waste).

Finally, to the extent that a bona fide public interest and need for reservoir water for fire safety can be shown, nothing in the Code presently prevents the Commission from facilitating and permitting such uses. In other words, SB 2828's proposed Code amendment is a "solution without a problem." Moreover, as discussed above, the proposed "solution"—i.e., a piecemeal insertion in the Code's declaration of the public trust doctrine—will only raise more questions and problems.

For the foregoing reasons, Earthjustice opposes SB 2828 and respectfully requests that it be **held, or at least amended to delete the proposed amendment of the Code**. Mahalo nui for this opportunity to testify. Please do not hesitate to contact us with any further questions or for further information.

Isaac H. Moriwake



Attorney
Earthjustice

SB-2828

Submitted on: 2/4/2020 1:14:05 PM

Testimony for WTL on 2/5/2020 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
james Kimo Falconer	Individual	Support	No

Comments:

Dear Chair Kahele and members of the WTL committee,

West Maui is in a situation where none of the former sugar plantation reservoirs are holding water largely due to the CWRM rulings that has affected diverted water to no longer flow to this infrastructure. Most of the native forest lands and former sugar lands that lie fallow are inaccessible by ground crews to fight brush fires. MFD must use helicopters to dump water for fire control.

Due to the recent loss of water to these reservoirs the air crews must pull water from the ocean or even private swimming pools. Salt water is harmful to the soil and our native forests and ocean proximity is often too far to reasonably fight a high altitude or otherwise remote blaze. We are very lucky not to have injuries from recent fires. Most of these reservoirs, once filled can have the water redirected back into the streams if need be.

Please support a discussion to help in this situation and move this bill forward.

Mahalo,

James Kimo Falconer