

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

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**Testimony of  
SUZANNE D. CASE  
Chairperson**

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

**Friday, January 31, 2020  
1:45 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 3018  
RELATING TO TRADITIONAL HAWAIIAN PRACTICES**

Senate Bill 3018 proposes to amend Sections 174C-48 and 174C-93, Hawaii Revised Statutes (HRS), and requires that the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department), exempt the traditional and customary practice of kalo farming on kuleana lands by native Hawaiians from the requisite permit for: 1) withdrawal, diversion, impoundment, or consumptive use of water; and 2) construction or alteration of a stream diversion works. **The Department appreciates the intent of this measure and offers the following comments.**

The Commission recognizes and respects the importance of kalo cultivation in native Hawaiian culture, and recognizes the traditional knowledge and practices that allowed native Hawaiians to thrive and live sustainably on these Hawaiian Islands for centuries prior to foreign contact. However, the complete elimination of permitting requirements for native Hawaiians conducting the traditional and customary practice of kalo farming on kuleana lands potentially reduces protection of kalo farming in areas of competing water needs (surface water management areas), may result in inadequate water budgeting, may negatively impact instream flows, and raises land ownership questions outside the jurisdiction of the Commission.

The first amendment to Section 174C-48, HRS, proposes to eliminate the requirement of water use permits for any person making any withdrawal, diversion, impoundment, or consumptive use of water in a designated water management area for native Hawaiians conducting the traditional and customary practice of kalo farming on kuleana lands. The Commission is currently

**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

deliberating on contested case hearing CCH-MA15-01 on the surface water use permits, integration of appurtenant rights, and amendments to the interim instream flow standards in the Nā Wai ‘Ehā surface water management area (Nā Wai ‘Ehā), consisting of the Waihe‘e, Waiehu, Wailuku, and Waikapū Streams. Nā Wai ‘Ehā is the first designated surface water management area in Hawai‘i and the contested case consists of over 100 parties representing over 175 individual water use permit applications. The Commission is tasked with balancing the withdrawal of surface water from Nā Wai ‘Ehā streams and protecting instream uses, while also accounting for a multitude of noninstream uses including kalo cultivation.

In Nā Wai ‘Ehā, and other proceedings, the Commission has relied on water use estimates ranging from 100,000 to 300,000 gallons per acre per day required for kalo cultivation. Stream water is either diverted into legacy plantation ditches or more traditional ‘auwai (ditch) to feed lo‘i kalo, experiencing water loss through seepage and evaporation along the thousands of feet or miles from stream source to lo‘i. In some instances, water is returned to the stream (ho‘i), but for many farmers in Nā Wai ‘Ehā water is not always returned to the stream of origin or returned to a stream at all. However, the Commission has a responsibility to account for consumptive water uses, particularly in the protection of instream uses and appurtenant water rights. Application for a water use permit is the most direct and efficient means to obtain this information in water management areas. Elimination of the requirement to obtain a water use permit or provide water use information through some other means, essentially removes kalo cultivation from the water budget accounting and may result in reduced overall protections for kalo, particularly in such surface water management areas where there is already a high degree of competition for limited water resources. In other words, if the Commission is unaware of a kalo farmer’s water use, those needs may not be accounted for and ensured through the issuance of a water use permit.

The second amendment to Section 174C-93, HRS, proposes to eliminate the requirement of stream diversion works permits for the construction or alteration of stream diversion works by native Hawaiians conducting the traditional and customary practice of kalo farming on kuleana lands. In the development of measurable instream flow standards, the Commission relies heavily on the information provided by registered diversion works (diversions existing prior to the enactment of the State Water Code) and permitted stream diversion works. The Commission has the duty to balance these noninstream uses with instream uses, such as stream fauna and recreation, in consideration of the stream hydrology. Not having a complete picture of water uses and needs, including those of kalo cultivation, could severely hamper the Commission’s ability to prepare meaningful water budgets.

Furthermore, the stream diversion works permit is intended to regulate the withdrawal of water from streams to ensure sufficient water for multiple uses along the length of stream, including, but not limited to, keeping water flowing in its natural state, traditional and customary practices, domestic uses, and water for the Department of Hawaiian Home Lands. The proposed measures assume that kalo is a non-consumptive use and that water is returned to the stream of origin. However, as evidenced in Nā Wai ‘Ehā, the cultivation of kalo is a consumptive use (though the amount of water varies widely based on a multitude of factors) and water for kalo farming is not always returned to the stream of origin, if at all. Without complete regulation of stream diversion works from mauka to makai, there is a potential for unregulated diversions of water

from a stream, negatively impacting streamflows and possibly pitting farmer against farmer when there are insufficient flows to meet downstream needs.

The proposed measures also raise issues regarding land ownership. Lo'i kalo were traditionally irrigated with water from an 'auwai which conveyed water from the source stream to the lo'i. In modern times, particularly in urban areas, these 'auwai are no longer in existence or are disconnected as they traverse the landscape from one property to the next. Whether a modern kalo farmer intends to irrigate their lo'i kalo from an 'auwai or plastic pipe, they are sometimes faced with the challenge of crossing multiple properties, requiring permission or easements from multiple landowners, before reaching the stream source. The stream diversion works permit is one mechanism for ensuring that a farmer has those permissions in place prior to the installation or construction of their stream diversion works. These land ownership issues are outside the jurisdiction of the Commission.

In summary, the Commission is supportive of kalo cultivation by native Hawaiians throughout the Hawaiian Islands and is committed to working with other agencies to reduce permitting hurdles for kalo farmers. As stated previously, the complete elimination of permitting requirements for native Hawaiians conducting the traditional and customary practice of kalo farming on kuleana lands, potentially reduces protection of kalo farming in areas of competing water needs, may result in inadequate water budgeting, may negatively impact instream flows, and raises land ownership questions outside the jurisdiction of the Commission.

Thank you for the opportunity to comment on this measure.

**SB-3018**

Submitted on: 1/28/2020 7:11:58 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:

**SB-3018**

Submitted on: 1/29/2020 12:08:46 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dawn Poiani	Individual	Support	No

Comments:

Support SB3018

Traditional Hawaii practices should be supported by the state and undue restrictions resisted.

**SB-3018**

Submitted on: 1/29/2020 9:39:43 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Individual	Support	No

Comments:

**SB-3018**

Submitted on: 1/29/2020 5:57:40 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
cheryl	Individual	Support	No

Comments:

Anything that we can do to support Kanaka in their efforts to farm Kalo or continue traditional practices should be supported always. The `Ä• ina is waiting for all of us to understand its importance and do the pono thing.



Pono Hawai'i Initiative

Josh Frost - President • Patrick Shea - Treasurer • Kristin Hamada  
Nelson Ho • Summer Starr

Thursday, January 30, 2020

Relating to Traditional Hawaiian Practices  
Testifying in Support

Aloha Chair and members of the committee,

The Pono Hawai'i Initiative (PHI) **supports SB3018 Relating to Traditional Hawaiian Practices**, which exempts traditional and customary practices of kalo farming on kuleana lands from certain water permits. This measure will help remove hurdles for Native Hawaiians who are trying to preserve and cultivate their land. Traditional Native Hawaiian farming has always played a vital role in preserving and sustaining the quality of life without creating adverse impacts to the land and ahupua'a.

SB3018 will help the state move toward food sustainability by encouraging more locally grown food.

For all these reasons, **we urge you to move this bill forward.**

Mahalo for the opportunity,  
Gary Hooser  
Executive Director  
Pono Hawai'i Initiative



**SB-3018**

Submitted on: 1/29/2020 8:37:22 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Megan Fox	Testifying for Malama Kauaâ€™i	Support	No

Comments:

This is supportive of local agriculture and traditional farming practices. Please support.

**SB-3018**

Submitted on: 1/29/2020 8:31:55 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tina Taniguchi	Individual	Support	No

Comments:

A farmer that practices in such a traditional manner cannot be expected to get permits or be told how to manage their farm. Lo'i farming is by the lay of the land, the way the water flows not to be cookie cutter 'what's done for one is done for all'. The effect of Lo'i kalo farming is minimal and goes according to the land so I do not think there needs to be any restrictions on it at this time.

**SB-3018**

Submitted on: 1/29/2020 9:06:38 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Cabalse	Individual	Support	No

Comments:

**SB-3018**

Submitted on: 1/29/2020 9:12:15 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion McHenry	Individual	Support	No

Comments:

Please pass this bill.

Mahalo,

Marion McHenry

Kauai

**SB-3018**

Submitted on: 1/29/2020 9:26:13 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katy Benjamin	Individual	Support	No

Comments:

Aloha,

It is crucial at this time in history that Kanaka Maoli rights be amplified continuously. But supporting this bill, Kanaka will have access to the precious water their kupuna have used to farm kalo for generations. Please vote in support of SB3018.

Kathryn Benjamin

Kalo farmer, Hilo, HI

**SB-3018**

Submitted on: 1/29/2020 9:34:15 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Maile Lavea-Malloe	Testifying for Hui Aloha ?Aina O Puna	Support	No

Comments:

Hawaiians know what Hawaii needs. Malama Pono.

**SB-3018**

Submitted on: 1/29/2020 10:10:56 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Blaine De Ramos	Individual	Support	No

Comments:

I support SB3018

**SB-3018**

Submitted on: 1/29/2020 10:18:08 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine Cook	Individual	Support	No

Comments:

I am grateful for the opportunity to express my support of Bill SB3018. How wonderful that the legislature is willing to support farmers cultivating Hawai'i's most culturally relevant crops. It seems only fitting that taro farmers receive all the support possible. Taro used to be grown everywhere in Hawaii. When sugar took over and so much water was diverted from the taro fields the cultivation of taro was severely affected. Yet it is the staple food of the indigenous people. Anything that can be done to support farmers who are willing to grow this important crop is a step in the right direction and I give it my fullest support.

Sincerely

Christine A. Cook



**SB-3018**

Submitted on: 1/30/2020 8:31:05 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hoapili Ane	Testifying for Ho'oulu 'Aina Farms	Support	No

Comments:

**SB-3018**

Submitted on: 1/30/2020 8:33:31 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chana Ane	Individual	Support	No

Comments:

**SB-3018**

Submitted on: 1/30/2020 9:34:06 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ashley Gutierrez	Individual	Support	No

Comments:

My name is Ashley Gutierrez, I come from many generations born and raised in Hawaii whom practiced traditional Hawaiian farming. I was born on Kauai and raised in Hanalei Valley, which is known for its Lo'i. I am in full support of the perpetuation of traditional Hawaiian Loi Farming and practices.

We should be restoring our Ahupuaa's which would in turn help our People. Kauai is known for its beautiful beaches, yet our reefs are dead. I believe it all begins Mauka and ends Makai. Due to heavy floods and the mismanagement of the wetlands (i was born and raised in the area, so I know) from Fish and Wildlife and DLNR rerouting the river, EROSION is happening, our family is losing land, the sediment ends up on the reef. If we opened back up the ancient auwai (ditches) and made loi patches Mauka, there would be less pressure for flooding in the Hanalei River. Loi is the key!

I say all this because my family is willing to open up what land we have left for the children to come to the HANALEI RIVER VALLEY WETLANDS and gain hands on experience. We are willing to volunteer our time and knowledge to keep future generation interested in traditional hawaiian farming and practices. Also more food organic food production for the people is happening, it's a win win situation.

Please pass this bill and have the native community and future generations on your mind, mahalo.

**SB-3018**

Submitted on: 1/30/2020 9:41:14 AM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Support	No

Comments:

**SB-3018**

Submitted on: 1/30/2020 12:46:55 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kelvin Ho	Individual	Support	No

Comments:

Aloha Chair and Committe members

I wish to submit testimony in favor of the SB3018. Water rights and access by Kalo farmers in Hawaii need to be given every priority and deserve all our support. Let us recognize the importance on all levels of practice of Kalo farming and all Native practices.

Mahalo

Kelvin Ho

Lawai, Kaua'i

**SB-3018**

Submitted on: 1/30/2020 1:02:53 PM

Testimony for HWN on 1/31/2020 1:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jane Au	Individual	Support	No

Comments:

My name is Jane Au and I am from Maeaea (Haleiwa). I support SB3018. This bill will do much good not only for the native Hawaiian community, but the wider population in Hawaii. We need to support, explore, and engage in practices that lead to local, sustainable food production. Studies have shown that forms of indigenous agriculture, like the traditional farming practices named in this bill, are far more resilient to the effects of the climate crisis. This is the future of food production in Hawaii. The answers for our future can be found in lessons from the past. The future of our keiki is dependant on us finding more ethical ways to feed ourselves. This is it! Please support SB3018!