



SB1122 SD1  
RELATING TO THE COUNTY BOARDS OF WATER SUPPLY  
Ke Kōmike ‘Aha Kenekoa o ka Ho‘okolokolo

Pepeluali 25, 2021

9:30 a.m.

Hālāwai Keleka‘a‘ike

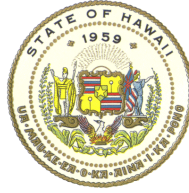
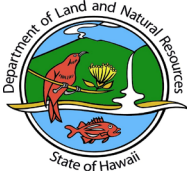
The Office of Hawaiian Affairs’ (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **SUPPORT** SB1122 SD1, which would provide needed protections for the Department of Hawaiian Home Lands’ (DHHL) water rights to ultimately facilitate their mission and our shared interests to house our shared native Hawaiian beneficiaries.

**OHA notes that there have been longstanding concerns involving the actual enforcement and practical implementation of DHHL’s water rights, which may be often overlooked in county decision-making processes.** For example, while the DHHL may apply for and receive water reservations from the Commission on Water Resource Management (CWRM), these reservations fail to materialize at the county level. Ultimately, without being able to realize previously approved water reservations, DHHL cannot fulfill its mission of providing homesteading opportunities for its native Hawaiian beneficiaries. This bill will add needed safeguards to DHHL’s water reservations and further facilitate a less cost prohibitive and expedient return of native Hawaiians to the land.

Designating appropriate representation for the interests of current and future DHHL beneficiaries on county boards of water supply will further ensure DHHL’s water rights are preserved. Both the Hawai‘i State Constitution and the State Water Code provide DHHL and its beneficiaries with unique rights to our public trust water resources. These rights may be essential to fulfilling the State’s and DHHL’s critical responsibilities, to serve the beneficiaries and manage the assets of the Hawaiian Home Lands Trust; such rights, for example, include the right to reserve water for future DHHL needs, as well as the right to enjoy a priority for water use in designated water management areas, among others. **By adding the appropriate DHHL beneficiary interest representation to the county councils board of water supply, this will further facilitate a greater understanding of DHHL’s unique water rights and needs, and better ensure that county decision-making properly considers DHHL’s historical and practical challenges and concerns relating to its water rights.**

Accordingly, OHA urges the Committee to **PASS** SB1122 SD1. Mahalo for the opportunity to testify 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 Committee on  
JUDICIARY**

**Thursday, February 25, 2021  
9:30AM  
State Capitol, Via Videoconference**

**In consideration of  
SENATE BILL 1122, SENATE DRAFT 1  
RELATING TO COUNTY BOARDS OF WATER SUPPLY**

Senate Bill 1122, Senate Draft 1 proposes to clarify the requirements on the County Boards of Water Supply; and adds representation on the County Boards of Water Supply of the interests to be served by the allocation of water for current and foreseeable development and use of Hawaiian Home Lands as set forth in section 221 of the Hawaiian Homes Commission Act 1920, as amended. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department is concerned that this bill may impair its ability to obtain water service for its major proposed development projects, including an industrial and business park at Pulehunui, Maui and the East Kapolei Transit Oriented Development project. While the Department appreciates the obligations to the beneficiaries of the Department of Hawaiian Home Lands (DHHL), the Department believes that the water needs of all public projects should be addressed, rather than only those of DHHL. Additionally, with respect to the proposed subsection (d) in Section 2 of this measure, land that is set aside by Governor's executive order to a county water board or department of water supply for the explicit purpose to provide water service to the public pursuant to Section 171-11, Hawaii Revised Statutes (HRS), the Department believes should not be also subject to the requirements of Section 171-58, HRS.

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  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

## OFFICE OF THE MANAGER AND CHIEF ENGINEER

DEPARTMENT OF WATER, COUNTY OF KAUAI

MARK R. KNOFF, P.E., Ph.D. MANAGER AND CHIEF ENGINEER

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Testimony of

Mark R. Knoff, P.E., Ph.D., Manager and Chief Engineer  
Department of Water, County of Kauai  
Before the Senate Committee on Judiciary  
State Capitol, Room 204

February 19, 2021

The Honorable Senator Rhoads, Chair  
The Honorable Senator Keohokalole, Vice Chair  
And the Members of the  
Senate Committee on Judiciary  
State Capitol, Room 204  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Dear Chair Rhoads, Vice Chair Keokokalole and Members:

**Subject: SB1122, SD1, HB968 RELATING TO THE COUNTY BOARDS OF WATER  
Senate Committee on Judiciary**

The Department of Water, County of Kauai respectfully submits the following testimony in strong opposition to SB1122, SD 1. The bill will have unintended consequences by modifying board structures; it is in essence an unfunded mandate; and it interferes with the Department's ability to perform its fundamental duties and responsibilities.

SB1122 overrides the Kauai County charter establishing the water board's makeup creating a knowledge shortfall in technical and planning expertise. The Kauai County Charter outlines the Board of Water Supply (BWS) membership. All members, except for ex-officio members, are appointed by the mayor with council approval. As proposed, the Planning Director, an ex-officio member, would be eliminated from the board. You are essentially eliminating the board member that is responsible for safeguarding all public water development interests, regardless of affiliation. They would be replaced by a special interest group that does not have the knowledge and insight of the overall development plan for the county. Overall, the bill undermines the County's ability to successfully manage its water resources.

The bill requires the BWS to report and reserve all available water credits held by the County for all of their respective systems, for the Department of Hawaiian Home Lands (DHHL) by June 30<sup>th</sup> of each year. The DHHL has until September 30<sup>th</sup> to identify needed credits and release the remainder back to the Department. Water credits would not be available to the Department until they were released by DHHL. First, this is an unfunded mandate, because nothing in the bill stipulates that DHHL will pay for the development and capital costs for the credits they reserve. Essentially, this transfers the financial burden on all other water customers on the island.

[www.kauaiwater.org](http://www.kauaiwater.org)

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The Honorable Senator Rhoads, Chair  
The Honorable Senator Keohokalole, Vice Chair

And the Members of the Senate Committee on Judiciary

**Subject: SB1122, HB968 RELATING TO THE COUNTY BOARDS OF WATER**

February 19, 2021

Page 2 of 2

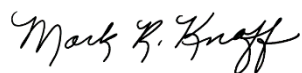
Second, it interferes with the Department's ability to perform its fundamental duties. The bill language is vague and over-reaching with respect to credits. It is vague because it does not define a held water credit. The bill does not specify if a held credit includes those allocated through the plan review process, or those allocated because construction has already begun. As such, the Department cannot perform its normal planning and permitting activities from June 30 until September 30 of each year, since DHHL will have the first right of refusal over any and all credits during that time period.

It is over-reaching in that DHHL would control all water credits in every water system, even though they may not have any planned DHHL projects in those water systems, essentially holding hostage all other development, including affordable housing, in the County. There is no sunset established for DHHL should they reserve credits. This would have a significant financial impact on driving water source development capital costs in areas where they may not necessarily be needed. It may force the Department to drill new wells, build new storage tanks, and install new distribution systems to meet other projected developments. It does not appear that DHHL is financially obligated to participate in that infrastructure development. This places an undue financial burden on current water customers.

DHHL's illustration of Hanapepe, Kaua'i is a perfect example of why the current system is working. When the environmental assessment was being completed the project had not received any funding, yet DHHL requested that credits be set aside for a project that might not come to fruition because of funding. Even though the department would not let DHHL bank the water credits, DHHL was notified a month ago that the project will be conditionally approved for a full water allocation, using the department's established process. DHHL is planning another 200-lot subdivision in Hanapepe. According to DHHL staff, development is not expected to begin for 10 years. Under this bill, DHHL would be able to bank those credits, essentially for an indefinite period. As a result, the department may be forced to redirect and expend its limited financial resources to develop new infrastructure that may not even be needed. Again, putting an undue burden on our current customers and potentially unnecessarily inflating rates.

Thank you for your time and consideration of the DOW's testimony in opposition to SB1122. The bill Impacts the Board's ability to successfully manage the island's drinking water resources, has a deleterious effect on the Department's ability to carry out its duties and responsibilities, and ultimately holds hostage the Kaua'i water system.

Respectfully submitted,



Mark R. Knoff, P.E., Ph.D.  
Manager and Chief Engineer

cc: Honolulu Board of Water Supply  
Department of Water Supply, County of Hawai'i  
Department of Water Supply, County of Maui

## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843  
www.boardofwatersupply.com




February 25, 2021

RICK BLANGIARDI, MAYOR

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KAPUA SPROAT, Vice Chair  
RAY C. SOON  
MAX J. SWORD  
NA'ALEHU ANTHONY

JADE T. BUTAY, Ex-Officio  
ROGER BABCOCK, Jr., Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer 

The Honorable Karl Rhoads, Chair  
and Members  
Committee on the Judiciary  
Hawaii State Capitol,  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

**SUBJECT: Senate Bill 1122, SD1 – Relating to the County Boards of Water Supply**

The Board of Water Supply (BWS), City and County of Honolulu strongly opposes Senate Bill (SB) 1122, SD1, relating to the county boards of water supply. This bill attempts to disregard pre-existing legal protections and systems regarding water use and allocation, and usurps “home rule” guarantees found in the State Constitution and Title 6, Hawaii Revised Statutes (HRS).

Under HRS § 46-1.5(23), the State conferred upon the counties the general powers to: (i) establish and maintain waterworks; (ii) collect rates for water supplied to consumers; (iii) install water meters whenever deemed expedient; and (iv) take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and to enlarge, develop and improve the same.

Nonetheless, SB1122, SD1, seeks to require each county board of water supply to apply for water licenses of any waters it develops or has in its system emanating from state lands. On this issue, the BWS concurs with DLNR’s February 16, 2021 testimony affirming that land set aside by the State to a county board of water supply for the explicit purpose of providing water service to the public is not subject to the requirements of HRS § 171-58, which is cited in section 2 of the proposed measure.

BWS further notes that section 2 of this bill appears to sidestep and undermine the comprehensive Water Use and Development Plan process articulated in HRS 174C-31(b), and the Commission on Water Resource Management’s (CWRM) statutory authority to address current and foreseeable development and use needs of the Department of Hawaiian Home Lands (DHHL). See HRS § 174C-31(q).

Whether or not the terms “water credits” and “water licenses” have been intentionally or inadvertently conflated with “water leases” in this bill, SB1122, SD1, improperly shifts the State’s constitutional and financial responsibilities relating to the management and

disposition of the Hawaiian Home Lands to the county boards of water supply. See, *generally*, Article XII, section 1 of the State Constitution; see also *id.* at section 2 (“The legislature shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots . . .”). The BWS does not believe it is appropriate for DHHL to expect the allocation of water without contributing to the system and infrastructure and shift the burden of costs to water rate payers.

BWS previously submitted testimony dated February 16, 2021 expressing concerns and recommendations to the Senate Committee on Hawaiian Affairs, but said Committee moved SB1122, SD1, forward without addressing the following substantive and technical comments:

1. Article VIII, §2 of the State Constitution provides for each political subdivision to have the power to frame and adopt a charter for its own self-governance. Title 6, HRS, allows the counties to organize and administrate, and enact general laws allocating and reallocating powers and functions. Further, under section 54-12, HRS, the Mayor of each county shall, with the advice and consent of the council, nominate the members of the county board of water supply stipulating the makeup of the members of the board. The Revised Charter of the City and County of Honolulu (RCCH) 1973, as amended, establishes the BWS as a semi-autonomous City agency. This bill appears to override the RCCH Sections 7-104 and 13-103 governing appointment of the members of the board.
2. This bill also requires that “at least one of the five members shall *represent the interests* to be served by the allocation of water for current and foreseeable development and use of Hawaiian Home Lands as set forth in section 221 of the Hawaiian Homes Commission Act, 1920, as amended.” The phrase “represent the interests” is vague and open to interpretation.
3. This bill attempts to amend §54-12, HRS, by amending the composition of the members of the county boards of water supply by requiring that “at least one of the five members shall *represent the interests* to be served by the allocation of water for current and foreseeable development and use of Hawaiian Home Lands. Currently, BWS already has three members of the BWS Board who are Native Hawaiians and are well versed in Native Hawaiian law and customary rights; two of which speak the language. One Board member is a law professor and director of the Ka Huli Ao Center for Excellence in Native Hawaiian Law and has written extensively about Native Hawaiian water rights. In prior testimony dated February 16, 2021, William Aila – Chair of Hawaiian Homes Commission, specifically recommended to add DHHL as a member on all county boards of water supply; this is unnecessary. There are many professionals from the Hawaiian community that would be qualified to serve on the county boards of water supply that support water for DHHL.

4. Section (d) of the bill is inconsistent with language in section 171-58, referring to leases, not licenses.
5. There is an apparent inconsistency and lack of integration between the applicability of water rights under Chapter 171-58, HRS, Mineral and Water Rights and Chapter 174C State Water Code. For example, §171-58, HRS, language seems to treat water as a commodity to be temporarily leased for profit and only mentions degradation of water quality but is absent protections for public trust resources or requirements for reasonable and beneficial use. In particular, the requirement for water leases on state lands under §171-58 confuses and may conflict with the requirement for a water use permit in designated water management areas under 174C.
  - a. Most of Oahu's aquifers are already designated water management areas, except for Waianae and BWS is pursuing Waianae designation establishing State administrative control over all of Oahu's aquifers to ensure consistent reasonable-beneficial use of the water resources in the public interest.
  - b. Standard water use permit conditions already have protections for water for DHHL.
    - i. Authorized water use is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.
    - ii. The permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to meet legal obligations to the Department of Hawaiian Home Lands, if applicable;

In summary, this bill disregards pre-existing legal protections and systems regarding water use and allocation, usurps "home rule" guarantees found in the State Constitution and is unnecessary because water for DHHL on Oahu is already comprehensively planned and being implemented.

Thank you for your consideration of our testimony in opposition to SB 1122, SD1.

Very Truly Yours,

  
ERNEST Y.W. LAU, P.E.  
Manager and Chief Engineer





DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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February 22, 2021

TESTIMONY OF KEITH K. OKAMOTO, MANAGER-CHIEF ENGINEER  
DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII

HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 25, 2021

TIME: 9:30 a.m.

PLACE: Via Videoconference

**SB1122 SD1 – RELATING TO THE COUNTY BOARDS OF WATER SUPPLY**

Honorable Chair Karl Rhoads, Vice-Chair Jarrett Keohokalole, and Committee Members of the Senate Committee on Judiciary,

The Department of Water Supply, County of Hawaii (DWS) **strongly opposes** Senate Bill 1122 SD1. As written, the bill contains provisions that would adversely impact our ability to service communities across Hawaii island with potable water in a financially responsible manner.

We support the need for, and share the desire to see progress on DHHL projects and place lessees on the lands. However, placing blame and additional burden on the County Boards of Water Supply is misdirected.

Section 1. of SB1122 SD1 references Article XII, section 2 of the State Constitution. What is notably left out, is language from section 1 of the same Article XII, which states in part, “the legislature (*emphasis added*) shall make sufficient sums available for the following purposes: (1) development of home, agriculture, farm and ranch lots; etc.”

Section 2. of SB1122 SD1 generally appears to have 2 main desired outcomes: preferred priority of DHHL projects, and ability for DHHL to attain water for their projects without fair or perhaps any financial contribution. We believe we can continue to collaborate with DHHL to assist and compromise in these two areas without legislation. Examples of this collaboration are briefly identified below.

Water infrastructure development agreements that take advantage of partnering to allow for oversizing of infrastructure for each other's needs. Some of the more recent projects include:

- Villages of La'i'Opua (Villages 3, 4, and Portion of 5)
- La'i'Opua 2020 Development
- Palani Transmission (DWS CIP project - DHHL participation)
- Puukapu (Kuhio Village)
- Puukapu Farm Lots
- Puukapu Hybrid Water System/Lalamilo Subdivision (DWS Waimea Well CIP project – DHHL participation)
- Honokaia Pastoral Lots
- Hilo Scattered Lots (Kaumana-Piihonua, Keaukaha)
- Panaewa Farm Lots
- Makuu Farm/Ag Lots

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The DWS is also actively participating/assisting with the planning and design of several future developments requiring water infrastructure improvements including the following:

- Ka'u Pastoral Lots and future DHHL developments from the Naalehu-Waiohinu water system
- Panaewa Lot 185

The proposed bill would adversely impact the existing cooperation and collaboration between DWS and DHHL as it appears to put all of the burden on the DWS. The DWS does not feel that it is appropriate for DHHL to demand water from DWS systems without contributing to the system infrastructure.

The DWS also does not believe that this proposed legislation accords with the intent of Section 221 of the Hawaiian Homes Commission Act (HHCA). The DWS is a semi-autonomous agency that operates and maintains 23 public water systems primarily with revenues generated by its customers. This revenue must cover both the operational and capital improvement costs to ensure that we can continue to provide water service that meets the requirements of the Safe Drinking Water Act for public health and safety. The DWS does not sell water as a commodity as it appears to be addressed in the water license issues in this section of the HHCA. Section 221(f) also addresses water systems under the control of the department (DHHL) "shall remain under the exclusive control of the department provided that the department may negotiate an agreement to provide for the maintenance of the water system and the billing and collection of user fees." DWS has historically entered into an agreement consistent with these requirements wherein user fees have been determined by water rate studies and set by the Water Board.

The DWS also feels that it is DHHL's prioritization of their projects that would drive infrastructure improvements. Shifting the planning as well as financing of those improvements will ultimately be devastating to an already restricted DWS budget. The DWS cannot provide all of DHHL's water needs free of infrastructure improvements and/or charges and maintain a reasonable rate to its customers. DWS is not equipped to install water systems for proposed developments that may not come to fruition in a timely manner. That would further deplete the DWS budget as well as potentially introduce concerning water quality issues that could impact existing DWS customers.

Besides the financial challenges described above, there may also be legal ramifications as we have existing agreements with parties (private and government) which include obligations for water development and use on specific project lands.

We may be open to the provision regarding the allocation of all water developed by DHHL. Normally, we retain a portion due to the fact that we are responsible for the operation and maintenance costs of the source in perpetuity. The portion we normally retain is for the overall community benefit.

We agree with DLNR Chairperson, Suzanne Case in which she stated in previous testimony, "with respect to the proposed subsection (d) in Section 2 of this measure, land that is set aside by Governor's executive order to a county water board or department of water supply for the explicit purpose to provide water service to the public pursuant to Section 171-11, Hawaii Revised Statutes (HRS), we believe should not be also subject to the requirements of Section 171-58, HRS."

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Section 4. of SB1122 SD1 infringes on County Charter provisions as established by the Hawaii State Constitution, Article VIII, Section 2, in attempting to disproportionately set the requirements of the makeup of the Water Board of the County of Hawaii. Instead, we would welcome DHHL to educate the Water Board on the Hawaiian Homes Commission Act and their Water Policy Plan so that all members have a better understanding.

In summary, this bill is problematic with existing language in the State Constitution, Hawaii Revised Statutes and Hawaii County Charter. Additionally, it will still not ensure timely development of DHHL projects but would be very detrimental to our financial situation and our ability to provide a vital and essential service to our island.

A more productive approach would be continued collaboration with DHHL, including finding opportunities for partnering and cost sharing on projects that would be beneficial to both DHHL as well as the overall community.

Thank you for your time and consideration of DWS's testimony in opposition to SB1122 SD1.

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February 23, 2021

TESTIMONY OF WILLIAM BOSWELL, CHAIR  
WATER BOARD, COUNTY OF HAWAII

HEARING BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 25, 2021

TIME: 9:30 a.m.

PLACE: Via Videoconference

**SB1122 SD1 – RELATING TO THE COUNTY BOARDS OF WATER SUPPLY**

Honorable Chair Karl Rhoads, Vice-Chair Jarrett Keohokalole, and Committee Members of the Senate Committee on Judiciary,

The Water Board, County of Hawaii (DWS) **strongly opposes** Senate Bill 1122 SD1; and stands behind the testimony submitted by Mr. Keith K. Okamoto, Manager-Chief Engineer of our Department of Water Supply.

Thank you for your time and consideration of our testimony in opposition to SB1122 SD1.

*...Water, Our Most Precious Resource...Ka Wai A Kāne...*

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DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON JUDICIARY  
HEARING ON FEBRUARY 25, 2021 AT 9:30 AM VIA VIDEOCONFERENCE**

**SB 1122, SD1, RELATING TO THE COUNTY BOARDS OF WATER SUPPLY**

Aloha Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) is in strong support of this bill, which clarifies requirements on the County Boards of Water Supply and adds representation to their Boards, to further the development and use of Hawaiian Home Lands as set forth in section 221 of the Hawaiian Homes Commission Act (HHCA). This bill was approved by the Hawaiian Homes Commission (HHC) and included in the Governor's package by request of our department.

DHHL appreciates that some changes proposed in this bill face opposition. We assure the Committee that this measure was only crafted after nine years of development and implementation of the HHC Water Policy Plan and specific challenges experienced by DHHL in attempting to secure water for existing and future homesteads when working with Counties.

SB 1122 SD1 is anchored in the Constitutional obligations the State and Counties have to fulfill the HHCA. In the bill, the HHC and DHHL are asking for five systemic changes to the status quo that will more quickly address Hawai'i's obligations to the beneficiaries on the waiting list under the HHCA. These five proposed changes are:

1. The ability to reserve available water credits on a County water system IF a County water system has available and unallocated capacity.
2. Should DHHL need to develop a new water source, DHHL receive the water that is produced from that source. The current practice of the Counties is to withhold a percentage of the water produced from new sources for purposes they alone determine (even when the source was funded by the Legislature for DHHL uses).
3. In times of drought, develop plans to seek use reductions in line with Public Trust principles.
4. Clarify that County Boards of Water Supply are not exempt from the provisions of HRS 171-58.
5. Add DHHL representation on all County Boards of Water Supply as these bodies make major policy decisions that affect the availability of potable water for DHHL.

DHHL acknowledges the testimonies of the City and County of Honolulu BWS and County of Hawaii DWS during the Senate Hawaiian Affairs Committee Hearing. Their testimonies identify potential issues that the proposed legislation may present to their respective operations. DHHL offers the following clarifications and suggestions in response to the concerns that were raised.

**Concerns Raised by County Departments of Water Supply in testimony on SB1122 and noted in Standing Committee Report No. 432**

*Concerns #1 & #2: 1) This measure impacts “home rule” as it pertains to the appointment and composition of Boards of Water Supply, and 2) there is a lack of clarity regarding what it means to “represent the interests to be served by the allocation of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.”*

HRS 54-12 and -54 already provide requirements for the composition of the Boards of Water Supply, including the methods of their appointment, confirmation, size, and requirements for eligibility. Section -12 already requires one member to be the “state district engineer of the [state] department of transportation” and Section 54 imposes requirements of residency and serving as an elector. DHHL’s bill proposes language that it believes do not exceed these existing impacts on “Home Rule” that may occur from the above cited requirements, while still providing that county Boards of Water Supply take into consideration DHHL water needs.

This is sought because DHHL’s needs are sometimes overlooked in policy decisions made by the BWS’s. The bill could be amended to address the County’s concerns by providing more clarity.

*Concern #3: This measure disregards pre-existing legal protections and systems regarding water use and allocation. It does not resolve the apparent conflicts between the management of water use under Chapter 174C Part IV Regulation of Water Use and HRS 171-58 Minerals and water rights.*

DHHL agrees with the observation from the Honolulu Board of Water Supply that in designated water management areas, standard water use permit conditions have protections for water for DHHL. Because of this, DHHL largely agrees with the proposed amended language offered by the Honolulu Board of Water Supply in their testimony before Senate Committee on Hawaiian Affairs.

*Concern #4: This proposed measure could be detrimental to County abilities to provide a vital and essential service by imposing additional costs.*

DHHL believes this concern is based on a misunderstanding that DHHL would receive water credits, under the proposed part (a) in Section 2 of the bill that were already allocated to other users, or in the alternate would require the Counties to develop new source, storage, or transmission to serve DHHL.

Under the proposed legislation, **DHHL and the state will continue to contribute its fair share to improve county systems to accommodate new DHHL homestead development** when needed. Through this legislation, DHHL is seeking the ability to reserve available water credits from a county water system only **IF** a county water system has **available** and **unallocated** capacity.

Should a county have pre-existing water agreements and obligations with other private and government parties, this piece of legislation would not affect those commitments, as DHHL only seeks to reserve water from a county system that is **available** and **unallocated**. DHHL would like to highlight the current practice of the City and County of Honolulu BWS and a current collaborative effort between DHHL and the County of Hawaii DWS to illustrate this point further.

In its testimony to the Senate Hawaiian Affairs Committee, the City and County of Honolulu BWS acknowledges that “*BWS makes existing water system capacity available for DHHL projects under their public trust water rights*” and further “*the Oahu Watershed Management Plan, consisting of 8 regional Watershed Management Plans, codified in Chapter 30, ROH, sets forth the allocation of water for DHHL projects and other land uses on Oahu.*” DHHL greatly appreciates BWS’s current practice to reserve **available** and **unallocated** water on its system for future DHHL projects. This practice of BWS to reserve **available** and **unallocated** water on its system for DHHL development is one of the key reasons why DHHL has been able to develop more homestead lots on Oahu at a faster rate when compared to homestead development on other islands. DHHL would like to see this practice codified across all counties.

As noted in Hawaii County DWS’s testimony, DHHL is working with Hawaii County DWS on several fronts. In North Kona, DWS has communicated to DHHL that its system does not have available and unallocated water to service future DHHL development in the North Kona service area and that additional wells need to be developed. DHHL has been working with DWS on potential development of new wells so that the County system will be able to accommodate future DHHL development in



the county service area. DHHL has pledged to cover the cost of these source developments as well as associated storage and transmission improvements.

However, what would change under this proposed legislation is that when DHHL develops a new well, such as in North Kona, this legislation would ensure that DHHL gets the full amount of water from the well that it developed rather than a just a portion of the water as has been past practice. Hawaii County DWS has stated in its testimony to the Senate Hawaiian Affairs committee that it is open to considering this proposed change. City and County of Honolulu BWS has stated this specific provision would not affect them as DHHL has not developed any wells on the island of Oahu to date.

*Concern #5: This measure is unnecessary because water for DHHL has already been comprehensively planned and is being implemented and would adversely impact existing cooperation and collaboration.*

DHHL has enjoyed a productive long-term relationship with the City and County of Honolulu BWS and growing relationship with Hawaii County DWS under its current administration. We are appreciative of the willingness of both counties to not only work with DHHL but also invest the time to better understand DHHL's water policies and water rights. However, it has been DHHL's experience that not every administration in every county is as generous in spirit and time toward DHHL. Board members and administrations change regularly, and we cannot say with certainty that future administrations in every county will treat DHHL as well as the current boards and administrations have on Oahu and Hawaii Island. For these reasons, from a long-term perspective, we respectfully disagree with the City and County BWS and Hawaii County DWS that this legislation is not appropriate.

The following experience with the current administration of the Maui County DWS illustrates DHHL's long-term concerns and the need for this legislation.

### **Maui County DWS Ualapue Aquifer System Area Ground Water Use Permit Application**

In the summer of 2020, Maui County DWS submitted a ground water use permit application (GWUPA 01094) to utilize water from the Ualapue Aquifer System Area on the island of Molokai to "flush its system" of around 38,000 gallons per day, which is the equivalent amount of water that would be used by 63 homes. It also sought to provide an unspecified number of new meters to the general public. As required by HRS 174C-49, ground water use permit applicants are required to take into consideration the

potential effect the proposed use of water may have on current and future DHHL water needs.

Maui County DWS did not consult with DHHL on its current and future water needs in the Ualapue region prior to filing their permit. DHHL has plans to develop approximately 175 kuleana agriculture lots (lots with minimum infrastructure) on its lands in Ualapue and sought to meet with Maui County DWS to discuss potential partnership options to bring some of the water from its water use permit application to this future DHHL community. However, Maui County DWS ignored DHHL's request to meet. Subsequently via email, the County informed DHHL that "DWS is not able to provide water from our well to this development, or the remaining homesteads" but "DHHL can drill and provide their own source."

As such, DHHL had no choice but to officially comment on the application. When other community members requested a contested case on the matter, DHHL asked to be included as a necessary party. CWRM staff offered mediation to the parties involved as an alternative option to a contested case hearing. All parties except for Maui County DWS agreed to participate in mediation. Subsequently, we have been informed that the Maui County DWS recently withdrew its application before CWRM. No explanation has been communicated to DHHL.

Maui County DWS has done the following: ignored requests to meet with DHHL, stated a desire preferring to "flush" water rather than offer any uses to DHHL, declined to work out issues through mediation, and ultimately withdrew its CWRM water use permit application. It appears that Maui County DWS would rather forfeit the water it was seeking via its water use application than work out a solution with DHHL to bring water to a future Hawaiian homestead community. This incident is a prime example of why SB1122 SD1 is needed.

Two further examples of the challenges that DHHL has faced illustrate the reasons this bill was crafted.

### **Hanapepe, Kauai**

DHHL recently completed the final environmental assessment for a new residential and agriculture homestead development on the island of Kauai. See: [http://oeqc2.doh.hawaii.gov/Doc\\_Library/2020-11-08-KA-FEA-DHHL-Hanapepe-Homestead-Community.pdf](http://oeqc2.doh.hawaii.gov/Doc_Library/2020-11-08-KA-FEA-DHHL-Hanapepe-Homestead-Community.pdf)

The Kauai County Department of Water (DOW) has confirmed there is available water on its system to accommodate up to 75 new lots, reflected in the Draft Environmental Assessment (DEA) section 1.3.8 and confirmed by comment letter on the DEA dated August 24, 2020. However, the DOW said the water may not be available in the future if other developments in the region are constructed first:

*“Any actual subdivision or development of this area will be dependent on the adequacy of the source, storage, transmission facilities **existing at that time.**”*

DHHL’s development timetables are affected in large part from the availability of sufficient state funding. Should DHHL not receive sufficient funding in a timely manner, private developments in the region may move first and use the available capacity on the DOW system. If this occurs, DHHL would then need to develop additional improvements, adding to the time and expense for its homestead development. The inability to reserve credits ultimately impacts our shared kuleana to fulfill the HHCA.

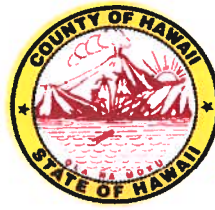
#### **Puunani Homestead, Waikapu, Maui**

DHHL recently completed the FEA for its planned 161 lot residential Puunani homestead on Maui. See: [http://oeqc2.doh.hawaii.gov/Doc\\_Library/2020-11-08-MA-FEA-Puunani-Homestead-Subdivision.pdf](http://oeqc2.doh.hawaii.gov/Doc_Library/2020-11-08-MA-FEA-Puunani-Homestead-Subdivision.pdf)

DHHL has not yet been able to secure water from the Maui County DWS for this new development, though that water is available. The issue has been that DHHL does not fit Maui County’s definition of affordable housing. As on Kaua’i, the inability to reserve available credits ultimately impacts our shared kuleana to fulfill the HHCA.

DHHL is grateful for the hearing of this bill and the deliberation on these critical issues. Thank you for your consideration of our testimony.

Mitchell D. Roth  
Mayor



Lee E. Lord  
Managing Director

Robert H. Command  
Deputy Managing Director

## County of Hawai'i Office of the Mayor

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February 24, 2021

Chair, Sen. Karl Rhodes  
Vice-Chair, Sen. Jarrett Keohokalole  
Senate Judiciary Committee  
Hawai'i State Legislature  
415 S. Beretania St.  
Honolulu, HI 96813

**Subject: S.B. 1122, SD 1**  
**RELATING TO THE COUNTY BOARDS OF WATER SUPPLY**  
**Hearing Date: Thursday, February 25, 2021**  
**Time/Place of Hearing: Videoconference at 9:30 a.m.**

Aloha Chair Rhodes, Vice Chair Keohokalole and Members of the Judiciary Committee:

The County of Hawai'i is expressing its strong opposition to Senate Bill 1122 which will mandate requirements upon county boards of water supply with regards to Department of Hawai'ian Homes Lands, and affect the allocation of water for future developments.

While the County of Hawai'i remains committed to working with DHHL to develop lands on behalf of their lessees, we believe a number of unacceptable consequences will result from this bill. Specifically, the usurping of home rule by mandating the make-up of county water boards and commissions; the reprioritization of resources and reallocation of water credits; and the disregard for systems currently in place to safeguard water usage.

I stand in support of testimony previously submitted by our Department of Water Supply and humbly ask for your committee's consideration of our opposition to this bill. Please feel free to contact me for any additional information.

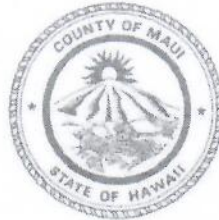
Mahalo

Mitchell D. Roth  
Mayor  
County of Hawai'i

**MICHAEL P. VICTORINO**  
Mayor

**JEFFREY T. PEARSON, P.E.**  
Director

**HELENE KAU**  
Deputy Director



**DEPARTMENT OF WATER SUPPLY**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/water](http://www.mauicounty.gov/water)

February 24, 2021

**Testimony of County of Maui Department of Water Supply  
In Consideration of S.B. 1122 relating to County Boards of Water Supply**

**Before the Senate Committee on  
Judiciary  
Thursday, February 25, 2021  
9:30 AM  
State Capitol, Via Videoconference**

The County of Maui, Department of Water Supply opposes the proposed Bill S.B. No 1122 SD 1. This bill would add undue hardships to all affected county utilities to provide potable water, a public trust use, to our future customers, domestic and otherwise. The County of Maui, Department of Water Supply supports all other counties in their opposition to SB 1122 SD 1.

The Department of Water Supply provides our response to testimony by DHHL on SB 1122, submitted February 26, 2021, to the Committee on Hawaiian Affairs. DHHL testimony states in part: " DHHL has not yet been able to secure water from Maui County DWS for this new development, though water is available. The issue has been that DHHL does not fit Maui County's definition of affordable housing...."

The DHHL proposed housing plan is for Puunani homestead, a 161 lot residential subdivision. Maui DWS is willing to serve DHHL for projects that meet the affordable housing requirements or is a development for public use provided source is available.

Thank you for your consideration of our viewpoint on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey T. Pearson".

Jeffrey T. Pearson, P.E.  
Director of Water Supply  
County of Maui

*"By Water All Things Find Life"*

**SB-1122-SD-1**

Submitted on: 2/24/2021 8:18:57 AM

Testimony for JDC on 2/25/2021 9:30:00 AM

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

Comments:

Aloha:

As a DHHL Beneficiary, I strongly support the intent of SB1122 SD1.

Me ke aloha,

Kamuela Werner