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DEPARTMENT OF LAND AND NATURAL RESOURCES
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Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 9, 2023
9:30 AM

State Capitol, Conference Room 430 & Videoconference

In consideration of
HOUSE BILL 1088
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

House Bill 1088 proposes to clarify the conditions, manner, and areas in which the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department) can declare water shortages and emergencies by amending Section 174C-62, Hawaii Revised Statutes (HRS). **The Department supports this measure.**

Section 174C-62, HRS, did not contemplate the existence of a water shortage and/or emergency due to an immediate degradation of water quality. As the Red Hill crisis has revealed, such shortages and emergencies can come into existence in an instant. Another type of an emergency that requires immediate Commission action are water uses to protect against wildfires. The Commission is proposing amendments in order to implement water shortage and emergency declarations to be able to react to crises in a swift and comprehensive manner to protect public trust resources. This bill serves to clearly define the Commission's authority to declare water shortages and emergencies and the Commission's measures.

Currently, Section 174C-62(g), HRS, with its reference to subsection (c) requires that a water shortage has to be declared by rule in accordance with a water shortage plan before the Commission can declare an emergency. This has resulted in overly burdensome and unnecessary constraints to the emergency declarations process in instances where the emergency is due to an instant degradation in water quality or a wildfire, unlike a slower processing decline in water quantity, which can be anticipated and planned

for. This bill would allow the Commission to declare a water emergency without a prior water shortage declaration by rule.

This bill would require water shortage plans statewide and provide clarity that the Commission has authority to declare water shortages in any area, within and outside of a water management area. The Commission would be required to consider the impacts of the climate crisis in its determination of criteria for water shortage declarations. The bill also proposes to modernize notice requirements by adding notification of water use permit holders per electronic mail and publication of a water shortage and emergency on the Commission's website.

Finally, the bill clarifies the Commission's authority to modify, suspend, and revoke water use permits in the case of a permanent water shortage.

Mahalo for the opportunity to provide testimony in support of this measure.

BOARD OF WATER SUPPLY

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February 9, 2023

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Manager and Chief Engineer

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

The Honorable Linda Ichiyama, Chair
and Members
Committee on Water and Land
House of Representatives
Hawaii State Capitol, Room 430
Honolulu, Hawaii 96813

Dear Chair Ichiyama and Members:

SUBJECT: House Bill 1088: Relating to Water Shortage and Emergency

The Honolulu Board of Water Supply (BWS) offers comments on House Bill (HB) 1088 for your consideration. This bill amends the Water Code §174C-62, Hawaii Revised Statutes (HRS), which requires that a water shortage has to be declared by rule in accordance with the water shortage plan before the Commission on Water Resource Management (CWRM) can declare an emergency. This bill would allow the CWRM to declare a water emergency without a prior water shortage declaration by rule.

The Red Hill fuel crisis is the most unprecedented contamination of Oahu's irreplaceable drinking water resources from Red Hill facility fuel and other hazardous materials such as aqueous film forming foam (AFFF) releases that pose an imminent threat to public health and the environment. However, we feel that §174C-62 is adequate and we are concerned that this proposal broadens the Commission's authority without adequate notice and transparency that the rule adoption requirement provides for public input. If the Commission needs to take faster action, they can request the Governor to exercise his authority under Chapter 127A (127A-14 (c)).

The BWS suggest also that adequate resources be provided to CWRM to support the expeditious development of a statewide water shortage plan. Broadening their authority without adequate transparency and public input is not the solution.

The Honorable Linda Ichiyama, Chair
and Members
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Thank you for the opportunity to testify offering comments for your consideration on
HB 1088.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Ernest Y.W. Lau', written in a cursive style.

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