

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 HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 23, 2022 AT 2:00 PM VIA VIDEOCONFERENCE

IN SUPPORT OF

HB 1768 HD2, RELATING TO THE DISPOSITION OF WATER RIGHTS

February 23, 2022

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) supports this bill that exempts the instream use of water for (1) traditional and customary kalo cultivation practices and (2) commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights.

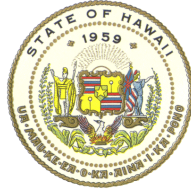
DHHL has been working with the Department of Land and Natural Resources (DLNR) for the past few years on a number of efforts where DLNR is attempting to issue water licenses or leases under HRS 171-58. These include hydroelectric projects on Hawai'i Island and Kaua'i, and agricultural water on Kaua'i, Maui and Hawai'i Island. DHHL has three significant, distinct interests in all these potential leases:

1. A right to have water reserved for its future use from the source;
2. Any traditional and customary rights its beneficiaries may have; and
3. 30% of the revenue generated by the lease.

On November 10, 2020, DHHL held a beneficiary consultation meeting (virtually) with Kaua'i beneficiaries where the proposed water lease of the Wai`oli Kalo Farmer's Hui was described and distinguished from other proposed leases. Beneficiaries were asked to opine on the staff recommendation that no reservation of water or lease revenue be sought from this proposed use, and support was unanimous. In January 2021, the Hawaiian Homes Commission subsequently approved the Beneficiary Consultation report and adopted the staff recommendations. Adoption of this measure would be consistent with the HHCs action and promote the use of water for traditional and customary purposes and not adversely harm DHHL and beneficiaries rights.

Thank you for your consideration of our testimony.

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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 23, 2022
2:00 PM**

State Capitol, Conference Room 325, Via Videoconference

**In consideration of
HOUSE BILL 1768, HOUSE DRAFT 2
RELATING TO THE DISPOSITION OF WATER RIGHTS**

House Bill 1768, House Draft 2 proposes to exempt the instream use of water for 1) traditional and customary kalo cultivation practices and 2) commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights. **The Department of Land and Natural Resources (Department) supports the intent of this measure and offers the following comments.**

The Department acknowledges that the water leasing process currently in place imposes burdensome requirements on water lease applicants, especially smaller agricultural users including taro farmers. The Department supports amending Section 171-58, Hawaii Revised Statutes (HRS), to simplify the water leasing process, including providing certain exemptions from regulatory requirements for taro farmers. The Department's administrative measures have been introduced as House Bill 2164 and Senate Bill 3132. The Department notes that this measure proposes to exempt a disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices and commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from Section 171-58, HRS.¹ The Department understands that this would allow a kalo farmer using water in a manner that meets the criteria in this measure to forego the public auction process and obtain a lease by direct negotiation, subject to review and approval by the Board of Land and Natural Resources. Furthermore, a qualifying applicant would not be required to provide a reservation to the Department of Hawaiian Home Lands (DHHL) nor collaborate with the Department to develop and implement a watershed management plan in order to obtain a water lease, both of which are requirements of the water lease process. However, this measure would not exempt a kalo farmer from obtaining a disposition altogether.

¹ Section 171-58, HRS, is the only statutory provision to regulate dispositions of water rights.

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

The Department believes that a formal disposition of water rights for taro cultivation would benefit both the public trust and taro growers. Executing a formal disposition would provide the Department with the oversight authority to ensure that the water is used appropriate manner consistent with public trust obligations. Additionally, a formal disposition would provide security to the taro farmer with a vested right to use water.² In order to ease the burden and uncertainty faced by taro farmers seeking to obtain a water lease, the administrative measures previously referenced proposed to exempt water leases for taro cultivation from the public auction process, allowing for a direct lease.

However, the Department does not support exempting water leases for kalo cultivation from all of the requirements in Section 171-58, HRS. The Department believes that all water leases, including those for kalo cultivation, should still be subject to DHHL beneficiary consultation and reservation. Furthermore, regardless of use, a water lessee should still contribute to support watershed management. As both the Department and DHHL recognize the challenge and significance of kalo cultivation, the Department believes that both of those requirements could be resolved in a manner that is not overly burdensome to the kalo farmer. The Department offers the following amendment to address these issues:

(h) A public auction shall not be required for a lease of water for the instream use of water for traditional and customary kalo cultivation practices, as well as commercial kalo cultivation conducted in a manner consistent with traditional and customary native Hawaiian practices.

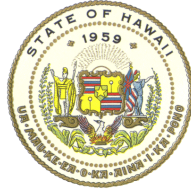
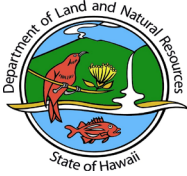
Finally, the Department supports the application of this measure to both subsistence and commercial kalo farmers, provided the manner of cultivation is consistent with traditional and customary Native Hawaiian practices. Many of the taro farmers who may benefit from an exemption have some commercial aspect to their operations beyond solely subsistence needs.³ The Department believes that in order to preserve the practice of taro cultivation and further the State's food sustainability goals, commercial taro farmers should also be considered for amendments to the water lease process targeted to support taro cultivation.

Thank you for the opportunity to comment on this measure.

² Although the Department's Commission on Water Resource Management must reserve an appropriate amount of water for taro cultivation through the determination of instream flow standards, it cannot dispose the right to use water to a specific party.

³ Traditional and customary practices cannot be for a commercial purpose.

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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 23, 2022
2:00 PM**

State Capitol, Conference Room 325, Via Videoconference

**In consideration of
HOUSE BILL 1768, HOUSE DRAFT 2
RELATING TO THE DISPOSITION OF WATER RIGHTS**

House Bill 1768, House Draft 2 proposes to exempt the instream use of water for 1) traditional and customary kalo cultivation practices and 2) commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights. **The Department of Land and Natural Resources (Department) supports the intent of this measure and offers the following comments.**

The Department acknowledges that the water leasing process currently in place imposes burdensome requirements on water lease applicants, especially smaller agricultural users including taro farmers. The Department supports amending Section 171-58, Hawaii Revised Statutes (HRS), to simplify the water leasing process, including providing certain exemptions from regulatory requirements for taro farmers. The Department's administrative measures have been introduced as House Bill 2164 and Senate Bill 3132. The Department notes that this measure proposes to exempt a disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices and commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from Section 171-58, HRS.¹ The Department understands that this would allow a kalo farmer using water in a manner that meets the criteria in this measure to forego the public auction process and obtain a lease by direct negotiation, subject to review and approval by the Board of Land and Natural Resources. Furthermore, a qualifying applicant would not be required to provide a reservation to the Department of Hawaiian Home Lands (DHHL) nor collaborate with the Department to develop and implement a watershed management plan in order to obtain a water lease, both of which are requirements of the water lease process. However, this measure would not exempt a kalo farmer from obtaining a disposition altogether.

¹ Section 171-58, HRS, is the only statutory provision to regulate dispositions of water rights.

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

The Department believes that a formal disposition of water rights for taro cultivation would benefit both the public trust and taro growers. Executing a formal disposition would provide the Department with the oversight authority to ensure that the water is used appropriate manner consistent with public trust obligations. Additionally, a formal disposition would provide security to the taro farmer with a vested right to use water.² In order to ease the burden and uncertainty faced by taro farmers seeking to obtain a water lease, the administrative measures previously referenced proposed to exempt water leases for taro cultivation from the public auction process, allowing for a direct lease.

However, the Department does not support exempting water leases for kalo cultivation from all of the requirements in Section 171-58, HRS. The Department believes that all water leases, including those for kalo cultivation, should still be subject to DHHL beneficiary consultation and reservation. Furthermore, regardless of use, a water lessee should still contribute to support watershed management. As both the Department and DHHL recognize the challenge and significance of kalo cultivation, the Department believes that both of those requirements could be resolved in a manner that is not overly burdensome to the kalo farmer. The Department offers the following amendment to address these issues:

(h) A public auction shall not be required for a lease of water for the instream use of water for traditional and customary kalo cultivation practices, as well as commercial kalo cultivation conducted in a manner consistent with traditional and customary native Hawaiian practices.

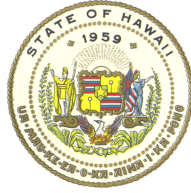
Finally, the Department supports the application of this measure to both subsistence and commercial kalo farmers, provided the manner of cultivation is consistent with traditional and customary Native Hawaiian practices. Many of the taro farmers who may benefit from an exemption have some commercial aspect to their operations beyond solely subsistence needs.³ The Department believes that in order to preserve the practice of taro cultivation and further the State's food sustainability goals, commercial taro farmers should also be considered for amendments to the water lease process targeted to support taro cultivation.

Thank you for the opportunity to comment on this measure.

² Although the Department's Commission on Water Resource Management must reserve an appropriate amount of water for taro cultivation through the determination of instream flow standards, it cannot dispose the right to use water to a specific party.

³ Traditional and customary practices cannot be for a commercial purpose.

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 House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Wednesday, February 23, 2022
2:00 PM**

State Capitol, Conference Room 325, Via Videoconference

**In consideration of
HOUSE BILL 1768, HOUSE DRAFT 2
RELATING TO THE DISPOSITION OF WATER RIGHTS**

House Bill 1768, House Draft 2 proposes to exempt the instream use of water for 1) traditional and customary kalo cultivation practices and 2) commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights. **The Department of Land and Natural Resources (Department) supports the intent of this measure and offers the following comments.**

The Department acknowledges that the water leasing process currently in place imposes burdensome requirements on water lease applicants, especially smaller agricultural users including taro farmers. The Department supports amending Section 171-58, Hawaii Revised Statutes (HRS), to simplify the water leasing process, including providing certain exemptions from regulatory requirements for taro farmers. The Department's administrative measures have been introduced as House Bill 2164 and Senate Bill 3132. The Department notes that this measure proposes to exempt a disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices and commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from Section 171-58, HRS.¹ The Department understands that this would allow a kalo farmer using water in a manner that meets the criteria in this measure to forego the public auction process and obtain a lease by direct negotiation, subject to review and approval by the Board of Land and Natural Resources. Furthermore, a qualifying applicant would not be required to provide a reservation to the Department of Hawaiian Home Lands (DHHL) nor collaborate with the Department to develop and implement a watershed management plan in order to obtain a water lease, both of which are requirements of the water lease process. However, this measure would not exempt a kalo farmer from obtaining a disposition altogether.

¹ Section 171-58, HRS, is the only statutory provision to regulate dispositions of water rights.

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

The Department believes that a formal disposition of water rights for taro cultivation would benefit both the public trust and taro growers. Executing a formal disposition would provide the Department with the oversight authority to ensure that the water is used appropriate manner consistent with public trust obligations. Additionally, a formal disposition would provide security to the taro farmer with a vested right to use water.² In order to ease the burden and uncertainty faced by taro farmers seeking to obtain a water lease, the administrative measures previously referenced proposed to exempt water leases for taro cultivation from the public auction process, allowing for a direct lease.

However, the Department does not support exempting water leases for kalo cultivation from all of the requirements in Section 171-58, HRS. The Department believes that all water leases, including those for kalo cultivation, should still be subject to DHHL beneficiary consultation and reservation. Furthermore, regardless of use, a water lessee should still contribute to support watershed management. As both the Department and DHHL recognize the challenge and significance of kalo cultivation, the Department believes that both of those requirements could be resolved in a manner that is not overly burdensome to the kalo farmer. The Department offers the following amendment to address these issues:

(h) A public auction shall not be required for a lease of water for the instream use of water for traditional and customary kalo cultivation practices, as well as commercial kalo cultivation conducted in a manner consistent with traditional and customary native Hawaiian practices.

Finally, the Department supports the application of this measure to both subsistence and commercial kalo farmers, provided the manner of cultivation is consistent with traditional and customary Native Hawaiian practices. Many of the taro farmers who may benefit from an exemption have some commercial aspect to their operations beyond solely subsistence needs.³ The Department believes that in order to preserve the practice of taro cultivation and further the State's food sustainability goals, commercial taro farmers should also be considered for amendments to the water lease process targeted to support taro cultivation.

Thank you for the opportunity to comment on this measure.

² Although the Department's Commission on Water Resource Management must reserve an appropriate amount of water for taro cultivation through the determination of instream flow standards, it cannot dispose the right to use water to a specific party.

³ Traditional and customary practices cannot be for a commercial purpose.



OFFICE OF HAWAIIAN AFFAIRS

HB1768 HD2

RELATING TO THE DISPOSITION OF WATER RIGHTS

Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
(House Committee on Judiciary & Hawaiian Affairs)

Pepeluali 23,2022

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS HB1768 HD2**, which would exempt the instream use of water for traditional and customary kalo cultivation practices, as well as for commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices, from the existing process for disposition of water rights and that water rights are central for taro cultivation. **This measure provides support for traditional and customary kalo cultivation.**

In 2008, the Hawai‘i State Legislature passed Act 211, which established the Taro Security and Purity Task Force (Task Force). Act 211 directed taro farmers, agencies, and University of Hawai‘i representatives to seek solutions to the challenges facing taro production, taro farmers, and taro markets. Funding and administrative support from OHA enabled the Task Force to meet consistently and to gather input from taro growing communities on all islands over a period of 12 months. The Task Force’s ensuing 2010 Legislative Report, entitled, “E Ola Hou Ke Kalo; Ho‘i Hou Ka ‘Āina Lē‘ia – The Taro Lives; Abundance Returns to the Land,”¹ issued 87 recommendations and grouped them according to the following categories: Land; Water; Economic Viability; Biosecurity; Research; Communication, Education, and Public Awareness; and Hawaiian Taro Varieties.

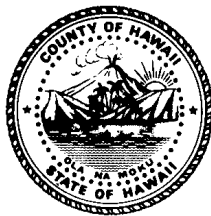
Consistent with the Taro Security and Purity Task Force’s report, this measure provides a legal framework for managing Hawai‘i’s precious freshwater resources, and recognizes the importance of stewarding these resources as a Public Trust for the benefit of present and future generations. Moreover, lo‘i kalo cultivation in a traditional manner continues to create opportunities for community-based cultural and agricultural education while providing vital environmental benefits, such as flood mitigation and groundwater recharge; preserving native habitat for endangered and threatened water birds; advancing food security; and building community and cultural resilience in the face of the rising costs of imported food; and honors and supports appurtenant, riparian, and traditional and customary Native Hawaiian rights and practices.

Traditional and Customary Native Hawaiian water uses for kalo cultivation are non-consumptive, non-polluting, instream, and in-watershed. Therefore, to exempt these uses from HRS § 171 is pono. Kalo farmers utilize a traditional mānowai to take some water from a stream. That water flows through our ‘auwai, into the lo‘i, then back to either to the stream or the lower reaches of the water way. Kalo farmers need water flowing through the lo‘i but they don’t “consume” water like most water users. The water returns

to the streams. All of the use is within the watershed where the water supply originates, including any seepage which also goes back to feed the water cycle in the larger watershed system.

Article XII, section 7, of the Hawaii State Constitution mandates the State to protect the traditional and customary rights of Native Hawaiians. This measure helps to ensure that mandate is fulfilled. OHA asks that the committee **PASS HB1768 HD2**. Mahalo for the opportunity to testify.

Holeka Goro Inaba
Council Member, District 8, N. Kona



Office: (808) 323-4280
Email: holeka.inaba@hawaiiicounty.gov

HAWAI'I COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 20, 2022

Committee on Judiciary and Hawaiian Affairs
Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair

Re: Testimony in support of HB1768, HD2, RELATING TO DISPOSITION OF
WATER RIGHTS
Videoconference Hearing: February 23, 2022 at 2:00 p.m.

Dear Chair, Vice Chair, and Members of the above referenced Committee,

On behalf of myself and constituents of Council District 8 in North Kona, I would like to express support for the above referenced bill, and submit a brief testimony as follows:

We support this measure which exempts the instream use of water traditional and customary kalo cultivation practices and commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights.

Small 'ohana farmers such as the kalo farmers across Hawai'i have longstanding relationships with 'āina and the communities they serve. Kalo farmers provide stewardship over our 'āina and its resources and are the living sources of cultural knowledge and practices.

This measure would support local food production and farmers who supply kalo and poi across Hawai'i, and practitioners such as our kalo farmers uphold constitutionally protected traditional and customary rights. Without practitioners, there is no culture.

I strongly urge the passing of HB1768, HD2.

Sincerely,

HOLEKA GORO INABA, Council Member
District 8, North Kona

OFFICE OF THE MAYOR

DEREK S.K. KAWAKAMI, MAYOR

MICHAEL A. DAHLIG, MANAGING DIRECTOR



Testimony of Michael A. Dahilig
Managing Director, County of Kaua'i

Before the
House Committee on Judiciary
February 23, 2022 at 2:00 PM
Room 325 & Via Videoconference

In consideration of
House Bill 1768 HD2
Relating to the Disposition of Water Rights

Honorable Chair Nakashima, Vice-Chair Matayoshi, and Committee Members:

The County of Kauai is in **support** of HB1768 HD2 which exempts the instream use of water for traditional and customary kalo cultivation practices and commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices from the existing process for disposition of water rights.

Generations of kalo farmers on Kauai have shown their respect and stewardship of the land and resources. Their track record of stewardship has contributed immensely to restoring their agricultural and cultural practice through cultivating a staple in our state-wide community and supporting our local food production.

Our county 2018 General Plan includes an objective to perpetuate the wisdom of Native Hawaiian watershed management and calls to support the protection, restoration, and enhancement of surface and subsurface water resources, stream habitats, and watershed areas to support: groundwater aquifer recharge aquatic and environmental processes; riparian scenic, recreational, and Native Hawaiian cultural resources; and constitutionally protected Native Hawaiian traditional and customary practices.

HB1768 HD1 will exempt instream use of water for traditional and customary kalo cultivation practices from the challenging requirements set forth by HRS 171-58 and encourage more kalo production.

Thank you for your consideration of this testimony in **support** of HB1768 HD2.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

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

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

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

February 22, 2022

TESTIMONY OF MASON K. CHOCK
COUNCIL VICE CHAIR, KAUAI COUNTY COUNCIL
ON
HB 1768, HD2, RELATING TO THE DISPOSITION OF WATER RIGHTS
House Committee on Judiciary & Hawaiian Affairs
Wednesday, February 23, 2022
2:00 p.m.
Via Videoconference
Conference Room 325

Dear Chair Nakashima and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB1768, HD2, Relating to The Disposition of Water Rights. My testimony is submitted in my individual capacity as Council Vice Chair of the Kaua'i County Council.

I wholeheartedly support HB 1768, HD2, which will provide much needed support for traditional practices like *kalo* cultivation in Hawai'i and small family farmers, including the Wai'oli Valley Taro Hui. The water leasing process under Hawai'i Revised Statutes § 171-48 is incredibly burdensome for practitioners, many of whom are small family farmers. Over the course of three (3) years, the Wai'oli Valley Taro Hui has completed the majority of the water leasing process, but only with the help of a team of attorneys and thousands of hours of volunteer work. Like many other small *'ohana* farmers across Hawai'i, *kalo* farmers like the Hui have longstanding relationships with *'aina* and the communities they serve. *Kalo* farmers provide important stewardship over our *'aina* and its finite resources. This important exemption would support local food production and farmers who supply *kalo* and *poi* across *Hawai'i nei*. Without practitioners, we have no culture.

Thank you again for this opportunity to provide testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

MASON K. CHOCK
Council Vice Chair, Kaua'i County Council

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

Testimony of Jodi Higuchi Sayegusa

Deputy Director, Planning Department, County of Kaua'i

Before the

House Committee on Judiciary & Hawaiian Affairs

February 23, 2022 at 2:00 pm

Room 325 & Via Videoconference

In consideration of

House Bill 1768 HD2

Relating to the Disposition of Water Rights

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Committee Members:

The County of Kaua'i Planning Department submits its testimony in **support** of HB 1768 HD2, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process.

Among its policies aimed to shape the growth and development of Kaua'i, the 2018 General Plan detailed an objective to perpetuate the wisdom of Native Hawaiian watershed management. A specific recommendation to implement this objective, states:

9. Support the protection, restoration, and enhancement of surface and subsurface water resources, stream habitats, and watershed areas to support: groundwater aquifer recharge aquatic and environmental processes; riparian scenic, recreational, and Native Hawaiian cultural resources; and constitutionally protected Native Hawaiian traditional and customary practices.

HB 1768 HD2 supports this policy and objective by supporting Kaua'i's lo'i kalo farmers in their work to perpetuate constitutionally protected Native Hawaiian traditional and customary practices and knowledge.



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

February 23, 2022

2:00 PM

Conference Room 325

In SUPPORT of HB1768 HD2: Relating to the Disposition of Water Rights

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **supports HB1768 HD2**, which would exempt the instream use of water for traditional and customary kalo cultivation practices from the existing processes for disposition of water rights.

Like much of Kaua'i, the taro farming community of Wai'oli was devastated by the massive floods of 2018. Experts recognize that climate change morphed otherwise typical rainy weather into a dangerous extreme weather event that this community is still recovering from. **This bill will not only provided needed support for the Wai'oli Valley Taro Hui, but also for traditional practices, like kalo cultivation, and for local, sustainable food production across the islands.**

We urge the legislature to support the recovery of this community and the perseverance of their unique traditional kalo farming practices by facilitating their compliance with state laws protecting stream water. The Native Hawaiian residents of Wai'oli have been farming kalo -- and supplying kalo products to Hawai'i nei -- for generations. The Wai'oli Valley Taro Hui that have come together in Wai'oli to re-build have done so in complete compliance with all of the state protections for natural and cultural resources, especially stream water. **As the legislature works to diversify local agriculture and support communities harmed by drastic changes in our climate, it is crucial to support the small family farms and the traditional kalo cultivation techniques of long-standing communities like Wai'oli. This bill will provided needed support to kalo farmers statewide, and facilitate achieving state goals around food production and managing the our most precious resource, wai.**

Practitioners, such as our kalo farmers, uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships. Further, practitioners have a close relationship with this land and they have demonstrated their commitment to steward these natural resources over centuries. Given their use of this stream water is relatively small and is expected to not have a significant impact on the environment, and that there is no one else anywhere better qualified or more committed to steward these resources, the Sierra Club supports an exemption for instream water uses for traditional and customary kalo cultivation practices.

Accordingly, the Sierra Club of Hawai'i urges the Committee to **PASS** HB1768 HD2. Mahalo nui for the opportunity to testify.



Testimony Before The
House Committee on Judiciary and Hawaiian Affairs
IN SUPPORT OF HB 1768 HD2
February 23, 2022, 2:00PM, Room 325

My name is Kevin Chang and I am the Executive Director of [Kua'āina Ulu 'Auamo \(or KUA\)](#). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA supports HB 1768 HD2 as an incremental step towards 'āina momona. This bill provides much needed support for traditional practices, like kalo cultivation in Hawai'i where our water leasing process under HRS § 171-58 is incredibly burdensome for practitioners, many of whom are small family farmers or often armies of passionate volunteers and charitable organizations that wish to bring back these traditional crops and cultural practice as a matter of community and cultural revitalization and re-building a less import dependent infrastructure for their families, communities and Hawai'i.

KUA employs a community-driven approach that currently supports a statewide network of 36 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a growing group of over 60 Limu practitioners and supporters called the Limu Hui.

Kalo farmers, by virtue of their very existence uphold the values in our constitution and provide important stewardship over our 'āina and its finite resources. They are living repositories of cultural knowledge and practices. A number of the participants, organization and initiatives in our networks engage in or support traditional kalo cultivation, use and consumption as part of their culture and as an essential pathway to achieving their vision of 'āina momona- an abundant, productive ecological system that support community well-being.

Indeed, as we look to the future our communities are raising the kupa'āina who want to have jobs and lifestyles that support mālama 'āina which includes more sustainable island-based values and food systems. The communities we work for and with execute their initiatives with a vision and a vested relationship with the long-term health of our biocultural resources. They have depended on them for generations. We believe our environment, the foundation of our very existence, is about long-term investment and a vision of 'āina momona. To get there it requires among other things greater capacity and pathways to build more regenerative or restorative infrastructure. Like we build roads to help people get where they need to go, you will make a path for our farmers by letting the waters flow. If you let the waters flow, the people will grow.

Passing this bill out of your committee will open a pathway toward reaching this vision.

Mahalo for this opportunity to testify in support.

Aloha 'Āina Momona.

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of your Honorable Committee:

Mahalo for scheduling this hearing on HB 1768, HD 2. **The Wai'oli Valley Taro Hui supports this measure, which is critical to perpetuate our Native Hawaiian and local kalo culture on Kaua'i's North Shore.**

Our Hui of about a dozen small family farmers has been growing kalo on the same 'āina in Wai'oli Valley for many, many generations. We work to support and enhance the ma uka to ma kai biocultural resources primarily in the Wai'oli Stream Watershed, protect the natural and cultural resources that enable traditional and customary Native Hawaiian practices, maintain habitat for endangered Hawaiian waterbirds, and engage the greater Kaua'i community through educational outreach programs and initiatives relating to kalo farming and community-based stewardship of water resources.

Although our community has always been close, we did not formally organize as a state nonprofit with federal tax exempt status until 2019, after devastating floods made it painfully clear that our entire community and way of life was at risk. As a part of the disaster relief effort, the Department of Land and Natural Resources informed us that portions of our centuries-old lo'i kalo irrigation system, which predates modern zoning laws and even the water licensing provision of HRS § 171, was located on conservation land. So, we are now required to get a water lease, even though our farms have operated the same way for centuries.

After those 2018 floods, our mānowai (traditional Native Hawaiian break-away dam), po'owai (dam at the head of the 'auwai), and entire 'auwai (ditch) systems were devastated. Our river changed course, and some described what we experienced as a thousand-year flood event. As wetland kalo farmers, water from Wai'oli Stream is our lifeline. Now, four years after the 2018 floods, we are still in basic recovery mode despite significant kōkua from the State of Hawai'i, County of Kaua'i, and University of Hawai'i at Mānoa's Richardson School of Law. The County helped to fix our māno in Summer 2020, but later flooding caused damage that required further repairs. For the last three years, we have worked closely with the Law School's Environmental and Native Hawaiian Rights Clinics. They helped us navigate the many legal processes we had to wade through, including applying for and securing an easement for our irrigation system and a revocable permit for our water use, lobbying for an amended Interim Instream Flow Standard for Wai'oli Stream, submitting a Final Environmental Assessment for a long-term water lease and securing a Finding of No Significant Negative Impacts from the Board of Land and Natural

Resources. We have completed consultation with the Department of Hawaiian Home Lands and drafted a Watershed Plan. Despite all of these efforts, a long-term water lease remains elusive. To say that this process is complicated and confusing is a gross understatement – we would never have gotten this far without the hard work of the Clinic’s students, fellows, and attorneys. All of this support has been a huge gift that we are so grateful for, but we still desperately need your help to finally finish this process after four long years.

As a small group of family farmers, we have significant concerns about our Hui’s ability to prevail at a public auction.

Ancient, Native Hawaiian water uses for kalo cultivation are non-consumptive, non-polluting, instream, and in-watershed. It is entirely appropriate to exempt uses like ours from HRS § 171. Our Hui utilizes a traditional mānowai to take some water from Wai‘oli Stream. That water flows through our ‘auwai, into our lo‘i, then back to either Wai‘oli Stream or the lower reaches of Hanalei River. Like other kalo farmers, we need throughflow – water flowing through our lo‘i – but we do not “consume” water like most offstream users because the water returns to the streams. All of our use is within the watershed where our water supply originates. So, any seepage, for example, also goes back to feed our water cycle in the larger Hanalei Bay Watershed.

For these reasons, Hawai‘i’s Constitution (including Article XI, Sections 1 and 7 and Article XII, Section 7), Water Code (HRS § 174C-101), and court decisions (*Waiāhole*), grant special protection and respect to traditional instream, in-watershed cultivation of kalo like our Hui’s. Our water use is fundamentally different from most of the “big users” regulated under HRS § 171, such as EMI/Mahi Pono’s use of East Maui water where water is taken out of the watershed, distributed across the island, and never returns to its ahupua‘a of origin.

Given these unique circumstances, we humbly ask your committee to pass out HB 1768, HD 2 and exempt instream traditional and customary kalo cultivation from HRS § 171.

We also support the language in this HD 2 to expand the proposed exemption to include kalo cultivation, even if some commercial element is involved, as long as it is conducted in a manner consistent with traditional and customary Native Hawaiian practices.

Mahalo for your time and consideration. Our farmers will be available at the hearing to answer any questions that you may have.

Reid Yoshida
President, Wai‘oli Valley Taro Hui
Kaua‘i, Hawai‘i
waiolivalleytarohui@gmail.com

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai‘i State Capitol
415 South Beretania Street**

Aloha Chair and Members of House Committee on Judiciary and Hawaiian Affairs,

My name is Conrad “Kimo” Inanod, and I am a kalo farmer in Wai‘oli Valley and the Vice President of the Wai‘oli Valley Taro Hui. Mahalo for hearing HB 1768, HD 2, which would help us continue to steward our ancient lo‘i kalo system. Like many others in our hui, my family has been farming kalo and taking care of Wai‘oli’s natural and cultural resources since before I was born. I am a fourth generation Native Hawaiian kalo farmer in Wai‘oli. I cultivate one kuleana that my family owns and about seven acres that I lease from Wai‘oli Corporation. Because of this, I also help to mālama Wai‘oli Stream and the larger watershed.

I was raised by my grandpa, James Masada, right here in Wai‘oli. Over thirty years ago in May 1989, my grandpa and I submitted declarations of our water use with the Commission on Water Resource Management. In 1993, the Commission verified our water uses from the same mānowai, po‘owai, and ‘auwai that feeds Wai‘oli Valley taro patches today. I am also an avid hunter, and regularly access the ma uka reaches of our watershed to exercise my traditional and customary Native Hawaiian rights and practices. Because of this, I am intimately familiar with this ‘āina and feel an obligation to ensure responsible use of this land and its resources.

For me, and so many others, an exemption from HRS § 171 is more than just a legal issue. For us, this is about protecting and restoring our quality of life as Native Hawaiian practitioners and small family farmers. Kaua‘i’s North Shore has changed dramatically, and our sleepy farming community has been transformed into a bustling tourist destination and construction zone. While the bill you are considering today will not repair our lo‘i or equipment that were devastated by the historic floods four years ago, it will ease our path and provide hope that we will be able to persevere and maintain this way of life for our children and the generations yet to come.

Our road to recovery is perpetual. In addition to the devastating 2018 floods, we were hit with heavy rainfall and flooding again in February 2021. My lo‘i was completely flooded (I included a picture below). Some members of our hui almost got washed away in the flash floods as they rushed out to save some of their huli (stocks of kalo meant to be replanted for the next crop). I could not see the yard that surrounds my house, there was only water. Some have said that these floods are made worse by the fact that our lo‘i are not operating at full capacity because our resource management practices help to channel water through the Hanalei Kalana, preventing flash flooding.



This is my lo'i on Friday (2/19/2021)

We need your Committee's support more than ever as we try to restore our lo'i and overcome the many procedural hurdles to obtain a long-term water lease. Our community is resilient and committed to this work, but we need your kōkua to continue our efforts in earnest. Please act today to pass out HB 1768, HD 2.

Mahalo piha,

C. Kimo Inanod

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Nakashima, Vice Chair Matayoshi, and Committee Members:

My name is JoAnne Kaona. I am a fourth generation Native Hawaiian kalo farmer in Wai'oli Valley and the Secretary of the Wai'oli Valley Taro Hui. Mahalo for the opportunity to testify on this issue, which is of great importance to our community: exempting the instream use of water for traditional and customary kalo cultivation from HRS § 171.

I am one of only a handful of wahine farmers of my generation in Wa'oli. I help my Dad, Clarence "Shorty" Kaona, to mālama our family kuleana and some leased land, which is altogether about 3½ acres of kalo. For us, kalo farming defines our 'ohana; it is what we do and something special that we share. It is also how we contribute to our community: by providing kalo, the ultimate staple of Hawaiian culture, as food that is enjoyed by all in Wai'oli and the larger Hanalei area.

Our 'āina in Wai'oli is perfectly suited for wetland kalo cultivation. The 'ohana who have been farming for multiple generations, like mine, have taken on this kuleana to ensure accessibility to our lāhui's most basic and essential food. But, we were hit hard by the 2018 floods, and for the first time in my entire life, many of the Hui's lo'i were barren. It has been a long road to get our patches back into cultivation. We continue to face damage from more frequent and severe weather events due to climate change.

I also work at the Waipā Foundation where I teach kids about aloha 'āina, sustainability, natural resource management, and traditional and customary Native Hawaiian practices. The Waipā Foundation's mission is to create a healthier community by educating our people about an indigenous diet while also keeping it affordable. One way to maintain this is by ensuring that our community has local kalo and poi to eat. The Waipā Foundation gets between 70-90% of our kalo from the Wai'oli farmers, including my Dad and me. The Foundation processes that kalo and poi at our certified kitchen with volunteer labor and provides pa'i'ai for our community at or below cost. For example, Waipā's pa'i'ai price for kūpuna is \$1 per pound.

My Dad took over kalo farming from his dad in 1987 and even now in his 80s, he still works in the lo'i almost every day. I know that this kuleana will fall upon me when my Dad is no longer able, and I am ready. After four generations of this work, it would be impossible for me to turn away from a practice that has been a part of our family for so long. There is no alternative for me — I just have to do it. Part of my kuleana in preparation to take on farming my 'ohana's

lands has been to help our Hui obtain an easement from the Board of Land and Natural resources so we could fix and maintain our traditional ditch system. Our hui has worked with BLNR on a revocable permit for our water use. We also submitted a Final Environmental Assessment for a long-term water lease, and, in the process, secured an amendment to Wai‘oli Stream’s IIFS that accounts for our traditional biocultural resource stewardship. BLNR found that our proposed long-term water lease would have No Significant Negative Impact. We’re so grateful for the unyielding support from state and county officials at every step of this process. After four years, however, we still do not have a water lease despite complying with all the necessary legal requirements. The truth of the matter is that we, as small family-run farms, won’t be able to compete in a public auction process with the wealthy individuals and corporations who have moved to Kaua‘i’s North Shore. This exemption is crucial for our community and other kalo farmers utilizing traditional and customary Native Hawaiian cultivation practices.

Our desire to continue kalo farming is not for us as individuals, but for our entire community who relies on our small farms to feed them. Please support this Native Hawaiian tradition and way of life that has become all too rare on Kaua‘i and throughout Hawai‘i.

I humbly request that you support HB 1768, HD 2. An exemption from HRS § 171 will bring our Hui one step closer to upholding our mission to provide this staple Hawaiian food for our community in a way that was done by our ancestors since time immemorial.

Mahalo for your time and consideration,

JoAnne Kaona

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha to the Chair, Vice Chair, and all the Committee members,

My name is Clarence “Shorty” Kaona. I am a 3rd generation kalo farmer in Wai‘oli Valley, 100% Native Hawaiian, and a member of the Wai‘oli Valley Taro Hui. **I am testifying in strong support of HB 1768, HD 2.** I have been farming the same kuleana land since I was 6 years old. My grandfather started farming kalo in Hanalei Valley in the 1930s. When he passed away, my dad took over. In the 1940s, my Dad acquired land in Wai‘oli Valley. This is the same kuleana that I continue to farm and that will be passed down to my daughter, JoAnne Kaona, and to the generations yet to come.

When we were kids, we would walk to the kalo patch to work every day. We were tasked with weeding, tilling, planting, and any other work my Mom and Dad needed. I think back to these days fondly. We would make poi every week with a model A Ford engine that my Dad hooked up to our grinder. We would share this with our ‘ohana and friends in the community. As long as I remember, we always had a bowl of poi on the table. From grade school and through high school, my brothers, sisters, and I spent countless hours in the lo‘i. This was our routine and cultural practice as an ‘ohana. I am very grateful for this because it taught me many lessons and values. I learned how to work hard, to work diligently, and to work in harmony with nature. Everything in the environment, including us humans, has an impact on the growth of the kalo.

Because our Hui has always shared one lo‘i system, we know how to use water responsibly. If we didn’t, our farms and families would not survive. For many of us in the Hui, our families have been working together for generations. This experience taught me the importance of valuing our culture as Native Hawaiians and the importance of ‘ohana. I lived in California for some time, but when my dad passed away in 1986, I moved back to Kaua‘i and have been farming kalo in Wai‘oli Valley full-time ever since. I knew that no one else would step up to this responsibility, and I really wanted to honor my dad’s legacy and continue kalo farming. I hope to pass down the lessons learned in the lo‘i to my children and the generations after them.

My family has been here in Wai‘oli for generations, and I work hard to continue our traditional and customary Native Hawaiian practice of wetland kalo cultivation. The devastating floods from 2018 have made it hard to continue. In all of my years here in Wai‘oli, I have never seen a flood like that. The damage was devastating. It ruined my equipment and tools, most of the banks that border my patches, and the ‘auwai, our traditional irrigation system. The ‘auwai needs continual maintenance and restoration after extreme weather events, which have become more

frequent. The struggle to keep up with the needs of our irrigation system has impeded our ability to continue farming at the capacity needed to feed our families.

Our Hui regularly cleans out the mānowai, po‘owai, and ‘auwai, which is very important for healthy water flow, streams, and watersheds. Over the years, I’ve come to know that it also helps to prevent flooding. It has been a blessing to have younger farmers like my daughter, JoAnne, who do this work for our farms.

As I understand it, this bill would exempt instream water uses for traditional Native Hawaiian kalo cultivation from the water lease requirements in HRS 171. Passing this bill would do so much for my peace of mind. We would still face problems related to the restoration of our lo‘i, but this bill would really lift a huge burden off our shoulders. Over the last four years since the floods, we have made some progress. We got a perpetual easement and revocable permit from BLNR, secured an IIFS amendment for Wai‘oli Stream from the Water Commission, and submitted a Final Environmental Assessment to BLNR for a long-term water lease, for which BLNR later issued a FONSI. But so much work remains, and we still do not have a water lease.

Today, we are asking for your kōkua to approve this bill. Doing so would give us a little more stability in Wai‘oli Valley. All we want to do is continue farming so that our traditional and customary practices, knowledge, and lessons, can be continued by future generations. This bill gives me hope that the younger generations will be able to continue kalo farming in Wai‘oli. This knowledge and the lessons learned can only be gained through the hard work and love that comes with spending time in the lo‘i.

Mahalo for the opportunity to testify in strong support of this bill of vital importance for my ‘ohana and our larger community. Please vote today to approve HB 1768, HD 2.

Mahalo,

Clarence “Shorty” Kaona

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai‘i State Capitol
415 South Beretania Street**

Aloha Chair and Members:

My name is Bobby Watari, and I am the Treasurer of the Wai‘oli Valley Taro Hui. I urge you to support HB 1768, HD 2, which will exempt traditional lo‘i kalo cultivation from the legal requirements of HRS 171. I am a third generation kalo farmer who has been farming full-time for the past forty years. Farming kalo is my life’s work and passion. I learned to farm from my father, who moved to Hanalei in the 1950s to farm kalo. My father started farming on leased land, and I now steward the same lo‘i and have added to it. I cultivate the kuleana land that my family owns, and I lease other lo‘i from Wai‘oli Corporation.

Farming has been my life. My wife Lilian and I are now grooming my step-son, Kaisen Carillo, to take over. I am not sure if our daughter Lily is interested in farming, but it feels like I am working constantly to ensure that our farm is operational and healthy so that my kids have the option of continuing this important family tradition.

Unfortunately, this has been a struggle. Farming is so much more than planting and harvesting. We work hard to preserve the land for kalo. In Wai‘oli, we use a traditional Native Hawaiian irrigation system that has been in place since before the arrival of Captain Cook in the 1700s. We are honored to be a part of the handful of farmers who continue this important practice — one that has been our way of life in Wai‘oli for hundreds of years. We feed our community by supplying this staple to small nonprofits like the Waipā Foundation and others throughout Hawai‘i. My step-son Kaisen also provides lū‘au leaf so local families can make laulau and other Hawaiian food.

Restoring and maintaining our existing lo‘i kalo system is so critical — not only for my family’s livelihood and the livelihood of the other famers — but also to perpetuate our way of life and the community here in Wai‘oli that we are all a part of. We use a mānowai, a traditional, Native Hawaiian breakaway dam, to take some water from Wai‘oli Stream. That water flows through our ‘auwai (ditches), then into our kalo patches, then back to either Wai‘oli Stream or the lower reaches of Hanalei River. Like other kalo farmers, we need throughflow — water flowing through our lo‘i — but we don’t “consume” water like most offstream users because it goes back to the stream. All of our use is within the watershed where our water supply originates. So the water that runs through our patches eventually goes back to feed our water cycle in Wai‘oli. For these reasons, instream, in-watershed cultivation of kalo in a traditional manner (like ours) has earned special protection and respect under Hawai‘i’s Constitution and Water Code.

Our responsible water use and efforts to maintain the watershed and stream system not only benefits us, but many others. Having worked with these resources for generations, we take care of them and they take care of us. Although much has been done, we still have more work to do. For the first time in my life, I have had to face the harsh reality of many of my fields remaining unplanted. Prior to the 2018 floods, I had never seen so many of my fields empty. It has taken a toll on me personally and on our family. We enjoy, and are proud of, being able to farm as a family. The vision I have of farming this land with my wife, Lillian, step-son, Kaisen, and his kids gives me the strength needed to continue during these difficult times. Knowing that in the future our 'ohana will have access to water would give me hope that they will be able to continue our family tradition of farming kalo. The bill you are considering today that would grant us an exception from needing to go through the process to qualify for a long-term water lease is the critical next step for us to maintain our way of life in Wai'oli.

Mahalo for considering my testimony and for your continued work to protect our valuable natural resources and traditional practices. Please pass out HB 1768, HD 2.

Mahalo nui,

Robert "Bobby" Watari

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Nakashima, Vice Chair Matayoshi, and Committee Members,

Thank you for the opportunity to testify on this important matter. As a kalo farmer in Wai'oli Valley, Kaua'i, and a member of the Wai'oli Valley Taro Hui, I strongly support HB 1768, HD 2.

My name is Dwight Morishige and I am a 3rd generation kalo farmer. I have been farming in Wai'oli Valley for over 40 years. From before I can remember, my father and his family farmed kalo. I grew up in a community that dedicated itself to farming kalo. I learned how to farm kalo from my father-in-law and other farmers in this area.

My family has been here in Wai'oli for decades, and I have continued our traditional and customary practice of wetland kalo cultivation. I currently lease 10 acres to grow kalo. The 2018 flood was the worst I have ever seen. As you may know, all of the Wai'oli Valley kalo farmers experienced damage individually and collectively. That damage was mostly caused by flooding, landslides, and silt and erosion being deposited in our lo'i.

This community has always been close and centered around kalo cultivation. Kalo is a very nutritional food that we grow right here in our own town. Culturally, it is important for our younger generation to continue farming. Even though our community has always been tight knit, this is the first time we received so much help and have since organized in response to the flood. Our community has worked really hard to make sure we can continue the practice of kalo farming in Wai'oli. Without help from people like you, kalo farming in 2022 and into the future would be impossible.

Thank you again for this opportunity to testify in support of HB 1768, HD 2 and for your work for the people of Hawai'i. Please approve this bill so our hui can finally be done with all of the legal processes and focus on restoring our lo'i.

Mahalo,

Dwight Morishige

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Nakashima, Vice Chair Matayoshi, and Committee Members:

Mahalo for hearing HB 1768, HD 2. **Exempting instream water use for traditional and customary lo'i kalo cultivation from the legal maze of Hawai'i Revised Statutes (HRS) 171 would mean so much to our small hui of farmers.** As a kalo farmer in Wai'oli Valley, and a member of the Wai'oli Valley Taro Hui, I humbly continue to care for our precious resources that are an important part of our livelihood and our community.

My name is Chris Kobayashi, and my family has been living and farming in Wai'oli Valley for three generations and over one hundred years. My grandfather moved here from Japan and chose to begin farming in Wai'oli. Initially, my family farmed rice, but by the early 1940s, we expanded to wetland kalo. My father was born in Wai'oli in 1920, the fifth of six siblings. I was born and raised on the same land. My father spent his entire life farming that land. And, this is the same land that I continue to farm today in Wai'oli. One day, my father spoke to me about how worried he was that there might not be anyone left to carry on our kalo farm. I thought of all of his blood, sweat, and tears that had gone into clearing, preparing, planting, maintaining, and taking care of the kalo and the land. I thought: I can't let all that he put into our farm be for nothing. In that moment, I decided to take over our family farm.

Over twenty years ago, we started growing various vegetables and fruits using organic methods and inputs. We also applied that knowledge to our kalo cultivation and started implementing sustainable practices. We are always trying to do better. We work really hard to grow food for ourselves and to supply good kalo to small poi millers who make poi or pa'i'ai for their communities. We also support 'aina-based education and organizations, as well as students and families who do traditional ku'i with their native food. It has been a heartfelt honor to have been part of this, and we hope to continue to supply these friends and others.

Though we continued to harvest kalo until November of 2018, we were unable to plant new fields because all of our equipment, amendments, small tools, and our truck were ruined in the April 2018 flood. After numerous repairs, we finally got our tractor fully working again in March 2019, and

weather permitting, we started mowing, tilling and cover cropping our farm and preparing our fields. With the huli that we had available to us then, **we were able to plant only three fields that year. We have the potential to plant twenty-six lo'i of various sizes. Today, we are still not operating at full capacity and continue to be in recovery mode.**

With frequent and extreme rainfall events, like the devastating 2018 flood, the entire auwai system is in constant flux. 'Ili'ili, rocks and huge boulders are moved into the māno, po'owai and 'auwai causing sometimes complete blockages and often major damages to the entire water system and breaching our banks. Landslides occur frequently and uprooted invasives like huge albizia trees block our waterways and do significant damage and require constant attention. Our small Hui works closely together and does monthly maintenance, but responds immediately especially after heavy rain and wind events because we know there's going to be extra work up mauka that needs our attention. We know it's really bad when there is no water flowing to our lo'i.

As a kalo farmer, I accept nature's unpredictability and work to maintain my relationship with this land. But, we need help. Where we can, we need stability and predictability in those areas that can be actively managed. We need reliable access to water. **We have diligently navigated HRS 171's legal maze for four years.** Wai'oli Stream's IIFS was amended to reflect our generational stewardship of the Wai'oli and the greater Hanalei Kalana. We submitted a Final Environmental Assessment for our long-term water lease and secured a Finding of No Significant Negative Impact from BLNR. But we still do not have a water lease, which threatens the sustainability of our crucial cultural practices.

An exemption from the complicated and expensive water leasing process due to our special "legal unicorn-like" status would allow us to continue to take care of Wai'oli and our traditional lo'i system. This is imperative in order for us and for future generations to continue farming kalo to feed ourselves, our 'ohana, and our community. We're just small farmers and there is no way we could compete at a public auction. Since 2018, we have been working really hard to understand and go through all the necessary processes. It's a lot, but we also know that it is important for the greater good. As the tides ebb and flow, farmers working with the land and water and kalo are so intertwined with nature and their own lives, that we too ebb and flow.

Thank you for this opportunity to share my testimony and for your continued support of the Wai'oli Valley Taro Hui. We humbly ask you to please vote to pass out HB 1768, HD 2 today.

Mahalo,

Chris Kobayashi



'Ahahui o nā Kauka

677 Ala Moana Blvd., Suite 1015

Honolulu HI 96813

Phone 808.548.0270

E-mail huikauka@gmail.com

2021-2022 Board

Noa Emmett Aluli, MD
President

Martina Kamaka, MD
Vice-President

N. Mahealani Lum, DO
Secretary

Kara Wong Ramsey, MD
Treasurer

Clayton D.K. Chong, MD, MPH
Kauka Kupuna

H. Nalani Blaisdell-Brennan, MD

Kapono Chong-Hanssen, MD

S. Ku'ulei Christensen, MD

Leah Dowsett, MD

Tiffany C.K. Forman, MD

Kaipo Pau, MD

Kanoelehua Perry, MD

Keola Richardson, MD

Kelli-Ann Voloch, MD

Programs

Kim Ku'ulei Birnie

February 22, 2022

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Group Testimony in Support of HB1768HD2

RELATING TO THE DISPOSITION OF WATER RIGHTS

'Ahahui o nā Kauka stands in support of the benefits HB1768HD2 would bring to traditional kalo farmers. In addition to kalo being regarded as an ancestor to all Native Hawaiian people through Hāloa, it comprised a large part of the traditional Hawaiian diet. Historical records show that our people were noted to be in excellent health and complex carbohydrates which included a large amount of poi, the traditional dietary staple made from kalo, comprised about 75% of the average Native Hawaiian's diet. Local studies have shown that poi-centered traditional diets can lower blood pressure, blood sugar, cholesterol, and body weight¹. The transition from water use for kalo cultivation for local consumption to cash crop cultivation, and the related increase in consumption of imported white rice as the primary staple carbohydrate in the local diet has undoubtedly contributed to the disparity of diabetes affecting Native Hawaiians and Pacific Islanders at a rate 2.5 times higher than non-hispanic whites (<http://www.cdc.gov/nchs/nhis/shs/tables.htm>). Many of our patients lament the fact that they cannot afford to eat poi kalo and must fall back on cheaper, less healthy carbohydrates, such as white rice. We support all efforts that would improve access to affordable kalo and support traditional cultivation of this important canoe plant and ancestor of the Native Hawaiian people.

¹ Ruth Fujita, Kathryn L. Braun, Claire K. Hughes. **The traditional Hawaiian diet: a review of the literature.** October 2004 [Pacific health dialog: a publication of the Pacific Basin Officers Training Program and the Fiji School of Medicine](#) 11(2):250-9



House Committee on Judiciary

Wednesday, February 23rd, 2022, 2:00 p.m. Conference Room 325

Hawai'i Alliance for Progressive Action Supports: HB1768 HD2

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

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in support of HB1768 HD2.

HB1768 HD2, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process.

We must support our practitioners and small family farmers. This bill would also encourage others throughout Hawai'i to farm kalo on State land or with water that comes from them.

This bill would benefit the Wai'oli Valley Taro Hui (Hui). After several years and thousands of hours of pro bono work from the Richardson School of Law's legal clinics, the farmers are nearing the end of the complex process of seeking a long-term water lease. Their leadership and diligence underscores why this exemption is pono. As an organization headquartered on Kaua'i, we know first-hand the devastation and challenges of the 2018 floods. Although that happened almost four years ago, we continue to live with global warming's impacts. In the meantime, the Wai'oli Valley Taro Hui remains hard at work seeking the approvals necessary to continue their 'ohana's stewardship of lo'i kalo that have fed our community for generations.

Additionally, we know firsthand how important this Hui is to the fabric of the Kaua'i community. These farmers do not hesitate to generously share their kalo, poi and kulolo at community events and with community members in need.

Like many other small 'ohana farmers across Hawai'i, kalo farmers like the Hui have long standing relationships with 'āina and the communities they serve. Kalo farmers provide important stewardship over our 'āina and its finite resources, and they are living repositories of cultural knowledge and practices. After completing the chapter 343 environmental review process, the Hui's environmental assessment for kalo cultivation

in a traditional manner not only found “No Significant Impact,” but in fact, *beneficial* impacts to the environment.

This important exemption would also support local food production and farmers who supply kalo and poi across Hawai'i nei. Practitioners such as our kalo farmers uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships. Without practitioners, we have no culture.

Please vote to pass HB1768 HD2 and exempt traditional kalo cultivation from 171-58.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Anne Frederick". The signature is fluid and cursive, with a long horizontal stroke at the end.

Anne Frederick
Executive Director



Testimony in Strong Support of HB 1768

Tuesday, February 23, 2022, 2 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

ATTN: CHAIR MARK J. HASHEM & VICE CHAIR AMY A. PERRUSO,
REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
FROM: Stacy Sproat-Beck, Executive Director, The Waipā Foundation
RE: Testimony in Support of HB 1768

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Committee Members,

My name is Stacy Sproat-Beck, and I have served as a founder and board member of the Waipā Foundation from 1994-2001 and then as Executive Director since 2001. I am writing in strong support of HB 1768, which would exempt the instream use of water for traditional and customary kalo cultivation from the HRS § 171-58 water leasing process.

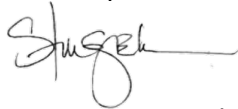
I strongly encourage you to pass this bill to support kalo farmers and help to continue the cultural practice of growing kalo.

The Waipā Foundation is a 501c3 nonprofit founded in 1994 that evolved from the community's first efforts in the early 1980's to save the 1,600 acre ahupua'a of Waipā, located on the north shore of Kaua'i, from resort and golf course development. The valley is owned by the Kamehameha Schools which is one of the strongest supporters of the Foundation and its work, and we currently hold a 40 year agricultural lease for the land. For over 20 years, Waipā has been a living learning center, its work multi-faceted with efforts balanced between stewardship, cultural resiliency and economic development rooted in agriculture that has historically sustained local Hawaiian communities.

Among many other things that we do, Waipā Foundation produces poi weekly, and has done so since the late 1980's when our founders realized that the market price of poi was at such a level that kūpuna, Hawaiian families and hard-core poi eaters would lose access to poi in retail markets. Today, we mill an average of 40,000 lbs of poi annually with staff and volunteer labor. The vast majority of our kalo for this poi comes from the farmers of Wai`oli, and we are highly dependent on-and grateful to-them. Waipā produces and distributes poi to our lāhui and beyond, so that access to and the practice of consuming poi, our traditional staple food, can continue.

Throughout the past couple of years, we have seen how complex the process of obtaining a water lease has been for the Wai`oli Valley Taro Hui and have supported them whenever possible, but what would really help them is if they and other small family kalo farmers could be exempt from this process altogether. Kalo farming is hard-work, it's a labor of love, major financial challenge, and isn't making anyone rich, but we are all in it together. To perpetuate our cultural practices and continue to feed our communities. Please support our farmers, I urge you to very strongly consider and support HB 1768.

Mahalo piha,

A handwritten signature in black ink, appearing to read 'Stacy Sproat-Beck', with a long horizontal flourish extending to the right.

Stacy Sproat-Beck
Executive Director



Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

Hui o Nā Wai 'Ehā Board of Directors

Hökūao Pellegrino
(President)

Koa Hewahewa
(Vice President)

Lani Eckart-Dodd
(Treasurer)

Lucienne de Naie
(Secretary)

Duke Sevila
(Founding Board
Member)

Miki'ala Pua'a-
Freitas
(Board Member)

Ikaika Nakahashi
(Board Member)

Kōnane Awo
DelaNux
(Board Member)

Mariana Löwy-
Gerstmar
(Board Member)

Ka'apuni Aiwahi
(Board Member)

Kamalani Uehara
(Board Member)

Maui Tomorrow (Collaborator)

Albert Perez
(Executive Director)

Legal Counsel

Isaac Moriwake
(Earthjustice)

February 22, 2022

To: Representative Mark M. Nakashima, Chair, Representative Scot Z. Matayoshi,
Vice Chair, House Committee on Judiciary and Hawaiian Affairs



Re: Testimony in Strong Support of House Bill 1768, HD2

Aloha e Chair Nakashima, Vice Chair Matayoshi and Committee Members

Hui o Nā Wai 'Ehā is a Native Hawaiian community-based organization that was established in 2004. Our mission is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, and Waihe'e Rivers/Streams, to protect cultural and natural resources pertaining to the traditional and customary practices of Native Hawaiian kuleana kalo farmers, and to conduct water resource management education outreach programs for the Maui community.

The Hui **strongly supports HB1768, HD2**, Relating to the Disposition of Water Rights. As the bill recognizes, "Traditional farming practices of Native Hawaiians and the Native Hawaiian culture generally play a vital role in preserving and advancing the quality of life and cultural vitality of Hawaii," and "the State has an obligation to ensure that traditional and customary practices of Native Hawaiians continue to be protected." The bill thus proposes to exempt traditional and customary kalo cultivation practices from the provisions for permitting or leasing water rights, which will provide relief for the Wai'oli kalo farmers, as well as set important precedent statewide to facilitate traditional kalo farming. The bill also includes much needed and very timely protections of kalo farmers' kuleana and traditional and customary water rights, including our rights of access to the 'auwai or water course for kalo farming. Together, these amendments would promote much needed and overdue justice for kalo farmers in Hawai'i.

Hui o Nā Wai 'Ehā stands in solidarity with the Wai'oli kalo farmers, who have endured serious hardship in dealing with damage from historic floods, and navigating an inordinately long and complex process to obtain government approvals for their water uses for kalo farming practices that have continued since time immemorial. While much of this process has been completed, HB 1768, HD2 would help the community proceed to "Go" more directly. It would also send an important message that the State supports traditional and customary practices like kalo farming, and should continue to find ways to facilitate such rights and practices throughout Hawai'i Nei, whether its kalo farming, fishpond restoration, community fisheries, or many other long-established cultural activities and values.

Hui o Nā Wai 'Ehā (501c3) • 213 West Waikō Road, Wailuku, Maui, Hawaii 96793
(808) 430-4534 • Huionawai4@gmail.com • www.huionawaieha.org •  

The Mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources pertaining to traditional and customary practices of Native Hawaiian kuleana kalo farmers and to conduct water resource management education outreach programs for the Maui community.

HB 1768, HD2 also supports kalo farmers' water rights, including our kuleana and traditional and customary water rights, by protecting our rights to access a traditional water course or 'auwai to enable our water use for kalo farming. As background, Senator Inouye took the time several months ago to visit Nā Wai 'Ehā and witness firsthand the struggles of kalo farmers on kuleana lands who have waited almost 20 years to have their priority rights recognized, but even after all this time are deprived of their entitled water because of failures to protect their rights to water access. HB 1768, HD2 thus recognizes these rights of water access and also the authority of the state water commission to make dispositions regarding these rights.

Both the proposed exemption from the water permitting and leasing process and the proposed recognition of water access rights would help support and benefit kalo farmers across Hawai'i. To be clear, all the amendments in HB 1768, HD2 simply **confirm and uphold rights that already exist**. The exemption of kalo farming from water rights permitting and leasing recognizes that kalo farmers already have such rights. Similarly, water access rights are already an inherent and long-established part of traditional water rights, and this bill would simply confirm they must be protected.

For the reasons above, Hui o Nā Wai 'Ehā strongly supports HB 1768, HD2. Together, these amendments could be aptly called the **"Justice for Kalo Farmers Act"**; it may be worth considering whether such a title could be added to the combined measure. Such a bill would send a very positive message that the State, including its elected officials, supports kuleana and traditional and customary rights of kalo farmers. Mahalo for your leadership and support on this bill and for this opportunity to provide testimony.

Me ka ha'aha'a,

Hōkūao Pellegrino
(President)

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Testimony in Strong Support of HB 1768, HD 2

Wednesday, February 23, 2022, 2 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Committee Members,

The Hanalei Hawaiian Civic Club fully supports, House Bill 1768 and urges your honorable Committees to please do the same. The North Shore of Kaua'i, like most of the world, has been hit hard by the effects of Covid-19. These impacts have been especially challenging for our community as we are still recovering from the severe flooding that occurred in 2018.

These two crises, while devastating to our community, have showed that we are resilient like the kalo growing in our iconic fields. Through these trying times we have pulled together and have supported one another, and have once again proven how resilient we are because of the connections we have with each other and our 'āina. If not for the farmers of Wai'oli, Waipā, and others in the Halele'a (North Shore) community, we would have been in an even worse situation than we are now. These farmers and families have provided local, accessible, 'ono food for our community and others around Kaua'i, ensuring that we did not go hungry.

Our organization and many others throughout the years have benefitted from the kalo that comes from Wai'oli. These 'ohana who have been feeding our community for generations, continually provide support for fundraisers, community events, and small family parties. Their farms are constantly photographed as part of the North Shore's iconic view plane and many work multiple jobs to continue to preserve and perpetuate this endangered lifestyle.

To support this bill supports not only kalo farmers, but the very essence of Hawai'i. Kalo farmers are true kama'āina, children of the land, firmly rooted and unwavering, despite the many storms that attempt to irreparably change our Hawaiian way of life. This bill will help to stem the tide of the detrimental change that has been seen in our community, and communities around Hawai'i, by promoting and protecting the traditional and customary practice of kalo farming.

We humbly ask for your support of this bill and our Hawaiian community.



Jessica Kau'ionalani Fu
President Hanalei Hawaiian Civic Club



Papa Ola Lokahi
Nana I Ka Pono Na Ma

Papa Ola Lōkahi
894 Queen Street
Honolulu, Hawaii 96813

Phone: 808.597.6550 ~ Facsimile: 808.597.6551

House Committee on Judiciary & Hawaiian Affairs
Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice Chair

Wednesday, February 23, 2022, 2:00PM, Videoconference

RE: HB 1768 HD 2 – Relating to the Disposition of Water Rights
Position: STRONG SUPPORT

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee on Judiciary & Hawaiian Affairs,

Papa Ola Lōkahi **supports** HB 1768 HD 2, which exempts the instream use of water for traditional and customary kalo cultivation practices, including those with a commercial element, from the existing process for disposition of water rights. The current water leasing process places a significant burden on kalo farmers who must spend time and resources to navigate and complete the process, which may disproportionately impact smaller ‘ohana farmers without the resources to pursue the arduous process. This bill removes access barriers to a necessary resource, wai, and provides critical support to perpetuate traditional practices, such as kalo cultivation.

Papa Ola Lōkahi supports efforts that ensure traditional and customary practices, such as kalo farming, remain easily accessible to Native Hawaiian communities and cultural practitioners, like the Wai‘oli Valley Taro Hui. In addition to contributing to local food production, the Hui provides pono stewardship over our ‘āina and its finite resources, as evidenced by the Hui’s environmental assessment for kalo cultivation, which found their stewardship to be beneficial to the environment. Additionally, this bill provides a pathway for the proliferation of more kalo cultivation and additional ‘ai pono efforts for our communities, increasing connection to land and culture, which impact health and wellbeing.

Native Hawaiians hold a holistic view of health, in which the health of the people, land, and spiritual realms are interconnected. This perspective lends to envisioning policies that provide access to resources that support Native Hawaiian traditional practices and their holistic view of health and wellbeing, which include connecting them to land in ways that allow them to fully engage in cultural practices. Cultural practitioners like Wai‘oli Valley Taro Hui are living repositories of Native Hawaiian cultural knowledge and practices, for which every effort must be made to ensure Native Hawaiians are able to practice and pass down ancestral knowledge.

Thank you for the opportunity to testify in **strong support** of this important legislation.

About Papa Ola Lōkahi

Papa Ola Lōkahi, the Native Hawaiian Health Board authorized by the federal Native Hawaiian Health Care Improvement Act, is charged with raising the health status of Native Hawaiians to the highest possible level, which we achieve through strategic partnerships, programs, and public policy. Our workforce development program includes scholarships across 20 different health professions and education and training for community based allied health professionals.

Papa Ola Lokahi

is the Native Hawaiian Health Board established in 1988 to improve the health and well-being of Native Hawaiians.

Board of Directors

Member Organizations

Ho‘ola Lahui Hawaii

Hui No Ke Ola Pono

Hui Malama Ola Na ‘Oiwī

ALU LIKE

Ke Ola Mamo

E Ola Mau

University of Hawai‘i

Hawai‘i State Department of Health

Na Pu‘uwai

Office of Hawaiian Affairs

Executive Director

Sheri-Ann Daniels, EdD



February 22, 2022

TO: Committees on Water & Land, Judiciary & Hawaiian Affairs, and Finance

FR: Kanaeokana Network

RE: IN SUPPORT OF HB1768 HD2 RELATING TO THE DISPOSITION OF WATER RIGHTS.

Aloha Representatives Representatives Mark M. Nakashima, Chair; Scot Z. Matayoshi, Vice Chair and Committee Members:

Kanaeokana is in support of HB1768 HD2 to make exemptions to HRS § 171-58 for traditional and customary kalo cultivation from the water leasing process.

This bill provides much needed support for traditional practices, like kalo cultivation in Hawai'i for small family farmers, including the Wai'oli Valley Taro Hui and other taro growers in Hawai'i that contribute to local food production of kalo and poi across the Hawaiian islands.

As a network of schools and organizations with DOE, Charter and independent school members, Kanaeokana recognizes the need to support the cultivation of taro to ensure sustainability of our residents and our unique cultural practices. Our network of schools strive to embed kalo cultivation into its curriculum by working with farmers across the state, such as Wai'oli Valley Taro Hui to educate our preK to adult learners.

We humbly ask this committee to support HB1768 HD2 to ensure the survivance of this practice in our small farming communities dedicated to kalo cultivation.

Mahalo,

Kanaeokana

advocacy@kanaeokana.net



LATE

HB 1768, HD 2
Relating to the Disposition of Water Rights
House Committee on Judiciary and Hawaiian Affairs

February 23, 2022

2:00 PM

Videoconference

The Council for Native Hawaiian Advancement (CNHA), **STRONGLY SUPPORT** HB1768, HD2, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. We must support our practitioners and small family farmers. This bill would also encourage others throughout Hawai'i nei to farm kalo on State land or with water that comes from such 'āina.

As I understand it, this bill would benefit the Wai'oli Valley Taro Hui (Hui). After several years and thousands of hours of pro bono work from the Richardson School of Law's legal clinics, the farmers are nearing the end of the complex process of seeking a long-term water lease. Their leadership and dilligence underscores why this exemption is pono. As a Kaua'i resident, I know first-hand the devastation and challenges of the 2018 floods. Although that happened almost four years ago, we continue to live with global warming's impacts. In the meantime, the Wai'oli Valley Taro Hui remains hard at work seeking the approvals necessary to continue their 'ohana's stewardship of lo'i kalo that have fed our community for generations.

Like many other small 'ohana farmers across Hawai'i, kalo farmers like the Hui have longstanding relationships with 'āina and the communities they serve. Kalo farmers provide important stewardship over our 'āina and its finite resources, and they are living repositories of cultural knowledge and practices. After completing the chapter 343 environmental review process, the Hui's environmental assessment for kalo cultivation in a traditional manner not only found "No Significant Impact," but in fact, beneficial impacts to the environment.



This important exemption would also support local food production and farmers who supply kalo and poi across Hawai'i nei. Practitioners such as our kalo farmers uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships. Without practitioners, we have no culture.

Please vote to pass HB 1768, HD2 and exempt traditional kalo cultivation from 171-58.

Mahalo nui for your consideration.

Respectfully,

J. Kūhiō Lewis, CEO

Council for Native Hawaiian Advancement

About Council for Native Hawaiian Advancement

CNHA is a member-based 501(c)3 non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians. For more information, visit www.hawaiiancouncil.org/.

HB-1768-HD-2

Submitted on: 2/18/2022 8:57:01 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Vince Kana`i Dodge	`Ai Pohaku	Support	No

Comments:

Aloha kakou Senators!

Imagine for a few moments that you are a small family traditional Taro/kalo farmer. You get up early every day check your loi and regulate water levels. Your days are filled with loi preparation, planting, weeding, harvesting, grass cutting and perhaps cooking taro and making poi. Then at night you do your books, organize orders and supplies needed and deliveries etc. You're always watching the weather which is getting more and more extreme and having to take action to protect your traditional form. Or as in the case on Kauai in 2018 where flooding devastated numerous Taro Farms you're having to spend months and months to repair and rebuild.

Now imagine on top of all the work above, that you have to comply with the HRS §171-58 water leasing process to continue growing taro.

HRS §171-58 is an extremely complicated and burdensome process for small traditional taro farmers. The Wai'oli Valley Taro Hui on Kauai enlisted the support of dozens of legal professionals and law students and spent thousands of hours to meet the requirements of HRS §171-58. And they're not done yet. This is far far too burdensome for the regular taro/kalo farmer!

Please vote to pass HB1768 SD2 and exempt traditional kalo cultivation from 171-58.

Traditional kalo farming is one of the heartbeats of Hawaiian culture. Our connection to the elder brother of the people, Haloanakalaukapalili, is in our DNA.

No taro, no Hawaiians.

Traditional and customary taro/kalo farming is good for the `Aina. In fact after completing the chapter 343 environmental review process, the Wai'oli Hui's environmental assessment for kalo cultivation in a traditional manner not only found "No Significant Impact," but in fact, beneficial impacts to the environment.

This important exemption would also support local food production and farmers who supply kalo and poi across Hawai'i nei. Practitioners such as our kalo farmers uphold constitutionally

protected traditional and customary rights, even in the face of immense pressure and hardships. Without practitioners, we have no culture.

Please vote to pass HB 1768 SD2 and exempt traditional kalo cultivation from 171-58.

Aloha Nui!

Vince Kana'i Dodge

‘Ai Pohaku-The Stone Eaters

HB-1768-HD-2

Submitted on: 2/21/2022 1:57:48 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John K. Aana	Individual	Support	No

Comments:

Aloha Hi. St. Legislators,

I am submitting this testimony in strong support of HB1768 HD2. I have been farming taro in Makaweli Valley on the westside of Kauai for over 40 years. Taro farmers, and all farmer's, face many challenges, from long hours of hard labor, to floods, storms, pests, and diseases, to name a few. But many of us continue to carry on these cultural traditions as a labor of love. HB1768 will make it easier for taro farmers to continue to access the water that is needed to continue their livelihoods. I strongly support this bill and appreciate all of your support.

Mahalo

John Keikiala Aana

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair and Committee Members,

My name is Lillian Watari, and I am a 4th generation Native Hawaiian kalo farmer. I have been farming for over 45 years. Our 'ohana started farming kalo in Lumaha'i with my great-grandfather, Saburo Harada. My grandfather Genichi Harada then moved the farm to Wai'oli, and the tradition continued with my mother and father who still farm in Wai'oli Valley at 75 & 84 years old. I am married to Bobby Watari, who also farms in Wai'oli Valley with our son, Kaisen Carillo.

Kalo farming is more than a longstanding custom and tradition in our family, it's our way of life and our family legacy. Growing up, I was the eldest of 5 children. As soon as we were physically able, we were out in the lo'i helping our parents and grandparents maintain and cultivate kalo. At such a young age, I didn't understand the commitment necessary to farm kalo. It felt like a burden. Our lives revolved around the kalo's needs. Our routine consisted of coming home after school, having just enough time to grab a quick snack, and loading up the truck to head down to the lo'i. Looking back now, the value of the lessons I learned working in the lo'i is hard to put into words. I am proud of my family's tradition of farming kalo and the person it has made me. It taught me the value of hard work and the importance of being able to spend time with nature.

I currently work full-time at a hotel. Yet, even now, I look forward to the weekends and going to the lo'i and having the opportunity to be there with my family. It gives me the peace of mind that is often hard to find in today's complex world. It's hard work, but I enjoy it and wouldn't trade it for anything. It's beautiful to continue the legacy built by my grandparents in Wai'oli and to pass that on to my children and, hopefully, my grandchildren.

It has been hard since the 2018 floods, both emotionally and in terms of our kalo production. Our family farm may have been hit the hardest because of where our lo'i are situated in relation to the floodwaters. For the first time in our lives, our farm was left with many empty fields for a number of reasons, including a decrease in water flow. Yet, we are resilient and will persevere. We are still here. We just want to be able to get back on our feet and continue to practice the culture we love in our small community. Hanalei has changed so much over the years. Yet, what holds together our identity as a community is the kalo farming that has been here since the beginning of time in these islands. It is a true testament to our community that we work together and help each other get through challenges like this. We are proud of who we are and what we do, and hope to continue to pass down this tradition to future generations.

Exempting our water use for traditional and customary kalo cultivation from HRS 171 would bring much needed relief to our small Hui. We have worked tirelessly for four years now to comply with HRS 171's requirements. Wai'oli Stream's IIFS was amended and we completed a Final Environmental Assessment (FEA) for a long-term water lease for our traditional lo'i kalo cultivation. BLNR issued a Finding of No Significant Impact on this FEA. Yet, we still do not have a long-term water lease. We are so grateful for the kōkua we have received along the way from state and county officials, but it is time to be done with these legal processes. Our Hui just wants to continue our family tradition of farming kalo. This exemption would enable us to continue to be together in the environment and on the land we love most.

Mahalo for your time and consideration of this solution that is vital to our survival. Please act today to ensure the viability of our future.

Mahalo,

Lillian Watari

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Members of this Important Committee,

Mahalo for taking the time to consider the HB 1768, HD 2, which would exempt instream uses of water for traditional and customary kalo cultivation from HRS 171. This bill would be a game-changer for our Wai'oli Valley Taro Hui, bringing us one step closer to securing a long-term water lease that would enable us to continue to cultivate this important crop that feeds our community.

My name is Kaisen Carrillo, and I come from multiple generations of kalo farmers on both sides of my 'ohana. My mother's side of the family, the Haradas, started farming with my great-great-grandfather, Saburo Harada, in Lumaha'i. My great-grandfather, Genichi Harada, eventually moved the farm to Wai'oli, and my 'ohana has been farming in the valley ever since. My great grandfather's daughter, my grandma Lily, married Ahfook Tai Hook and both of them still farm in Wai'oli at 75 and 84 years old. Finally, my mom Lillian, daughter of Ahfook, married Bobby Watari, who also farms in Wai'oli Valley.

That leaves me, a 30-year-old 5th generation Native Hawaiian kalo farmer in Wai'oli Valley. I am one of only three farmers in Wai'oli younger than 35-years-old. I have just started my own family, and I am raising my 5-year-old daughter and 2-year-old son to farm this land as well. With your support, they will be 6th generation Wai'oli kalo farmers. I spent some time outside of Kaua'i, going to school, earning my associate's degree in hospitality and my bachelor's degree in business. I'm grateful to have earned these degrees and have been putting them to good use since I moved back to Kaua'i from O'ahu about 6 years ago. Now, as an adult, I am able to use my formal education to expand my own farming efforts and am currently being groomed to run our family-operated farm some day.

Since the 2018 floods, though, things have really been hard. As a full-time farmer with a young family, it's been stressful trying to figure out how to provide for my 'ohana. I need to not only repair the damage to my farm, but also provide for my growing family's needs. At the same time, I have been trying to engage more in the administrative aspects of farming by working with our Hui to learn about the issues unique to Wai'oli kalo farmers. These include securing a perpetual easement and revocable water permit from BLNR, getting an IIFS amendment for Wai'oli Stream, submitting a Final Environmental Assessment for a long-term water lease to BLNR, securing a FONSI from BLNR, and now working on a Watershed Management Plan. I am

committed to these issues because I know this will make it possible for my children to farm, just as my kūpuna did all they could to pave the way for me to continue farming.

It is amazing how far we have come over the last four years, and I am so thankful for local and state officials' kōkua throughout these legal processes. But we should not have had to wade through HRS 171 in the first place. Our ancient kalo farming practices are different from most other uses. Our traditional and customary Native Hawaiian cultivation methods rely on "throughflow." Water from the stream flows into our lo'i then returns to the stream — it's an instream use. It's not consumptive or polluting, and all use is within the same watershed. It's scary to think that we still do not have a water lease despite all of the support our Hui has received over the last four years and the constitutionally protected nature of our traditional practices.

Perpetuating our generational stewardship is very important to me because I am raising my keiki with Native Hawaiian values in the hopes that they will develop a passion for kalo as a connection to our culture. But, without the security of a long-term water lease, it is difficult for me to look them in the eye and promise that they will be able to cultivate the same patches that their ancestors stewarded for generations.

As difficult as things have been, I love what I do. This is my culture. It is what my family has been doing for generations. I feel a deep sense of pride and honor to 'auamo my kuleana and perpetuate this practice — especially now when many of my generation are becoming less interested in taro farming. To be honest, there are more lucrative ventures for some. But, what we do goes beyond monetary value; this is about kuleana. It is our way of life, and we will continue to farm taro on these lands for as long as we are physically able.

An exemption from HRS 171 would bring me some peace of mind during a stressful time for our Wai'oli farmers. Mahalo for the opportunity to explain why this issue is so incredibly important to our way of life in Wai'oli. Please vote to pass out this bill today.

Mahalo,

Kaisen Carillo

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee,

Thank you for the opportunity to testify on this important matter. As a taro farmer in Wai'oli Valley and a member of the Wai'oli Valley Taro Hui, **I respectfully request that you vote to pass out House Bill 1768, HD 2.**

My name is Wayne Tanji, and I have been farming in Wai'oli Valley for over thirty years. Prior to becoming a farmer, I worked retail in Hanalei. Back then, my friends were taro farmers and so I eased into farming by slowly acquiring patches from them. Eventually, I decided to farm full-time. I currently lease a little over an acre of land where, prior to the flood, I maintained six wetland kalo patches.

The flood four years ago completely devastated my farming operations. Because of the location of my patches, the damage to the 'auwai system hit me particularly hard. After the 2018 floods, my patches could not receive enough water to ensure a consistent level of through-flow, and, as a result, my taro couldn't grow properly. This event highlighted how important it is for us to have a stable water supply. We know the water we use affects others further down the 'auwai in our Hui. Because of this, we are all considerate about how our water use impacts others.

Currently, at seventy-one years old, I am barely able to maintain only two of my original six patches. Although sometimes friends come over to give me a hand, I mostly farm alone. Water is so vital for us to continue farming. It is the lifeblood. Without it, we cannot survive. To say that this situation is causing me stress is an understatement.

There is still much work to be done as we recover from the 2018 floods and other damage that keeps happening, but your approval of this bill and the exemption

from the water lease requirements would help a ton; especially because we have been working hard to make sure that we comply with all the necessary legal processes. We are trying our best.

Thank you again for this opportunity to testify in support of HB 1768, HD 2, that would exempt our Hui from the legal requirements of HRS § 171. Please pass out this bill today.

Mahalo,

Wayne Taniji
Farmer, Wai'oli Valley Taro Hui

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Nakashima and Members of the Committee on Judiciary and Hawaiian Affairs,

Mahalo for the opportunity to testify on this important matter. As a kalo farmer and member of the Wai'oli Valley Taro Hui, I strongly support HB 1768, HD 2. I urge you to allow for instream water use for traditional and customary lo'i kalo cultivation to be exempted from HRS § 171.

My name is Sierra-Lynn Stone, and my family (the Haradas) has been farming kalo for generations. The legacy my family has created inspired me to begin farming, and it is what drives me to continue. Farming kalo is my passion and is a purposeful way to live life. The dedication I have for farming is genuine, and I come before you with the hope that your Committee can help to ensure a future in farming for me, my young family, and the families of all the other kalo farmers in Wai'oli Valley.

My love for farming began at an early age. I was raised in the fields where I learned and grew to enjoy the culture of kalo, the various aspects of hard work, and how to have fun while working. My dream is to carry on this tradition and lifestyle, and to teach my children and future generations of my family to love it as I do.

Initially, my career pathway was very different. After I graduated from high school, I went off to Washington State University to become a registered nurse. While there, my grandfather's health took a turn for the worse. I had the option of continuing school in Washington, but instead, I chose to return home to run the family farm. Since 2010, I have been running the entire farm and steadily trying to grow my operations. Challenges have come and gone for us, but I always persevered and overcame them. That is why I am asking for your Committee's help with this particular matter.

Our farm consists of nine acres. Since the flooding in 2018, we have struggled to maintain our normal operations. We have had to deal with many challenges, but we work really hard to continue. Right after the 2018 flood, the Department of Land and Natural Resources informed us that portions of our centuries-old lo'i kalo irrigation system—a system that predates modern zoning laws and the water licensing provision—was located on conservation land. Since then we have worked hard to get a permanent easement so we could access our mānowai and po'owai and repair them. We have also worked hard to apply for a long-term water lease with the state and established that our situation is unique. We have worked to gain access to the water needed for us to continue farming. We have worked hard for stability. This dilemma has affected our

entire community. It is important to us all, as a Hui, to have stability with our water and its delivery infrastructure. With your Committee's help, we will have a chance to ensure enough water for us to gain stability and to continue doing what we love.

While we've been able to make some progress since the devastating floods, our farm, as well as all the other farms in Wai'oli, still have a long way to go as flash flooding continues to happen. Our families and our community rely on us to face challenges as they come. To do this, it is imperative that we secure a long-term water lease. But after four years of navigating the legal requirements, we still don't have a water lease. We've diligently followed all of the steps—getting an IIFS amendment for Wai'oli Stream, submitting a Final Environmental Assessment to BLNR, and securing a FONSI from BLNR—but our much-needed lease remains elusive despite the immense support from our community and local and state officials. Exempting traditional and customary kalo cultivation practices like ours from legal requirements of HRS § 171 would bring peace of mind that we will be able to continue responsible stewardship of our lo'i kalo system into the future.

My love for farming is limitless, and it is hard to put into words. The opportunity to love what you do, and do what you love, is an experience that I hold dear. It is priceless, and I plan to continue my family's tradition of farming here on the North Shore of Kaua'i. With the Committee's help, I can do just that.

Thank you again for this opportunity to testify. I am so grateful for your support of our Hui. Please vote to approve HB 1768, HD 2 today.

Mahalo,

Sierra-Lynn Stone

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

Mahalo for the opportunity to testify today in strong support of HB 1768, HD 2. My name is MJ Palau-McDonald, and I'm a third-year law student at the University of Hawai'i at Mānoa's William S. Richardson School of Law. I've had the great pleasure of working with the Wai'oli Valley Taro Hui ("Hui"), a small nonprofit of kalo farmers, for the past two years as part of Professor Kapua Sproat's Native Hawaiian Rights Clinic and as a Ka Huli Ao summer fellow.

Since devastating flooding in 2018 revealed that part of the Hui's ancient lo'i kalo irrigation system was on state conservation land, the Wai'oli farmers have worked diligently to navigate HRS § 171 and comply with all the legal requirements. This has included securing a right of entry, an easement, a revocable permit, a concurrent resolution for direction negotiation on a water lease, an amendment to Wai'oli Stream's interim instream flow standards, and a watershed management plan, as well as submitting a cultural impact statement and environmental assessment (for which the Department of Land and Natural Resources issued a Finding of No Significant Impact), and completing beneficiary consultation with the Department of Hawaiian Home Lands. Four attorneys and thirty-three clinic students have collectively spent over two-thousand hours supporting the Hui through these efforts. The Hui would not have been able to navigate HRS § 171 without free legal services from Richardson Law School's clinics.

As a Kanaka 'Ōiwi and future attorney, I'm immensely grateful that the people of Hawai'i chose to safeguard traditional and customary Native Hawaiian practices, like lo'i kalo cultivation, under the state constitution and Water Code. I fear, however, that these constitutional, statutory, and regulatory protections become meaningless when the legal processes are so time intensive and financially taxing that it would be impossible for many small-scale 'ohana farmers to prevail on their own. To truly protect and preserve traditional and customary Native Hawaiian rights, our laws need to be realistically navigable by the very people these provisions seek to support.

For this reason, I ask you to please pass out HB 1768, HD 2 today. Thank you for your time and consideration.

Mahalo,

MJ Palau-McDonald

**REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
REPRESENTATIVE SCOT Z. MATAYOSHI, VICE-CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS**

Testimony in Strong Support of HB 1768, HD 2

**Wednesday, February 23, 2022, 2:00 p.m.
Conference Room 325 & Videoconference
Hawai‘i State Capitol
415 South Beretania Street**

Aloha Chair Nakashima, Vice Chair Matayoshi, and Members of this Honorable Committee:

My name is U‘ilani Tanigawa Lum and I am an attorney and a Post-Juris Doctor Legal Fellow at Ka Huli Ao Center for Excellence in Native Hawaiian Law where I help to teach the Native Hawaiian and Environmental Law Clinics. I am also a hula practitioner and a new mother. **I strongly support this measure.**

Our State Constitution prioritizes and protects traditional and customary Native Hawaiian practices. While this protection exists in the black letter of the law, bringing that law to life on the ground and in our communities is often a challenge. The Wai‘oli Valley Taro Hui (“Hui”) offers an poignant example of this challenge. After three years of work, the help of four attorneys and over 30 students, the Hui continues to navigate the complex process of government approvals for their water use for traditional and customary practice. This bill would provide a significant step towards effectuating these important protections. As a hula practitioner, I’m keenly aware that we often read about and look to cultural practices and traditions as “what used to be,” but these fifth and sixth generation farmers perpetuate this specific practice in this specific area in today’s modern world. At a Board of Land and Natural Resources meeting considering a request from the Hui, Chair Case said it best: “What we’re trying to do here is fit an old system into a new legal system.” This bill distinguishes the small, ‘ohana-based historical practices that our constitution protects from large for-profit diverters. Most of all, this bill effectuates justice for small kalo farmers and ‘ai pono that we all enjoy.

I first met the Wai‘oli Valley Taro Hui as a third year law student taking the Environmental Law Clinic with Professor Kapua Sproat in 2019. Since then, my career as a young attorney has been shaped by their hardwork, aloha, and their challenges. Over this time, we helped the Hui secure a right of entry, an easement, a revocable permit, a watershed management plan, an environmental assessment, a cultural impact statement, a concurrent resolution urging the issuance of a water lease by direct negotiation, amending the interim instream flow standards for Wai‘oli Stream, and completing beneficiary consultation with DHHL. Each of these tasks alone are no small feat; especially for small family farmers who are still in basic recovery mode.

Instream use of water for traditional and customary kalo cultivation offers significant environmental benefits. As the Hui’s 2021 environmental assessment’s “Finding of No Significant Impact” illustrates, kalo farmers like those in Wai‘oli actually *improve* the

environment and provide crucial stewardship of ‘āina and its resources.¹ Lo‘i kalo not only provides important habitat for Native flora and fauna, beneficial effects on air and water quality, contributes to groundwater recharge, and mitigates flood risks, but kalo farmers like the Hui also offer comprehensive long-term and strategic stewardship of biocultural watershed resources and the maintenance of the stream itself. Though these benefits have long sustained Kānaka Maoli in these islands, recent scholarly articles confirm these vast benefits.

Aside from the significant value that this Hui offers, farmers like those in the Hui are the epitome of ‘auamo kuleana. When asked why they continue this work in the midst of the many challenges and lack of support, most of them reply: “just cause gotta,” or, “who else going do um?” They are a shining example of undertaking kuleana – the burdens and the privileges. We have much to learn from these farmers and their practice.

Mahalo nui for your service and work for our collective Hawai‘i. This was the reason I decided to go to law school; to see government, our communities, and our practices not only coexist, but uplift one another; in the black letter law and in our communities. I respectfully ask you to vote today to pass HB 1768, HD 2.

Mahalo nui,

U‘ilani Tanigawa Lum, Esq.

¹ Final Environmental Assessment for the Wai‘oli Valley Taro Hui Long-Term Water Lease for Traditional Lo‘i Kalo Cultivation Project, http://oeqc2.doh.hawaii.gov/Doc_Library/2021-10-08-KA-FEA-Waioli-Valley-Taro-Hui-Long-Term-Water-Lease.pdf#search=wai%CA%BBoli (October 2021).

HEARING OF THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
ATTN: CHAIR MARK M. NAKASHIMA & VICE CHAIR SCOT Z. MATAYOSHI

Testimony Strongly Supporting HB1768 HD2
Relating to the Disposition of Water Rights

February 23, 2022, 2:00 p.m.
Via Videoconference

Aloha Chair, Vice Chair, and Honorable Members of the House Committee on Judiciary & Hawaiian Affairs,

My name is Alexa Deike and I am testifying in **strong support** of HB1768 HD2. I am a 2021 graduate of the William S. Richardson School of Law at the University of Hawai'i at Mānoa and had the privilege and honor to work with the farmers of the Wai'oli Valley Taro Hui for three semesters in the Environmental Law and Native Hawaiian Rights clinics. This bill would benefit farmers like the farmers of the Wai'oli Valley Taro Hui and other kalo farmers across the pae 'āina.

During our site visit in Wai'oli in February 2020, I have met the humble and extremely hard-working farmers and could see for myself the on-going devastation of the 2018 floods and the long, arduous road of recovery to have water returned to their lo'i and return to growing kalo. Besides facing the challenge of repairing their water intake from the stream and their silt damaged lo'i fields, the Wai'oli Valley Taro Hui was confronted with the extremely difficult legal hurdle of obtaining a water lease.

Wai'oli Valley is a truly unique and special place. This lo'i kalo system has been in place since time immemorial as Wai'oli Stream is one of the very few streams in the state that has not been diverted for plantation needs. The farmers have stewarded this 'āina and wai for multiple generations and supplied kalo and poi for the community in Kaua'i and across Hawaii nei.

The Wai'oli Valley Taro Hui has worked diligently with the DLNR to fulfill all the requirements needed to obtain a water lease under HRS § 171-58. This was only possible with the help of multiple attorneys and thousands of hours of volunteer work from our law clinics. Other small family kalo farmers would have extremely difficulties to undergo this task.

Your vote today will exempt the Wai'oli Valley Taro Hui from the burden of obtaining a water lease and support traditional lo'i kalo cultivation.

Mahalo for your time and consideration,

Alexa Deike

HB-1768-HD-2

Submitted on: 2/22/2022 12:05:41 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Nicholas Ernst	Individual	Support	No

Comments:

HB-1768-HD-2

Submitted on: 2/22/2022 12:09:14 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ashley Kaono	Individual	Support	No

Comments:

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Committee Members,

I offer my testimony in **STRONG SUPPORT of HB 1768, HD 2**. The policy of exempting traditional and customary kalo cultivation from the requirements of the HRS §171-58 water leasing process is absolutely needed and frankly something that should already be in place. It is imperative that we support our small ‘ohana farmers and practitioners, especially those who aim to continue the important work of kalo cultivation. Such an exemption, as proposed here, would indeed encourage others throughout Hawai‘i to not only support the traditional and customary practices of kalo cultivation but perhaps expand our capacity to include many more of them.

Additionally, as someone who has had the pleasure of working with the Wai‘oli Taro Hui, I can say with all certainty that the Hui has worked very hard to navigate the extremely complex process of seeking a long-term water lease. I know they will continue to do so. This proposal, however, offers the State of Hawai‘i a constructive opportunity to not only support the Hui's work but also advance our practitioners' constitutionally protected traditional and customary rights.

Please vote to pass HB 1768, HD 2, and exempt kalo cultivation from §171-58.

Respectfully,

Ashley B. Kaono

HB-1768-HD-2

Submitted on: 2/22/2022 3:17:03 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Maya Saffery	Individual	Support	No

Comments:

My name is Maya Kawailanaokeawaiki Saffery and I am a Kanaka Hawai‘i – a Native Hawaiian educator, scholar, community leader, and hula practitioner from Kailua, O‘ahu. It is from these different roles that I share my comments of strong support of this bill.

The philosophy that guides all of my work – from the university to the community - is grounded in the understanding that Kānaka Hawai‘i (Native Hawaiians) and our ‘āina belong together. Many living narratives of our kūpuna teach us that our ‘āina cannot be separated from us; thus, we cannot be separated from our ‘āina. One such narrative, which I learned as a hula practitioner is the mele, “Eia Hawai‘i,” a twelfth-century chant that was first offered by the kāula nui (great prophet, seer), Kamahualele, to his chief, Mō‘īkeha, as the islands of Hawai‘i rose up out of the sea in front of their voyaging canoes. “Eia Hawai‘i” teaches us that we have both a familial and generative relationship with our ‘āina, a relationship that defines, grows, and sustains us as Kānaka Hawai‘i. The reciprocal caring for and cultivation of one another helps to ensure healthy, abundant futures for us both. And by extension, when this foundational relationship is recognized and honored by all—Hawaiian and non-Hawaiian—it supports the well-being of everyone.

There are many ways that we can feed this life-giving relationship, including planting and eating kalo. We literally come from the land, but it is also our presence on the land, our cultivation of the land, and our engagement with the land through various practices that transform land to ‘āina, that which feeds us nutritionally, culturally, and spiritually. People help to bring balance and abundance to the land through our cultivation of its soil, our stewardship of its resources, our naming of its many features, our conducting of ceremonies, etc. Through these cultural and spiritual practices, kānaka give life to the land, and in turn, the ‘āina feeds us and gives us life as well.

This bill will clearly help those kalo farmers who are committed to this work of transforming land to ‘āina through their traditional and customary Native Hawaiian use of water for lo‘i kalo cultivation. From generation to generation, the cultural practices of kalo farmers from around Hawai‘i have benefited the land and water of their homelands as well as the community they feed. In order to ensure that they can continue this practice of feeding for generations to come, I write in full support of HB1768, HD2.

Here are also some other reasons why I support this bill:

- This bill provides much needed support for traditional practices, like kalo cultivation in Hawai‘i and small family farmers, including the Wai‘oli Valley Taro Hui.
- The water leasing process under HRS § 171-58 is incredibly burdensome for practitioners, many of whom are small family farmers. Over the course of 3 years, the Wai‘oli Valley Taro Hui has completed the majority of the water leasing process, but only with the help of a team of attorneys and thousands of hours of volunteer work.
- Like many other small ‘ohana farmers across Hawai‘i, kalo farmers like the Hui have longstanding relationships with ‘āina and the communities they serve. Kalo farmers provide important stewardship over our ‘āina and its finite resources, and they are living repositories of cultural knowledge and practices.
- After completing the chapter 343 environmental review process, the Hui’s environmental assessment for kalo cultivation in a traditional manner not only found “No Significant Impact,” but in fact, *beneficial* impacts to the environment.
- This important exemption would support local food production and farmers who supply kalo and poi across Hawai‘i nei
- Practitioners such as our kalo farmers uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships. Without practitioners, we have no culture.