

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY**

**Thursday, March 31, 2022
9:30 AM**

State Capitol, Conference Room 016, Via Videoconference

**In consideration of
HOUSE BILL 1768, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO THE DISPOSITION OF WATER RIGHTS**

House Bill 1768, House Draft 2, Senate Draft 1 proposes to exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights, and recognize, confirm and protect traditional and customary and kuleana rights to water, including rights of use, access, delivery and quality of water. **The Department of Land and Natural Resources (Department) supports the intent of this measure and offers the following comments and amendments.**

The Department supports efforts to simplify the water leasing process for farmers that cultivate kalo in a traditional and customary manner and the proposed amendments to the State Water Code, Chapter 174C, Hawaii Revised Statutes (HRS), that further define appurtenant rights, however we are concerned that as drafted the bill could impose potentially significant obligations and liabilities on public land management agencies, including the Department, so we offer some amendments.

The amendments to the State Water Code propose to further define appurtenant rights to include use, access, delivery and quality of water. The Department believes that the holder of the appurtenant right should be responsible, at their expense, for any regulatory approvals, repair, maintenance or other activity necessary to deliver water and ensure water quality is sufficient in temperature and turbidity for their end use. This kuleana/responsibility was expected traditionally of the holder in the management of the system that the collective benefited from. In the event the appurtenant right holder requires access to State land to conduct such activities as previously described, the Department will work with the holder to provide them access. In order to address these concerns, the Department offers the following amendments:

LATE

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

- Amend SECTION 4 of the bill as follows:

SECTION 4. Section 174C-63, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]§174C-63[§]~~ **Appurtenant rights.** Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right ~~[by the holder thereof at any time.]~~, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld. A permit for water use based on an existing appurtenant right shall be issued upon application. ~~[Such]~~ The permit shall be subject to sections 174C-26 and 174C-27 and 174C-58 to 174C-62."

- Amend SECTION 5 of the bill as follows:

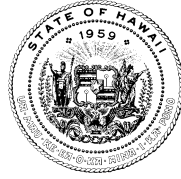
SECTION 5. Section 174C-101, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter."

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON JUDICIARY
DECISION MAKING ON MARCH 31, 2022 AT 9:30 AM VIA VIDEOCONFERENCE**

IN SUPPORT OF

HB 1768 HD2, SD1, RELATING TO THE DISPOSITION OF WATER RIGHTS

March 31, 2022

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

The Department of Hawaiian Home Lands (DHHL) supports this bill that exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights and recognizes, confirms, and protects traditional and customary and kuleana rights to water, including rights of use, access, delivery, and quality of water. DHHL recommends the language amending 171-58(h) as stated in the HD2, as it more clearly addresses the measure's intent.

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.



HB1768 HD2 SD1

RELATING TO THE DISPOSITION OF WATER RIGHTS

Ke Kōmike 'Aha Kenekoa o ka Ho'okolokolo
Senate Committee on Judiciary

Malaki 31,2022

9:30 a.m.

Lumi 16

The Office of Hawaiian Affairs (OHA) **SUPPORTS HB1768 HD2SD1**, 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. Significantly, this measure provides clarity to support appurtenant,

¹ TARO PURITY TASK FORCE REPORT 2010

<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:e699a0fd-9480-38d0-9347-0a5d3e1e76d8>

riparian, with traditional and customary Native Hawaiian rights and practices ensuring those priority rights can be exercised.

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 the ‘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 SD1.** Mahalo for the opportunity to provide written testimony on this important measure.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
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Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
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KipuKai Kualii



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

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

March 29, 2022

**TESTIMONY OF MASON K. CHOCK
COUNCIL VICE CHAIR, KAUAI COUNTY COUNCIL
ON**

HB 1768, HD2, RELATING TO DISPOSITION OF WATER RIGHTS

Senate Committee on Judiciary

Thursday, March 31, 2022

9:30 a.m.

Via Videoconference
Conference Room 016

Dear Chair Rhoads and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 1768, HD2, Disposition of Water Rights. My testimony is submitted in my individual capacity as 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, as well as for 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, due to 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 in support of HB 1768, HD2. 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

AAO:mn

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
Senate Committee on Judiciary
March 31, 2022 at 9:30 AM
Room 016 & Via Videoconference

In consideration of
House Bill 1768 HD2 SD1
Relating to the Disposition of Water Rights

Honorable Chair Rhoads, Vice-Chair Keohokalole, and Committee Members:

The County of Kauai is in **support** of HB1768 HD2 SD1 which exempts the instream use of water for traditional and customary kalo cultivation practices; and recognizes, confirms, and protects traditional and customary and kuleana rights to water, including rights of use, access, delivery, and quality of water.

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 HD2 SD1 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 SD1.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



LATE

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
Senate Committee on Judiciary
March 31, 2022 at 9:30 am
Conference Room 016 & Via Videoconference

In consideration of
House Bill 1768 HD2 SD1
Relating to the Disposition of Water Rights

Aloha Chair Rhoads, Vice-Chair Keohokalole, and Committee Members:

The County of Kaua'i Planning Department submits its testimony in **support** of HB 1768 HD2 SD1, 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 SD1 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.



HAWAI'I LAND TRUST

HAWAI'I LAND TRUST'S TESTIMONY REGARDING HB 1768, HD2, SD1

SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY

Testimony in Strong Support of HB 1768, HD 2, SD 1

Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Aloha Chair Rhodes, Vice-Chair Keohokalole, and Committee Members,

Hawaiian Islands Land Trust d/b/a Hawai'i Land Trust (HILT) is Hawai'i's islands-wide land trust that is both a Hawai'i 501(c)3 nonprofit, and a nationally accredited land trust. Our mission is to protect and steward the lands that sustain Hawai'i, and perpetuate Hawaiian values by connecting people to 'āina. We appreciate the opportunity to provide testimony in strong support of HB 1768 that would exempt kalo farming from the water leasing process. HILT has protected over 21,500 acres throughout Hawai'i, owns and stewards 7 preserves, including Kahili Beach Preserve and Wainiha Beach Preserve on Kaua'i's North Shore, and holds 45 conservation easements permanently protecting conservation values of private lands across the state. HILT's land protection priorities include Hawaiian cultural landscapes, coastlines, and lands that produce healthy food for Hawai'i's people.

Recognizing the importance of kalo cultivation to our 'āina and having supported the Wai'oli Valley Taro Hui's diligent work in navigating this burdensome lease process, HILT strongly supports this important measure. Since 2015, HILT holds two conservation easements permanently protecting approximately 39 acres of kalo producing 'āina in Wai'oli that is currently farmed by members of the Wai'oli Valley Taro Hui. HILT has seen firsthand the ongoing effects of the devastating 2018 floods. These lo'i kalo have fed 'ohana and community for generations and we acknowledge the importance that this measure has to ensure active stewardship and farming of these lands.

As we understand it, this bill would benefit the Wai'oli Valley Taro Hui (Hui) and we must support our practitioners and small family farmers. 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. Although the Kaua'i floods of 2018 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 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 final 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, HD 2, SD1 and exempt traditional kalo cultivation from 171-58.

Mahalo for the opportunity to share feedback,



Laura H. E. Kaakua
President and CEO
Hawai'i Land Trust

Board of Directors 2022

Lisa Grove, *Chair* | Jennifer Luck, *Vice Chair* | Keith Ogata, *Treasurer* | U'ilani Tanigawa Lum, *Secretary*
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Laura H. E. Kaakua, *President & CEO*



SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON JUDICIARY

March 31, 2022

9:30 AM

Conference Room 016

In SUPPORT of HB1768 HD2 SD1: Relating to the Disposition of Water Rights

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Judiciary Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **supports HB1768 HD2 SD1**, 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 across the islands, 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 SD1. Mahalo nui for the opportunity to testify.



Testimony Before The
Senate Committee on the Judiciary
IN SUPPORT OF HB 1768 HD2 SD1
March 31, 2022, 9:30AM, Room 016

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 SD1 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.



LEGISLATIVE TESTIMONY
Senate Committee on Judiciary

HB1768, HD2 SD1 – Relating to the Disposition of Water Rights

Thursday, March 31, 2022, 9:30am, Rm 016 & Videoconference

The Council for Native Hawaiian Advancement (CNHA) offers testimony in **SUPPORT** of HB1768, HD2 SD1, which would exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

In addition to being a constitutionally protected right, lo'i kalo cultivation has minimal impact to the watershed and provides a number of environmental and social benefits. Traditionally, water uses for kalo cultivation are instream, in-watershed, non-consumptive and non-polluting. Lo'i kalo cultivation also supports flood mitigation and groundwater recharge, and promotes food security and community resilience. As such, it is appropriate to exempt lo'i kalo cultivation from HRS § 171-58.

In a time where competing sociopolitical-economic interests has made it increasingly difficult for Native Hawaiians to perpetuate their cultural practices, CNHA appreciates the Legislature's attention to furthering the constitutionally protected rights associated with kalo cultivation. CNHA strongly believes that a prosperous future for all of Hawai'i can be achieved through the continued support for Native Hawaiian traditional and customary practices. As these practices organically evolve into integral facets of society, they will play an increasingly critical role in shaping a more robust socio-economic future.

Accordingly, the Council for Native Hawaiian Advancement urges the Committee to **PASS** HB1768, HD2 SD1. Mahalo nui loa for the opportunity to provide testimony on this measure.

Respectfully,

J. Kūhiō Lewis, CEO
Council for Native Hawaiian Advancement

SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY

Testimony in Strong Support of HB 1768, HD 2, SD 1

Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Aloha Chair Rhoads, Vice-Chair Keohokalole & Committee Members,

The Hanalei Hawaiian Civic Club fully supports, House Bill 1768, HD2, 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.



Dr. Kapua L. Chandler
President Hanalei Hawaiian Civic Club

HB-1768-SD-1

Submitted on: 3/29/2022 10:21:38 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Vince Kana`i Dodge	Testifying for `Ai Pohaku	Support	Written Testimony Only

Comments:

In strong support of HB 1768 HD2 SD1

Aloha kakou legislators!

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 farm. 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 HB 1768 HD2 SD1 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 HD2 SD1 and exempt traditional kalo cultivation from 171-58.

Aloha Nui!

Vince Kana'i Dodge

'Ai Pohaku-The Stone Eaters



3/30/22

Testimony in Strong Support of HB 1768, HD 2, SD 1

Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

ATTN: SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY
FROM: Stacy Sproat-Beck, Executive Director, The Waipā Foundation
RE: Testimony in Support of of HB 1768

Aloha Chair Rhoads, Vice Chair Keohokalole, 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 40,000lbs 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



'Ahahui o nā Kauka

677 Ala Moana Blvd., Suite 1015

Honolulu HI 96813

Phone 808.548.0270

E-mail huikauka@gmail.com

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March 30, 2022

COMMITTEE ON JUDICIARY
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair

Group Testimony in Support of HB1768HD2SD1 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

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of your Honorable Committee:

Mahalo for scheduling this hearing on HB 1768, HD 2, SD 1. **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 HB 1768, HD 2, SD 1, and exempt instream traditional and customary kalo cultivation from HRS § 171.

We also request that the language from the HD 2 be reinserted to expand the proposed exemption in 171-58(h) 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. This is the last committee this bill needs to pass through, so please help our ‘ohana and larger community today.

Mahalo for your time and consideration. Please feel free to contact me if you have any questions.

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



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

Senate Committee on Judiciary

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair

Thursday, March 31, 2022, 9:30 AM, CR 016 & Videoconference

RE: HB 1768 HD 2 SD 1 – Relating to the Disposition of Water Rights
Position: STRONG SUPPORT

Dear Chair Rhoads, Vice-Chair Keohokalole, and members of the Committee on Judiciary,

Papa Ola Lōkahi testifies in **strong support of HB 1768 HD 2 SD 1**, 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 navigating and completing 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 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 supporting Native Hawaiian traditional practices and their holistic view of health and well-being, including connecting them to land to engage in cultural practices fully. Cultural practitioners like Wai‘oli Valley Taro Hui are living repositories of Native Hawaiian cultural knowledge and practices. POL supports this measure and other efforts to uplift Native Hawaiian health by decreasing administrative barriers to the operation of traditional cultivation and food systems work.

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

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.

Papa Ola Lokahi

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

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Senate Committee on Judiciary

Hawai'i Alliance for Progressive Action (HAPA) Supports: HB1768 HD2 SD1

Thursday, March 31st, 2022 9:30am, Conference Room 016

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

HAPA is in support of HB1768 HD2 SD1 which exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

HAPA understands that the water leasing process under HRS § 171-58 imposes burdensome requirements on water lease applicants, especially smaller agricultural users including small family taro farmers. We believe HB1768 HD2 provides the security of water rights that our taro farmers need on every island.

We understand 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. Kalo farmers provide important stewardship for our 'āina and its finite resources.

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, the Hui has longstanding relationships with 'āina and the communities they serve.

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.

The Hawai'i State Constitution mandates the protection of traditional and customary practices of Native Hawaiians. Therefore, Hawaiian kalo farmers should be exempt from the burdensome process of securing water leases for traditional kalo farming.

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.

This measure is an important step towards supporting native traditional food ways, farming and food security for Hawai'i. We need to do everything we can to support the expansion of the cultivation of kalo which is so culturally significant and such an important part of our landscape, history, food security and community.

HB1768 HD2 SD1 is a great way to support a native cultural practice and Hawai'i's staple food. Supporting taro farming and assisting farmers will also help to keep native Hawaiian traditional and customary cultural practices alive.

We strongly support HB1768 HD2 SD1 and believe it will help facilitate more local production of kalo, which in turn helps to strengthen our food security and local economy.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne Frederick', with a long horizontal flourish extending to the right.

Anne Frederick
Executive Director



Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

LATE

Hui o Nā Wai 'Ehā Board of Directors

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Isaac Moriwake
(Earthjustice)

March 30, 2022

To: Senator Karl Rhodes, Chair, Senator Jarrett Keohokālole, Vice Chair, Senate Committee on Judiciary

Re: Testimony in Strong Support of House Bill No. 1768, HD2, SD1

Aloha e Chair Rhodes, Vice Chair Keohokālole, 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 HB 1768, HD2, SD1**, 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 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 • [f](#) [i](#)

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 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 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 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. 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)



SENATOR KARL RHODES, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY

TESTIMONY IN STRONG SUPPORT OF HOUSE BILL NO. 1768, HD 2, SD1

Thursday, March 31, 2022, 9:30 a.m.
Conference Room 016 & Videoconference
State Capitol
415 South Beretania Street

Aloha Chair Rhodes, Vice-Chair Keohokalole, and Committee Members,

Earthjustice strongly supports House Bill No. 1768, HD 2, SD1, Relating to the Disposition of Water Rights (“HB 1768”). The bill exempts traditional kalo farming from onerous water rights permitting and leasing process under Hawai’i Revised Statutes (“HRS”) chapter 171, thus providing beneficial relief for kalo farmers such as in the Wai’oli community. Even though the Wai’oli community’s kalo farming practices and rights have been established since time immemorial and everyone respects, admires, and wants to support the farmers, the Wai’oli community has still been forced to undergo lengthy and complicated processes related to chapter 171 just to continue what they have always been doing. HB 1768 takes the pono approach in simply exempting such traditional practices from chapter 171, eliminating needless red tape for exercising these practices and rights, and ensuring that this and other communities do not have to go through this anymore or ever again.

HB 1768 also recognizes kalo farmers’ rights to the water course or means of accessing and delivering water for kalo farming and confirms the state water commission’s authority to render dispositions on these water rights. Senator Inouye conducted a site visit to Nā Wai ‘Ehā on Maui and saw firsthand kalo farmers being deprived of their ability and right to access their traditional sources of water, even though their rights are supposed to be a protected public trust purpose and have legal priority above any other non-instream use. After a lengthy and still ongoing process (even longer than what the Wai’oli community has endured), the state water commission has recognized kalo farmers’ priority rights in Nā Wai ‘Ehā, yet these farmers can get only leftover flows, or are being cut off entirely, because their rights of water access are not being recognized and protected.

In sum, HB 1768 would bring much needed and overdue justice for kalo farmers and their water rights not only in these communities, but across the state. Again, these amendments do nothing more than *confirm and uphold rights that already exist*.

Mahalo for this opportunity to submit testimony. Please do not hesitate to reach out to me anytime if you have any questions or need further information.

Isaac H. Moriwake, Esq.
Managing Attorney
Earthjustice, Mid-Pacific Office



Hanalei Watershed Hui

LATE

Testimony in Strong Support of HB 1768, HD 2 SD1

March 29, 2022

Aloha Chair Rhodes and Vice Chair Keohokalole and member of the Judiciary Committee,

The Hanalei Watershed Hui **strongly supports HB1768, HD2, SD1** which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. This bill would encourage others throughout Hawai'i nei to farm kalo on State land or with water that comes from such 'āina.

Our organization implements a community based Watershed Action Plan that prioritized support kalo farming in Hanalei since our beginning in 1998. We have participated in planning and effort to understand the water delivery system in Hanalei and this legislation will facilitate that work.

Kalo farmers have longstanding relationships with 'āina and the communities they serve. Kalo farmers provide important stewardship for our 'āina and its finite resources, and they are living repositories of cultural knowledge and practices.

Fish and poi are the traditional mainstays of Hawaii life, they connect the land to the sea and the 'aina to you and me. Productive farms are good for the fishery.

Please pass HB1768, HD2, SD1 and support Hawaii's promise of healthy aina.

Me ka ha'a ha'a,

Makaala Kaaumoana
Executive Director

HB-1768-SD-1

Submitted on: 3/29/2022 12:50:16 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Maya Saffery	Individual	Support	Written Testimony Only

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‘ikeha, 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 HB 1768 HD2, SD1.

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.

HB-1768-SD-1

Submitted on: 3/30/2022 2:52:05 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ku Kahakalau, Ph.D.	Individual	Support	Written Testimony Only

Comments:

SENATOR KARL RHOADS, CHAIR

SENATOR JARRETT KEOHOKALOOLE, VICE-CHAIR

SENATE COMMITTEE ON JUDICIARY

Testimony in Strong Support of HB 1768, HD 2, SD 1

Thursday, March 31, 2022 at 9:30am

Conference Room 016 & Videoconference

Hawai'i State Capitol

415 South Beretania Street

Aloha Chair Rhoads, Vice-Chair Keohokalole & Committee Members,

My name is Dr. Kū Kahakalau and I am testifying in **strong support of HB 1768, HD2, SD 1**, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process.

As a native Hawaiian family of cultural practitioners and award winning educators, who have been involved in growing taro in Waipi'o Valley on Hawai'i Island since the early 1990s, with our daughter currently having 5-acres of taro patch land, called Kapapa Lo'i o Keali'ikua'aina, in production at Kūnaka, we strongly support HB 1768 for multiple reasons.

For one HB 1768 will supports Hawaiian practitioners like ourselves and other kalo farmers to perpetuate the traditions of our kūpuna, by taking on the responsibility to take care of our older

brother Hāloa, as we grow taro, our primary staple, while upholding our constitutionally protected traditional and customary rights.

HB 1768 will also encourage farmers throughout Hawai‘i to utilize “State” land to grow taro, and/or use water that comes from such ‘āina to irrigate their lo‘i. This in turn will stimulate and support local taro production in general, not only adding to our local food production and stimulating our Hawai‘i economy, but also reducing our need to import over 2 million pounds of taro a year to cover consumption.

We strongly agree that the State has a fiduciary duty to assure the preservation and enhancement of water for various public interests. However, current regulatory actions disrupt the protected cultural rights and traditions of Native Hawaiians. This was substantiated in the report of the Senate Committees on Water and Land and Agriculture and Environment which concludes that “for nearly two thousand years, Native Hawaiians have been farming successfully on lands throughout the State without adversely impacting the land. As a significant cultural and traditional practice, Native Hawaiian farming practices serve as a key tradition that also benefits the quality of life for Hawai‘i’s residents.

Please vote to pass HB 1768, HD2, SD1 and exempt traditional kalo cultivation from 171-58.

Mahalo nui,

Kū Kahakalau, Ph.D.

kukahakalau@gmail.com

(808) 775-0867

HB-1768-SD-1

Submitted on: 3/29/2022 2:53:34 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Daniel Bishop	Individual	Support	Written Testimony Only

Comments:

Aloha All

I am in Strong Support of HB 1768

My name is Daniel Bishop and I reside on the Island of Oahu s windward side.

My family and I are small Kalo farmers in two different valleys in the Koolau district.

We have been doing our part to help with FOOD SECURITY for our families, as well as our communities by providing fresh, organically grown Kalo and Poi.(among other fruits and vegetables)

Like the Hawaiian Cultural Renisance of the 1970 s, and the revival of Our Native Language, there is a large intrest by our Young Adults, some with Children of thier own, to connect to Aina, as well as what some consider to have played a major role in our suces as an isolated community, Loi Kalo.

The passage of this bill will enable more families to experience the Very Rewarding practice of Aloha Aina. The act of Nurturing Ourselves and Our Communities through the interaction with Our Environment and Our Food.

Aloha and Mahalo

Please Vote Yes

Daniel Bishop

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Rhoads, Vice-Chair Keohokalole, and Members of the Committee:

Mahalo for the opportunity to testify today in strong support of HB 1768, HD 2, SD 1. 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, 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 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 HB 1768, HD 2, SD 1 today. This is the last hearing, and this bill is vital to sustaining lo'i kalo cultivation in Wai'oli. Thank you for your time and consideration.

Mahalo,
MJ Palau-McDonald

HEARING OF THE SENATE COMMITTEES ON JUDICIARY
ATTN: CHAIR KARL RHOADS
VICE CHAIR JARRETT KEOHOKALOLE

Testimony Strongly Supporting HB1768 HD2 SD1
Relating to the Disposition of Water Rights

March 31, 2022, 9:30 a.m.
Via Videoconference and Conference Room 016

Aloha Chair, Vice Chair, and Honorable Members of the Senate Committee on Judiciary,

My name is Alexa Deike and I am testifying in **strong support** of HB1768 HD2 SD1. 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-SD-1

Submitted on: 3/29/2022 10:03:48 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Wendy Gibson-Viviani	Individual	Support	Written Testimony Only

Comments:

TO: COMMITTEE ON JUDICIARY

FROM: Wendy Gibson-Viviani RN/BSN

RE: HB1768 (In Support)

Hearing: March 31, 2022 at 9:30 a.m.

Dear, Chair Senator Karl Rhoads, Vice-Chair Senator Jarrett Keohokalole, and Members of the Committee,

I am Wendy Gibson-Viviani, a healthcare professional (RN) who has lived and worked in Hawaii for 29 years. I support HB1768 because I support kalo farmers. They are the ones who will supply the islands with a sustainable, healthy source of food for generations to come.

I applaud this effort to:

- Protect kalo farmers traditional/customary and kuleana rights to water (including rights of use, access, delivery, and quality of water), and
- Exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

I gather from previous testimony from kalo farmers that the current water leasing process under Hawai'i Revised Statutes § 171-48 is incredibly burdensome and time-consuming.

Thank you for allowing me to submit testimony on this important matter. Please support kalo farmers in Hawaii by supporting HB1768.

Wendy Gibson-Viviani RN/BSN

Kailua

HB-1768-SD-1

Submitted on: 3/29/2022 10:08:58 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gloria Palma	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice Chair Keohokalole and Committee members,

I write in **strong support** of **HB1768 HD2 SD1**, which would exempt traditional and customary kalo cultivation from the HRS 171-58 water leasing process. I am one of the dozens of students who participated in the Native Hawaiian Rights Clinic at the William S. Richardson School of Law, and had the distinct honor and pleasure to work with the Wai‘oli Valley Taro Hui, who continue to persevere through the water leasing process.

I assisted with crafting a draft environmental assessment (DEA) for the Hui, which not only found that kalo farming had no significant impact on the environment, but also came to the conclusion that their actions actually benefited the environment. Through that experience, I witnessed not only the dedication of the farmers and the care they have for the ‘āina, but their perseverance through the Chapter 343 process.

Small ‘ohana kalo farmers, like the Hui, will benefit from this exemption. As a result, these farmers will continue to supply kalo and poi across the pae ‘āina, and preserve an important part of our culture, for which we all benefit.

Please vote to pass HB1768 HD2 SD1.

Mahalo,

Gloria Palma

HB-1768-SD-1

Submitted on: 3/29/2022 11:03:47 PM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
penny levin	Individual	Support	Written Testimony Only

Comments:

Aloha;

As a taro farmer on the island of Maui, I understand the challenges that Wai'oli taro farmers face. I **strongly support** the farmers of Wai'oli, Kaua'i and HB 1768 HD2 SD1 Relating to the Disposition of Water Rights. I urge you to support this bill with your vote in favor. Say Ae!

Mahalo

Penny Levin

HB-1768-SD-1

Submitted on: 3/30/2022 8:11:33 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Keoni DeFranco	Individual	Support	Written Testimony Only

Comments:

Please vote to pass HB 1768, HD2, SD1 and exempt traditional kalo cultivation from 171-58.

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair and Members of Senate Committee on Judiciary,

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, SD 1 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, SD 1.

Mahalo piha,

C. Kimo Inanod

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Rhoads, Vice Chair Keohokalole, 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, SD 1. This is the last committee meeting, and 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

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & 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, SD 1.** 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. Your committee is the last one this bill needs to pass through. Please vote today to approve HB 1768, HD 2, SD 1.

Mahalo,

Clarence “Shorty” Kaona

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & 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, SD 1, 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 Lillian 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, SD 1.

Mahalo nui,

Robert "Bobby" Watari

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & 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

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & 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, SD 1 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. This is the last committee meeting, so please vote to pass this bill today.

Mahalo,

Kaisen Carillo

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Rhoads, Vice-Chair Keohokalole, and Committee Members:

Mahalo for hearing HB 1768, HD 2, SD 1. **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 HB 1768, HD 2, SD 1 today.

Mahalo,

Chris Kobayashi

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha to the Chair and Members of the Committee,

Mahalo for the opportunity to testify in strong support of HB 1768, HD 2, SD 1. Please pass out this bill today and allow traditional and customary Native Hawaiian kalo cultivation to be exempted from the water lease requirements.

My name is Demetri Rivera. I am a kalo farmer and a Board Member with the Wai'oli Valley Taro Hui. I farm with Chris Kobayashi in Wai'oli. Together, we maintain and farm about 10 acres of lo'i, banks, and roads. I have been farming kalo full-time for over 25 years.

I know that you cannot farm wetland kalo without good, fresh, flowing water from the mountains. If there is a lack of water or inconsistent water, you will get lots of weeds growing and your kalo quality can be so bad, that sometimes, you just gotta plow under. If water flow is low in the summer and the other hot months, the water is warm and the kalo will rot due to diseases and a poor environment. No sense plant.

As a hui, we have been maintaining the Wai'oli mānowai, po'owai, and 'auwai on a regular basis and especially during emergencies, which happens to be every time there is a big rain these days. In the winter months, we brace ourselves for big rains and storms, hoping that there won't be any flooding. The 2018 flood, however, was unlike anything we've ever seen. And we are still recovering.

Over the last four years, we've worked really hard to repair the māno, clear the stream of debris, and fix the 'auwai, in addition to going through all these legal requirements. Despite all of our hard work and community support, we don't have a water lease that would ensure a reliable supply of water.

Mahalo for this opportunity to testify. I humbly ask you to please vote in support of HB 1768, HD 2, SD 1 and exempt instream uses of water for traditional Native Hawaiian lo'i kalo cultivation, like ours, from the water lease requirements.

Aloha,

Demetri Rivera

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Rhoads, Vice-Chair Keohokalole, 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, SD 1.

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, SD 1 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

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Dear Chair Rhoads, Vice Chair Keohokalole, 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, SD 1.**

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-two 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, SD 1, 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

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Rhoads and Members of the Committee on Judiciary,

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, SD 1. 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, SD 1 today.

Mahalo,

Sierra-Lynn Stone

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Rhoads, Vice-Chair Keohokalole & Committee Members,

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, SD1.

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).

HB-1768-SD-1

Submitted on: 3/30/2022 8:40:35 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Frederick Reppun	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Rhoads, Vice-Chair Keohokalole & Committee Members,

Thank you for allowing me to submit testimony in support of HB1768, to exempt instream water use for traditional and customary kalo cultivation from the water leasing process. I grew up on a taro farm, and my family spent countless hours working to secure water rights for taro farmers. The Wai'oli taro farmers have had to do the same. Now I work for the He'eia National Estuarine Research Reserve, and spend a great deal of time helping our kalo farming partners navigate the State's rules and processes around stream water use. Kalo farmers should be able to focus on farming, not navigating complex leasing processes, especially when those processes were originally intended to protect their water rights, and when the public trust benefits of instream water use for kalo farming have been demonstrated by communities time and again. This bill would alleviate some aspects of that burden for taro farmers. I thank the introducers of this bill, and urge the Committee to support it.

Sincerely,

Frederick Reppun

**SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON JUDICIARY**

Testimony in Strong Support of HB 1768, HD 2, SD 1

**Thursday, March 31, 2022 at 9:30 am
Conference Room 016 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chair Rhoads, Vice-Chair Keohokalole and Committee Members,

My name is Rachel M. Goldberg, and I am testifying today in **strong support of HB 1768, HD2, SD1**, which would exempt traditional and customary kalo cultivation from the §171-58 water leasing process. I am a 2020 Richardson graduate, and member of the Hawai'i and California Bars. In law school, I had the privilege of participating in the first Environmental Law Clinic cohort to work with the Wai'oli Valley Taro Hui ("Hui").

This bill would help ensure that the Hui, and small kalo farmers across Hawai'i can continue their centuries old role as the environmental and cultural stewards of the land without the burdensome process of complying with the §171-58 water leasing process.

In that first clinic, myself and a team of dedicated students and professors assisted the farmers in applying for and securing a right of entry and easement necessary to begin repair to the Hui's ancient irrigation system in compliance with HRS §171-58. Since then, the farmers, with the assistance of UH Mānoa's Environmental Law and Native Hawaiian Rights Clinics, have completed the majority of the requirements for the water leasing process, but only with help of a team of attorneys and thousands of hours of pro bono work. Without this exemption *any* small kalo farmers who may need a water lease in the future would need to undertake the same process. *This bill would exempt instream use of water for traditional and customary kalo cultivation practices from these requirements, as they are related to HRS 171.*

In 2019 our Environmental Law Clinic was able to visit the Hui on Kauai to situate our understanding of our legal work, and witnessed firsthand the impacts the 2018 floods had on the mānowai (traditional instream diversion structures) and 'auwai (irrigation ditch) that supports the Hui's lo'i kalo cultivation.

Even in the face of such devastation, what was clear in 2018, and is clear now, is that the Hui's traditional lo'i kalo cultivation is intertwined with the vibrant ecosystem of the area. As we walked along the mauka reaches of Wai'oli Valley down to the lo'i kalo below, I watched as the water continued to flow, recharging the surface and groundwater. There, I saw endemic species of birds in numbers I have never seen anywhere else during my ten years living in Hawai'i, thriving among the lo'i kalo.

Few experiences shaped me more in law school than witnessing firsthand the Hui's mauka to makai biocultural stewardship. It is something often studied, but much more rarely seen. The Hui, and other small kalo farmers act as a hub for the community, allowing others to witness and take part in the living culture of Hawai'i. Passing HB 1768 means that others can continue to share in this experience, that kalo farmers can continue to provide food to the islands, and that practitioners such as our kalo farmers can continue to uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships.

Therefore, **I urge you to vote today to pass HB 1768, HD2, SD1** and exempt traditional kalo cultivation from §171-58. Please help us bring the work we started four years ago to fruition, and support the Hui, who support the land.

Thank you for your time and consideration,
Rachel M. Goldberg

HB-1768-SD-1

Submitted on: 3/30/2022 9:23:15 AM

Testimony for JDC on 3/31/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Emily Schlack	Individual	Support	Written Testimony Only

Comments:

SENATOR KARL RHOADS, CHAIR

SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR

SENATE COMMITTEE ON JUDICIARY

Testimony in Strong Support of HB 1768, HD 2, SD 1

Thursday, March 31, 2022 at 9:30am

Conference Room 016 & Videoconference

Hawai'i State Capitol

415 South Beretania Street

Aloha Chair Rhoads, Vice-Chair Keohokalole & Committee Members,

My name is Emily Schlack and I am testifying today in **strong support of HB 1768, HD2, SD 1**, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. This bill would provide support and relief for farmers engaged in the tradiitonal and customary practices of cultivating their lo'i kalo and in turn help them to continue to provide much needed local food to their local communities, as well as continue to carry on the practices passed down to them for generations.

The Wai‘oli Valley Taro Hui, who would benefit from this bill, have completed the chapter 343 environmental review process and the environmental assessment not only reflected findings of “No Significant Impact” from their instream use of water in traditional cultivation of their lo‘i kalo, but further found that there are also benefits to the surrounding environment when instream kalo cultivation is conducted in the traditional manner. This is the manner in which their families have been participating and passing on to their children for generations, continuing in their stewardship of the ‘āina, and this exemption would help them to focus on what they do best – and not require extensive legal or administrative work in addition to the critical needs they already serve in their communities.

Please vote in favor of HB 1768, HD2, SD1, help to support these mahi‘ai in doing what they are experts in – continuing to feed people in their communities and across Hawai‘i nei, and perpetuating their traditional and cultural practices for the coming generations.

Mahalo piha for your time and consideration,

Emily Schlack