

**SB-179-HD-1**

Submitted on: 4/6/2021 2:23:45 PM

Testimony for FIN on 4/7/2021 2:00:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
AGR-Saiki, Kirk	Hawaii Department of Agriculture	Comments	No

Comments:

Available for Questions



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTY-FIRST LEGISLATURE, 2021**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 179, S.D. 2, H.D. 1, RELATING TO IRRIGATION.

**LATE**

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, April 7, 2021

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Conference Room 308, Via Videoconference

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Jennifer Waihee-Polk, Deputy Attorney General

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Chair Luke and Members of the Committee:

The Department of the Attorney General provides the following comments.

Senate Bill No. 179, S.D. 2, H.D. 1. places the east Kauai irrigation system (Irrigation System) under the operational authority of the Department of Agriculture (Department) until: (1) the Board of Agriculture adopts administrative rules for irrigation water development and irrigation and water utilization for the Irrigation System, or (2) a determination is made that the system can be appropriately operated and maintained pursuant to chapters 167 and 168, Hawaii Revised Statutes (HRS).

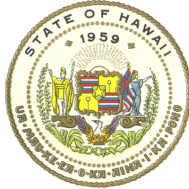
The bill appropriates moneys to the Department to expend for purposes of the Act, but further provides that “no funds shall be expended if the east Kauai irrigation system does not become a state irrigation system under the department of agriculture pursuant to this Act.”

We understand that the Department will need a few years to determine whether the Department can appropriately operate and maintain the Irrigation System—either through administrative rules or pursuant to chapters 167 and 168, HRS. As such, this bill effectively makes a precondition for spending of the appropriated moneys contingent on an act taking place after the moneys would already have been expended.

To avoid this problem, we recommend the Committee remove “; provided that no funds shall be expended if the east Kauai irrigation system does not become a state irrigation system under the department of agriculture pursuant to this Act” on page 3, lines 14-17.

Thank you for the opportunity to provide comments.

DAVID Y. IGE  
GOVERNOR OF HAWAII

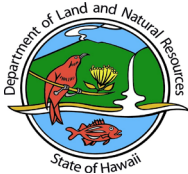


SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committee on  
FINANCE

Wednesday, April 7, 2021  
2:00 PM

State Capitol, Via Videoconference, Conference Room 308



In consideration of  
SENATE BILL 179, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO IRRIGATION

Senate Bill 179, Senate Draft 2, House Draft 1 proposes to transfer operational authority over portions of the east Kauai irrigation system operated and maintained by the East Kauai Water Users' Cooperative before December 15, 2020, to the Department of Agriculture (DOA). The measure also proposes to appropriate funds. **The Department of Land and Natural Resources (Department) strongly supports this measure and provides the following comments.**

The East Kauai Irrigation System was formerly under the management of the East Kauai Water Users Cooperative (EKWUC) via a month to month revocable permit. On September 3, 2019, the EKWUC voted against the continuation of their revocable permit which expired on December 31, 2019. The irrigation system, including the reservoir, has since reverted to the Department's management beginning January 1, 2020. Therefore, the date of December 15, 2020 referenced in Section 1(a) on page 1 of the bill does not indicate the date EKWUC ceased management of the irrigation system, and the Department is unclear as to its significance.

The Department's current oversight of the irrigation system is focused on addressing public health and safety and preserving the viability of the irrigation system for future use, but not for the continued delivery of water to various users. As an interim measure, the Department has used its limited operating funds to hire a contractor to operate and maintain the system on a limited basis to address public health and safety issues. Based on the costs incurred thus far, the Department believes that the proposed appropriation amount of \$500,000 annually for the next two fiscal years that was included in previous drafts of this measure to be sufficient to meet the objective of this measure, and the Department respectfully requests that amount be restored to this measure.

Moving forward, the Department's primary objective is to work collaboratively with Kauai legislators to find an appropriate public or private entity that can assume management and

operation of the system as had previously been done by EKWUC. The Department believes this measure would satisfy that objective, by ensuring the ongoing operation of the irrigation system by DOA in support of local agriculture. However, if this measure were to not pass and the primary objective cannot be met, the Department will pursue shutdown of the irrigation system, including breaching the reservoirs, as a last resort.

The Department does not have the resources and expertise to function as a water delivery provider. Additionally, this would be inconsistent with the Department's mission of natural, cultural, recreational and historical resource management and protection. A shutdown of the system would be a long-term process with significant planning and studies to determine the impacts of such action, which would include public engagement. Any action to proceed with a system shutdown would be subject to the approval of the Board of Land and Natural Resources in an open, public meeting.

Thank you for the opportunity to comment on this measure.

**OFFICE OF THE MAYOR**

**DEREK S.K. KAWAKAMI**, MAYOR

**MICHAEL A. DAHILIG**, MANAGING DIRECTOR

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Testimony of  
**Michael A. Dahilig**  
Managing Director, County of Kaua'i  
  
Before the  
**House Committee on Finance**  
April 7, 2021 at 2:00 p.m.  
Conference Room 308 and Via Videoconference

**LATE**

In consideration of  
**SB179 SD1 HD1**  
**Relating to Irrigation**

Honorable Chair Luke, Vice Chair Cullen, and Members of the Committee:

The County of Kaua'i writes in **strong support** of SB179 SD1 HD1 which transfers operational authority over portions of the East Kaua'i irrigation system operated and maintained by the East Kaua'i Water Users' Cooperative to the Department of Agriculture.

Historically, the East Kaua'i Water Users' Cooperative managed the twenty-two mile ditch system and two State-owned reservoirs in the Kapa'a and Kalepa area for eighteen years. This irrigation system is not only critical in maintaining our storm water but also in allowing our small farms and ranches to increase local food production and provide food security.

After the Coop's year to year renewable lease option ended in 2018, management of the irrigation system has been in limbo. Transferring the operational authority to the Department of Agriculture and allowing them to contract with those who can best manage the system is of utmost concern for the agricultural welfare of Kaua'i.

We also support funding positions to manage the state irrigation system in the Department of Agriculture when the transfer is made.

Thank you for the opportunity to provide testimony.



P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail info@hfbf.org; www.hfbf.org

April 7, 2021

**LATE**

HEARING BEFORE THE  
HOUSE COMMITTEE ON FINANCE

**TESTIMONY ON SB 179, SD2, HD1**  
RELATING TO IRRIGATION

Conference Room 308  
2:00 PM

Aloha Chair Luke, Vice-Chair Cullen, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

**The Hawaii Farm Bureau supports SB 179, SD2, HD1**, which transfers operational authority over portions of the east Kauai irrigation system operated and maintained by the east Kauai water users' cooperative before 12/15/20 to the Department of Agriculture.

Since the demise of plantation operations across the islands, we have seen the erosion of irrigation systems. Ditches that carried water fell into disrepair with major leaks in the system, and in cases such as Ka'u, cracks in tunnels created enough losses that there is no longer a significant flow of water. The Legislature continues to advocate for increased self-sufficiency, sustainability, and food security. Agriculture must play a key role in the process and for there to be agriculture, water is critical.

The East Kauai Irrigation System services more than 12,500 acres of agricultural land on Kauai. The repair and maintenance of this 21-mile irrigation system are critical for Kauai's farmers who depend on the East Kauai Irrigation System for their operations. Water availability is a basic necessity needed by farmers and ranchers to maintain and expand their production, particularly in times of drought. Having a reliable water supply is a key factor when Hawaii's farmers and ranchers are making decisions to start new or to expand existing operations.

Thank you for this opportunity to testify on this important matter.



**LATE**

Email: [communications@ulupono.com](mailto:communications@ulupono.com)

HOUSE COMMITTEE ON FINANCE  
Wednesday, April 7, 2021 — 2:00 p.m.

**Ulupono Initiative supports SB 179 SD 2 HD 1, Relating to Irrigation.**

Dear Chair Luke and Members of the Committee:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

**Ulupono supports SB 179 SD 2 HD 1**, which transfers operational authority over portions of the East Kaua'i Irrigation System operated and maintained by the East Kaua'i Water Users' Cooperative before 12/15/20, to the Department of Agriculture.

Ulupono supports affordable access to water resources for local food producers across the State. The East Kaua'i Irrigation System is critical for local farmers on the island and directly supports Hawai'i's food production goals. Without access to water, agriculture does not exist. It is important for the State to support the operation and maintenance of irrigation systems statewide in order to meet Hawai'i's food security and sustainability goals.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

**LARRY JEFTS FARMS, LLC**  
**PO BOX 27**  
**KUNIA, HAWAII 96759**  
**(808) 688-2892**

**LATE**

SB179sd2, hd1, Relating to Irrigation  
House FIN Hearing  
Wednesday, April 7, 2021 – 2:00pm  
Testimony By: Larry Jeffs  
Position: Support

Chair Luke, Vice Chair Cullen, Members of the House FIN Committee:

I am Larry Jeffs, owner and operator of Larry Jeffs Farms, LLC. We have more than 42 years of Hawaii farm experience on Molokai and Oahu. I am a volunteer director, serving as Chair of the West Oahu Soil and Water Conservation District (SWCD). I have been an officer of the Hawaii Farm Bureau for many years.

Water is the lifeblood of all farmers, and without affordable and accessible water, there will be no farming. No farming, no locally grown produce and livestock. The East Kauai Irrigation System is the lifeblood for Kauai farmers and ranchers.

SB179sd2,hd1 transfers to the Department of Agriculture operational authority over portions of the East Kauai Irrigation System operated and maintained by the East Kauai Water Users' Cooperative. It provides a conditional extension to acquire required permits. It provides funding to support the operations and maintenance of this irrigation system.

Agriculture, farmers, and ranchers must be a priority among the many pandemic needs.

Thank you for the opportunity to present testimony.





**East Kauai  
Water Users' Cooperative**

4334 Rice Street, Suite 202  
Lihue, Kauai Hawaii 96766  
Phone: 808-246-6962  
Fax: 808-245-3277

April 6,2021

TO: **Committee on Finance**  
Rep. Sylvia Luke, Chair  
Rep. Ty J.K. Cullen, Vice Chair



RE: **Testimony on SB179 SD2, HD1, Relating to Irrigation  
Wednesday, April 7, 2021, Via Videoconference**

Chairperson Luke and Members of the Committee:

My name is Jerry Ornellas and **I strongly support SB179 SD2, HD1**. I have been the president of the East Kauai Water Users' Cooperative since its formation in 2001. Until last year, the Coop managed the State-owned reservoir and ditch system in the Kapaa/Kalepa area under a year-to-year revocable permit from the Department of Land and Natural Resources. With great regrets, the Coop cancelled the RP effective December 30, 2019 and the system reverted to DLNR. The Coop is in the final phase of dissolution and will no longer exist in a few months. An ever-increasing list of legal requirements to be met by the Coop were impossible to fulfill, despite the need for water by the area farmers and ranchers.

I would like to recount for the committee the series of decisions and subsequent demands placed on our small Coop that have brought us to this point.

**These State requirements and decisions made it completely unrealistic for a local community organization to operate a State-owned water system of any substantial size.**

On September 20, 2016, the Cooperative was informed by DLNR that as a consequence of the East Maui irrigation decision we would have to seek a long-term water lease (see letter page 4). We were given three years to complete the application process including an Environmental Impact Statement which alone is beyond our monetary resources to pay for, as well as other complex requirements. Even if we had had the monetary resources to meet the requirements, we could only bid on the system at public auction with no guarantee that we would ultimately be awarded the lease. The letter states that if the lease has not been granted by the beginning of 2020, the RP would not be renewed again.

Other demands, small and large, started to be made. For example, in the DLNR letter of August 21, 2019 (see page 6), which was ostensibly to address our concerns expressed in a personal meeting with DLNR staff, included new demands. The first and minor one was to repair "within days" a culvert near

Kapahi Park which was part of an abandoned ditch not part of our system and not our responsibility; the second, to maintain acres of land in and adjacent to the now abandoned area of the renovated Upper Kapahi Reservoir—a substantial job not related to the operation of the system.

Then in March, 2019, BLNR approved a “cost share” formula for watershed management (see page 7) of which our Coop was expected to pay initially \$15,874 a year out of an estimated annual cost to maintain the Blue Hole/East Kauai watershed of \$587,347 per year. Our share in subsequent years was undetermined.

With such demands piling up on top of the EIA and possibly EIS, and seeing no alternative, the Coop informed DLNR it would cease operation and that the irrigation system, including the recently renovated Wailua and Upper Kapahi Reservoirs, would revert to DLNR control (including dam safety oversight).

In 2001, ITC Water Management, hired by the State to evaluate the East Kauai system, estimated the cost to build it in 2001 to be in excess of \$200 million. We are talking about the potential loss of a substantial and irreplaceable State asset. Our system includes two reservoirs and 22 miles of ditch which has historically serviced thousands of acres of State and private lands (see attached map, page 14).

We are therefore in favor of SB179, SD2, HB1 recommending the East Kauai system be taken over by the Department of Agriculture. This is in keeping with the mandate of Article XI, Section 3, of the State Constitution: “The state shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”

Hawaii Revised Statue 167-1, Irrigation Water Development, states: “Findings and declaration of necessity. It is important to the welfare of the people of Hawaii that agricultural production be developed as fully as possible. **It is further found that water presently tapped for irrigation is inadequate for the fullest development of the economy of the State.** It is therefore hereby declared that additional water and water facilities are necessary for the development of agriculture in the State.” The statue recommends development of new water facilities, what to say of preserving the ones we already have.

In 2003, the Department of Agriculture released its comprehensive Agricultural Water Use and Development Plan which analyzed the development and present status of State’s plantation-developed irrigation systems and concluded that **the East Kauai System was among five State systems “important and viable to Hawaii’s growing diversified agricultural industry.”**

In particular, it can supply irrigation water to more than 1,000 acres of the State Kalepa lands located between Kapaa and Lihue, and a similar amount of private former cane lands mauka of Kapaa town. When first taken out of sugar cane in 2001, the Kalepa lands had gone into pasture, but in the last few years, through the good action of the Agribusiness

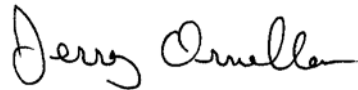
Development Corporation, nearly 300 acres to date has been leased to farmers who are actively developing their crops, including ginger, bananas, noni and sweet potatoes. This is only possible because the Coop could provide these farms with water. At present water delivery continues to these ADC lots from the adjacent Grove Farm ditch system, but there is no agreement in place for the water use, nor formal management or even rights to use the ditches on the ADC lands, which remain under DLNR jurisdiction.

Aside from the State lands and private Kapaa parcel, the Coop system can service thousands of acres of so-called “marginal lands”—those not taken by the cane companies and now privately owned. These are located throughout Kapaa and are or could be productive agricultural lands, such as my own profitable farm.

The Department of Agriculture is the natural State agency to manage this public water system, as is the pattern in most other states in the country. Indeed, irrigation systems worldwide are built and operated by the government. It is also the only long-term, permanent way to manage the system for the benefit of our citizens.

I respectfully ask that you pass this bill.

**East Kauai Water Users' Cooperative**

A handwritten signature in cursive script that reads "Jerry Ornellas".

Jerry Ornellas, President

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

September 20, 2016

RECEIVED

SEP 23 2016

BELLES GRAHAM PROUDFOOT  
WILSON & CHUN, LLP

PSF No.: 16KD-114

Max W.J. Graham, Jr., Esq.  
Belles Graham Proudfoot Wilson & Chun, LLP  
Attorneys At Law  
4334 Rice Street, Suite 202  
Lihue, HI 96766

**Subject: East Kauai Water Users' Cooperative Application for Water Lease on State Lands at Kawaihau, Kauai, Tax Map Key: (4) Zone 4, Sections 1; 2; 3; 4; and 6**

Dear Mr. Graham:

We acknowledge receipt of your client's application for a water lease from a source located on the subject State lands. As you note in the application, your client's use of water is consumptive. A water lease for consumptive use can only be issued by public auction after authorization by the Board of Land and Natural Resources (Board). To enable us to present a request to the Board to conduct a public auction of a water lease, your client will first need to comply with the following requirements of Section 171-58, Hawaii Revised Statutes (HRS):

1. Unless determined by the Chairperson or Board to be exempt under applicable laws and rules, complete an Environmental Assessment (EA) or Environmental Impact Statement (EIS), as appropriate, under Chapter 343, HRS, regarding your client's current and proposed use of the water;
2. Coordinate with our Division of Forestry and Wildlife to develop a watershed management plan;
3. Contact the Office of Conservation and Coastal Lands (OCCL) to determine whether a conservation district use application is required for the water lease; and
4. Coordinate with the Department of Hawaiian Home Lands to develop a reservation of water rights in favor of its beneficiaries sufficient to support current and future homestead needs.

Once your client has satisfied these requirements, the staff submittal for authorization to conduct the public auction will be prepared and presented to the Board at a public meeting.

Max W.J. Graham, Jr., Esq.  
September 20, 2016  
Page 2

Please note that under Act 126, Session Laws of Hawaii 2016, your client's current Revocable Permit No. S-7310 for use of the water can only be held over for three consecutive years while you pursue the application requirements for a water lease.<sup>1</sup> Accordingly, we recommend that your client begin work on the lease requirements as soon as possible and diligently pursue them to conclusion.

If you have any questions, please contact Assistant Administrator Kevin Moore at (808) 587-0426. Thank you.

Very truly yours,

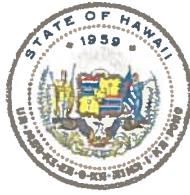


Russell Y. Tsuji  
Administrator

cc: Land Board Member  
East Kauai Water Users' Cooperative  
District Files

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<sup>1</sup> We anticipate taking a request to the Board for the holdover of current water revocable permits before the end of 2016.



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

3060 Eiwa Street, Room 208  
Lihue, Hawaii 96766  
PHONE: (808) 274-3491  
FAX: (808) 241-3535

August 21, 2019

Ref. No.: RPS-7310

Mr. Jerry Ornellas, President  
East Kauai Water Users' Cooperative  
P. O. Box 800  
Kapaa, HI 96746

Dear Mr. Ornellas,

It was a pleasure meeting with you the other week to discuss matters concerning the maintenance of the various ditches/streams covered under Revocable Permit No. S-7310, issued to the East Kauai Water Users' Cooperative (EKWUC).

In our discussion, you indicated that maintenance of the ditch system is becoming more and more difficult due to the decrease in manpower due to the aging membership, and a shortage of available funds to cover the cost to maintain these ditches. The EKWUC membership is aging with less and less landowners/families farming their lands, thus no longer having interest in the ditch system. You have indicated that it costs EKWUC approximately \$75,000 a year to maintain the existing ditches, which is much less if other agencies were to do the same work. The limited funds and manpower are making it near impossible to properly maintain the existing ditch system. As a result, more and more sections of the irrigation system are becoming inoperable and may require eventual decommissioning.

You've indicated that due to the difficulties experienced, EKWUC may not be seeking an extension or renewal of its revocable permit due to its inability to continue proper maintenance of the irrigation system under the existing revocable permit as it is too large a task for EKWUC to handle. It is hoped that either the Department of Agriculture (DOA) or the Agribusiness Development Corporation (ADC) will be able to take over the maintenance of the ditch system, although rumors indicate that neither agency has the funds to maintain these ditches.

In our discussion, I inquired about the status of the various culverts that cross Kaapuni Road at vicinity of the Kapahi Park. Our office received a call from a concerned resident whom informed us that the culverts are severely damaged and pose a hazard to individuals walking in the area. Staff conducted an inspection of the culverts and noted that the culverts and/or culvert covers are either damaged or

missing, leaving just a hole in the ground off the shoulders of the Kaapuni Road. A couple of these openings in the ground are not clearly visible/noticeable unless one was actually looking for it, which could cause someone to step and fall into the hole. We request that this hazardous condition be addressed and remedied immediately, within the next couple days to prevent potential injury to the general public entering the area.

Other matters discussed involved the routine clearing/maintenance of vegetation at both the Wailua Reservoir and the Upper Kapahi Dam/Reservoir. I am of the understanding that EKWU is responsible for the maintenance of the vegetation at these two sites. You mentioned that EKWUC no longer maintained the vegetation off Kainahola Road at the Upper Kapahi Dam because it was assumed that the boundary of the Upper Kapahi Dam was moved from the dam boundaries off Kainahola Road to the boundary of the "new" dam. I explained that the revocable permit requires that EKWUC repair and maintain the lands up to Kainahola Road as described when the permit was issued. There were no changes to the permit area due to the repair of the Upper Kapahi Dam/Reservoir. As a result, we request that EKWUC continue maintenance of the area between the "old" and "new" Upper Kapahi Dam. Maintenance of both the Upper Kapahi Dam and the Wailua Reservoir should be conducted as often as quarterly, to assure the vegetation is manageable, and no damage is being done to the infrastructure.

Your immediate attention to the above is of great importance as the maintenance of this irrigation system, including the reservoirs cannot be neglected for too long. If EKWUC is not willing or able to continue maintenance of these ditch systems, we might not have any choice and might need to shut-down the system if both the DOA and ADC will not take over the maintenance.

If EKWUC is having great difficulty in maintaining the irrigation system as presently described/covered under Revocable Permit No. S-7310, I strongly recommend that EKWUC discuss matters with the Chairperson, and to perhaps request a decrease of the permit area EKWUC shall be responsible for.

Should you have any questions or concerns relating to the above, please feel free to give me a call to discuss.

Best regards,



Wesley T. Matsunaga  
District Land Agent

cc: Central File  
District File

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 22, 2019

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

STATEWIDE

Approval of Watershed Management Protection Cost Share Formula and Contribution for Leases of Water Rights Pursuant to Section 171-58(e), Hawaii Revised Statutes (HRS); and Adoption of Guidelines to Determine Whether a Lease of Water Rights May Be Exempt from the Preparation of an Environmental Assessment or Environmental Impact Statement Under Chapter 343, HRS.

BACKGROUND

At its meeting on December 8, 2017 under agenda item D-4, the Board approved as amended the holdover of revocable permits for water use for the islands of Hawaii and Kauai. As part of the approval, the Board directed staff to clarify lease requirements in Section 171-58, HRS in regards to compliance with Chapter 343, HRS and the development of a watershed management plan. Specifically, the Board inquired whether 1) existing watershed management plans are sufficient to meet the requirement of Section 171-58(e), HRS, and 2) certain leases may be exempted from an environmental assessment or environmental impact statement.

In addressing the watershed management plan issue, Land Division was greatly assisted by staff from the Division of Forestry and Wildlife (DOFAW) and the Commission on Water Resource Management (CWRM), along with the Department of the Attorney General. It was determined that for the current permittees, there are watershed management plans in existence for the water lease areas. As the statute requires a lessee to both develop and implement a watershed management plan, staff worked to devise an alternative to address the current situation. Rather than requiring the lessee to expend significant funds and time to achieve duplicative results, it would be preferable for the lessee to contribute funds to DOFAW to support the management plans already in existence. Additionally, as lessees generally lack the staff and resources to implement plans and DOFAW and watershed partners have available staff and field crews, this would be a more productive alternative. To determine the appropriate amount that the lessee should contribute, staff developed a watershed management plan cost share formula, which is now brought to the Board for review and approval.



## REMARKS

### HRS 171-58(e) Watershed management cost-share formula

The cost share formula calculates the amount that the lessee must contribute on an annual basis to support implementation of a watershed management plan by considering three factors: 1) the amount of water used by the lessee daily per million gallons (mgd), 2) the available amount of water from the stream or aquifer, determined by median stream flow for surface water or sustainable yield for ground water, and 3) estimated daily management cost for the watershed area contributing to either the surface flow (for stream diversions) or groundwater recharge (for wells). The formula is calculated as follows: the amount of water used, divided by the amount of water available, multiplied by estimated daily management costs, multiplied by 365 days.

The foregoing provides a conceptual framework aimed at developing a cost-share structure to serve the intent and purposes of Chapter 171-58(e), HRS, which requires that any lease of water rights shall contain a covenant that requires the lessee and the Department to jointly develop and implement a watershed management plan. Sections (e) and (f) of HRS 171-58 were added in 1990 (HB3286). At that time, the Legislature found it vital to encourage the prudent management of watershed forests in Hawaii, requiring incorporation of a watershed management plan into all water rights lease agreements to help protect this important natural resource. Originally intended to be a State-developed plan implemented by the lessee, it was amended to be jointly developed and implemented by the Department and the lessee. Accordingly, both the State and the lessee have a duty to protect public trust resources.

Prior to 1990 few watershed management plans existed. Today there are numerous watershed plans, including those implemented by DOFAW and groups like the Watershed Partnerships. Therefore, the Department has determined that existing watershed management plans can be used in lieu of the Department and lessee developing new plans. Currently, implementation of existing watershed management plans is partially supported by State funding appropriated by the Legislature and administered by DOFAW. The proposed watershed protection cost-share would provide an additional source of funds to support on-the-ground management and protection of public trust fresh water resources. The cost-share will be primarily geared towards supporting activities that help maintain watershed function and yield (stream flow and recharge) within the water lease area.

In general, the goal of watershed protection is to maintain watershed function and yield and to restore or maintain a certain level of biological integrity that is the foundation of a healthy watershed. The watershed management cost-share is based on cost estimates for watershed protection activities within a specific watershed or watershed(s) that provide source water for the lessee. Estimates are based on the current cost of management and future planned management activities within the next five years. Accurate cost estimation for the long-term management of Hawaii's watershed forests is challenging because the threats and the management effort needed to detect and control those threats vary in space and time. Similarly, timing of use of certain management tools, such as fencing, may vary depending on when the plans or decisions to install them are completed or the frequency of maintenance or replacement. That being said, there are

certain principles that guide watershed management activities and these can be used to provide reasonable cost estimates.

The following approach was considered by the Department when estimating watershed management costs: 1) identify watershed management area (geographic source of water), 2) identify biological goals and objectives, 3) identify management strategy, 4) determine methods and effort, and 5) cost to implement on-the-ground management activities.

The following management activities were identified to help estimate watershed management costs: 1) construction and maintenance of ungulate proof fencing within the watershed(s); 2) ground and aerial ungulate control within the watershed(s); 3) biological monitoring for species richness and diversity, and invasive species early detection and control, consisting of aerial (digital sketch mapping), imagery (pictometry) and ground (targeted surveys); 4) aerial and ground invasive species removal; and 5) administration activities including planning and logistics, data management, analysis and reporting.

For groundwater, the estimate of water availability is based on the maximum sustainable yield of the aquifer system which benefits from the watershed management. Each aquifer sector and system's sustainable yield is set by CWRM based on best available information regarding groundwater recharge and hydrogeology. An aquifer's sustainable yield may change over time based on new information, specifically with regard to revisions in future rainfall estimates, land-cover, or geology that may influence recharge estimates. The amount of water used is based on the maximum withdrawal rate of the installed pump or the total estimated flow from the development tunnel. For example, the sustainable yield of the Naalehu aquifer system is 118 million gallons per day (mgd) and the total available yield from the Noguchi Tunnel (1 & 2) is 0.934 mgd. Thus, the proportion of water that could be used is 0.79%.

The availability of surface water is based on the best available information regarding runoff and groundwater contributions to surface flow which is influenced by the watershed management from which the cost-share is estimated. Because of the complexity of surface flow and the unique geology of volcanic islands, the management of upslope regions may influence stream flow in one or more adjacent watersheds. For example, the management costs for protecting the eastern portion of the Alakai Swamp benefits groundwater recharge and runoff that contributes to surface flows in the Wainiha, Wailua (Wai'ale'ale & Waikoko streams), and Hanalei watersheds. The water available (total median flow) from the streams flowing from this region of the Alakai Swamp is estimated at 103.8 mgd:

USGS station <sup>1</sup>	River	Median flow (mgd)
16108000	Wainiha	49.1
16101003	Hanalei	40.7
16061200	Wai'ale'ale & Waikoko	14.0
Total =		103.8

<sup>1</sup>USGS Scientific Investigations Report 2016-5103

With an estimated amount used of approximately 14.0 mgd, the proportion of water used by diversions 714 and 716 on Wai'ale'ale and Waikoko streams respectively is 13.49 % (a diverted amount of 14.0 mgd divided by an available amount of 103.8 mgd).

To illustrate the potential amounts that would be paid by a lessee, a table is attached as **Exhibit A** that calculates the annual cost share amount for the permittees based on the amount of water currently diverted. Note that the cost share amounts are estimates only and would be subject to adjustment depending on the amount of water used under the lease. Even though some of the permittees currently use a small amount of water, the Board is requested to set a minimum annual cost share in the amount of \$2,500.00, as any amount less would have minimal benefit to watershed management<sup>1</sup>. Furthermore, regardless of how much water a lessee uses, or if such use is non-consumptive, effective watershed management is critical to ensure a sustainable water supply to allow for long-term water use.

As this is an alternative to the watershed management plan requirement in HRS Section 171-58, the cost share will be a payment distinct from, and in addition to, the lease rent. The cost share will not be considered revenue for the purpose of payments to the Office of Hawaiian Affairs (OHA) and the Department of Hawaiian Homelands (DHHL). OHA and DHHL will receive their shares of the lease rent of 20% and 30% respectively. In order to ensure that the lessee contributes an appropriate amount through the term of the lease, the Department will re-evaluate the amounts used in the watershed cost share formula and make adjustments as appropriate. Finally staff notes that for future water leases, the Board could still impose the statutory requirement to develop and implement a watershed management plan if none already exists.

#### Guidelines for HRS Chapter 343 exemption

Pursuant to the Board's directive to determine whether it may be appropriate to exempt certain leases from an environmental assessment (EA) or environmental impact statement (EIS), staff offers the following guidelines for review and acceptance by the Board to assist in future decision making when individual leases are brought before the Board for approval. To clarify, the Board is not requested to exempt any particular lease at this time. The guidelines are intended to provide guidance to the applicants of the conditions under which certain water leases may be granted an exemption. The applicants would still be responsible to comply with Chapter 343, HRS for their water lease request.

In reviewing the water use of the permittees, it appears as though many permittees use a small amount of water, especially in proportion to the amount of available water. In those instances, an exemption may be appropriate under Hawaii Administrative Rules Section 11-200-8, exemption class 1 which states "operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Additionally, item 47 of the Department's exemption list approved by the Environmental Council on June 5, 2015 applies to "leases of state land involving negligible or no expansion or change of use beyond that previously existing."

The exemption item could be applied to water leases<sup>2</sup>, provided that the Board finds the amount of water diverted under the lease is minimal in relation to the amount of available water from the

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<sup>1</sup> For example, \$2,500 would pay for a crew to conduct invasive species removal for a single day. Any cost share amount that would provide for significant management activities would likely be burdensome for many lessees.

<sup>2</sup> HRS Section 171-1 includes water in the definition of land.

ground or surface source and the proposed amount and purpose of water allowed by the lease is negligible or no expansion or change of use beyond that previously existing. An extensive review of each lease application would be required in order to determine whether an exemption is appropriate. Factors that would be considered by the Board would include but not be limited to whether the proposed lease would use only pre-existing structures, or whether new improvements could be constructed. Other factors would include whether the proposed amount and use of water is consistent with past uses, such as previous water leases. Additionally, cumulative impacts would also be considered, such as the potential effects on downstream users and uses. For example, in its determination, the Board would consider whether an applicant seeks to use water for agricultural purposes, or a more intensive use such as a development. Under this guideline, larger water users that have a greater impact on the water source, such as hydro-electric projects and other large scale or intensive uses would not be exempt, even though the proposed use of the water is consistent with prior uses. Staff will recommend whether an exemption is appropriate when individual projects are brought to the Board for approval. However, staff notes that the even if the Board approves an exemption, such exemption could still be subject to challenge.

RECOMMENDATION: That the Board:

- 1) Approve the watershed management protection cost share formula and contribution for leases of water rights pursuant to Section 171-58(e), Hawaii Revised Statutes (HRS); and
- 2) Adopt the guidelines to determine whether a lease of water rights may be exempt from the preparation of an environmental assessment or environmental impact statement under Chapter 343, HRS.

Respectfully submitted,



Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL

  
Suzanne D. Case, Chairperson

Formula = usage divided by available, multiply by \$/day for mgmt; multiply by 365 days

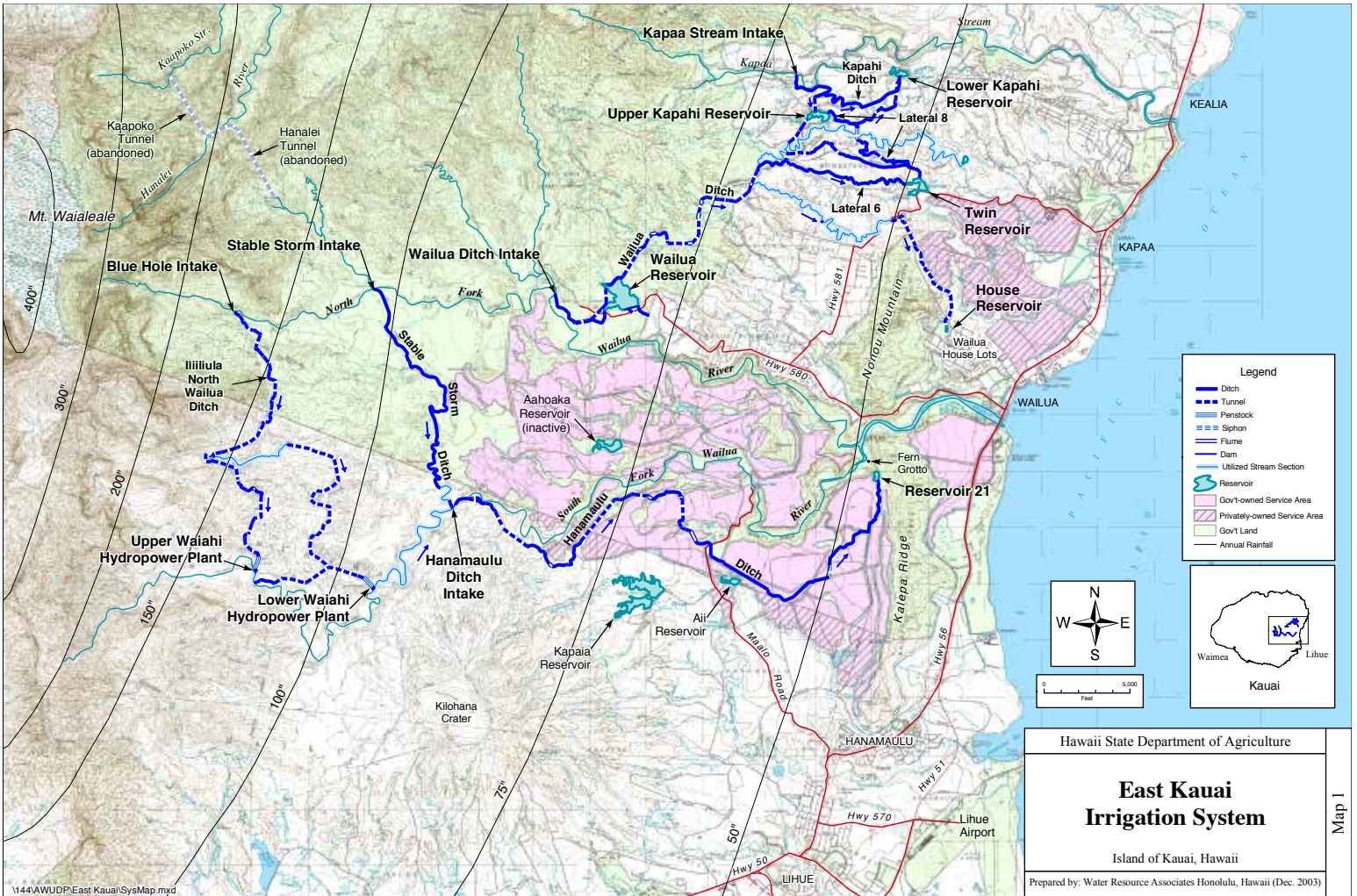
Island	Applicant	USAGE	AVAILABLE		MGMT. COST		Watershed Cost Share/year*
		consumptive/non-consumptive	Surface mgd	Ground mgd	\$/day for management	Days	
		Amount used (mgd) (est.)	Median stream flow	SY			
Kauai	KIUC	14	103		\$1,609.17	365	\$79,833.58
Kauai	East Kauai Water Users Coop	2	74		\$1,609.17	365	\$15,874.24
Kauai	Jeffrey Lindner	0.15		17	\$255.95	365	\$824.31
Mauai	EMI	67	450		\$4,061.60	365	\$220,725.40
Hawaii	HELCO	47	250		\$3,847.95	365	\$264,046.33
Hawaii	Edmund C. Olson Trust	0.0161		118	\$2,863.01	365	\$142.58
Hawaii	Kapapala Ranch	0.113		118	\$2,863.01	365	\$1,000.72
Hawaii	Kuahwi Contractors	0.369		118	\$2,863.01	365	\$3,267.83
Hawaii	Wood Valley	0.0605		118	\$2,863.01	365	\$535.78

Estimated Annual Watershed Management Costs

Location	\$/year	\$/day
East Maui	\$1,482,487.00	\$4,061.60
Blue Hole/East Kauai	\$587,347.00	\$1,609.17
Molokaa FR	\$61,302.00	\$255.95
Hilo	\$1,404,500.00	\$3,847.95
Kau	\$1,045,000.00	\$2,863.01

\* Lessee would contribute the amount determined by the formula or \$2500, whichever is greater.

EXHIBIT "A"





**Kalepa Koalition**

4334 Rice Street, Suite 202  
Lihue, HI 96766  
Phone: 808-634-6189

**LATE**

April 6, 2021

**TO: Committee on Finance**

Rep. Sylvia Luke, Chair  
Rep. Ty J.K. Cullen, Vice Chair

**RE: Testimony on SB179 SD2, HD1, Relating to Irrigation  
Wednesday, April 7, 2021, Via Videoconference**

Chairperson Luke and Members of the Committee:

We **strongly support SB179 SD2 HB1**. The Kalepa Koalition is a Hawaii agricultural cooperative of the farmers and ranchers who hold long-term licenses on 6,500 acres of State land behind Kalepa Ridge on Kauai and under the administration of the State's Agribusiness Development Corporation (ADC).

The East Kauai Water Irrigation System presently services more than 300 acres of these lands actively in crops and can potentially service 1,000. In addition, it services hundreds of acres of DHHL lands makai of Kalepa Ridge and fills Reservoir 21, which sits on top of the popular tourist destination of Fern Grotto in Wailua River State Park and is essential to the health of its ferns.

As of January 1, 2020, the Revocable Permit (RP) of the East Kauai Water Users Cooperative lapsed on the system.

If the system is shut off, not only will farmers be put out of business, Fern Grotto will suffer greatly as the ferns die off (as they did when the reservoir dried up in 2001) and the DHHL lands will need to find another source of water.

We respectfully request that this bill be passed, with revisions as explained in the testimony from the East Kauai Water Users Cooperative.

A handwritten signature in black ink, appearing to read "Leslie P. Milnes".

Leslie P. Milnes, Vice-President  
Kalepa Koalition

**LATE**

**SB-179-HD-1**

Submitted on: 4/6/2021 4:39:21 PM

Testimony for FIN on 4/7/2021 2:00:00 PM

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

Comments:

Aloha,

My name is Brad Seymour and I am writing in support of SB 179. This water system is critical infrastructure to the future of agricultural opportunity on the east side of Kauai. This system has the capability of distributing water from the Wailua river to Kapahi. The east side of Kauai was once known for its incredible ability to produce food for the community, this can again be a reality if the system continues to operate. With well over 100 potential users we cannot afford to lose this system that is able to provide irrigation water to our farmers and ranchers.

If this system were to be lost we would suffer as a community and state. Both the Wailua and Upper Kapahi reservoirs have had their dams reconstructed in recent years, the loss of this system would result in the loss of all of those tax dollars that were invested. In addition the community in both areas appreciate and enjoy these reservoirs for fishing and walking.

The East Kauai Irrigation system also reduces the burden on our municipal water system, irrigation water from a surface water source reduced the need to pump water through our wells, reduces the volumes of chlorine being injected, and all around provides us with a sustainable method of distributing irrigation water to our farmers.

I humbly ask that we do all that we can for today's agriculturalists and tomorrow's future farmers and ranchers.