

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 Committees on  
WATER AND LAND  
and  
AGRICULTURE AND ENVIRONMENT  
and  
HAWAIIAN AFFAIRS**

**Friday, February 4, 2022  
1:05 PM**

**State Capitol, Conference Room 229, Via Videoconference**

**In consideration of  
SENATE BILL 2759  
RELATING TO THE DISPOSITION OF WATER RIGHTS**

Senate Bill 2759 proposes to exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights. **The Department of Land and Natural Resources (Department) supports the intent of this measure and offers the following comments.**

The Department acknowledges that the water leasing process currently in place imposes burdensome requirements on water lease applicants, especially smaller agricultural users including taro farmers. The Department supports amending Section 171-58, Hawaii Revised Statutes (HRS), to simplify the water leasing process, including providing certain exemptions from regulatory requirements for taro farmers. The Department's administrative measures have been introduced as House Bill 2164 and Senate Bill 3132. The Department believes that the exemption as drafted in this measure is vague and ambiguous. While this measure exempts the disposition of water rights for the instream use of water for "traditional and customary kalo cultivation practices" from HRS 171-58, it does not specify an alternative process as to how such dispositions could be granted, if at all.<sup>1</sup>

The Department believes that a formal disposition of water rights for taro cultivation would benefit both the public trust and taro growers. Executing a formal disposition would provide the Department with the oversight authority to ensure that the water is used appropriate manner consistent with public trust obligations. Additionally, a formal disposition would provide

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<sup>1</sup> HRS Section 171-58 is the only statutory provision to regulate dispositions of water rights.

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

security to the taro farmer with a vested right to use water.<sup>2</sup> In order to ease the burden and uncertainty faced by taro farmers seeking to obtain a water lease, the administrative measures previously referenced proposed to exempt water leases for taro cultivation from the public auction process, allowing for a direct lease.

Furthermore, the Department believes that limiting the exemption to “traditional and customary kalo cultivation practices” may be too narrow. Many of the taro farmers who may benefit from an exemption have some commercial aspect to their operations beyond solely subsistence needs.<sup>3</sup> The Department believes that in order to preserve the practice of taro cultivation and further the State’s food sustainability goals, commercial taro farmers should also be considered for amendments to the water lease process targeted to support taro cultivation. The Department notes that its administrative measures that propose to exempt water leases for taro cultivation from the public auction process would apply broadly, provided the taro cultivation is done in a traditional manner. Therefore, the Department respectfully requests that the administrative measures receive a hearing.

Thank you for the opportunity to comment on this measure.

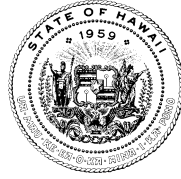
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<sup>2</sup> Although the Commission on Water Resource Management must reserve an appropriate amount of water for taro cultivation through the determination of instream flow standards, it cannot dispose the right to use water to a specific party.

<sup>3</sup> Traditional and customary practices cannot be for a commercial purpose.

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 WAYS AND MEANS  
DECISION MAKING ON FEBRUARY 15, 2022 AT 10:30 AM VIA VIDEOCONFERENCE

IN SUPPORT OF

**SB 2759, SD1, RELATING TO THE DISPOSITION OF WATER RIGHTS**

February 15, 2022

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran 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.

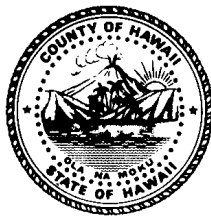
DHHL has been working with the Department of Land and Natural Resources (DLNR) for the past few years on a number of efforts where DLNR is attempting to issue water licenses or leases under HRS 171-58. These include hydroelectric projects on Hawai'i Island and Kaua'i, and agricultural water on Kaua'i,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

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



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

## HAWAI'I COUNTY COUNCIL

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

February 13, 2022

Committee on Ways and Means  
Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Re: Testimony in support of SB2759, RELATING TO THE DISPOSITION OF  
WATER RIGHTS  
Videoconference Hearing: February 15, 2022 at 10:30 a.m.

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

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

We support this measure which exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights. This bill also recognizes, confirms and protects traditional and customary and kuleana rights to water, including rights of use, access, delivery, and quality of water.

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

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

I strongly urge the passing of SB2759, SD1.

Sincerely,

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HOLEKA GORO INABA, Council Member  
District 8, North Kona

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

**Testimony of Jodi Higuchi Sayegusa**  
Deputy Director, Planning Department, County of Kaua'i

Before the  
**Senate Committee on Ways and Means**  
February 15, 2022 at 10:30a.m.  
Room 211 & Via Videoconference

In consideration of  
**Senate Bill 2759 SD1**  
**Relating to the Disposition of Water Rights**

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members,

The County of Kaua'i Planning Department submits its testimony in **support** of SB 2759 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.

SB 2759 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.

# OFFICE OF THE MAYOR

DEREK S.K. KAWAKAMI, MAYOR

MICHAEL A. DAHLIG, MANAGING DIRECTOR

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

Before the  
**Senate Committee on Ways and Means**  
February 15, 2022 at 10:30 am  
Room 211 & Via Videoconference

In consideration of  
**Senate Bill 2759 SD1**  
**Relating to the Disposition of Water Rights**

Honorable Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

The County of Kauai is in **support** of SB2759 SD1 which exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

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

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

SB2759 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 SB2759 SD1.



**SB2759**  
**RELATING TO THE DISPOSITION OF WATER RIGHTS**  
Senate Committee on Water and Land  
Senate Committee on Agriculture and Environment  
Senate Committee on Hawaiian Affairs

February 4, 2022

1:05 PM

Videoconference

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The Council for Native Hawaiian Advancement (CNHA), a member-based 501(c)(3) non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians, **SUPPORTS** SB2759, which would exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights.

CNHA appreciates the Legislature's attention to further the constitutionally protected rights of Native Hawaiians. The traditional and customary rights of Native Hawaiians are becoming more increasingly difficult to perpetuate at a time where there are competing socio-political-economic interests and regulation over the natural resources that also serve as Native Hawaiian cultural resources. CNHA strongly believes that the path forward into a prosperous future for all who call Hawai'i, home, is through continued support for Native Hawaiian traditional and customary practices and to allow these practices to organically evolve into integral facets of society that could very well play a critical role in shaping a more robust socio-economic future.

CNHA urges the Legislature to pass SB2759.

Mahalo nui loa for this opportunity to provide testimony on this measure.

Respectfully,

J. Kūhiō Lewis  
CEO, Council for Native Hawaiian Advancement



Testimony Before The  
Senate Committee on Ways and Means  
**IN SUPPORT OF SB 2759 SD1**  
February 15, 2022, 10:30AM, Room 211

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 SB 2759 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 cultural and community 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 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.





# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WAYS AND MEANS

February 15, 2022

10:30 AM

Conference Room 211

**In SUPPORT of SB2759 SD1:** Relating to the Disposition of Water Rights

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Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **supports SB2759 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 statewide, and facilitate achieving state goals around food production and managing the our most precious resource, wai.**

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

Accordingly, the Sierra Club of Hawai'i urges the Committee to **PASS** SB2759 SD1. Mahalo nui for the opportunity to testify.



## Aloha 'Āina Legal Group, LLC

Elwen A. Freitas, Esq.  
Sharde K.M. Freitas, Esq., MPH

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### **SB2759 SD1**

Relating to the Disposition of Water Rights  
Senate Committee on Ways and Means

February 15, 2022

10:30 AM

Conference Room 211

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Aloha 'Āina Legal Group (AALG) **STRONGLY SUPPORTS SB2759 SD1**, which would exempt traditional and customary kalo cultivation from the Hawai'i Revised Statutes §171-58 water leasing process. This bill will not only provide needed support to kalo farmers Statewide, but also support achieving State goals around food production.

Many kalo farmers are also juggling other kuleana just to survive in Hawai'i. AALG encourages the Legislature to not only minimize or eliminate barriers to kalo cultivation, in addition to other traditional practices, but also facilitate compliance with state laws protecting stream water. Further, this bill would effectuate recommendation(s) from the Taro Purity Task Force's with "support to taro-farming communities with flooding and stream blockage issues on how to interface with federal and state agencies and the permitting process."<sup>1</sup> This bill would also encourage others across Hawai'i to farm kalo on State land or with water that comes from such 'āina.

Hāloa, the kalo plant and cited as the origin of the Hawaiian people, has not only signified cultural importance for this lineage, but also as a staple food source. Kalo farmers provide important stewardship over our 'āina and its finite resources, and they are living repositories of cultural knowledge and practices. Practitioners, such as our kalo farmers, uphold constitutionally protected traditional and customary rights, even in the face of immense pressure and hardships. Clearly, the importance of kalo to Hawai'i and its people further support the need to ensure that kalo cultivation will be continued for generations to come. This bill will provide an important exemption that would also support local food production and farmers who supply kalo and poi across Hawai'i nei.

Therefore, we urge the Committee to **PASS SB2759 SD1**.

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<sup>1</sup> Taro Security and Purity Task Force, "E Ola Hou ke Kalo; Ho'i Hou ka 'Āina Lē'ia," p. 5, Dec. 29, 2009.

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of your Honorable Committee:

Mahalo for scheduling this hearing on SB 2759, SD 1. **The Wai'oli Valley Taro Hui strongly supports this measure, which is critical to perpetuate our Native Hawaiian and local kalo culture on Kaua'i's North Shore.**

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

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

After those 2018 floods, our mānowai (traditional Native Hawaiian break-away dam), po'owai (dam at the head of the 'auwai), and entire 'auwai (ditch) systems were devastated. Our river changed course, and some described what we experienced as a thousand-year flood event. As wetland kalo farmers, water from Wai'oli Stream is our lifeline. Now, four years after the 2018 floods, we are still in basic recovery mode despite significant kōkua from the State of Hawai'i, County of Kaua'i, and University of Hawai'i at Mānoa's Richardson School of Law. The County helped to fix our māno in Summer 2020, but later flooding caused damage that required further repairs. For the last three years, we have worked closely with the Law School's Environmental and Native Hawaiian Rights Clinics. They helped us navigate the many legal processes we had to wade through, including applying for and securing an easement for our irrigation system and a revocable permit for our water use, lobbying for an amended Interim Instream Flow Standard for Wai'oli Stream, submitting a Final Environmental Assessment for a long-term water lease and

securing a Finding of No Significant Negative Impacts from the Board of Land and Natural Resources. We have completed consultation with the Department of Hawaiian Home Lands and drafted a Watershed Plan. Despite all of these efforts, a long-term water lease remains elusive. To say that this process is complicated and confusing is a gross understatement – we would never have gotten this far without the hard work of the Clinic’s students, fellows, and attorneys. All of this support has been a huge gift that we are so grateful for, but we still desperately need your help to finally finish this process after four long years.

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

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

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

**Given these unique circumstances, we humbly ask your committee to pass out SB 2759, SD 1 and exempt instream traditional and customary kalo cultivation from HRS § 171.** We are open to an amendment to expand the proposed exemption to include traditional kalo cultivation on traditional kalo lands, even if some commercial element is involved.

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

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

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Chair and Committee Members,

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 SB 2759, 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 SB 2759, SD 1.

Mahalo piha,

C. Kimo Inanod

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai‘i State Capitol  
415 South Beretania Street**

Aloha Chair Dela Cruz 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 SB 2759, SD 1.** 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 DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

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

My name is Clarence “Shorty” Kaona. I am a 3<sup>rd</sup> 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 SB 2759, 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. Please vote today to approve SB 2759, SD 1.

Mahalo,

Clarence “Shorty” Kaona



## **‘Ahahui o nā Kauka**

**677 Ala Moana Blvd., Suite 1015**

**Honolulu HI 96813**

**Phone 808.548.0270**

**E-mail [huikauka@gmail.com](mailto:huikauka@gmail.com)**

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February 14, 2022

### COMMITTEE ON WAYS & MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

### **Group Testimony in Support of SB2759 SD1 RELATING TO THE DISPOSITION OF WATER RIGHTS**

‘Ahahui o nā Kauka stands in support of the benefits SB2759 SD1 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 weight<sup>1</sup>. 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.

<sup>1</sup> 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



# Hui o Nā Wai 'Ehā

*Ola i ka wai* [WWW.HUIONAWAIEHA.ORG](http://WWW.HUIONAWAIEHA.ORG)

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Isaac Moriwake  
(Earthjustice)

February 14, 2022

To: Senator Donovan M. Dela Cruz, Chair, Senator Gilbert S.C. Keith-Agaran, Vice Chair, Senate Committee on Ways and Means

## Re: Testimony in Strong Support of Senate Bill No. 2759, SD1

Aloha e Chair Dela Cruz, Vice Chair Keith-Agaran, 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 SB 2759, 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, SB 2759 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](mailto:Huionawai4@gmail.com) • [www.huionawaieha.org](http://www.huionawaieha.org) •  

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

SB 2759 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. SB 2759 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 SB 2759 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 SB 2759, SD1. 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 DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY IN STRONG SUPPORT OF SENATE BILL NO. 2759, SD1

Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
State Capitol  
415 South Beretania Street

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members,

Earthjustice strongly supports Senate Bill No. 2759, SD1, Relating to the Disposition of Water Rights. 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. SB 2759 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.

SB 2759 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, SB 2759 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

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & 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 SB 2759, 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 Lilian and I are now grooming my step-son, Kaisen Carillo, to take over. I am not sure if our daughter Lily is interested in farming, but it feels like I am working constantly to ensure that our farm is operational and healthy so that my kids have the option of continuing this important family tradition.

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

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



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

Mahalo for considering my testimony and for your continued work to protect our valuable natural resources and traditional practices. Please pass out SB 2759, SD 1.

Mahalo nui,

Robert "Bobby" Watari

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & 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 SB 2759, 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 SB 2759, 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



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 Ways and Means  
Senator Donovan Dela Cruz, Chair  
Senator Gilbert Keith-Agaran, Vice Chair

**Tuesday, February 15, 2022, 10:30AM, Videoconference**

**RE: SB 2759 SD 1 – Relating to the Disposition of Water Rights**  
**Position: STRONG SUPPORT**

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means,

Papa Ola Lōkahi **supports** SB 2759 SD 1, which exempts the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights; and would **support** amendments that ensure the exemption includes kalo cultivation done in a traditional manner, even if that includes a commercial element. The current water leasing process places a significant burden on kalo farmers who must spend time and resources to navigate and complete the process, which may disproportionately impact smaller 'ohana farmers without the resources to pursue the arduous process. This bill removes access barriers to a necessary resource, wai, and provides critical support to perpetuate traditional practices, such as kalo cultivation.

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

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

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

### ***About Papa Ola Lōkahi***

Papa Ola Lōkahi holds the mission of improving the health status and well-being of Native Hawaiians and others by advocating for, initiating, and maintaining culturally appropriate strategic actions aimed at improving the physical, mental, and spiritual health of Native Hawaiians and their 'ohana, and empowering them to determine their own destinies. This mission works towards Papa Ola Lōkahi's vision of a thriving Native community of health individuals, families, and communities who are informed about their rich heritage and culture living in a state of lōkahi (unity) and making informed choices and responsible decisions in a safe island society that is pono (in proper order). Created through the Native Hawaiian Health Care Improvement Act, Papa Ola Lōkahi is the designated organization charged with a variety of mandates, which include coordinating, implementing, and updating a Native Hawaiian comprehensive health care master plan; leading the five Native Hawaiian Health Care Systems; and

### Papa Ola Lokahi

is a non-profit Native Hawaiian organization founded in 1988 for the purpose of improving the health and well-being of Native Hawaiians and other native peoples of the Pacific and continental United States.

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*Sheri-Ann Daniels, EdD*

**SB-2759-SD-1**

Submitted on: 2/14/2022 9:44:40 AM

Testimony for WAM on 2/15/2022 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Lucienne de Naie	Individual	Support	No

Comments:

Aloha

Ha'iku Community Association is in strong support of this bill. Our kalo farmers deserve to have efficiency and clarity on how their their kuleana rights are implemented.

Mahalo for your support

Lucienne de Naie

President, Ha'iku Community Association

**LATE**

SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

**Testimony in Strong Support of SB2759, SD 1**

Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference

Hawai'i State Capitol  
415 South Beretania Street

Aloha Chair Tarnas, Vice-Chair Branco, and Committee Members,

The Hanalei Hawaiian Civic Club fully **supports SB2759, SD 1**, and urges your honorable Committee 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 farmers work multiple jobs to continue to preserve and perpetuate this endangered lifestyle.

To support these bills supports not only these farmers, but the very essence of our humble community and of Hawai'i by given them access to water, the life of the land. We are kama'āina, children of the land, firmly rooted and unwavering, despite the many storms that attempt to irreparably change our Hawaiian way of life. These bills 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 traditional practices and use of wai for as kalo farming.

Please vote to pass SB 2759, SD1 and exempt traditional kalo cultivation from 171-58.

Mahalo,



Jessica Kauai Fu  
Pelekikena

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members,

Mahalo for the opportunity to testify today in **strong support of SB 2759, 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 ("Hui"), a small nonprofit of kalo farmers, for the past two years as part of Professor Kapua Sproat's Native Hawaiian Rights Clinic and as a Ka Huli Ao summer fellow.

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

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

For this reason, I ask you to please pass out SB 2759, SD 1 today. Thank you for your time and consideration.

Mahalo,

MJ Palau-McDonald

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Chair and Committee Members,

My name is Lillian Watari, and I am a 4<sup>th</sup> 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,

Lilian Watari



**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Members of this Important Committee,

Mahalo for taking the time to consider the SB 2759, 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 5<sup>th</sup> 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 6<sup>th</sup> generation Wai'oli kalo farmers. I spent some time outside of Kaua'i, going to school, earning my associate's degree in hospitality and my bachelor's degree in business. I'm grateful to have earned these degrees and have been putting them to good use since I moved back to Kaua'i from O'ahu about 6 years ago. Now, as an adult, I am able to use my formal education to expand my own farming efforts and am currently being groomed to run our family-operated farm some day.

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

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

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

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

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

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

Mahalo,

Kaisen Carillo

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members:

Mahalo for hearing SB 2759, 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 out SB 2759, SD 1 today.

Mahalo,  
Chris Kobayashi

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran, 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 SB 2759, 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 SB 2759, 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 DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

**Testimony in Strong Support of SB 2759, SD 1**

Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street

Dear Chair Dela Cruz, Vice-Chair Gilbert, 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 Senate Bill 2759, 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-one years old, I am barely able to maintain only two of my original six patches. Although sometimes friends come over to give me a hand, I mostly farm alone. Water is so vital for us to continue farming. It is the lifeblood. Without it, we cannot survive. To say that this situation is causing me stress is an understatement.

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

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

Thank you again for this opportunity to testify in support of SB 2759, 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 Hu

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha Chair Dela Cruz and Committee Members,

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 SB 2759, 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 SB 2759, SD 1 today.

Mahalo,

Sierra-Lynn Stone

**SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Testimony in Strong Support of SB 2759, SD 1**

**Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street**

Aloha nui mai e Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of this Committee,

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

Our State Constitution prioritizes and protects traditional and customary Native Hawaiian practices. While this protection exists in the black letter of the law, bringing that law to life on the ground and in our communities is often a challenge. The Wai'oli Valley Taro Hui ("Hui") offers a 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.<sup>1</sup> 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 SB 2759, SD 1.

Mahalo nui,

U‘ilani Tanigawa Lum, Esq.

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<sup>1</sup> 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](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).

**SB-2759-SD-1**

Submitted on: 2/13/2022 7:25:05 PM

Testimony for WAM on 2/15/2022 10:30:00 AM

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

Comments:

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members,

I offer my testimony in **STRONG SUPPORT of SB 2759, SD 1**. The policy of exempting traditional and customary kalo cultivation from the requirements of the HRS §171-58 water leasing process is absolutely needed and frankly something that should already be in place. It is imperative that we support our small ‘ohana farmers and practitioners, especially those who aim to continue the important work of kalo cultivation. Such an exemption, as proposed here, would indeed encourage others throughout Hawai‘i to not only support the traditional and customary practices of kalo cultivation but perhaps expand our capacity to include many more of them.

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

**Please vote to pass SB 2759, SD 1, and exempt kalo cultivation from §171-58.**

Respectfully,

Ashley B. Kaono

**SB-2759-SD-1**

Submitted on: 2/14/2022 5:53:34 AM

Testimony for WAM on 2/15/2022 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Walter Ritte	Individual	Support	No

Comments:

Aloha Kakou,

I am in strong support of SB 2759!

Our ability to feed our families traditionally needs to be recognized and supported by this government!

SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

**Testimony in Strong Support of SB2759, SD 1**

Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street

Aloha Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members,

My name is Nāhulu Nunokawa and I am testifying today in **strong support** of SB 2759, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. My mom's family is from Anahola, Kauai. I was born on Maui but I spent much of my life on the north shore of Kauai. It's a special place that we need to protect. In order to do that we need to protect the people that make it special; that make it unique. It is vital that we support the practitioners and small family farmers, now more than ever in these turbulent times.

As I understand it, this bill would benefit the Wai'oli Valley Taro Hui (WVTH). As someone who has lived on Kaua'i off and on post 2018, I know first-hand the devastation and challenges of the 2018 floods and how hard it has been for everyone in that valley. Although that happened almost four years ago, Kaua'i continues to live with global warming's impacts. It seems like every winter the valley is impacted by devastation caused by severe weather. Still, WTVH continues to persever and strives to keep the community fed.

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. Furthermore, when WVTH completed 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. Please help preserve our culture and to preserve our environment.

Please vote to pass SB 2759 and exempt traditional kalo cultivation from 171-58.

Mahalo nui for your consideration,

Nāhulu Nunokawa

SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

**LATE**

**Testimony in Strong Support of SB2759, SD 1**

Tuesday, February 15, 2022, 10:30 a.m.  
Conference Room 211 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street

E Chair Tarnas, Vice-Chair Branco, and Committee Members, welina aloha iā 'oukou:

My name is Li'iPi'ilani Stevens Nāhiwa, and I am testifying today in **strong support of SB2759, SD 1**, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. As a kupa of Waiākeawaena, Hilo, we must support our practitioners and small family farmers. This bill would also encourage others throughout Hawai'i nei to farm kalo on State land or with water that comes from such 'āina.

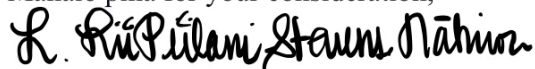
As I understand it, this bill would benefit the Wai'oli Valley Taro Hui (Hui). After several years and thousands of hours of pro bono work from the Richardson School of Law's legal clinics, the farmers are nearing the end of the complex process of seeking a long-term water lease. Their leadership and diligence underscore why this exemption is pono. As a Hawai'i island resident, I know firsthand the devastation and challenges of flooding. Although the 2018 flooding devastated Kaua'i, which happened almost four years ago, and as a kupa from another island and likewise ma'a to heavy rains and flooding, I know firsthand how imperative this measure is. It is inarguable that we *all* 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 communities, even those on other islands for generations.

Like many other small 'ohana farmers across Hawai'i, kalo farmers like the Hui have longstanding relationships with 'āina and the communities they serve. Kalo farmers provide important stewardship over our 'āina and its finite resources. 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 vital 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. Without culture, we have no lāhui Hawai'i.

Please vote to pass SB 2759, SD1, and exempt traditional kalo cultivation from 171-58.

Mahalo piha for your consideration,



L. Li'iPi'ilani Stevens Nāhiwa, Assistant to the Dean  
Hawai'inuiākea School of Hawaiian Knowledge

**LATE**

**SB-2759-SD-1**

Submitted on: 2/14/2022 11:10:40 AM

Testimony for WAM on 2/15/2022 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
penny levin	Individual	Support	No

Comments:

Aloha;

My name is Penny Levin. I am testifying in STRONT SUPPORT for SB2759. As a small taro farmer on Maui, I stand in support of the taro farmers of Wai'oli and for taro growers statewide with this proposed change in the water lease process. The current water lease system places far too great a burden on taro farmers, both appurtenant and kuleana water users. This simple addition to the statute will help to ensure that kalo and its caretakers (taro growers) will remain on the land and that this unique crop and lifestyle that we have chosen, one that inhabits the very core of Hawaiian culture, can persist, and perhaps, in time, thrive again.

Kalo farmers have protected our streams and mauka to makai water connections through the best and the worst of natural, socio-political and economic disasters in these islands, during wars, floods, hurricanes, and pandemics, and still they rise to feed their families, communities and all of O'ahu. As climate change brings greater uncertainty to our islands, this bill will help us keep kalo farming alive for the next generations.

Please vote yes and pass SB2759 SD1

Mahalo