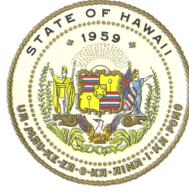


DAVID Y. IGE
GOVERNOR OF HAWAII



**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**

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COMMISSION ON WATER RESOURCE MANAGEMENT

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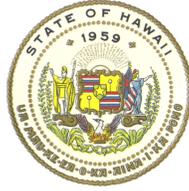
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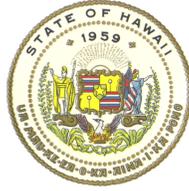
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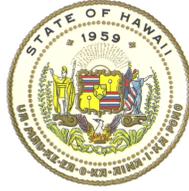
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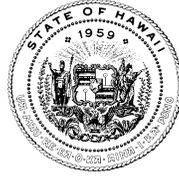
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STATE OF HAWAII

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 COMMITTEES ON WATER AND LAND, AGRICULTURE AND
ENVIRONMENT, AND HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 4, 2022 AT 1:05 PM VIA VIDEOCONFERENCE

IN SUPPORT OF

SB 2759, RELATING TO THE DISPOSITION OF WATER RIGHTS

February 4, 2022

Aloha Chairs Inouye, Gabbard, Shimabukuro and members of the Committees:

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.

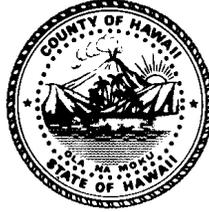
DHHL has been working with the Department of Land and Natural Resources (DLNR) for the past few years on a number of efforts where DLNR is attempting to issue water licenses or leases under HRS 171-58. These include hydroelectric projects on Hawai'i Island and Kaua'i, and agricultural water on Kaua'i,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

Dr. 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 2, 2022

Committee on Water and Land
Senator Lorraine R. Inouye, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

Committee on Agriculture and Environment
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

Committee on Hawaiian Affairs
Senator Maile S. L. Shimabukuro, Chair
Senator Jarrett Keohokālole, Vice Chair

Re: Testimony in **Support** of SB2759, RELATING TO DISPOSITION OF WATER RIGHTS
Videoconference Hearing: February 4, 2022 at 1:05 p.m.

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

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

The Hawai'i State Constitution mandates that the traditional and customary practices of Native Hawaiians be protected. Keeping this in mind, kanaka farmers should be exempt from the burdensome process of securing water leases for traditional kalo farming.

I would like to recognize and mahalo the legal clinics of Richardson School of Law for their thousands of hours of pro bono work in assisting Wai'oli Valley Taro Hui with water rights in recent years. As representatives of the people, I hope that you will support the continued success of our kalo farmers at Wai'oli and across the pae 'āina by voting in favor of this measure.

We strongly **support** the passing of SB2759.

Sincerely,

DR. 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 Water and Land

Senate Committee on Agriculture and Environment

Senate Committee on Hawaiian Affairs

February 4, 2022 at 1:05 p.m.

Room 229 & Via Videoconference

In consideration of

Senate Bill 2759

Relating to the Disposition of Water Rights

Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

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



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

LATE

Before the
Senate Committee on Water and Land
Senate Committee on Agriculture and Environment
Committee on Hawaiian Affairs
February 4, 2022 at 1:05 pm
Room 229 & Via Videoconference

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

Honorable Chair Inouye, Vice Chair Keith-Agaran, Chair Gabbard, Vice Chair Nishihara, Chair Shimabukuro, Vice Chair Keohokalole, and Committee Members:

The County of Kauai is in **support** of SB2759 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 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.

SB-2759

Submitted on: 2/1/2022 4:29:09 PM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Edith Kawai	Testifying for Waimea Hawaiian Civic Club	Support	No

Comments:

The Waimea Hawaiian Civic Club strongly supports the purpose of SB25759 to exempt in stream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights. Kalo and sweet potato cultivation have long been land use methods where the Kanaka is part of the life cycle and, thus, dependent upon growing practices that allow taro cultivation to co-exist rather than to take from the environment. This bill helps the State to try to fit growing practices into a water use system that tends to overuse and abuse. How will the percentage of use be calculated and enforced?

Thank you,

Edith Kawai Waimea Hawaiian Civic Club, President



Testimony Before The
Senate Committee on Water and Land
Senate Committee on Agriculture and the Environment
Senate Committee Hawaiian Affairs
IN SUPPORT OF SB 2759

Friday, February 4, 2022, 1:05PM, Room 229

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 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 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.

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha nui mai e Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

Mahalo for scheduling this hearing on SB 2759. **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 and exempt instream traditional and customary kalo cultivation from HRS § 171.

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



**Senate Committee on Water and Land
Senate Committee on Agriculture and the Environment
Senate Committee on Hawaiian Affairs**

Friday, February 4, 2022, 1:05 p.m. Conference Room 229 & Videoconference

Hawai'i Alliance for Progressive Action Supports: SB2759

Aloha Chairs Inouye, Gabbard and Shimabukuro, Vice Chairs Keith-Agaran, Nishihara, and Keohokalole and Members of the Committees,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in support of SB2759. HAPA is a state-wide organization that engages approximately 10,000 local residents annually.

SB 2759, which would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. We must support our practitioners and small family farmers. This bill would also encourage others throughout Hawai'i nei to farm kalo on State land or with water that comes from such 'āina.

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

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

Like many other small 'ohana farmers across Hawai'i, kalo farmers like the Hui have longstanding relationships with 'āina and the communities they serve. Kalo farmers provide important stewardship over our 'āina and its finite resources, and they are living

repositories of cultural knowledge and practices. After completing the chapter 343 environmental review process, the Hui's environmental assessment for kalo cultivation in a traditional manner not only found "No Significant Impact," but in fact, *beneficial* impacts to the environment.

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

Please vote to pass SB2759 and exempt traditional kalo cultivation from 171-58.

Mahalo for your consideration,

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

Anne Frederick
Executive Director



Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

Hui o Nā Wai 'Ehā Board of Directors

February 2, 2022

Hökūao Pellegrino
(President)

To: Senator Lorraine R. Inouye, Chair, Senator Gilbert S.C. Keith-Agaran, Vice Chair, Senate Committee on Water and Land

Koa Hewahewa
(Vice President)

To: Senator Mike Gabbard, Chair, Senator Clarence K. Nishihara, Vice Chair, Senate Committee on Agriculture and Environment

Lani Eckart-Dodd
(Treasurer)

To: Senator Maile S.L. Shimabukuro, Chair, Senator Jarret Keohokālole, Vice Chair, Senate Committee on Hawaiian Affairs

Lucienne de Naie
(Secretary)

Duke Sevila
(Founding Board
Member)

Re: Testimony in Strong Support of Senate Bill No. 2759 and Proposing Amendments

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

Aloha e Chairs Inouye, Gabbard and Shimabukuro, Vice Chairs Keith-Agaran, Nishihara, and Keohokālole, and Members of the Committees.

Ikaika Nakahashi
(Board Member)

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.

Kōnane Awo
DelaNux
(Board Member)

Mariana Löwy-
Gerstmar
(Board Member)

Ka'apuni Aiwohi
(Board Member)

Kamalani Uehara
(Board Member)

Maui Tomorrow (Collaborator)

Albert Perez
(Executive Director)

Legal Counsel

Isaac Moriwake
(Earthjustice)

Pamela W. Bunn
(Dentons)

The Hui **strongly supports SB 2759**, 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. In addition, related to SB 2759's subject, purpose, and principles, the Hui **requests that the bill be amended** to also include 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**. Chair Inouye is intimately aware of this issue through her site visit to Nā Wai 'Ehā in Maui, where kalo farmers have been struggling for far too long to have these rights of access recognized and protected. The Hui's proposed additions, attached to this testimony, would address this issue for these communities and the ability to help similar communities throughout Hawai'i Nei. Together with the provisions to exempt kalo farmers from burdensome permitting processes, the protections of kalo farmers'

Hui o Nā Wai 'Ehā (501c3) • 213 West Waikō Road, Wailuku, Maui, Hawaii 96793

(808) 430-4534 • Huionawai4@gmail.com • www.huionawaieha.org •  

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

water access rights 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.

The Hui further believes that SB 2759 provides an opportunity to support kalo farmers by also protecting our kuleana and traditional and customary water rights, including our rights to access a traditional water course or ‘auwai to enable our water use for kalo farming. The Hui has attached proposed amendments along these lines. As background, Chair 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. We are grateful to Chair Inouye for taking the initiative to meet with us and consider helping through legislation, and we humbly ask the other Chairs, Vice-Chairs, and Committee Members to also support these efforts. Like the proposed relief that would help the Wai‘oli community but also extend more broadly, the proposed amendments on water access rights would help address this issue in communities beyond Nā Wai ‘Ehā, supporting and benefitting kalo farmers across Hawai‘i.

To be clear, all the amendments under consideration, including the proposed additional amendments, simply **confirm and uphold rights that already exist**. The exemption of traditional and customary kalo farming from water rights permitting and leasing recognizes that kalo farmers already have such rights. The same goes with the proposed amendments protecting water access rights: these rights are already an inherent and long-established part of traditional water rights, and the amendments would simply confirm they must be protected.

For the reasons above, Hui o Nā Wai ‘Ehā strongly supports SB 2759 and requests that it also include the attached proposed amendments. 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 again Chair Inouye and all the Senators on these Committees for your leadership and support on this bill and for this opportunity to provide testimony and offer amendments.

Me ka ha‘aha‘a,

Hōkūao Pellegrino
(President)

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

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

PROPOSED AMENDMENTS TO SB 2759
(additions underlined)

(preamble section:)

SECTION 1. The legislature finds that native Hawaiians have been farming successfully on lands throughout the State for nearly two thousand years without creating adverse impacts to the land in which they operated. 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. Article XII, section 7, of the Hawaii State Constitution mandates that such traditional and customary practices of native Hawaiians be protected.

The legislature further finds that it is the State's responsibility as that of a trustee to act with the diligence and care of a fiduciary in assuring that bona fide trust purposes, including the preservation and enhancement of the water for various uses in the public interest, are protected when deciding what constitutes maximum beneficial use. However, in carrying out this responsibility, the regulatory actions of the State may adversely hamper and impact the constitutionally protected rights of native Hawaiians. The State has an obligation to ensure that traditional and customary practices of native Hawaiians continue to be protected.

The legislature further finds that appurtenant or kuleana rights to water for traditional and customary rights and domestic farming purposes must also be protected. These rights to water necessarily include the right to use water, as well as the right to

the water course, i.e., the means of access and delivery of the water to be used.

The purpose of this Act is to exempt the instream use of water for traditional and customary kalo cultivation practices from the existing process for disposition of water rights, and to clarify that traditional and customary and kuleana rights to water include rights of use, access, delivery, and quality of water, which shall be recognized and protected.

(statutory amendments:)

§174C-5 General powers and duties. The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

. . . .

(15) Shall determine appurtenant water rights, including but not limited to the quantification of the amount of water and the specification of the water course or the means of access and delivery entitled to by that right, which determination shall be valid for purposes of this chapter.

[§174C-63] Appurtenant rights. Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right, including the use, access, delivery, and quality of water, by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be issued upon application. Such permit shall be subject to sections 174C-26 and 174C-27 and 174C-58 to 174C-62.

§174C-101 Native Hawaiian water rights.

. . . .

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, including but not limited to the rights of use, access, delivery, and quality of water, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.



PO Box 1177 Koloa HI 96756
808.652.5286 hawaiiSEED.org

February 2, 2022

Testimony in Strong Support of SB 2759

Aloha Chairs, Vice Chairs, and Committee Members of Water and Land, Agriculture and Environment, and Hawaiian Affairs,

Hawai`i SEED stands in strong support to exempt water use for traditional and customary kalo cultivation from the water leasing process. I live on Kaua`i and have followed the hard work and integrity in which the kalo farmers of Kaua`i's Wai`oli Valley Taro Hui. They have continued working to comply with the water leasing process since the heavy rains that devastated their farms and lifeways from the 2018 floods that ravaged Kaua`i's North Shore. The kalo farmers and their hui have made great improvements to malama `aina and the streams. Please help them to continue the cultivation of their `āina and provide `ai pono for our communities as they have for generations. Please support this bill to exempt instream use of water for traditional and customary kalo cultivation practices from these requirements.

With Sincere Aloha,

Jeri Di Pietro, Hawai`i SEED
PO Box 1177
Koloa, HI 96756

SB-2759

Submitted on: 2/2/2022 11:50:37 PM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lucienne de Naie	Testifying for Haiku Community Assopciatiopn	Support	Yes

Comments:

Haiku Community Association represents many east Maui families who are farminmg kalp or wish to return to farming kalo. They are often mystified why as kuleana land owners they must try to navigate extensive permit processes.

We mahalo the Senate and House committees for movimng these needed reforms forward.

Lucienne de Naioe

President, Ha'iku Community Association



SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR

Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

FROM: Stacy Sproat-Beck, Executive Director, The Waipā Foundation
RE: Testimony in Strong Support of SB 2759

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

My name is Stacy Sproat-Beck, and I have served as a founder and board member of the Waipā Foundation from 1994-2001 and then as Executive Director since 2001. I am writing in strong support of SB 2759, which would exempt the in stream use of water for traditional and customary kalo cultivation from the HRS § 171-58 water leasing process.

I strongly encourage you, the members of the Senate Committee on Water and Land, and the Senate Committee on Agriculture and Environment to pass this bill to support kalo farmers and help to continue the cultural practice of growing kalo.

The Waipā Foundation is a 501c3 nonprofit founded in 1994 that evolved from the community's first efforts in the early 1980's to save the 1,600 acre ahupua'a of Waipā, located on the north shore of Kaua'i, from resort and golf course development. The valley is owned by the Kamehameha Schools which is one of the strongest supporters of the Foundation and its work, and we currently hold a 40

year agricultural lease for the land. For over 20 years, Waipā has been a living learning center, its work multi-faceted with efforts balanced between stewardship, cultural resiliency and economic development rooted in agriculture that has historically sustained local Hawaiian communities.

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

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

Please support our farmers, I urge you to very strongly consider and support SB 2759.

Mahalo piha,

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

Stacy Sproat-Beck,
Executive Director

Kūpuna for the Mo'opuna
committed to the well-being of Hawai'i for the next generations to come
kupuna4moopuna@gmail.com



SB 2759 – RELATING TO THE DISPOSITION OF WATER RIGHTS – SUPPORT

WTL/AEN/HWN 2.4.2022 @ 1:05pm

We SUPPORT SB 2759

SB 2759 would greatly support our practitioners and small kalo framers with this exemption to HRS 171-58. This bill will support and encourage local food production and farmers who supply kalo and poi all across Hawai'i.

Please vote YES to SB 2759.

Mahalo,
~Kūpuna for the Mo'opuna
Pana'ewa, Hawai'i

Ua mau ke ea o ka 'āina i ka pono!



SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

TESTIMONY IN STRONG SUPPORT OF SENATE BILL NO. 2759
AND PROPOSED AMENDMENTS

Friday, February 4, 2020, 1:05 p.m.
Conference Room 229 & Videoconference
State Capitol
415 South Beretania Street

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Members of the Committees,

Earthjustice strongly supports Senate Bill No. 2759, 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 these practices, and ensuring that this and other communities do not have to go through this anymore or ever again.

Earthjustice also strongly supports the amendments proposed by Hui o Nā Wai 'Ehā, in consultation with Chair Inouye, to include protections of kalo farmers' kuleana and traditional and customary water rights, including rights to the water course or means of accessing and delivering water for kalo farming. Chair 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.

Hui o Nā Wai 'Ehā's proposed amendments would confirm kalo farmers' traditional rights to water, which inherently and necessarily must include the right to use water and the right to access and deliver the water. Along with the exemption of traditional kalo farming from water rights permitting and leasing, these amendments would bring much needed and overdue justice 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; I also plan to be present at the hearing for further discussion as necessary. 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

SB-2759

Submitted on: 2/1/2022 8:56:16 PM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Barry	Individual	Support	No

Comments:

Aloha,

I support SB2759,

Mahalo,

Barbara Barry



Restore the Commons

Thursday, February 3, 2022, 9:00 am

Senate Committees on Water and Land, Agriculture and Environment, and Hawaiian Affairs

SENATE BILL 2759 – RELATING TO DISPOSITION OF WATER RIGHTS

Position: Support, with pointed comments

Me ke Aloha, Chairs Inouye, Gabbard, and Shimaburo; Vice-Chairs Agaran, Nishihara, and Keohokalole; and Members of the Committees on Water and Land, Agriculture and Environment, and Hawaiian Affairs

The expertise in water matters lies with the Commission on Water Resource Management and its allies in the Aquatics and Forestry Divisions, not in the Land Board. It is the Water Commission that conducts contested cases regarding water matters, reviews watershed plans, regulates stream flow and ground water withdrawals, and determines water rights – by statute. The Land Board is not equipped to handle these issues, nor is its Land Division particularly well-known for its qualified decision-making.

Water issues under the public trust are extremely sensitive public matters, with distribution of uses marked by legal complexities and an urgent need for an appropriate public venue and processing. The Water Commissioners, laboring under great pressures in an open forum, are informed by the foremost experts in surface and ground water management and an historic concern for preserving native Hawaiian water rights. It is also bound by the most intense public scrutiny on a daily basis, and its expert staff operates in the field, connecting with water users on an ongoing basis.

In these regards, the disposition of land tenure and rights to minerals are a very different set of propositions from the unique limitations of water flow, and are only in the colonial setting mashed into pretensions of similarity. Hawaii has come a long way in reversing colonial thinking, but this bill seems locked into old-fashioned notions we have yet to dispose.

The intent of this bill is to protect water use for traditional and customary water kalo cultivation practices. It is appropriate that these practices not be subject to land and mineral dispositions, and it is also true that water *dispositions* generally should no longer be the province of the Land Board at all, but remain a public trust reasonable and beneficial use under the sole jurisdiction of the Water Commission, not a subject of property rights except as defined in common law and case law. Any diversions and uses of water for non-traditional and non-customary use should remain solely at the discretion of the public process embedded at the Commission on Water Resource Management, which solely should determine the legal rights to water.

Mahalo for the opportunity to address this issue,

Charley Ice, Hoa'āina; retired senior Hydrologist at the Commission on Water Resource Management

SB-2759

Submitted on: 2/2/2022 10:40:41 PM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kaulu Luuwai	Individual	Support	No

Comments:

Aloha,

As a former student of the Native Hawaiian Law and Environmental Law clinics at the William S. Richardson School of Law, I worked directly with the Wai'oli Valley Taro Hui and have witnessed firsthand the farmers' commitment to preserving their practice of kalo farming for the wellbeing of their families and community. I have also witnessed how much hardship this process has placed on them and the amount of effort the process requires for success. I cannot imagine how other small kalo farming operations will make it through this process without a team of passionate students and lawyers on their side.

As a student, I wrote a paper on this exact issue and would be happy to share it with this Committee. The paper analyzes why exempting instream water use for traditional and customary kalo cultivation from the water leasing process does not violate Article XI, Section 1, Article XI, Section 7, and Article XII, Section 7 of the Hawai'i constitution as well as the Water Code. In essence, granting this exemption would not violate any of the bedrock environmental and Native Hawaiian traditional and customary rights protection laws in Hawai'i.

Although I am not able to testify in person, please reach out if I can help in any way.

Mahalo for your consideration,

Kaulu Lu'uwai, Esq.

Email: kp.luuwai@gmail.com

SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR

Testimony in Strong Support of SB 2759

Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, 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 perserver 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 LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chairs Inouye, Gabbard, and Shimabukuro, and Committee Members,

Mahalo for the opportunity to testify today in **strong support of SB 2759**. 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 today. Thank you for your time and consideration.

Mahalo,

MJ Palau-McDonald

SB-2759

Submitted on: 2/3/2022 12:43:56 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Haunani Lemn	Individual	Support	No

Comments:

SENATOR LORRAINE R. INOUE, CHAIR

SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR

SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR

SENATOR CLARENCE K. NISHIHARA, VICE CHAIR

SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR

SENATOR JARRETT KEOHOKALO, VICE-CHAIR

Testimony in Strong Support of SB 2759

Friday, February 4, 2022, 1:05 p.m.

Conference Room 229 & Videoconference

Hawai'i State Capitol

415 South Beretania Street

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

My name is Haunani S. Y. Lemn, and I am testifying today in strong support of SB 2759. It is my understanding that this legislation would exempt traditional and customary kalo cultivation from the HRS §171-58 water leasing process. As one born and raised on Kauaʻi, I have watched many changes come to our islands that have significantly impacted our way of life and our ability to maintain a sustainable future. SB 2759 is legislation which not only helps to perpetuate constitutionally protected traditional cultural practices but also supports activities which provide much needed food resources for our populace.

Throughout the Covid pandemic, it became increasingly apparent that Hawaiʻi has become overly dependent on outside food resources which must be shipped in. This dynamic has made us critically vulnerable as a community. Support of our small family farmers is a key component in our ability to create sustainable options for our growing population. Additionally, without this support, more and more of our agricultural lands fall prey to residential or commercial development which takes prime agricultural lands permanently out of cultivation. This trend moves us further and further away from the ability to provide for Hawaiiʻs people. It is in our best interest as a society that we support those who help to provide for the basic necessities that are imperative for our survival. This is especially so given how increasingly difficult for our local people to make a living farming here in Hawaiʻi.

Having been raised in a small farming community on Kauaʻi, I am very cognizant of the continual and unpredictable challenges which our small farmers face. The 2018 floods experienced by Kauaʻi farmers is just one example of these challenges. Floods, droughts, devouring insects, vermin control, diseases, weeds, land costs, property tax increases, market price fluctuations, shipping costs, equipment failures, and toxic chemical impacts are just some of a farmerʻs challenges. A farmerʻs life is not one which revolves around an 8 hour day or 5 day a week schedule. It is long, strenuous work from dawn to dusk. When a catastrophe like the 2018 flood hits, the farmer must begin again but, now, without the benefit of the inground crops that were essential to provide for their familyʻs future livelihood. Consequently, legislation which helps to free small family farmers from the burden of endless bureaucratic processes assists them to focus their time on the farming activities which makes them so valuable to our commonwealth. This is especially so for our kalo farmers who face continuous challenges to water resources essential for kalo farming. Year by year, we lose more and more kalo farmers due to the difficulties which confront them.

Since the floods, the Waioli farmers have been waging battles on two fronts. Not only have they been spending long hours restoring that which was lost in the floods, but they have also been doggedly working to comply with bewildering governmental edicts and exacting permitting regulations. Grueling hours have been spent away from their farms while they worked with volunteers from the William S. Richardson School of Law to meet complicated governmental compliance requirements. Through these efforts, their chapter 343 review led not only to a “No Significant Impact” finding in their environmental assessment, but, indeed, supported a finding that their activities actually benefitted the environment. These findings reinforce that the kalo

farmers activities are the types of activities that should be supported and encouraged by our law makers and our general population.

The kalo farmers of Kaua'i are an important part of the cultural identity and shared heritage of Hawai'i nei. They are part of that which makes Hawai'i unique. Kaua'i without its kalo farmers is unimaginable. This legislation would recognize the contributions of the Waioli farmers and assist them to continue longstanding practices disrupted by the floods.

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

Me ka ha'aha'a,

Haunani S. Y. Lemn

SB-2759

Submitted on: 2/3/2022 3:23:33 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Hoku Chun	Individual	Support	No

Comments:

Aloha,

My name is Hōkū Chun and I strongly support SB2769. Exempting traditional kalo farming from HRS 171-58 will not only benefit the Wai'oli Valley Taro Hui but communities throughout Hawai'i. It is important to me as a Native Hawaiian that we support and protect traditional and customary practices, especially kalo farming which feeds our people. Please vote to pass SB2759. Mahalo for your consideration.

Best,

Hōkū

SB-2759

Submitted on: 2/3/2022 7:14:53 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

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

Comments:

Aloha kākou,

My name is Nicholas Harders, I'm 29 years old and I currently reside in Waikapū, Maui, where I was born and raised. My family has lived on our lands here for many generations and we are fortunate to still have our traditional auwai or ditch that feeds our land with surface water from Waikapū stream. We use this gift of water to irrigate kalo, fruit trees and many other ornamental and garden crops. Access to clean, cool water in the proper amount is absolutely essential to produce kalo of sufficient quality for sustenance. As a kanaka maoli (native hawaiian) I view growing kalo as an essential cultural practice and as a means to maintain proper health of myself and our land. I submit this testimony in strong support of SB 2759 which would support and give access to surface water to kalo growers who do not have the water they need to produce kalo of sufficient quality.

Mahalo

SB-2759

Submitted on: 2/3/2022 9:39:33 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Christine Cook	Individual	Support	No

Comments:

Aloha mai

My name is Maui Ola Cook and I am an educator living on the island of Kaua‘i for the last 36 years.

I am writing to urge you to pass Bill SB2759.

While not a native to Hawai‘i I have enjoyed the privilege of participating in a kanaka maoli life style for many of my years. here. I taught with the Hawaiian Studies program with the DOE for 18 years and have 14 years teaching in Hawaiian focus charter schools.

Farming the land, especially growing taro, is in my humble opinion one of the most important things we can teach our keiki. Living in a kalo culture helps everyone to connect to their roots and feel their ancestors‘ strength and mana. Of course our keiki need to become fluent in reading, writing and math. But, they need first to feel at home in their own place. They need to learn the traditions of their people and be able to live them.

If you have ever farmed or known farmers you would know what a challenging life style it can be. Every bug. mold, storm or drought can completely devastate the product you have put everything into for months maybe even years. Farmers need all the support they can get. What would our world be like without fresh healthy food to eat? Please consider supporting farmers by making life easier for them. It is hard enough to farm without having to deal with endless paperwork.

na‘u

Maui Ola Cook

(aka Christine Anne Cook)

mauliola3@gmail.com

PO 326 Kilauea 96754

SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Testimony Strongly Supporting SB2759
Relating to the Disposition of Water Rights

February 4, 2022, 1:05 p.m.
Via Videoconference

Aloha Chairs, Vice Chairs, and Honorable Members of the Senate Committees on Water and Land, Agriculture and Environment, and Hawaiian Affairs,

My name is Alexa Deike and I am testifying in **strong support** of SB2759. I am a 2021 graduate of the William S. Richardson School of Law at the University of Hawai‘i at Mānoa and had the privilege and honor to work with the farmers of the Wai‘oli Valley Taro Hui for three semesters in the Environmental Law and Native Hawaiian Rights clinics. This bill would benefit farmers like the farmers of the Wai‘oli Valley Taro Hui and other kalo farmers across the pae ‘āina.

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

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

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

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

Mahalo for your time and consideration,

Alexa Deike

SB-2759

Submitted on: 2/3/2022 9:57:45 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jordan Loudon	Individual	Support	No

Comments:

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

My name is Jordan Loudon 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. As a kupa of Kaua‘i, we must support our practitioners and small family farmers. This bill would also encourage others throughout Hawai‘i nei to farm kalo on State land or with water that comes from such ‘āina.

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

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

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

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

Mahalo nui for your consideration,

Jordan

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chairs 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, 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 Committees' 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.

Mahalo piha,

C. Kimo Inanod

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chairs Inouye, Gabbard, and Shimabukuro, 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. 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 LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha to the Chairs, Vice Chairs, and all the members of the Committees,

My name is Clarence “Shorty” Kaona. I am a 3rd generation kalo farmer in Wai‘oli Valley, 100% Native Hawaiian, and a member of the Wai‘oli Valley Taro Hui. **I am testifying in strong support of SB 2759.** 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 the 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.

Mahalo,

Clarence "Shorty" Kaona

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha Chairs 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, 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.

Mahalo nui,

Robert “Bobby” Watari

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
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415 South Beretania Street**

Aloha Chairs and Committee Members,

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

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

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

It has been hard since the 2018 floods, both emotionally and in terms of our kalo production. Our family farm may have been hit the hardest because of where our lo'i are situated in relation to the

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

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

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

Mahalo,

Lilian Watari

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
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**Friday, February 4, 2022, 1:05 p.m.
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Hawai'i State Capitol
415 South Beretania Street**

Aloha Members of these Important Committees,

Mahalo for taking the time to consider the SB 2759, which would exempt instream uses of water for traditional and customary kalo cultivation from HRS 171. This bill would be a game-changer for our Wai'oli Valley Taro Hui, bringing us one step closer to securing a long-term water lease that would enable us to continue to cultivate this important crop that feeds our community. My name is Kaisen Carrillo, and I come from multiple generations of kalo farmers on both sides of my 'ohana. My mother's side of the family, the Haradas, started farming with my great-great-grandfather, Saburo Harada, in Lumaha'i. My great-grandfather, Genichi Harada, eventually moved the farm to Wai'oli, and my 'ohana has been farming in the valley ever since. My great grandfather's daughter, my grandma Lily, married Ahfook Tai Hook and both of them still farm in Wai'oli at 75 and 84 years old. Finally, my mom Lillian, daughter of Ahfook, married Bobby Watari, who also farms in Wai'oli Valley.

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

Since the 2018 floods, though, things have really been hard. As a full-time farmer with a young family, it's been stressful trying to figure out how to provide for my 'ohana. I need to not only repair the damage to my farm, but also provide for my growing family's needs. At the same time,

I have been trying to engage more in the administrative aspects of farming by working with our Hui to learn about the issues unique to Wai‘oli kalo farmers. These include securing a perpetual easement and revocable water permit from BLNR, getting an IIFS amendment for Wai‘oli Stream, submitting a Final Environmental Assessment for a long-term water lease to BLNR, securing a FONSI from BLNR, and now working on a Watershed Management Plan. I am committed to these issues because I know this will make it possible for my children to farm, just as my kūpuna did all they could to pave the way for me to continue farming.

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

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

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

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

Mahalo,

Kaisen Carillo

SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
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SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

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SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS

Testimony in Strong Support of SB 2759

Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Dear Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members:

Mahalo for hearing SB 2759. **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 the 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 today.

Mahalo,
Chris Kobayashi

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
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SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha to the Chairs and Members of the Committees,

Mahalo for the opportunity to testify in strong support of SB 2759. 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 and exempt instream uses of water for traditional Native Hawaiian lo'i kalo cultivation, like ours, from the water lease requirements.

Aloha,

Demetri Rivera

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
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**Friday, February 4, 2022, 1:05 p.m.
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Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

Thank you for the opportunity to testify on this important matter. As a kalo farmer in Wai'oli Valley, Kaua'i, and a member of the Wai'oli Valley Taro Hui, I strongly support SB 2759.

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 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 LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
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Dear Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Members of the Committees,

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.**

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 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 LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

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Aloha Chairs Inouye, Gabbard, and Shimabukuro, 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. 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 Committees 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 Committees' 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 Committees’ 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 Committees’ 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 today.

Mahalo,

Sierra-Lynn Stone

SB-2759

Submitted on: 2/3/2022 11:09:16 AM

Testimony for WTL on 2/4/2022 1:05:00 PM

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

Comments:

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

I offer my testimony in **STRONG SUPPORT of SB 2759**. 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 extremely 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 and exempt kalo cultivation from §171-58.

Respectfully,

Ashley B. Kaono

**SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND**

**SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**

**SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALO, VICE-CHAIR
SENATE COMMITTEE ON HAWAIIAN AFFAIRS**

Testimony in Strong Support of SB 2759

**Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street**

Aloha nui mai e Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

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

Our State Constitution prioritizes and protects traditional and customary Native Hawaiian practices.¹ While this protection exists in the black letter of the law, bringing that law to life on the ground and in our communities is often a challenge. The Wai'oli Valley Taro Hui ("Hui") offers an poignant example of this challenge. After three years of work, the help of four attorneys and over 30 students, the Hui continues to navigate the complex process of government approvals for their water use for traditional and customary practice. This bill would provide a significant step towards effectuating these important protections. As a hula practitioner, I'm keenly aware that we often read about and look to cultural practices and traditions as "what used to be," but these fifth and sixth generation farmers perpetuate this specific practice in this specific area in today's modern world. At a Board of Land and Natural Resources meeting considering a request from the Hui, Chair Case said it best: "What we're trying to do here is fit an old system into a new legal system." This bill distinguishes the small, 'ohana-based historical practices that our constitution protects from large for-profit diverters. Most of all, this bill effectuates justice for small kalo farmers and 'ai pono that we all enjoy.

I first met the Wai'oli Valley Taro Hui as a third year law student taking the Environmental Law Clinic with Professor Kapua Sproat in 2019. Since then, my career as a young attorney has been shaped by their hardwork, aloha, and their challenges. Over this time, we helped the Hui secure a right of entry, an easement, a revocable permit, a watershed management plan, an environmental assessment, a cultural impact statement, a concurrent

¹ HAW. CONST. art. XII, § 7 (1978); HAW. REV. STAT. § 1-1; HAW. REV. STAT. § 7-1.

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.² 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.

Mahalo nui,

U‘ilani Tanigawa Lum, Esq.

² Final Environmental Assessment for the Wai‘oli Valley Taro Hui Long-Term Water Lease for Traditional Lo‘i Kalo Cultivation Project, http://oeqc2.doh.hawaii.gov/Doc_Library/2021-10-08-KA-FEA-Waioli-Valley-Taro-Hui-Long-Term-Water-Lease.pdf#search=wai%CA%BBoli (October 2021).



LATE

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

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



LATE

HAWAI'I LAND TRUST'S TESTIMONY REGARDING SB 2759

SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND

SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR
Testimony in Strong Support of SB 2759

Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

Aloha Chairs Inouye, Gabbard, and Shimabukuro, Vice-Chairs Keith-Agaran, Nishihara, and Keohokalole, and Committee Members,

Hawaiian Islands Land Trust d/b/a Hawai'i Land Trust (HILT) is Hawai'i's islands-wide land trust that is both a Hawai'i 501(c)3 nonprofit, and a nationally accredited land trust. Our mission is to protect and steward the lands that sustain Hawai'i, and perpetuate Hawaiian values by connecting people to 'āina. We appreciate the opportunity to provide testimony in strong support of SB 2759 that would exempt kalo farming from the water leasing process. HILT has protected over 21,500 acres throughout Hawai'i, owns and stewards 7 preserves, including Kahili Beach Preserve and Wainiha Beach Preserve on Kaua'i's North Shore, and holds 45 conservation easements permanently protecting conservation values of private lands across the state. HILT's land protection priorities include Hawaiian cultural landscapes, coastlines, and lands that produce healthy food for Hawai'i's people.

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

that this measure has to ensure active stewardship and farming of these lands.

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

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

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

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

Mahalo for the opportunity to share feedback,



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

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LATE

SB-2759

Submitted on: 2/3/2022 4:18:40 PM

Testimony for WTL on 2/4/2022 1:05:00 PM

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

Comments:

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

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

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

This bill will clearly help those kalo farmers who are committed to this work of transforming land to ‘āina through their traditional and customary Native Hawaiian use of water for lo‘i kalo cultivation. From generation to generation, the cultural practices of kalo farmers from around Hawai‘i have benefited the land and water of their homelands as well as the community they feed. In order to ensure that they can continue this practice of feeding for generations to come, I write in full support of SB2759.

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

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

SB-2759

Submitted on: 2/3/2022 5:07:29 PM

Testimony for WTL on 2/4/2022 1:05:00 PM



Submitted By	Organization	Testifier Position	Remote Testimony Requested
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.

Mahalo

SENATOR LORRAINE R. INOUE, CHAIR
SENATOR GILBERT S.C. KEITH-AGARAN, VICE-CHAIR
SENATE COMMITTEE ON WATER AND LAND



SENATOR MIKE GABBARD, CHAIR
SENATOR CLARENCE K. NISHIHARA, VICE CHAIR
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR MAILE S.L. SHIMABUKURO, CHAIR
SENATOR JARRETT KEOHOKALOLE, VICE-CHAIR

Testimony in Strong Support of SB 2759

Friday, February 4, 2022, 1:05 p.m.
Conference Room 229 & Videoconference
Hawai'i State Capitol
415 South Beretania Street

E nā Kenekoa o ke Kōmike, Aloha 'oe,

The Hanalei Hawaiian Civic Club fully supports SB 2759, and urges your honorable Committees to please do the same. The North Shore of Kaua'i, like most of the world, has been hit hard by the effects of Covid-19. These impacts have been especially challenging for our community as we are still recovering from the severe flooding that occurred in 2018.

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

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

We humbly ask for your support of these bills and our Hawaiian community.

Mahalo,

A handwritten signature in black ink, appearing to read 'Jessica Kau'i Fu'. The signature is fluid and cursive, with a distinct loop at the end.

Jessica Kau'i Fu
Pelekikena