

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
JUDICIARY**

**Monday, February 28, 2022  
10:30 AM  
State Capitol, Via Videoconference**

**In consideration of  
SENATE BILL 872, SENATE DRAFT 1  
RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT**

Senate Bill 872, Senate Draft 1, proposes to amend Section 174C-7, Hawaii Revised Statutes (HRS), to add an eighth member, the Chairperson of the Hawaiian Homes Commission or the Chairperson's designee, to serve as an ex-officio voting member on the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department), and exclude the Chairperson of the Department and Hawaiian Homes Commission from having water resource management experience. **The Department offers the following comments.**

The Commission is committed to fulfill its mandate to incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in Section 221 of the Hawaiian Homes Commission Act, as provided in the State Water Code, Section 174C-101, HRS. The Commission's 2019 Water Resource Protection Plan includes a priority task (Task 2.3.4) to establish additional water reservations for the Department of Hawaiian Home Lands (DHHL).

Towards that end, the Commission has approved 28 reservations thus far for DHHL for both ground and surface waters across the six major Hawaiian islands totaling over 32 million gallons per day (mgd):

**LATE**

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

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

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

Island	Hydrologic Unit*	Reservation Amounts MGD	Effective Date
Kaua'i	Wailua GWHU	0.708	9/18/18
	Anahola GWHU	1.470	9/18/18
	Kekaha GWHU	0.336	9/18/18
	Makaweli GWHU	0.405	9/18/18
	Waimea SWHU	6.903	6/20/17
	Wailua SWHU	0.513	10/16/18
O'ahu	Waipahu-Waiawa GWHU	1.724	2/18/94
	Waimānalo GWHU	0.124	2/18/94
Lāna'i	Leeward GWHU	0.067	9/18/18
Molokai	Kualapu'u GWHU	2.905	6/10/95
Maui	Honokōwai GWHU	0.770	9/18/18
	Kama'ole GWHU	2.547	9/18/18
	Ke'anae GWHU	0.003	9/18/18
	Kawaipapa GWHU	0.118	9/18/18
	Luala'iula GWHU	0.063	9/18/18
	Honokōhau SWHU	2.000	5/18/21
Hawai'i	Keauhou GWHU	3.398	8/17/15
	Hawi GWHU	0.148	9/18/18
	Māhukona GWHU	3.014	9/18/18
	Honoka'a GWHU	0.396	9/18/18
	Hakalau GWHU	0.083	9/18/18
	Onomea GWHU	0.250	9/18/18
	Hilo GWHU	0.492	9/18/18
	Kea'au GWHU	1.336	9/18/18
	'Ōla'a GWHU	0.025	9/18/18
	Nā'ālehu GWHU	0.185	9/18/18
	Pāhoa GWHU	0.660	9/18/18
	Wailuku SWHU	1.600	3/17/20
TOTAL		32.242	

\* GWHU= Ground Water Hydrologic Unit; SWHU = Surface Water Hydrologic Unit

To date, the Commission has not reserved water for any other entity except DHHL. All reservations made since 2017 are based on the State Water Projects Plan, updated in 2017, which focuses exclusively on the water needs for DHHL. Reservations are currently in place for DHHL's potable water needs from ground water sources. Additional surface water reservations for DHHL's non-potable needs are being made in conjunction with the Commission's establishment of measurable interim instream flow standards across the State, as that process provides the necessary streamflow information (currently lacking for many streams) as well as information on existing offstream uses and other public trust uses against which DHHL needs must be balanced. Moreover, the Commission has also acted on and approved all completed DHHL well permit or water use permit applications.

All Commission members have constitutional and statutory responsibilities to protect and preserve the rights of DHHL. The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State's public trust duties. This responsibility does not rest on a single member.

Thank you for the opportunity to comment on this measure.



## Environmental Caucus of The Democratic Party of Hawai'i

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To: The Honorable Karl Rhoads, Chair  
The Honorable Jarrett Keohokalole, Vice Chair  
Committee on Judiciary

Re: SB 872 SD 1 RELATING TO THE COMMISSION ON WATER RESOURCE  
MANAGEMENT

Hearing: Monday, February 28, 2022, 10:30 a.m., Via Videoconference

Position: Strong Support

Aloha, Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee on Judiciary:

The Environmental Caucus of the Democratic Party of Hawai'i stands in strong support of SB 872 SD 1. This measure would add the chairperson of the Hawaiian Homes Commission or the chairperson's designee to serve as an ex officio, voting member on the Commission on Water Resource Management. The effective date is 7/1/2050.

We believe that while the Commission of Water Resource Management is under a legal obligation to incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands, to include the chairman of the Hawaiian homes commission or the chairman's designated representative as an ex officio, voting member to the commission on water resource management would directly advance and protect the interests of the beneficiaries of the Hawaiian Homes Commission Act.

In our view, this bill is highly beneficial; accordingly, we respectfully request that this bill be passed by your committee.

Mahalo for the opportunity to testify,

Sincerely,

*Melodie Akuya*

*Alan B. Burdick*

Co-Chairs, Environmental Caucus of the Democratic Party of Hawai'i

Email: [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com)

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879  
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON JUDICIARY  
DECISION MAKING ON FEBRUARY 28, 2022 AT 10:30AM VIA VIDEOCONFERENCE

IN SUPPORT OF

**SB 872, SD1, RELATING TO THE COMMISSION ON WATER RESOURCE  
MANAGEMENT**

February 4, 2022

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

The Department of Hawaiian Home Lands (DHHL) supports this bill that adds the Chairperson of the Hawaiian Homes Commission (HHC) or the Chairperson's designee to serve as an ex officio, voting member on the Commission on Water Resource Management (CWRM).

The HHC approved a proposal to add the Chairman of the Hawaiian Homes Commission or the Chairman's designee to the CWRM. Additionally, the HHC approved a Water Policy Plan in 2014 which includes the goal to "aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL and the HHC to water before all relevant agencies and entities." While DHHL has been working closely with CWRM, this bill would allow for greater advocacy for beneficiaries.

We note that in the past the Department of Land and Natural Resources has consistently opposed similar measures, and have noted that "The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State's public trust duties. This responsibility does not rest on a single member." We note that the DLNR's testimony neglects to note that the Court has made this clear in cases where the CWRM failed to fulfill its duties to DHHL, and that the presence of the Chairman or representative would help fulfill CWRM's duties.

Thank you for your consideration of our testimony.



SENATE COMMITTEE ON JUDICIARY  
Chair Sen Karl Rhoads, Vice Chair Sen Jarrett Keohokalole  
Monday, February 28, 2022, 10:30 pm, via videoconference

SB 872 - Relating to the Commission on Water Resource Management

TESTIMONY

Piilani Kaopuiki, Legislative Committee, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Keohokalole, and Committee Members:

**The League of Women Voters of Hawaii strongly supports SB 872** that will add the chairman of the Hawaiian Homes Commission or the chairman's designated representative as an ex officio, voting member to the Commission on Water Resource Management. As water is the lifeline of our society, both land managers have an interest in oversight of this resource. The presence on the commission of the Hawaiian Homes Commission is a laudable recognition of a huge segment of beneficiaries affected by the Commission on Water Resource Management. The Hawaiian Homes Commission will provide valuable insights and perspectives to water management in the islands.

As the legislature is poised to help clear the backlog of Native Hawaiians waiting to get into livable homes, it is imperative that the Hawaiian Homes Commission sits on the Commission on Water Resource Management.

Mahalo for the opportunity to submit testimony.

**LATE**

**SB-872-SD-1**

Submitted on: 2/28/2022 5:52:00 AM

Testimony for JDC on 2/28/2022 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kapua Keliikoa-Kamai	Individual	Support	No

Comments:

Aloha kakou,

I rise in **STRONG SUPPORT OF SB872 SD1** - Adds the chairperson of the Hawaiian Homes Commission or the chairperson's designee to serve as an ex officio, voting member on the Commission on Water Resource Management. Takes effect 7/1/2050.

It is unfortunate, yet interesting, that the Department of Land and Natural Resources continues to oppose this and previously submitted measures. With respect, the CWRM has failed to fulfill its duties to the Department of Hawaiian Home Lands in the past. The presense of the DHHL Chairman, or repreneurative, will help fulfill CWRM's duties considering that the Hawaii Supreme Court had to make it clear that in the context of water, the Commission has a responsibility to respect and protect native Hawaiian rights, **INCLUDING THOSE OF DHHL**, and to carry out the State's public trust duties.

DHHL already operates and manages four (4) water systems on the islands of Kauai, Molokai and Hawaii and recognizes the full depth of water management. DHHL's presense on the CWRM will help ensure it has sufficient water to fulfill its Federal mandate for the rehabilitation of the native Hawaiian people.

Mahalo for this opportunity to **SUPPORT PASSAGE** of SB 872 SD1 out of your committee. It is long overdue and I thank you for rectifying this in advance.

Me ka haahaa,

Kapua Keliikoa-Kamai

Concerned Waianae Resident

**LATE**

**SB-872-SD-1**

Submitted on: 2/28/2022 11:54:02 AM

Testimony for JDC on 2/28/2022 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Kapua Keliikoa-Kamai	Individual	Support	No

Comments:

Aloha kakou,

I SUPPORT HB 1577 HD1 - RELATING TO THE KAHO‘OLAWE ISLAND RESERVE COMMISSION. Appropriates funds for the Kaho‘olawe island reserve commission and to fund two full-time equivalent permanent positions for the Kaho‘olawe island reserve commission. Effective 7/1/2050.

Me ka haahaa,

Kapua Keliikoa-Kamai

Concerned Waianae Resident



**LATE**

Clifton M. Hasegawa, President & CEO  
Clifton M. Hasegawa & Associates LLC  
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Testimony of  
CLIFTON M. HASEGAWA

Before the Senate Committees on  
COMMITTEE ON JUDICIARY

NOTICE OF DECISION MAKING  
Monday, February 28, 2022  
10:30 a.m. Via Videoconference

In consideration of  
S.B. NO. 872 S.D. 1

Chairperson Karl Rhoads, Vice-Chairperson Jarrett Keohokalole,  
Senator Laura Acasio, Senator Chris Lee, Senator Mike Gabbard,  
Senator Kurt Fevella, Senator Donna Mercado Kim

S.B. 872 SD1 Adds the Chairperson of the Hawaiian Homes Commission (HHC) or the chairperson's designee to serve as an ex officio, voting member on the Commission on Water Resource Management (CWRM). Takes effect 7/1/2050. (SD1)

I OPPOSE SB 872 S.D. 1 as presently written. Having the the HHC Representative on the CWRM as a VOTING MEMBER creates a DIRECT AND IRRECONCILABLE CONFLICT OF INTEREST.

“Over 100 years ago the Hawaiian Homes Commission Act began as a legislative resolution from native Hawaiian community leaders. DHHL’s process to bring forward proposals to the legislature mirrors the efforts of those leaders who got us here today. We look forward to working with the beneficiary community in advocating for these measures in the next session.”

Tyler Iokepa Gomes, Deputy to the Chairman William J. Aila, Jr.

Source: COMMISSION MOVES DHHL LEGISLATIVE  
PROPOSALS FORWARD, September 29, 2021

<https://dhhl.hawaii.gov/2021/09/29/commission-moves-dhhl-legislative-proposals-forward/>

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Testimony of SUZANNE D. CASE, Chairperson DLNR, CWRM  
[https://www.capitol.hawaii.gov/Session2022/Testimony/SB872\\_TESTIMONY\\_WTL-HWN\\_02-04-22\\_.PDF](https://www.capitol.hawaii.gov/Session2022/Testimony/SB872_TESTIMONY_WTL-HWN_02-04-22_.PDF)

The Commission [CWRM] has approved 28 reservations thus far for DHHL for both ground and surface waters across the six major Hawaiian Islands totaling over 32 million gallons per day (mgd)

To date, the Commission has not reserved water for any other entity except DHHL. All reservations made since 2017 are based on the State Water Projects Plan, updated in 2017, which focuses exclusively on the water needs for DHHL. Reservations are currently in place for DHHL's potable water needs from ground water sources. Additional surface water reservations for DHHL's non-potable needs are being made in conjunction with the Commission's establishment of measurable interim instream flow standards across the State, as that process provides the necessary streamflow information (currently lacking for many streams) as well as information on existing offstream uses and other public trust uses against which DHHL needs must be balanced. Moreover, the Commission has also acted on and approved all DHHL well permit or water use permit applications. All Commission members have constitutional and statutory responsibilities to protect and preserve the rights of DHHL. The Hawaii Supreme Court has made it clear that in the context of water, the entire Commission has a responsibility to respect and protect native Hawaiian rights, including those of DHHL, and to carry out the State's public trust duties. This responsibility does not rest on a single member.

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Recent events have intensified the Legislature's efforts to restore the Public Trust by strengthening laws regarding ethics, gifts, and conflicts of interest. Recusal by HHC from matters the directly related to Permit Applications submitted to the CWRM and matter directly or indirectly related to Native Hawaiian rights presents a conflict situation that can and should be avoided.

“Conflicts of interest in the public sector are particularly important because, if they are not recognised and controlled appropriately, they can undermine the fundamental integrity of officials, decisions, agencies, and governments. “Integrity” is used in the public sector to refer to the proper use of funds, resources, assets, and powers, for the official purposes for which they are intended to be used. In this sense the opposite of “integrity” is “corruption”, or “abuse”.”

“For a public official, having an “apparent conflict of interest” can be as serious as having an actual conflict, because of the potential for doubt to arise about the official’s integrity, and the integrity of the official’s organisation.”

Additionally, “The recusal option may also be unconvincing to the world at large, unless the organisation and the individual official have established good administrative procedures to ensure that the recusal arrangement is effectively implemented, and have good reputations for integrity already.”

Source: “Managing Conflict of Interest in the Public Sector” By Organisation for Economic Co-Operation and Development (OECD) <https://www.oecd.org/gov/ethics/49107986.pdf>

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Thank you for the opportunity to comment on this measure

V/R

Electronically Signed

Clifton M. Hasegawa