



**Department of Land and Natural Resources
Hawaii State Aha Moku
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Hawaii State Aha Moku

Before the House Committee on
Water and Land

Thursday, March 17, 2022
8:30 a.m.
Conference Room 430 & via Videoconference

**In SUPPORT of
Senate Bill 872 SD 1
Relating to the
Commission On Water
Resource Management**

Senate Bill 872 SD 1 adds the Chairperson of the Hawaiian Homes Commission or the Chairpersons designee to serve as an ex officio, voting member on the Commission on Water Resource Management.

The Hawaii State Aha Moku (Aha Moku) supports this measure.

The Hawaii State Aha Moku System encompasses the eight main Hawaiian Islands and supports the traditional and generational knowledge of the people who are connected to each of the 46 moku and 606 ahupua'a. The system was brought forward from the 9th century, a time where sustainability and protection of resources ensured existence. It was a time where the focus of the people of the land was on survival. Water is survival.

Since Prince Kuhio created the Hawaiian Homes Commission Act in 1921, water has always been mandatory for Hawaiian Homesteaders. In 2014, the Hawaiian Homes Commission adopted a much-needed Water Policy Plan. "The Department of Hawaiian Homelands (DHHL) has various water responsibilities including the development of water sources, the operation and maintenance of water systems, planning for the use of water and advocating for the water rights of the Department, the HHC, and native Hawaiians." Water Policy, 2014.

To fulfill those responsibilities, DHHL participated in the Department of Land and Natural Resources (DLNR) planning process for the update of the State Water Projects Plan (SWPP), one of five plans that make up the Hawai'i Water Plan. The purpose of the SWPP is to provide a framework for planning and implementing water development programs to meet projected demands for State projects over a 20-year planning horizon.

Since 2014, it has become clear that DHHL must have a closer relationship with DLNR, specifically with the Commission on Water Resource Management (CWRM) as per the Hawaiian Homes Commission Act because Hawaiian Homes has priority on water reservations. We believe this closer relationship entails that the Chairperson of the Hawaiian Homes Commission or the Chairpersons designee serve as an ex officio, voting member on the Commission on Water Resource Management.

We ask that this House Committee on Water and Land adopt SB 872 SD1.

Respectfully,

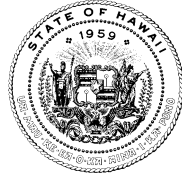
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DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

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 HOUSE COMMITTEE ON WATER & LAND
HEARING ON MARCH 17, 2022 AT 8:30AM VIA VIDEOCONFERENCE

IN SUPPORT OF

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

March 17, 2022

Aloha Chair Tarnas, Vice Chair Branco and members of the Committee:

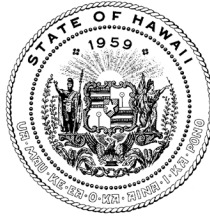
The Department of Hawaiian Home Lands (DHHL) supports this bill that adds the Chairperson of the Hawaiian Homes Commission (HHC) or the Chairperson's designee to serve as an ex officio, voting member on the Commission on Water Resource Management (CWRM).

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.

The Department of Land and Natural Resources notes in testimony 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." It's important to point out that DLNR's testimony neglects to mention 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.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Thursday, March 17, 2022
8:30 AM**

State Capitol, Conference Room 430, 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 respectfully opposes this measure.**

The Department recognizes that the Department of Hawaiian Home Lands (DHHL) has a priority to ensure water reservations for Hawaiian home lands. However, the Department believes that adding an ex-officio seat on the Commission is unnecessary for this goal and may unduly complicate Commission decision-making.

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 DHHL.

Significant progress has been made in recent years, with staff of the Commission working closely with staff of DHHL to facilitate beneficiary consultation to determine appropriate water

reservations in Commission water allocation decisions. This established process should now facilitate future DHHL water reservations.

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):

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
Moloka'i	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. There is strong adherence to the Commission's duty to protect and ensure adequate reserves of water for current and foreseeable development of DHHL lands. 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. Most recently, at its March 15, 2022 regular meeting, the Commission acted to initiate the rulemaking process to reserve 2.629 million gallons per day (mgd) of groundwater for DHHL on the island of Molokai.

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.

The Department believes that the inclusion of the Chairperson of the Hawaiian Homes Commission (HHC) or their designee on the Commission may result in conflicts of interest. DHHL is often a party before the Commission with permit applications and reservation petitions, including important contested case hearings. If a Commission member is representing a particular organization, such as DHHL, and the organization appears before the Commission for administrative action, then there may be a question of whether the member has a conflict of interest as to that organization. Active participation by both the organization and the member representing the organization on the Commission would, on its face, appear to be a conflict. The Commission has a trust duty to the general public, whereas the HHC Chairperson has a trust duty to a specific subset of the general public. Inclusion of the HHC Chairperson as a voting member on the Commission may result in perceived or potential conflicts between the HHC Chairperson's trust duties to its beneficiaries versus the general public and other public trust purposes of water.

Further, decision making with an even number of Commission members can result in deadlock, when votes can split 4-4. An odd number of Commission members is necessary for a clear majority vote. Too many members can be cumbersome. Water regulation is a complex specialty, and knowledge of water regulation is important for Commission action. Adding an ex-officio member without water regulation knowledge may not benefit Commission decisions.

Thank you for the opportunity to testify on this measure.

SB-872-SD-1

Submitted on: 3/16/2022 8:25:10 AM

Testimony for WAL on 3/17/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kaleo Manuel	DLNR-CWRM	Oppose	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

SB-872-SD-1

Submitted on: 3/16/2022 8:26:08 AM

Testimony for WAL on 3/17/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Ryan Imata	DLNR-CWRM	Oppose	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

SB-872-SD-1

Submitted on: 3/14/2022 1:36:33 PM

Testimony for WAL on 3/17/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Edward Halealoha Ayau	Hui Iwi Kuamo'o	Support	Written Testimony Only

Comments:

Aloha nui,

I fully support this bill and urge this Committee to do the same because it is long overdue for Hawai'i law to reconcile the requirements of the federal Hawaiian Homes Commission Act with regards to providing adequate water to implement the Hawaiian Home Lands Program.

Management of the DHHL is an express condition of Statehood. This is not a matter of special privilege to DHHL, but instead a duty on the part of the State of Hawai'i in responsibly managing Hawaiian Home Lands, mahalo.

Ola i ka wai,

Edward Halealoha Ayau

(808) 646-9015

halealohahapai64@gmail.com



HOUSE COMMITTEE ON WATER & LAND
Chair Rep David Tarnas, Vice Chair Rep Patrick Branco

Thursday March 17, 2022, 8:30 pm, via videoconference
SB 872 SD1 - Relating to the Commission on Water Resource Management

TESTIMONY

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

Chair Tarnas, Vice Chair Branco, and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 872 SD1 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.



Environmental Caucus of The Democratic Party of Hawai'i

To: The Honorable David A. Tarnas, Chair
The Honorable Patrick Pihana Branco, Vice Chair
Committee on Water and Land

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

Hearing: Thursday, March 17, 2022, 8:30 a.m., Conference Rm. 430 & Via
Videoconference

Position: Strong Support

Aloha, Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

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 Adyja

Alan B. Burdick

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

Email: legislativepriorities@gmail.com

1288 Kapiolani Blvd, Apt 1905
Honolulu, Hawaii 96814
March 14, 2022

COMMITTEE ON WATER & LAND

Rep. David A. Tarnas, Chair
Rep. Patrick Pihana Branco, Vice Chair

Rep. Sonny Ganaden	Rep. Dee Morikawa
Rep. Bertrand Kobayashi	Rep. Takashi Ohno
Rep. Sam Satoru Kong	Rep. Bob McDermott

Aloha, Chair Tarnas and Vice Chair Branco
and members of the Committee on Water and Land

I am writing in support of SB872 SD1 that proposes to allow 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.

This is the fourth (4th) year a form of this bill has been introduced for legislation. The Commission on Water Resource Management (CWRM) motto is "Ke Kahuwai Pono", which translates to "The trustee who oversees the rightful sharing of water". A seat and a vote on the Commission on Water Resource Management for the Chairperson of the Hawaiian Homes Commission (HHC) will provide oversight for compliance with Section 221 (b) of the HHCA.

I do not understand the hesitancy or reluctance of the legislature to pass a bill that makes logical sense. All testimonies given support this bill. Yet, DLNR in its comments on the bill indirectly advocates that allowing the chairperson of the HHC to serve on the Commission is unnecessary because "..., 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):"

Interestingly, in reviewing the agenda of meetings held by the Commission, they deal with a variety of issues not limited to Hawaiian Home Lands. With their experience on water management on Hawaiian Home Lands, the chairperson or his designee can bring added mana'o to the table to assure informed decisions on water issues.

I saw no other reasons given as to why this bill should not be passed, thus kindly urge your passage of this bill out of your committee.

Respectfully,

LEIMOMI KHAN

SB-872-SD-1

Submitted on: 3/14/2022 7:03:52 PM

Testimony for WAL on 3/17/2022 8:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Benton Kealii Pang, Ph.D.	Individual	Support	Written Testimony Only

Comments:

I am in support of SB872 SD1 to add the DHHL chair as an ex officio member of the Hawai'i State Water Commission.

Mahalo for the opportunity to comment.

Benton Kealii Pang, Ph.D.