

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
HOUSING
and
WATER AND LAND**

**Friday, April 1, 2022
1:05 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
SENATE CONCURRENT RESOLUTION 160/SENATE RESOLUTION 152
REQUESTING THE ESTABLISHMENT OF A PROCESS FOR AFFORDABLE
HOUSING PROJECTS IN THE COMMISSION ON WATER RESOURCE
MANAGEMENT TO ADDRESS HAWAII'S HOUSING SHORTAGE**

Senate Concurrent Resolution 160/Senate Resolution 152 requests the Commission on Water Resource Management requested to develop and implement a permitting process that supports the preauthorization for the development of affordable housing throughout the State and to establish an affordable housing working group. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department and its Commission on Water Resource Management (Commission) acknowledges the critical need for affordable housing in the State of Hawai'i and that planned affordable housing projects would need a reliable and reasonably priced source of water to ensure successful project completion. However, the Department believes that a separate permitting process for affordable housing is unnecessary and that the focus should be on the actual creation of affordable housing projects, including water infrastructure. The Commission has not received genuine petitions or claims that the lack of available water resources was preventing or delaying the development of affordable housing projects. There have been no inquiries or investigations related to well permit applications for affordable housing.

Under the State Water Code, Chapter 174C, Hawai'i Revised Statutes (HRS), the Commission's fundamental responsibility is balancing the protection of the State's water resources with reasonable and beneficial uses while protecting public trust purposes. Commission administrative procedures, including the well construction permitting process, exist to ensure the protection of

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

the State's water resources while assessing the water needs of affordable housing in Hawai'i. There is no authority for the preauthorization of water in the State Water Code or its administrative rules. An effective way to identify and quantify water for future affordable housing is to include these projects in the Hawai'i Water Plan and the respective County Island and Community Development Plans. The Commission, by rule, may reserve water in designated water management areas in such quantities as are deemed necessary for purposes which are consistent with the public interest as provided under Section 174C-49(d), HRS. The Department of Hawaiian Home Lands may also reserve water for its current and foreseeable development and use pursuant to Section 174C-101, HRS.

The Hawai'i Supreme Court has affirmed four public trust purposes of water: (1) maintenance of waters in their natural state, (2) Native Hawaiian and traditional and customary rights, (3) domestic water use, and (4) Department of Hawaiian Home Lands reservations of water. Water for affordable housing is a domestic use of water and is thus a protected public trust purpose. If there are competing public trust uses in a hydrologic unit, the Commission must find a balance using administrative functions such as designation of water management areas and permitting allocations of water use. Further, if an affected agency or person is concerned that water may not be available for future affordable housing projects in a designated water management area, they may petition for a reservation of water under Section 174C-49(d), HRS.

Finally, the Department agrees that a lack of water delivery infrastructure is a powerful deterrent to affordable housing development. We suggest that the responsible government agencies and affordable housing developers work with the local and municipal water utilities to come to agreement on the responsibilities and commitments of each party for providing water to planned affordable housing developments.

Thank you for the opportunity to testify on these measures.

SCR-160

Submitted on: 3/31/2022 10:30:41 AM

Testimony for HOU on 4/1/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Ryan Imata	Testifying for DLNR-CWRM	Comments	Remotely Via Zoom

Comments:

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

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

**SENATE COMMITTEE ON WATER AND LAND
AND
SENATE COMMITTEE ON HOUSING**

April 01, 2022 at 1:05 p.m.
State Capitol, Room 229

In consideration of
S.C.R. 160/ S.R. 152
**REQUESTING THE ESTABLISHMENT OF A PROCESS FOR AFFORDABLE
HOUSING PROJECTS IN THE COMMISSION ON WATER RESOURCE
MANAGEMENT TO ADDRESS HAWAII'S HOUSING SHORTAGE.**

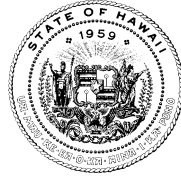
HHFDC ***strongly supports*** S.C.R. 160/ S.R. 152. This resolution requests that the Commission on Water Resource Management establish a working group to develop and implement a permitting process that supports the preauthorization for the development of affordable housing throughout the State.

HHFDC needs access to potable water for its affordable housing development in North Kona called the Villages of Laiopua. This resolution would help address delays in issuing water use permits connected to affordable housing.

Thank you for the opportunity to testify.

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. AILĀ, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEES ON WATER AND LAND & HOUSING
HEARING ON APRIL 1, 2022 AT 1:05 PM VIA VIDEOCONFERENCE

**SCR 160 & SR 152 REQUESTING THE ESTABLISHMENT OF A PROCESS FOR
AFFORDABLE HOUSING PROJECTS IN THE COMMISSION ON WATER
RESOURCE MANAGEMENT TO ADDRESS HAWAI‘I'S HOUSING SHORTAGE.**

April 1, 2022

Aloha Chair Inouye, Chair Chang, and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) submits comments on these resolutions that requests that the Commission on Water Resource Management (CWRM) develop and implement a permitting process that supports the preauthorization for the development of affordable housing throughout the State and especially in rural areas, and CWRM also consider the establishment of a water resource management for affordable housing development working group that convenes upon a federal agency or authority's initiation of an inquiry or investigation relating to a permit application order to address the inquiry or investigation.

DHHL appreciates the motivation behind these resolutions, but is concerned that the measure does not differentiate between water used for undefined “affordable housing”, which is not a public trust use of water, and water for DHHL, which is. DHHL recommends that if approved, the measures be amended to ensure the focus of CWRM efforts be to provide water for homesteading projects by DHHL.

DHHL also notes that the approved [Water Policy Plan](#) of the Hawaiian Homes Commission states it is our policy to “Develop, manage, and steward water in a manner that balances cost, efficiency measures, and Public Trust uses in the short and long term.”

DHHL is open to designating a person to serve on the Working Group upon the initiation of a federal investigation or inquiry related to the Commission on Water Resource Management.

Thank you for consideration of our testimony.

Mitchell D. Roth
Mayor



Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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March 31, 2022

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

Senator Stanley Chang, Chair
Senator Dru Mamo Kanuha, Vice Chair
Committee on Housing

Hawai'i State Legislature
415 S. Beretania Street
Honolulu, Hawai'i 96813

Subject: SCR 160/SR 152 REQUESTING THE ESTABLISHMENT OF A PROCESS FOR AFFORDABLE HOUSING PROJECTS IN THE COMMISSION ON WATER RESOURCE MANAGEMENT TO ADDRESS HAWAII'S HOUSING SHORTAGE

Hearing Date: Friday, April 1, 2022 at 1:05 p.m.

**Time/Place of Hearing: Via Video Conference
Conference Room 229**

Aloha Chair Inouye, Vice Chair Keith-Agaran and Water and Land Committee members; Chair Chang, Vice Chair Kanuha, and Housing Committee members;

On behalf of the County of Hawai'i, I am expressing my strong support for SCR 160/SR152 which requests the Commission on Water Resource Management to establish a process for addressing water resource issues that support affordable housing development. The availability of potable water is one of the major obstacles to developing affordable housing in our county. SCR160/SR152 provides an opportunity to engage stakeholders and collectively move our efforts forward in that regard.

Your consideration of these resolutions are sincerely appreciated.

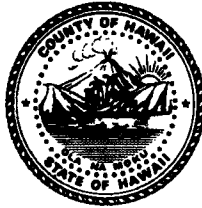
Mahalo,

Mitchell D. Roth
Mayor
County of Hawai'i

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director



Susan K. Kunz
Housing Administrator

Harry M. Yada
Assistant Housing Administrator

County of Hawai'i
Office of Housing and Community Development

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Kona: (808) 323-4300 • Fax (808) 323-4301

March 31, 2022

Senator Stanley Chang, Chair
Senator Dru Mamo Kanuha, Vice-Chair
Committee on Housing

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

RE: Support for S.C.R. 160 and S.R. 152, Requesting the establishment of a process for affordable housing projects in the Commission on Water Resource Management to address Hawai'i's housing shortage.

Hearing Date: Friday, April 1, 2022 at 1:05 p.m.

Location of Hearing: Via Video Conference, Conference Room 229

Aloha Chair Chang, Vice-Chair Kanuha, and Housing Committee members; Chair Inouye, Vice-Chair Keith-Agaran and Water and Land Committee members;

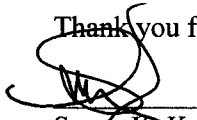
I am expressing my support for S.C.R. 160 & S.R. 152 for fiscal year 2022-2023 which will address a permitting process to identify and prioritize water resource management infrastructure for affordable housing development.

The shortage of affordable housing on Hawai'i island remains a challenge. The 2019 Hawai'i Housing Planning Study conducted by SMS Research cites a need for an additional 10,796 housing units, at the 140% AMI and below, by the year 2025. The Hawai'i County office of Housing and Community Development supports this measure in its intent to provide potable water for affordable housing.

I firmly believe S.C.R. 160 & S.R. 152 will also affect and enhance the quality of life for residents in West Hawai'i as well as our entire County.

Your consideration of this bill is sincerely appreciated. Please feel free to contact me for any additional information.

Thank you for the opportunity to testify.



Susan K. Kunz
Housing Administrator

3016pkrr





Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
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Senate Concurrent Resolution 160 & Senate Resolution No. 152

REQUESTING THE ESTABLISHMENT OF A PROCESS FOR AFFORDABLE HOUSING
PROJECTS IN THE COMMISSION ON WATER RESOURCE MANAGEMENT TO ADDRESS
HAWAII'S HOUSING SHORTAGE

SENATE COMMITTEES ON HOUSING and WATER AND LAND

April 1, 2022

1:05 p.m.

Conference Room 229

Aloha e Chairs Chang and Inouye, Vice Chairs Kanuha and Keith-Agaran, and Members of the Committees,

The Native Hawaiian Legal Corporation **OPPOSES S.C.R. No. 160 and S.R. No. 150**, which, like the now defunct SB2884, ultimately seek to “preauthorize” water permit applications to facilitate affordable housing.

Although addressing the affordable housing crisis is an important goal, creating a process allowing automatic approval of projects with an affordable housing hook does not comport with the Commission of Water Resource Management's (“Commission's”) duties under the Hawai'i constitution and water code. Hawai'i law requires that this fundamental resource be managed and used to fulfill specific public trust purposes – the maintenance of waters in their natural state, domestic water use, the exercise of Native Hawaiian traditional and customary rights, and the Department of Hawaiian Home Land's reservations and use of water. *See Kauai Springs, Inc v. Planning Comm'n of the County of Kaua'i*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014). In contrast, “preauthorization” of water permit applications disregards the public trust and undermines the Commission's kuleana to uphold its constitutional duty to protect this fundamental resource for the benefit of the public now and in the future. *See In Re Water Use Permit Applications*, 94 Hawai'i 97, 141, 9 P.3d 409, 453 (2000) (“*Waiāhole I*”) (“The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”).

As with SB2884, it is clear that this resolution aims to fast track automatic approval of the contested “Ota well” in North Kona, despite the Commission's prudent deferral of the application to more carefully analyze impacts on the shoreline, coastal waters, and Native Hawaiian traditional and customary practices. The Ota well – proposed by the Natural Energy Laboratory of Hawai'i Authority (“NELHA”) and the Hawai'i Housing Finance and Development Corporation as an expansion of NELHA's ocean and science park and an affordable housing project – is the first major well proposed in the Keauhou aquifer since

CWRM (1) denied a petition to designate the aquifer a water management area in 2017 and (2) imposed explicit conditions requiring review of all future wells in the aquifer to determine their impact on the coast and on traditional and customary practices.¹ NHLC represents Hui Ola Ka Wai, a group of practitioners and kia'i loko i'a from along the Kona coast, who raised concerns regarding the Ota well's effect on the ecosystems of Kaloko fishpond and the hui members' cultural practices. In response, the Commission voted to defer action on the application and is currently consulting with cultural practitioners to better understand potential impacts.

While the establishment of a working group in and of itself is innocuous, developing a permitting process to preauthorize water permits is problematic. Not only is it improper to circumvent the Commission's authority to protect our water resources, but it is also disingenuous to throw around the term "affordable housing" to sidestep prudent decisionmaking regarding our public trust resources – especially when "affordable housing projects" often make up only a fraction of a larger commercial development project. For the Ota well proposal, for example, half of the water drawn would be used for a new industrial park at NELHA and commercial development at Keahuolū (Kamakana Villages), while an undisclosed amount of the remaining 50% of water allocated toward "affordable housing" is in fact being set aside for people making 140% of adjusted gross income – essentially market rate housing – and less than 3% of the total water drawn is allocated to DHHL to develop its truly affordable homestead lots. These are the types of water uses that would be rubberstamped via this proposed permitting process.

Forcing the hand of the Commission, who is not only authorized but required to affirmatively analyze impacts on the public trust in the planning and allocation of water resources and to protect public trust uses whenever feasible, *see Waiāhole I*, 94 Hawai'i at 141, 9 P.3d at 453, sends the wrong message from the lawmakers of this state. Special interest projects should not be allowed to bypass review, especially when it comes to our state's precious water resources. While NHLC supports transparency in all permitting processes and encourages work to ensure the same, it opposes the creation of a process that disregards all legal standards to reach a predetermined result.

For these reasons, we ask that the Committees HOLD S.C.R. No. 160 and S.R. No. 152. Mahalo for the opportunity to testify.



Ashley K. Obrey
For the Native Hawaiian Legal Corporation

¹ This context is significant. S.C.R. No. 160 and S.R. No. 152 state without any explanation that "after years of permitting new drinking water sources through an administrative process, the Commission on Water Resource Management recently began processing well permits, which has not been a normal procedure for areas that are not designated as a groundwater management area[.]" It is important for these committees to understand that this practice in the Keauhou aquifer in particular was the Commission's direct response to community concerns during the failed designation process.

SCR-160

Submitted on: 3/31/2022 9:47:08 AM

Testimony for HOU on 4/1/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Neal Desai	Testifying for National Parks Conservation Association	Oppose	Written Testimony Only

Comments:

Dear Chairs Inouye and Chang, Vice Chairs Keith-Agaran and Kanuha, and members of the Senate Water and Land and Housing Committees,

The National Parks Conservation Association (NPCA) writes to **OPPOSE SCR 160 AND SR 152**, which is a “reincarnated” version of the SB 2884 bill that was overwhelmingly opposed last month and which NPCA strongly opposed. The reasons we oppose SCR 160 and SR 152 can be found in our testimony for SB 2884, which said:

- The bill would upend the fundamental scientific and public process used by the State to ensure water resources are protected and sustainably used. The matter of water protection is of great importance to the Association and its more than 6,000 members and supporters in Hawai'i because water resources support life and culture within our communities and national parks.
- Despite having the appearance of supporting affordable housing, SB 2884 [and now SCR 160 and SR 152] is actually special interest legislation [and now resolution] that would remove water protections across Hawai'i. Removing these protections and the deliberative process to understand complex scientific matters not only risks harming the environment, but it ironically *harms* housing and other development goals by permitting a water supply that may not really exist. It does not help anyone when taps need to be turned off because the water can't be sustainably provided.
- The Commission on Water Resource Management, the Water Code, and the transparent, scientific process should be supported. We should not legislate an arbitrary scheme that automatically allows anyone to take water for any use. SB 2884 [and now the intent of SCR 160 and SR 152] would effectively "undesignate" the state and remove the few protections for public trust water uses outside of water management areas.

Please **HOLD SCR 160 and SR 152**.

Neal Desai

Senior Program Director, Pacific Region

National Parks Conservation Association

SCR-160

Submitted on: 3/29/2022 8:56:47 PM

Testimony for HOU on 4/1/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqui Hoover	Testifying for Hawaii Leeward Planning Conference	Support	Written Testimony Only

Comments:

Water resource, infrastructure, and availability is critical to development including for housing. Estimates are that we have a shortage in excess of 5,000 units on Hawaii Island alone which exacerbates other socio-economic challenges including and not limited to, the current labor shortages. Unless CWRM can identify a process that mitigates the current bottleneck in permits for water resource development, the problems will expand exponentially. HLPC supports SCR160 and all efforts intended to water resource development and management in an environmentally and scientifically sound manner, and address the critically housing shortage. Mahalo for this opportunity to voice our support for SCR160.



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Email: hiedb@hiedb.org Website: www.hiedb.org

2021 - 2022

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HFE Hawaii LLC

Jennifer Zelko-Schleuter, Vice Chair
Hawaii Electric Light Co.

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James Takamine, Treasurer
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Richard Henderson, Director
Realty Investment Co., Ltd.

David Honma, Director
First Hawaiian Bank

LeeAnn Silva, Director
Queen Emma Land Co.

Jacqui Hoover, COO
Executive Director

Water resource and availability is critical to development including for housing. Estimates are that we have a shortage in excess of 5,000 units on Hawaii Island alone which exacerbates other socio-economic challenges including and not limited to, the current labor shortages. Unless CWRM can identify a process that mitigates the current bottleneck in permits for water resource development, the problems will expand exponentially. Hawaii Island Economic Development Board strongly supports SCR160 and all efforts to increase water resource development and management in an environmentally and scientifically sound manner, and address the unprecedented and critical housing shortage. Mahalo for this opportunity to voice our support for SCR160.

SCR-160

Submitted on: 3/31/2022 8:51:58 AM

Testimony for HOU on 4/1/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Loke Aloua	Individual	Oppose	Written Testimony Only

Comments:

Dear Chairs Inouye and Chang, Vice Chairs Keith-Agaran and Kanuha, and members of the Senate Water and Land and Housing Committees,

I **OPPOSE** SCR 160 SR 152, which is a “reincarnated” version of a bill that was overwhelmingly opposed last month.

Though SCR 160 SR 152 might have the appearance of being helpful it actually is harmful to our wai and the legal protection measures that safeguard it. As written, again, SCR 160 SR 152 implies that we have an affordable housing issue because there is a lack of freshwater available; this is false. Perhaps, if efforts are to be of service I suggest efforts be directed towards **assessing systematic barriers for home ownership and working with community to create desirable and favorable responses**. For example, financially capping what can be advertised as "affordable" is a place we could start. Housing projects are so often advertised as “affordable” but are they actually? According to Hawaii County Affordable Sales Price Guidelines (2020) homes can be sold anywhere from 50% to 140% of median income. For a family of 4 this translates to an "affordability" of \$679, 400 at 3% loan rate. Who can actually afford this? What is a more realistic price that local families can afford? And where can we create space for those who can't afford housing but need a permanent home in their homelands? Can we please get creative with creating housing solutions?

Another space of servitude is **joining discussions that are currently unfolding with the community that abide within the legal frameworks that exist to protect the health, availability, and access to wai for public trust users**. These efforts are being guided by Commission on Water Resource Management and the Aha Moku Council. In its current form SCR 160 SR 152 dismisses the efforts, actions, and expertise of these agencies, while silencing the voice of 'ohana and members of our kaiāulu.

There are so many needed pathways where our people and wai need servitude. Unfortunatley, SCR 160 SR 152 threatens the health, well being, and care of both.

Please **HOLD** SCR 160 and SR 152.

Ke Aloha ‘Āina,

Loke Aloua

Kona, Hawai'i

SCR-160

Submitted on: 3/31/2022 9:37:14 AM

Testimony for HOU on 4/1/2022 1:05:00 PM

Submitted By	Organization	Testifier Position	Testify
Craig Bo Kahui	Individual	Support	Remotely Via Zoom

Comments:

Laiopua Community Development Corporation is in support of SR 160. The Commission on Water Resource Management could use the assistance of local County Water agency and the DHHL who by State constitution has an interest in water resource development in the State that benefit native Hawaiians.

We are in full support of SCR160.

Mahalo

Bo Kahui