

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
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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**

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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.



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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.



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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 SR152 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 SR152.

SR-152

Submitted on: 3/31/2022 9:49:05 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 SR 152 and SCR 160 AND** , 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 SR 152 and SCR 160 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 SR 152 and SCR 160**.

Neal Desai

Senior Program Director, Pacific Region

National Parks Conservation Association