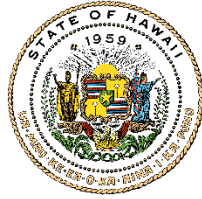
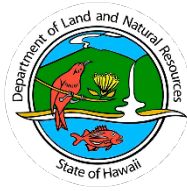


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
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
DAWN N. S. CHANG
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, March 15, 2023
1:00 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
HOUSE BILL 1088, HOUSE DRAFT 1
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY**

House Bill 1088, House Draft 1 proposes to amend the conditions, manner, and areas in which the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department) can declare water shortages and emergencies. **The Department strongly supports this measure.**

Hawai'i Revised Statutes (HRS) Section 174C-62 did not contemplate the existence of a water shortage and/or emergency due to an immediate degradation of water quality or other emergencies such as wildfires. As the Red Hill crisis has revealed, such shortages and emergencies can come into existence in an instant. All waters of the state are regulated by the Commission as provided in HRS Section 174C-4 (a), additionally the Commission regulates all holders of water use permits (WUP) in water management areas,¹ for example on O'ahu, this includes the Honolulu Board of Water Supply (HBWS) and others such as the Navy. The Commission is proposing amendments in order to implement water shortage and emergency declarations to be able to react to crises in a swift and comprehensive manner to protect public trust resources. Unlike emergency declarations issued by the Governor that might suspend entire laws as provided for in HRS Section 127A-13 (3), emergency declarations issued by the Commission can be tailored to specifically address orders and permits issued by the Commission without suspending sections of the State Water Code. For instance, the Commission can suspend an interim instream flow standard to allow water uses for emergency firefighting purposes. Thus, emergency declarations issued by the

¹ The following are groundwater management areas in the State, the entire island of O'ahu (except for the Wai'anae Aquifer Sector), the entire island of Moloka'i, the Lahaina Aquifer Sector Area and 'Īao aquifer on Maui. Surface water management areas are on the island of Maui in Nā Wai 'Ehā and the Lahaina Aquifer Sector Area.

Commission under HRS Section 174C-62 address situations that do not warrant an emergency declaration under Chapter 127A and the Commission is in the best position to make a determination whether further action by the Governor is required.

Currently, HRS Section 174C-62(g) is already applicable outside of water management areas, but its reference to subsection (c) requires that a water shortage has to be declared by rule, through rule-making process under HRS Chapter 91, which may take up to over one year, in accordance with a water shortage plan before the Commission can declare an emergency. This has resulted in overly burdensome and unnecessary constraints to the emergency declarations process in instances where the emergency is due to an instant degradation in water quality or a wildfire, unlike a slower processing decline in water quantity, which can be anticipated and planned for. This bill would allow the Commission to declare a water emergency without a prior water shortage declaration by rule. Such an emergency declaration by the Commission would be made at an agendaized “sunshine” meeting where the public has the opportunity to provide testimony.

Additionally, the bill clarifies the Commission’s authority to modify, suspend, and revoke water use permits in the case of a long term or permanent reduction of the available water source due to a water shortage or emergency in the new subsection (h).² HRS Section 174C-62 is in Part IV “Regulation of Water Use” of the Water Code. Part IV of the Water Code also contains HRS Sections 174C-57 “Modification of Permit Terms” and 174C-58 “Revocation of Permits.” However, HRS Section 174C-57 does not provide for a modification initiated by the Commission, thus the new subsection (h) allows a modification only due to a water shortage and emergency. Similarly, the proposed subsection (h) does provide the specific reason, long-term/permanent water shortage and emergency, why a revocation proceeding can be initiated by the Commission.

This bill also proposes to require water shortage plans to be developed statewide and provides clarity that the Commission has authority to declare water shortages in any area, within and outside of a water management area. Currently, water shortage plans have only been developed in water management areas. These plans establish criteria for declaring water shortages and actions that must be undertaken by WUP holders to protect the health of ground and surface water resources for as long as water shortage conditions exist. Certain counties, including the HBWS, have their own water shortage plans. Their ability to respond to emergencies are not affected by the amendments proposed in this bill. This bill serves to clearly define the Commission’s authority to declare water shortages and emergencies and the Commission’s measures pertaining to all water users and not just WUP holders. Water shortage declarations are a temporary measure and this bill will allow the Commission to provide a tailored response to fulfill its constitutional public trust duties outside of water management areas without taking over administrative control as provided for in the designation process of HRS Section 174C-41 (a).³

Finally, the Commission would be required to consider the impacts of the climate crisis in its determination of criteria for water shortage declarations. The bill also proposes to modernize notice requirements by adding notification of water use permit holders per electronic mail and publication of a water shortage and emergency on the Commission’s website.

Mahalo for the opportunity to provide testimony in strong support of this measure.

² Since 2003, the Commission has also included a standard condition to WUP that provides for the Commission’s authority to modify permits.

³ Notably, HBWS is only tangentially affected by this amendment as almost all aquifers of O’ahu are already water management areas since 1992 except for the Wai’anae Aquifer Sector.

BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com



March 15, 2023

RICK BLANGIARDI, MAYOR

BRYAN P. ANDAYA, Chair
KAPUA SPROAT, Vice Chair
MAX J. SWORD
NA'ALEHU ANTHONY
JONATHAN KANESHIRO

DAWN B. SZEWCZYK, P.E., Ex-Officio
EDWIN H. SNIFFEN, Ex-Officio

ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

ERWIN M. KAWATA
Deputy Manager

The Honorable Lorraine R. Inouye, Chair
and Members
Senate Committee on Water and Land
Hawaii State Capitol, Room 229
Honolulu, Hawaii 96813

Dear Chair Inouye and Members:

Subject: House Bill 1088, HD1: Relating to Declaration of Water Shortage
and Emergency

The Honolulu Board of Water Supply (BWS) understands the intent of House Bill (HB) 1088, House Draft (HD) 1, to allow the Commission on Water Resource Management (CWRM) to address water shortages created by an emergency to protect the state's water resources.

This measure proposes to amend the Hawaii Revised Statutes (HRS) §174-62 declaration of a water shortage to also include an emergency. Most of the original language (*L 1987, c 45, pt of §2*) should remain intact. We offer comments and recommend amendments to HB 1088, HD1, subsections (b), (c), (g), and (h) as follows:

1. The bill's proposed amendment to HRS §174C-62 (b) and (c) contravenes the intent and purpose of HRS 174C-41(a), which requires that the CWRM conduct scientific investigations and research to reasonably determine that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water as a precondition to designating water management areas.

We recommend most of the original language in §174C-62 subsection (b) remain intact and retain the minor amendment be made as underscored and bracketed:

(b) The commission, by rule, may declare that a water shortage exists within all or part of an area when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require a temporary reduction in total water use within the area to protect water resources from serious harm. The commission shall publish a set of criteria for determining when a water shortage and emergency exists[-], including but not limited to impacts and effects of the climate crisis.

We recommend most of the original language in subsection (c) remain intact and retain the minor amendment as underscored:

(c) In accordance with the plan adopted under subsection (a), the commission may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous water quantity or chloride level condition.

2. The bill's proposed amendment to strike language in HRS §174C-62 (g) would relieve CWRM of its responsibilities to perform its due diligence and make findings, before imposing restrictions on permittees. The declaration of an emergency is already codified in HRS §127A-14. The bill needs to address this statute in its proposed amendment of §174C-62 if the intent is to give the CWRM the authority to declare an emergency.

We recommend the original language in subsection (g) remain intact and a minor amendment be made as underscored:

(g) Subject to HRS chapter 127A, if an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under subsection (c) are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area. Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters.

3. The bill's proposed amendment to HRS §174C-62 (h) is not necessary as CWRM can already modify, suspend, or revoke water use permits under HRS §174C-57 and §174C-58.

We recommend deletion of subsection (h) in its entirety as it is redundant.

Thank you for the opportunity to testify on HB1088, HD1.

Very truly yours,



ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer

by



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKŪANAŌ`A STREET, SUITE 20 • HILO, HAWAII 96720

TELEPHONE (808) 961-8050 • FAX (808) 961-8657

March 14, 2023

TESTIMONY OF KEITH K. OKAMOTO, MANAGER-CHIEF ENGINEER
DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII

HEARING BEFORE THE SENATE COMMITTEE ON WATER AND LAND

DATE: Wednesday, March 15, 2023

TIME: 1:00 p.m.

PLACE: Conference Room 229 & Videoconference

HB 1088, HD 1 - RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

Honorable Chair Lorraine R. Inouye, Vice-Chair Brandon J.C. Elefante, and committee members of the Senate Committee on Water and Land.

The County of Hawaii Department of Water Supply (DWS) offers comments on House Bill (HB) 1088, House Draft (HD) 1, for your consideration. This bill proposes to amend the State Water Code 174C-62, Hawaii Revised Statutes (HRS), which currently requires that a water shortage be declared by rule in accordance with the water shortage plan before the Commission on Water Resource Management (CWRM) can declare an emergency. This proposed bill would allow CWRM to declare a water emergency without a prior water shortage declaration by rule. Without an established water shortage plan, or criteria for an emergency, any such declaration would be arbitrary and could likely result in unintended adverse consequences.

Subsection (g) should not be amended as proposed. If the intent is to allow CWRM to respond faster due to groundwater contamination or wildfires, HRS 127-14(c) could be utilized which would include input by other appropriate agencies and departments, i.e., Department of Health and Division of Forestry and Wildlife.

Subsection (h) should not be added unless shown necessary by an approved water shortage plan.

Overall, this bill is unnecessary and would effectively bypass procedural and substantive due process currently in the State Water Code.

It is my understanding that the State Water Code was developed through a significant collaborative effort of stakeholders. Any changes or amendments to the statute should also be collaborative.

Thank you for your time and consideration on our testimony on HB 1088, HD 1.

...Water, Our Most Precious Resource...Ka Wai A Kāne...

The Department of Water Supply is an Equal Opportunity provider and employer.

DEPARTMENT OF WATER

COUNTY OF KAUA'I

4398 PUA LOKE STREET LIHUE, HAWAII 96766

WWW.KAUAIWATER.ORG (808) 245-5400 BUSINESS (808) 245-5813 FAX



March 14, 2023

The Honorable Lorraine R. Inouye, Chair
and Committee Members
Senate Committee on Water and Land
Hawaii State Capitol, Room 229
Honolulu, HI 96813

JOSEPH E. TAIT
MANAGER AND CHIEF ENGINEER

MICHAEL K. HINAZUMI, P.E.,
DEPUTY MANAGER-ENGINEER

Dear Chair Inouye and Committee Members:

Subject: HB 1088, HD1 – Relating to Declaration of Water Shortage and Emergency

The County of Kaua'i, Department of Water (DOW) offers comments on House Bill (HB) 1088, House Draft (HD) 1, for your consideration. This bill proposes to amend the State Water Code 174C-62, Hawaii Revised Statutes (HRS), which currently requires that a water shortage be declared by rule in accordance with the water shortage plan before the Commission on Water Resource Management (CWRM) can declare an emergency. This proposed bill would allow CWRM to declare a water emergency without a prior water shortage declaration by rule.

An allowance to declare a water emergency without an established water shortage plan, or established criteria for an emergency, would be arbitrary and could result in unintended adverse consequences that impact the public's health and safety.

The proposed amendment to subsection (g) should not be included, as it removes the requirement to make findings before implementation of restrictions on permittees.

The proposed amendments to subsection (h) should not be included unless deemed necessary by an approved water shortage plan.

Overall, this bill is unnecessary and would effectively bypass procedural and substantive due process considerations and protections currently in the State Water Code. The State Water Code, as developed, was done through a collaborative effort of stakeholders. Proposed changes and/or amendments to it, should adhere to the collaborative approach.

Thank you for your time and opportunity to provide testimony for consideration on HB 1088, HD1.

Sincerely,

Joseph E. Tait
Manager and Chief Engineer

Michael K. Hinazumi, P.E.
Deputy Manager – Engineer

JT/crz

RICHARD T. BISSEN, JR.
Mayor

KEKUHAUPIO R. AKANA
Acting Managing Director



OFFICE OF THE MAYOR
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

March 14, 2023

TO: Honorable Senator Lorraine R. Inouye, Chair
Honorable Senator Brandon J.C. Elefante, Vice Chair
Senate Committee on Water and Land

FROM: Richard T. Bissen, Jr., Mayor
John Stufflebean, Director, Department of Water Supply

DATE: March 14, 2023

SUBJECT: COMMENTS FOR HB1088, HD1, RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

We respectfully offer our comments on House Bill 1088, House Draft 1 (HB1088, HD1), for your consideration. This measure amends the State Water Code §174C-62, Hawaii Revised Statutes (HRS), which requires that a water shortage has to be declared by rule in accordance with the water shortage plan before the Commission on Water Resource Management (CWRM) can declare an emergency. This measure would allow the CWRM to declare a water emergency without a prior water shortage declaration by rule.

Allowing CWRM to declare a water emergency without a prior water shortage declaration by rule, would appear to preempt and usurp the executive authority provided under HRS§127A-14 (c), which states "The governor or mayor shall be the sole judge of the existence of the danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or a local state of emergency in the county, as applicable. This section shall not limit the power and authority of the governor under section 127A-13(a)(5)."

The proposed amendments to subsections (b) and (c) would allow CWRM to impose restrictions on permits outside of management areas on well and stream diversion owners and operators. These proposed amendments would effectively contravene the intent and purpose of HRS§ 174C-41(a), which requires a precondition to designating water management areas, and that CWRM conduct scientific investigations and research to reasonably determine that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of

water. The purpose of this due diligence requirement is to ensure that the designation is in the public interest.

The proposed amendments to subsection (g) further absolve CWRM of its due diligence responsibilities by inappropriately removing the requirement that CWRM make findings before imposing restrictions on permittees.

The proposed amendments to subsection (h) should be addressed in § 174C-57 and § 174C-58, and "long term or permanent reduction of the available water source" should be defined by specific scope or magnitude.

Overall, this measure is unnecessary and would effectively give CWRM authority over designated and non-designated areas by eliminating procedural and substantive due process protections currently in the State Water Code.

Thank you for the opportunity to provide comments for your consideration on HB 1088, HD 1.

HB-1088-HD-1

Submitted on: 3/10/2023 8:25:32 PM

Testimony for WTL on 3/15/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I oppose this Bill.



Wednesday, March 15, 2023, 1:00 pm

Senate Committee on Water and Land

HOUSE BILL 1088 – RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

Position: Support with Amendment

Me ke Aloha, Chair Inouye, Vice-Chair ELefante, and Members of the Senate Committee on Water and Land:

HB1088 amends the Water Code to provide for declaration of water shortage or emergency in unforeseen circumstances – such as contamination of a water source.

The Water Code has been known to possess “inartful drafting”, revealed as the complexities of resource management emerge, and this is another case. Sometimes the lawyerese gets the better of clarity and hems in the actions needed in such a way that the most creative managers are flabbergasted.

In this case, we have been surprised by the nearly unbelievable opaqueness of Navy stewardship of resources. Compounded error requires stepping back to revisit a section of the Code rarely needed, thanks to thoughtful anticipation of the Commission.

Unfortunately, the authors of the proposed amendments have still not made fully straightforward and complete changes. The following are offered in the alternative:

The opening Section 1 is amended to read as follows, using Ramseyer formatting:

§174C-62 Declaration of water shortage ~~[]~~ and emergency. (a) The commission shall formulate and adopt by rule a statewide plan, for implementation during periods of water shortage or emergency. As a part of the plan, the commission shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water, or a combination thereof.

(b) The commission ~~[, by rule,]~~ may declare that a water shortage or emergency exists within all or part of an area, whether within or outside of a water management area, when insufficient water is available to meet the requirements of the permit system or when conditions are such as to require a ~~[temporary]~~ reduction in ~~[total]~~ water use within the area to protect water resources from serious harm. The commission shall publish a set of criteria for determining when a water shortage or emergency exists, including but not limited to impacts and effects of the climate crisis.

(c) (no change)

(d) A declaration of of water shortage or emergency and any measures pursuant thereto may be rescinded ~~[by rule]~~ by the commission.

(e) When a water shortage or emergency is declared, the commission shall cause notice ~~(thereof)~~ of the water shortage or emergency to be published uin a a newspaper of general circulation throughout the area ~~[]~~ and the the commission’s website. ...

(no further change to HB1088 HD1 amended text)

Mahalo for the opportunity to address this issue,

/s/ Charley Ice, Hoa'āina; senior Hydrologist, Commission on Water Resource Management 25 years (retired)

**Building the new normal with People and Land: Food Security Health Care Public Banking
Regenerating Soils Cutting Waste Eliminating GHG emissions**