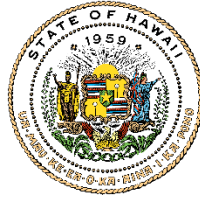


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GOVERNOR | KE KIA'ĀINA

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N. S. CHANG
Chairperson**

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

**Monday, February 13, 2023
12:30 PM**

State Capitol, Conference Room 229 & Videoconference

**In consideration of
SENATE BILL 1386
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY**

Senate Bill 1386 proposes to clarify 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 by amending Hawaii Revised Statutes (HRS) Section 174C-62. **The Department supports this measure.**

To prepare for water shortage situations, the State Water Code, HRS Chapter 174C and Title 13 of the Hawai'i Administrative Rules (HAR) directs the Commission to develop and implement water shortage plans. These plans establish criteria for declaring water shortages and actions that must be undertaken by water use permit holders to protect the health of ground and surface water resources for as long as water shortage conditions exist. Certain counties, including the Honolulu Board of Water Supply (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.

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 in water management areas¹. 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 firefighting purposes.

Currently, HRS Section 174C-62(g) with its reference to subsection (c) requires that a water shortage has to be declared by rule, through a rule-making process, 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.

This bill would require water shortage plans statewide and provide clarity that the Commission has authority to declare water shortages in any area, within and outside of a water management area. 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.

Finally, the bill clarifies the Commission's authority to modify, suspend, and revoke water use permits in the case of a permanent water shortage.

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

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 'Iao aquifer on Maui. Surface water management areas are on the island of Maui in Nā Wai 'Ehā and the Lahaina Aquifer Sector Area.

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February 13, 2023

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ERWIN K. 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: Senate Bill 1386: Relating to Water Shortage and Emergency

The Honolulu Board of Water Supply (BWS) offers comments on Senate Bill (SB) 1386 for your consideration. This bill 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 bill would allow the CWRM to declare a water emergency without a prior water shortage declaration by rule.

The Red Hill fuel crisis is the most unprecedented contamination of Oahu's irreplaceable drinking water resources from Red Hill facility fuel and other hazardous materials such as aqueous film forming foam (AFFF) releases that pose an imminent threat to public health and the environment. However, we feel that §174C-62 is adequate and we are concerned that this proposed bill broadens the Commission's authority without adequate notice and transparency that the rule adoption requirement provides for public input. If the Commission needs to take faster action, they can request the Governor to exercise his authority under HRS §127A-14 (c).

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 that -- as a precondition to designating water management areas -- 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 Honorable Lorraine R. Inouye, Chair
and Members
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The proposed amendments to subsection (g) further absolves 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.

Lastly, allowing CWRM to declare a water emergency without a prior water shortage declaration by rule, it 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 §127A-13(a)(5).”

Thank you for the opportunity to testify offering comments for your consideration on .SB1386.

Very truly yours,



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

RL