

JOSH GREEN, M.D.  
GOVERNOR  
STATE OF HAWAII  
*Ke Kia'āina o ka Moku'āina 'o  
Hawaii*

SYLVIA J. LUKE  
LT. GOVERNOR  
STATE OF HAWAII  
*Ka Hope Kia'āina o ka Moku'āina  
'o Hawaii*



KALI WATSON  
CHAIRMAN, HHC  
*Ka Luna Ho'okele*

KATIE L. DUCATT  
DEPUTY TO THE CHAIRMAN  
*Ka Hope Luna Ho'okele*

**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

*Ka 'Oihana 'Āina Ho'opulapula Hawaii'i*

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF KALI WATSON, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
HEARING ON MARCH 29, 2023 AT 2:00PM IN CR 325**

**SB 735, SD 1, HD 1, RELATING TO THE DISPOSITION OF WATER RIGHTS**

March 29, 2023

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

The Department of Hawaiian Home Lands (DHHL) submits comments on this measure that establishes that the public auction requirement for the disposition of water rights shall not be required for a lease of water for commercial kalo cultivation.

DHHL has been working with the Department of Land and Natural Resources (DLNR) for the past few years on several efforts where DLNR is attempting to issue water licenses or leases under HRS 171-58. These include hydroelectric projects on Hawaii Island and Kauai, and agricultural water on Kauai, Maui and Hawaii Island. DHHL has three significant, distinct interests in all these potential leases:

1. A right to have water reserved for its future use from the source;
2. Any traditional and customary rights its beneficiaries may have; and
3. 30% of the receipts derived from water licenses.

Any exemption from the existing process for the disposition of water rights may directly impact DHHL's interests. The expansion of this exemption as initially proposed in SB 735 was a concern as it was for commercial kalo cultivation of any kind. The measure enacted last year followed beneficiary consultation and was consistent with the Hawaiian Homes Commission action that did not adversely harm DHHL and beneficiaries' rights. We believe that the language in HD1 addresses our concerns.

We are also aware of a draft which would instead amend the end of Section (h) of HRS 171-58 to add the language "including commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices and on traditional kalo lands." We believe this alternate language would also not harm DHHL and beneficiaries' rights as it is a narrow clarification of the current exemption.

Thank you for your consideration of our testimony.



**SB735 SD1 HD1**  
**RELATING TO THE DISPOSITION OF WATER RIGHTS**  
**House Committee on Judiciary & Hawaiian Affairs**

March 29, 2023

2:00 PM

Room 325

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The Office of Hawaiian Affairs (OHA) offers **COMMENTS** on SB735 SD1 HD1, which would exempt the instream use of water for commercial kalo cultivation conducted in a manner consistent with traditional and customary practices of Native Hawaiians from the existing process for the disposition of water rights. **OHA wishes to express its concerns with the measure's potential to negatively impact constitutionally protected Native Hawaiian traditional and customary practices<sup>1</sup> in the absence of any accord by a representative body of Native Hawaiian practitioners of traditional and customary mahi'ai kalo (kalo farmers). Should the Legislature choose to advance this measure, OHA asks that the measure be amended with OHA's recommendation in order to mitigate our concerns for the betterment of conditions of Native Hawaiians.**

OHA offers the following recommendation to remove proposed section (i) and to amend section (h), Page 5, lines 13-15 to read:

(h) This section shall not apply to the disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices, including commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices and on traditional kalo lands.

**OHA offers the aforementioned amendments to the measure with rationale rooted in concerns that constitutionally protected Native Hawaiian traditional and customary practices will be undermined by commercial interests that have a tendency to stifle the advancement in perpetuating Native Hawaiian cultures.** As an example, Native Hawaiian traditional and customary hānai 'ai (food-producer practitioners) often struggle to secure agricultural loans from our own Department of Agriculture for farm operations and farm ownership, specifically due to the Department's policies that do not favor non-commercial agricultural activities for agricultural loan awards. Accordingly, this policy advantages and prioritizes commercial cultivation along with their use of natural resources, like land and water, which is not typically done in a manner consistent with the sustainable values embedded in Native Hawaiian traditional and customary Native Hawaiian practices.

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<sup>1</sup> HAW. CONST., art. XII, §7 (1978).



**SB735 SD1 HD1**  
**RELATING TO THE DISPOSITION OF WATER RIGHTS**  
**House Committee on Judiciary & Hawaiian Affairs**

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OHA, as the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians,<sup>2</sup> acknowledges that traditional and customary practices frequently involved commerce. I ka wā kahiko (In the time long before), subsistence included bartering and the trade of goods. Ko koā uka, ko koā kai (those of the upland, those of the shore) is an ‘ōlelo no‘eau (proverb/traditional saying) that aptly and succinctly describes one of the oldest systems of commerce among Native Hawaiians: the trading of goods between inhabitants of the uplands and inhabitants of the coasts. Be that as it may, the theft of Native Hawaiian sovereignty – and agency – has forcefully altered the evolution of Native Hawaiian practices in their adaptation to socio-political-economic-environmental change. As Native Hawaiians become more adept at navigating these currents, we are more aware of when it becomes appropriate to furl or unfurl our sails.

OHA is of the belief that at this present time, the character, direction, and thrust of traditional and customary Native Hawaiian practices, as it relates to Native Hawaiian culture(s), generally, must be determined by its Native Hawaiian practitioners with ample opportunity for them to convene, discuss, decide, and determine what is best for them. No such opportunity has yet been afforded to an adequate degree. **With that said, OHA is also concerned with the far-reaching impact of this measure on the water resources of non-commercial Native Hawaiian farmers, who are exercising constitutionally protected traditional and customary practices.**<sup>3</sup>

Likewise, Native Hawaiian mahi‘ai (farmers), kahu holoholona (ranchers), lawai‘a (fishers), hahai holoholona (hunters), and hānai ‘ai (food producer-practitioners) must have the opportunity to determine the parameters of modern day commerce as it intersects with traditional and customary practices. This measure introduces a concept – the rights of commercial farming through cultivation of a sacred Native Hawaiian staple food source: kalo – which has not been vetted by representatives of Native Hawaiian mahi‘ai kalo, and could undoubtedly lead to abuses that misappropriate, forcefully mutate, undermine, and erode Native Hawaiian traditional and customary practices.

OHA appreciates this opportunity to offer comments on SB735 SD1 HD1 and **asks the Legislature to take our recommendations into consideration.** Mahalo nui loa.

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<sup>2</sup> Haw. Rev. Stat. §10-3.

<sup>3</sup> HAW. CONST., art. XII, §7 (1978).



REPRESENTATIVE DAVID A. TARNAS, CHAIR  
REPRESENTATIVE GREGG TAKAYAMA, VICE CHAIR  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

COMMENTS AND SUGGESTED AMENDMENT RE: SENATE BILL 735 SD1 HD1,  
RELATING TO THE DISPOSITION OF WATER RIGHTS

March 29, 2023, 2:00 p.m.  
Conference Room 325  
State Capitol  
415 South Beretania Street

Dear Chair Tarnas, Vice-Chair Takayama, and members of the House Committee on Judiciary & Hawaiian Affairs:

While Earthjustice supports the intent of SB 735 SD1 HD1, which seeks to lessen requirements for water leases under Hawai'i Revised Statutes ("HRS") chapter 171 for "commercial kalo cultivation," we recommend some important amendments to address the potentially overbroad language of the bill.

Currently, the bill provides a blanket exemption from chapter 171's public auction requirement for any and all "commercial kalo cultivation." Earthjustice recognizes that kalo cultivation in general is important to support this keystone Hawaiian crop (particularly given long-standing supply shortages), and that the line between "subsistence" and "commercial" cultivation is blurred under the modern cash economy (where, e.g., farmers cannot pay for supplies or taxes in kalo). That said, we urge a measured and focused approach in creating new categories for legal exemptions, which could result in unintended loopholes and outcomes.

Earthjustice thus recommends that the term "commercial kalo cultivation" be further amended and defined with the language: "conducted in a manner consistent with traditional and customary Native Hawaiian practices and on traditional kalo lands." This is similar to the language that was developed during the previous legislative session for HB 1768 HD2.

This further amendment would ensure that the proposed exemption applies to bona fide kalo farming operations that are integrated with the 'āina under Native Hawaiian ecological and cultural practices (which includes the Waipi'o farming community that we understand this bill seeks to assist). It would also limit confusion or potential misuse by water lease applicants attempting to use ecologically or culturally *inappropriate* kalo cultivation as a justification to avoid chapter 171's legal requirements.

House Committee on Judiciary & Hawaiian Affairs

March 29, 2023

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In sum, Earthjustice supports the intent of SB 735 SD1 HD1 and respectfully requests that it be amended as discussed above. Mahalo nui for this opportunity to testify. Please feel free to contact us with any further questions or for further information.

Isaac H. Moriwake, Esq.

A handwritten signature in black ink, appearing to read 'Isaac H. Moriwake', written in a cursive style.

Managing Attorney  
Earthjustice, Mid-Pacific Office



# Food+ Policy Internship 2023

[food@purplemaia.org](mailto:food@purplemaia.org)

March 27, 2023

To: Chair Tarnas, Vice Chair Takayama, and the House Committee on Judiciary and Hawaiian Affairs

Subject: SB 735, Relating To The Disposition Of Water Rights

Aloha mai,

Food+ policy fully supports SB735. Exempting the instream use of water for kalo cultivation will allow for the increased production of local cultural starches in the state – along with promoting the revival and restoration of Hawaiian cultural and agricultural practices.

While allowing access to water, we continue to encourage the cultivation of both culture and Hawaii's staple crop. We strongly urge you to support bill SB735 so that we can continue to keep knowledge of the past as we move toward the future. Mahalo for your time and consideration.

Kelsey Amos & the Food+ Policy Team  
#fixourfoodsystem

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**The Food+ Policy internship** develops student advocates who learn work skills while increasing civic engagement to become emerging leaders. We focus on good food systems policy because we see the importance and potential of the food system in combating climate change and increasing the health, equity, and resiliency of Hawai'i communities.

In 2023, the cohort of interns are undergraduate and graduate students from throughout the UH System. They are a mix of traditional and nontraditional students, including parents and veterans, who have backgrounds in education, farming, public health, nutrition, and Hawaiian culture.



Testimony Before The  
House Committee on Judiciary and Hawaiian Affairs.  
**IN SUPPORT OF SB 735 SD1 HD1**  
March 29, 2023, 2:00PM, Room 325

My name is Kevin Chang and I am the Executive Director of [Kua'āina Ulu 'Auamo \(or KUA\)](#). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups to celebrate their places and pass on their traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

**KUA supports the intention of SB 735 SD1 HD1 as an incremental step towards 'āina momona. Further, we respectfully request amendments to support and encourage kalo farming practices in alignment with our constitution and its respect of traditional cultural practices of mālama 'āina and the values of aloha 'āina.** This bill provides much needed support for traditional practices, like kalo cultivation in Hawai'i where our water leasing process under HRS § 171-58 is incredibly burdensome for practitioners, many of whom are small family farmers or often armies of passionate volunteers and charitable organizations that wish to bring back these traditional crops and cultural practice as a matter of community and cultural revitalization and re-building a less import dependent infrastructure for their families, communities and Hawai'i.

KUA employs a community-driven approach that currently supports a statewide network of 36 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a growing group of over 60 Limu practitioners and supporters called the Limu Hui.

Traditional kalo farmers, by virtue of their very existence uphold the values in our constitution and provide important stewardship over our 'āina and its finite resources. They are living repositories of cultural knowledge and practices. A number of the participants, organization and initiatives in our networks engage in or support traditional kalo cultivation, use and consumption as part of their culture and as an essential pathway to achieving their vision of 'āina momona- an abundant, productive ecological system that support community well-being.

**We respectfully request that amendment be made to this current bill that the term “commercial kalo cultivation” be further amended and defined with the language: “conducted in a manner consistent with traditional and customary Native Hawaiian practices and on traditional kalo lands.”**

As we look to the future our communities are raising the kupa'āina who want to have jobs and lifestyles that support mālama 'āina which includes more sustainable island-based values and food systems. The communities we work for and with execute their initiatives with a vision and a vested relationship with the long-term health of our biocultural resources. They have depended on them for generations. We believe our environment, the foundation of our very existence, is about long-term investment and a vision of 'āina momona. To get there it

requires among other things greater capacity and pathways to build more regenerative or restorative infrastructure. Like we build roads to help people get where they need to go, you will make a path for our farmers by letting the waters flow. If you let the waters flow, the people will grow.

Mahalo for this opportunity to testify in support.

Aloha 'Āina Momona.





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Ray Maki  
Kauai

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the House Judiciary & Hawaiian Affairs Committee,

The Hawaii Farmers Union United (HFUU) is a 501(c)(5) agricultural advocacy nonprofit representing a network of over 2,500 family farmers and their supporters across the Hawaiian Islands. **HFUU supports SB735.**

This bill is of great benefit to the traditional agricultural communities of Hawaii and to their way of life. Kalo, or taro, has been a staple of Hawaiian diet and culture for centuries and its cultural significance cannot be understated. This bill would protect traditional and customary practices of Native Hawaiians related to the instream use of water for commercial kalo cultivation from the current process for the disposition of water rights. This would ensure a continued, prosperous future for Hawaiian agriculture and would provide for the protection and preservation of traditional practices.

For these reasons, the Hawaii Farmers Union United strongly supports SB735.

Mahalo for the opportunity to testify.

Kaipo Kekona, President HFUU/HFUF



**SB735 SD1 HD1**  
RELATING TO THE DISPOSITION OF WATER RIGHTS.  
**House Committee on Judiciary and Hawaiian Affairs**

March 29, 2023

2:00 PM

Room 325 &  
Videoconference

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The Council for Native Hawaiian Advancement (CNHA) offers the following COMMENTS with an AMENDMENT to SB735 SD1 HD1, which would alter the state's process for leasing water for commercial kalo cultivation.

We appreciate the Legislature's commitment to addressing the multitude of challenges faced by kalo growers. Kalo farmers serve a special role in Hawai'i. They preserve a longstanding cultural tradition; they provide locally sourced food for our communities; and they perpetuate a uniquely Native Hawaiian way of life. Kalo farming isn't necessarily glamorous or lucrative. More often than not, it's a struggle. State support of kalo farming is critical to ensuring that this key component of our islands' heritage can continue to thrive.

CNHA has concerns, however, about the broad language of the current HD1 and its potential unintended consequences. As such, we recommend reverting to the original version of SB735 and amending it to read as follows:

SECTION 1. Section 171-58, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) This section shall not apply to the disposition of water rights for the instream use of water for traditional and customary kalo cultivation practices~~[-]~~, including commercial kalo cultivation conducted in a manner consistent with traditional and



customary Native Hawaiian practices and on traditional  
kalo lands.”

In closing, we urge the Committee to amend SB735 SD1 HD1. Mahalo nui for the opportunity to testify.

Respectfully,

J. Kūhiō Lewis, CEO  
Council for Native Hawaiian Advancement

**About the Council for Native Hawaiian Advancement**

The Council for Native Hawaiian Advancement (CNHA) is a member-based 501(c)3 non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians. Headquartered in Kapolei, CNHA is a Native Community Development Financial Institution (CDFI) certified by the U.S. Treasury department and a HUD-Certified Housing Counseling agency. CNHA provides access to capital, financial education and individualized financial counseling services with a focus on low and moderate-income families. CNHA serves as a National Intermediary, providing grants and loans targeting underserved communities in Hawai'i. For more information, visit [www.hawaiiancouncil.org](http://www.hawaiiancouncil.org).

REPRESENTATIVE DAVID TARNAS, CHAIR  
REPRESENTATIVE GREG TAKAYAMA, VICE-CHAIR  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

**Comments and Suggested Amendment on SB 735, SD1, HD1:  
Relating to the Disposition of Water Rights**

Wednesday, March 29, 2023, 2:00 p.m.  
Conference Room 325 & Videoconference  
Hawai'i State Capitol  
415 South Beretania Street

Aloha Chair Tarnas, Vice-Chair Takayama, and Committee Members,

**I am writing to share my concerns and offer an amendment to SB 735, SD1, HD1: Relating to the Disposition of Water Rights.** While I am grateful that the legislature has recognized the significant burden that Hawai'i Revised Statutes ("HRS") Chapter 171 imposes on practitioners of traditional and customary Native Hawaiian practices, and kalo growers in particular, I offer a more focused approach.

Although I am testifying in my personal capacity, I have some experience in this area. I am a Professor of Law at the University of Hawai'i at Mānoa's William S. Richardson School of Law and the Director of Ka Huli Ao Native Hawaiian Law Center. I teach and write in this highly specialized area, including the Law School's courses in Native Hawaiian Rights and Water Law. I have also directed the Environmental Law and Native Hawaiian Rights Clinics where we explore traditional and customary practices, environmental compliance, and more. I have supervised over thirty law students who invested many thousands of hours supporting the Wai'oli Valley Taro Hui in navigating the HRS Chapter 171 water leasing process from 2019 to 2022 and am intimately familiar with the challenges that presents. I am also a practicing attorney with over twenty years of litigation experience in Native Hawaiian and Environmental Law.

I am concerned that SB 735's current language is overbroad and offer an amendment that would support commercial kalo growers, while also ensuring that their practices are pono. Last session, the legislature grappled with similar issues in crafting what is now HRS 171-58(h). Given the complexities of the water leasing process and the challenges that it presents for all kalo farmers, instead of adding a new section (i), the cleaner solution is to consolidate the amendments under the existing subsection (h). We must acknowledge that in today's society, the perpetuation of traditional and customary Native Hawaiian practices and kalo cultivation in particular often requires a cash or commercial element, as many farmers require supplies (including gas for their equipment) and must pay property taxes. This is precisely what was proposed last year in HB 1768, HD2 (the bill ultimately resulted in Act 27 and created HRS 171-58(h)). I respectfully request that you delete the proposed language in (i) and, instead, add the following to the end of 171-58(h): "including

commercial kalo cultivation conducted in a manner consistent with traditional and customary Native Hawaiian practices and on traditional kalo lands.”

I apologize that I am unable to attend in person, but I am teaching the Native Hawaiian Rights Clinic during the scheduled hearing time.

Please amend SB 735, SD1, HD1 today. Mahalo for your time and aloha.

Me ka ha‘aha‘a,

D. Kapua Sproat  
kapua.sproat@gmail.com

**SB-735-HD-1**

Submitted on: 3/25/2023 9:50:10 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Julia Estigoy-Kahoonei	Individual	Support	Written Testimony Only

Comments:

I aree that kalo cultivation all native Hawaiian practices should be given free accomodations and considerations without requiring "permission" from government. Government needs to honor the native culture. Stop restricting their rights to practice

**SB-735-HD-1**

Submitted on: 3/27/2023 9:44:30 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

support

**SB-735-HD-1**

Submitted on: 3/28/2023 9:21:06 AM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support SB735 SD1 HD1.



**SB-735-HD-1**

Submitted on: 3/28/2023 1:45:01 PM

Testimony for JHA on 3/29/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kanani Higbee	Individual	Support	Written Testimony Only

Comments:

Aloha Judiciary and Hawaiian Affairs Committee Chair Tarnas, Vice Chair Takayama, State Representatives, Ganaden, Hashimoto, Holt, Ichiyama, Illagan, Kong, Mizuna, and Souza:

I, Kanani Higbee, Maui 'oiwi, humbly ask that the Judiciary and Hawaiian Affairs Committee please join me in strong support for SB735 (SD1) (HD1). The kalo farmers are vital for perpetuating Hawaiian culture which allows Hawaiian to reconnect and heal from being disconnected from their culture and identity for several generations due to water being routed away and leading to their displacement from their kuleana lands. By not requiring a lease for water will reduce yet another obstacle from their culture and livelihood. Taro farmers are a huge asset by providing the State of Hawaii with a nutrient dense food that especially cones in handy during times of natural disaster due to its durability to survive in fields struck by hurricane and tsunami.

Thank you for taking the time to read this testimony. I hope SB735 will pass since it's come so far through this session already. The taro farmers could use all the support they can get because they provide a great service to their community.

With Aloha,

Kanani Higbee