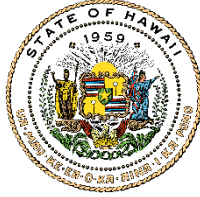


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN D. UYENO
ACTING 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 Committees on
WATER AND LAND
and
PUBLIC SAFETY AND INTERGOVERNMENTAL
AND MILITARY AFFAIRS

Wednesday, February 7, 2024
3:00 PM
State Capitol, Conference Room 225 & Videoconference

In consideration of
SENATE BILL 2089
RELATING TO WATER

Senate Bill 2089 proposes to specify that fire safety use is a beneficial use of fresh water in the State Water Code. This bill requires the Department of Land and Natural Resources (Department), in consultation with the Hawai'i Emergency Management Agency, to cooperate with the counties and reservoir owners to develop protocols and agreements for the use of reservoir waters for fire safety purposes and amends the conditions, manner, and areas in which the Commission on Water Resource Management (Commission) can declare and provide notice of water shortages and emergencies. **The Department appreciates the intent of this measure, offers the following comments, and proposes amendments.**

This measure proposes to amend the declaration of policy in the State Water Code, Hawaii Revised Statutes (HRS) Section 174C-2 to include maintenance of available fresh water for fire safety purposes to benefit the public's health, safety, and welfare. The Department concurs that fire safety is a beneficial use of water. However, to be able to address all possible beneficial uses of water for the public's health, safety, and welfare, the Department prefers broader language in this section without a limitation to fire safety purposes. Thus, the Department suggests amending HRS Section 174C-2 (c) as follows (grey highlight):

"(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses~~[7]~~; aquaculture uses~~[7]~~; irrigation and other agricultural uses~~[7]~~; power development~~[7, and]~~; commercial and industrial uses~~[7]~~; and uses to benefit the public's health, safety, and welfare~~[by maintaining available fresh water for fire safety purposes]~~. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. ~~[Such]~~ These objectives are declared to be in the public interest."

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 and Lahaina crises have revealed, such shortages and emergencies can come into existence in an instant. The Department appreciates the proposed amendments to HRS Section 174C -5, -9, and -62 in this bill. However, to be able to react to *all* crises that require a beneficial use of water for the public's health, safety, and welfare, the Department proposes to use the language of **Senate Bill 2146**¹ for amendments to HRS Sections 174C -5, -9, and -62. Thus, the Department suggests amending HRS Section 174C-5 (16), 9 (b), and 62 as follows (grey highlight):

§174C-5

(16) May declare an emergency if the commission determines, in consultation with the governor, the appropriate county, and the ~~[Hawaii emergency management agency]~~ department of health, that there is an absence of sufficient quantity and quality of water in any area, whether within or outside of a water management area, that immediately threatens the public health, safety, and welfare~~[during a wildfire]~~. The commission may issue orders reciting the existence of the emergency and requiring those actions as the commission deems necessary to address the emergency to be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources ~~[in]~~of the area. An emergency order shall expire no later than one year after ~~[the order is issued]~~issuance by the commission, unless extended by a separate or supplementary order.

§174C-9

(b) Any party to whom an~~[y]~~ emergency order is directed may challenge that order but shall immediately comply with the order pending disposition of the party's challenge. The commission shall

¹ https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=SB&billnumber=2146&year=2024

give precedence to a hearing on the challenge over all other pending matters."

"[+]§174C-62[+] Declaration of water shortage[-] and

emergency. (a) The commission shall formulate a statewide plan for implementation during periods of water shortage. 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 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 exists[-], including but not limited to the [imminent threat of an emergency condition caused by a wildfire] impacts and effects of the climate crisis.

(c) In accordance with the plan adopted under subsection (a), the commission may impose [such] restrictions on one or more classes of permits and outside of management areas on well and stream diversion owners and operators 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.

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

(e) When a water shortage is declared, the commission shall cause a notice [thereof] of the declaration to be published in a prominent place in a newspaper of general circulation throughout the area and on the commission's website. The notice shall be published each day for the first week of the shortage and once a week [thereafter] for four months, followed by monthly publications until the declaration is rescinded. Publication of [such] the notice shall serve as notice to all water users in the area of the condition of water shortage.

(f) The commission shall [cause] notify by regular and electronic mail each permittee in the area [to be notified by regular mail] of any change in the conditions of the permittee's permit, any suspension [thereof] of the permit, or of any other restriction on the use of water for the duration of the water shortage.

~~[(g) 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.]~~

~~[(g) Notwithstanding any other law to the contrary, a public water supplier may declare a water shortage emergency condition without holding a public hearing in the event of a wildfire.]"~~

The Department supports the amendments to HRS Section 185-1.5.

Thank you for the opportunity to comment on this measure.



COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL
AND MILITARY AFFAIRS

Senator Glenn Wakai, Chair

Senator Brandon J.C. Elefante, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

TESTIMONY IN OPPOSITION TO SENATE BILL 2089

February 7, 2024, 3:00 p.m.

Room 225

State Capitol

415 South Beretania Street

Dear Chairs Wakai and Inouye, Vice-Chair Elefante, and members of the Senate Committee on Public Safety and Intergovernmental and Military Affairs and the Senate Committee on Water and Land:

Earthjustice **opposes SB 2089**, “Relating to Water,” because it is unadvisable and unnecessary. We instead support SB 3327, which provides a more effective, balanced, and comprehensive approach to enabling the Commission on Water Resource Management to address fire safety and other exigencies.

SB 2089 amends the Water Code’s declaration of policy to insert “maintaining available fresh water for fire safety purposes” among the non-exclusive list of beneficial water uses. First of all, this language is unnecessary since the Code already provides ample authority for using water for reasonable and beneficial purposes such as fire safety. Further, the language is imprecise and overbroad: it does not refer to actually using water for fire safety, but rather “maintaining available fresh water” for that supposed purpose. The proposed amendment thus expresses blanket, indiscriminate support for continually extracting and banking fresh water resources, which raises major red flags given the highly publicized controversy over private water diverters attempting to use the Lahaina wildfire disaster to justify grabbing control of public water resources.

It is also unclear why “fresh water” is singled out for use for fire safety, since ocean or brackish water and recycled water are just as important and effective for this purpose. In sum, the proposed language appears more focused on supporting the banking of public fresh water resources, rather than fire safety in particular.

This concern is further corroborated and amplified by the additional proposed amendment providing that any “public water supplier may declare a water shortage emergency condition without holding a public hearing in the event of a wildfire.” This proposed provision would enable exactly the kind of improper and unjust water grab that the West Maui Land Company incited in the wake of the Lahaina wildfire. Such a provision granting such unbridled authority to private water companies has no place in the Code.

SB 2089 also includes proposed amendments clarifying the Commission’s authority to manage water supplies during emergencies. SB 3327 also includes similar amendments. Overall, Earthjustice prefers the amendments in SB 3327, which address the issue more effectively as part of a more comprehensive approach to supporting the Commission’s regulatory authority—including its independence from the political influences that undermined the Commission during the critical aftermath of the wildfire disaster.

In sum, Earthjustice opposes SB 2089 and instead supports SB 3327 as a better, broader, and more balanced measure. Mahalo nui for this opportunity to testify. Please do not hesitate to contact us with any further questions or for further information.

Isaac H. Moriwake

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

Managing Attorney
Earthjustice Mid-Pacific Office



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

LATE

February 7, 2024

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND
MILITARY AFFAIRS

TESTIMONY ON SB 2089
RELATING TO WATER

Conference Room 225 & Via Videoconference
3:00 PM

Aloha Chairs Inouye and Wakai, Vice Chair Elefante, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports SB 2089, which specifies that fire safety use is a beneficial use of fresh water in the State Water Code, requires the Department of Land and Natural Resources, in consultation with the Hawaii Emergency Management Agency, to cooperate with the counties and reservoir owners to develop protocols and agreements for the use of reservoir waters for fire safety purposes, and amends the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies.

The recent wildfires on Maui and Hawai'i Island demonstrated the need for filled reservoirs to help fight wildfires. Water availability close to wildfires can make a difference in the magnitude of damage. The large dry areas in the State usually do not have readily available water for emergency use for wildfires. Reservoirs filled with water in these secluded areas can assist in controlling and extinguishing fires and prevent large areas of devastation.

The Hawai'i Farm Bureau requests your support and passage of SB 2089.

Testimony by Dr. Clay Trauernicht IN OPPOSITION to SB 2089, Relating to Water

For the hearing on February 7th, 2024, Conference Room 225

To Senator Glenn Wakai, Chair of the Committee on Public Safety and Intergovernmental and Military Affairs and Senator Lorraine Inouye, Chair of the Committee on Water and Land:

I am submitting testimony in opposition to SB 2089 Relating to Wildfire Safety and Prevention. I have been working at the University of Hawai'i at Mānoa in the field of wildfire science and management since 2013, however, I am submitting this testimony as an individual and not as an official University of Hawai'i (UH) spokesperson.

On its face this bill appears to be for the benefit of the public by including “fire safety use” as a beneficial use of fresh water. However, I oppose this bill based on reservations about the opacity of the rules it lays forth and the long-term impact the change in rules may have on the ability of communities to effectively reduce fire risk across the wider landscape.

My primary concern is that this bill fails to consider the role of water in designing and developing “fire-resilient landscapes” that will confer the greatest safety to our communities. From a wildfire management perspective, effective community safety from wildfire requires long-term investment in land care practices, within which expanding water access and customary practices like lo'i kalo are key strategies to ‘re-greening’ landscapes. Fire-resilient landscapes are a key tenet of moving from reactive (ie, suppression-focused) to proactive (prevention-focused) wildfire management as explicitly outlined in national wildfire management policy, such as the [National Cohesive Strategy for Wildland Fire Management](#) and the recent presidential [Wildfire Mitigation and Management Commission's report](#). For Hawaii, this means using water and land care to support the community visions that have existed long before the Maui fires: re-establishing productive farm and grazing lands and restoring riparian areas and native ecosystems to remove and reduce high risk vegetative fuels across the landscape.

Beyond failing to acknowledge this critical use of water, the provisions in this bill actually threaten to prevent communities in fire-prone areas from realizing these outcomes and ensuring their safety. In my opinion, the bill’s vague terminology (e.g., ‘imminent threat of an emergency condition’) and opacity (e.g., ‘a public water supplier may declare a water shortage...without holding a public hearing’) threatens to tip the balance of power over water control towards storage for short-term needs and response over access to water for long-term risk mitigation strategies applied over the broader landscape.

Water is obviously of critical importance for fire response, but that is also the last line of defense. If we learn anything from the Maui fires is that we need to support resource use, tenure, and land care actions that reduce wildfire risk long before any emergency is declared. My fear is that this bill over-emphasizes our reliance on reactive measures - which as we also saw with the inability to use helicopters on Maui are not always an option - and

undercuts the ability of communities and landowners to use water to manage and change the composition of vegetative fuels, which is the one element of wildfire risk over which we have direct control.

Water storage and downstream water use do not necessarily need to be mutually exclusive, but this bill appears to be structured as if that is indeed the case. I urge the legislature to oppose this bill and consider solutions that don't pit emergency response against the protection of customary uses of water that have clear, long-term benefits for community health and safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Clay Trauernicht". The signature is fluid and cursive, with a large initial "C" and "T".

Clay Trauernicht, PhD
Extension Specialist in Ecosystems and Fire
University of Hawai'i at Mānoa

SB-2089

Submitted on: 2/6/2024 1:09:15 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sesame Shim	Individual	Oppose	In Person

Comments:

This is plantation disaster capitalism at its worst, private water purveyors attempt at water banking and using fires as an excuse to cover their greedy intentions. It's been attempted numerous times after fires in the past. Please do not be persuaded in the wake of Lahaina's devastation. Oppose SB2089.

SB-2089

Submitted on: 2/4/2024 2:12:49 AM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Kyle K Kajihiro	Individual	Oppose	Written Testimony Only

Comments:

This bill is a thinly veiled attempt to bank water for development and luxury uses.

SB-2089

Submitted on: 2/4/2024 8:31:19 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Comments	Written Testimony Only

Comments:

Having previously worked with former first deputy Kaleo Manuel on these issues in relation to reservoirs on Maui, it is important to note, sometimes water is then diverted from kuleana users for the filling of privately owned reservoirs for the purposes of firefighting thus leaving the kuleana users with no way to defend themselves from approaching wildfires. This was a real situation in previous fires in West Maui so please ensure that all parties have resources to fight fire and if necessary allow the bucket to dip into the ocean to avoid cutting off one side from access to water for the purpose of fighting fires.

Mahalo,

Tamara Paltin

SB-2089

Submitted on: 2/5/2024 10:48:23 AM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
James Kimo Falconer	Individual	Support	Written Testimony Only

Comments:

To the WTL/PSM committes, Chairs Wakai and Inouye and members,

Please support SB 2089. Improving our infrastuctual needs to hold water is of vast importance for many reasons beyond just fire control, although that is the key reason being mentioned. Plantation reservoirs that are currently not in use should be viewed as part of the ditch system from the valleys. It needs to be taken into account these reservoirs were built when people still lived and farmed in the valleys, and all of these reservoirs are designed to return the water to the valley after the reservoir is filled. This allows for aquifer recharge and water storage for fires outside of any Ag use, if that is even possible. It will not reduce the flow standard allowed in any stream feeding those reservoirs.

Thank you for the opportunity to testify on this important matter.

SB-2089

Submitted on: 2/5/2024 2:11:54 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Isis Usborne	Individual	Oppose	Written Testimony Only

Comments:

Aloha Chair Wakai, Chair Inouye, Vice Chair Elefante, and members of the committees,

I am a law student at the William S. Richardson school of law, and I respectfully oppose this bill. Please see testimony from my fellow law students as I agree with their reasoning and join them in their principled and specific objections to the potential misuse of this new power under the State Water Code to further erode Native Hawaiian land rights to healthy, locally managed water across the islands.

Mahalo,

Isis Usborne

SB-2089

Submitted on: 2/6/2024 12:10:12 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Holden Takahashi	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha,

My name is Holden "Kalama'ehu" Takahashi and I am writing in **opposition** of SB2089. Due to the limited amount of available fresh groundwater resources and the current inequitable and frankly criminal control that private purveyors have on the majority of a public trust resource with historical and contemporary misuse, commodification and hoarding of water for private luxury development and tourism (i.e. Launiupoko pools, hotel water features, golf courses, private estates, etc.), we are setting a stage for something like the wildfires to occur again. Hoarding water will not create a sustainable, truly fire-resistant environment but continue to destabilize our vegetation, soils, and stream health. Natural flow with protections and use for traditional cultural practices and community approved and driven agriculture are the future. This does not include settlers on lands of said companies that misappropriate Hawaiian culture to ground arguments for their continued theft. However, the only historical solution to this type of mismanagement is for the resource to be taken away, or "managers" (private purveyors and utility companies) to be removed. With the recent designation of Maui Komohana as a ground and surface water protection area and the devastating impacts of the Maui wildfires, fresh water is a resource that we absolutely can not afford to waste or be controlled by private entities and their interests. A reminder that the reservoirs are not a sufficient means of fire suppression as they are not connected to the county systems and the hydrants and areas were dry due to the lack of water caused by private mismanagement and environmental destabilization. Olowalu and Launiupoko have been severely dewatered and environmentally destabilized due to the theft of water for grand homes of foreigners while we struggle to feed ourselves from the limited water and land we can access. Families need to grow food in buckets on their tiny lanai or the hotel balconies while people who don't even live here exploit the labor and bodies of our truly local families (who also lost homes and are facing homelessness with the housing crisis that the governor and mayor are responsible for) to water their manicured lawns and palm trees and fill their pools that they swim in less than a handful of times a year. **Swimming pools should be outlawed.**

Additionally, high winds can ground aircraft and ocean water and R1 respectively are readily available. I would rather have a house and car that is salty than burnt to ash. We lost our home and we are committed to staying in Lahaina to ensure that we protect our resources and the well-being and interest of the community. Construction, development, and tourist industries and their local companies have minimal stakes in the conversations about water. It is the lineal descendants, long time advocates and supporters, and 'ohana that commit to the preservation of

water, land, housing, and other resources for the longevity of Lahaina for families and communities that should be consulted and have access to this resource. Do not let these disasters happen again. Do not perpetuate this dominance of our place, families, and resources. My name is Holden "Kalama'ehu" Takahashi and I am writing in opposition of sb2089.

SB-2089

Submitted on: 2/6/2024 2:54:30 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Malia Taylor-Wolfe	Individual	Oppose	Written Testimony Only

Comments:

I **strongly oppose** this bill. "Fire safety" historically was and still is an excuse used by large private landowners to hoard water. While fire safety is an important issue, I believe this bill conflicts with the purpose of the public trust doctrine.

Mahalo for your time and consideration,

Malia Taylor-Wolfe

William S. Richardson School of Law, Juris Doctor Candidate 2025

LATE

SB-2089

Submitted on: 2/6/2024 3:40:15 PM

Testimony for WTL on 2/7/2024 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

This is crucial- develop protocols and agreements for the use of reservoir waters for fire safety purposes. Amends the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies.