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

Friday, March 14, 2025  
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of  
HOUSE BILL 510, HOUSE DRAFT 1  
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

House Bill 510, House Draft 1, proposes to amend the conditions, manner, and areas in which the Commission on Water Resource Management can declare and provide notice of water shortages and emergencies. **The Department of Land and Natural Resources (Department) strongly supports this measure and offers suggested amendments.**

The Commission on Water Resource Management (Commission) was established by the Hawai'i State Legislature in 1987 to implement and administer the State Water Code (HRS chapter 174C). Under the laws and constitution of the State of Hawai'i, the Commission has a dual mandate of protecting and preserving the state's fresh water resources while providing for the maximum reasonable and beneficial use of water by present and future generations. The Commission allocates water to support needs like housing, agriculture, and other important uses. Under the Hawai'i Constitution and the State Water Code, the Commission must ensure the protection of public trust uses—maintenance of waters in their natural state, domestic uses, traditional and customary practices of Native Hawaiians, and adequate reservations of water for the Department of Hawaiian Home Lands—and appurtenant rights.

Climate change and drought combined with increased population and aging water infrastructure can lead to water shortage situations in some areas of the state. The changing rainfall patterns in Hawai'i along with more prolonged and intense drought events are causing water demands to meet or exceed the available freshwater supplies in some areas. The Third National Climate Assessment<sup>1</sup> shows that average rainfall and average stream flow in Hawai'i has been decreasing in some areas since the early

<sup>1</sup> <https://nca2014.globalchange.gov/report/regions/hawaii-and-pacific-islands>, accessed March 10, 2025

20th century. A recent report<sup>2</sup> finds that drought duration and magnitude increased in Hawai‘i between 1920-2019. While the county water departments and private water utilities have the ability to restrict their customers’ use of water, only the Commission has authority over all the water resources in the state. Water shortages impact all water users in a region – and since the counties and private utilities can only restrict uses of water under their control, it is vital for the Commission to have expanded flexibility to respond to conditions anywhere in the state that threaten our water supplies when issuing water shortage declarations. Current language in HRS §174C-62, prevents the Commission from declaring a water shortage in non-designated water management areas, and requires the Commission to declare a water shortage by a lengthy administrative rulemaking process.

This measure proposes amendments to HRS §174C-62, which would:

- Increase public input to the Commission by requiring a rulemaking process under Chapter 91, HRS, when formulating water shortage plans, developing a reasonable system of permit classification in designated water management areas, and publishing a set of criteria for determining when a water shortage exists;
- Provide the Commission discretion and immediacy to declare water shortages statewide by adding areas outside of designated water management areas to be eligible for water shortage declaration and removing the requirement “by rule” to declare a water shortage;
- Expand the Commission’s authority to impose restrictions on well and stream diversion works owners and operators during a water shortage outside of designated water management areas; and
- Enhance the requirements of public notice and permit holder notification of a water shortage.

The Department supports this measure, which would allow the Commission to quickly declare a water shortage during a crisis anywhere in the state. If enacted, this measure would allow for the Commission to further protect water resources statewide, particularly as the impacts of climate change threaten the future of our wai.

The Department takes note of testimony in opposition to this bill submitted by the Land Use Research Foundation (LURF) and the Hawai‘i Farm Bureau (HFB), and acknowledges concerns from the agricultural sector, which is an important element of Hawai‘i’s economy as well as a safeguard for the State’s food security. Commission staff have consulted with HFB and the Hawai‘i Department of Agriculture regarding potential impacts that this bill would have on farmers and the agricultural industry as a whole. The Department wants to mitigate negative consequences on stakeholders, particularly the agricultural industry, while still providing the Commission with the tools it needs to effectuate its mission.

Accordingly, **the Department suggests the following amendments** to HB510, HD1:

- 1. Limiting the duration of any water shortage declaration to 90 days, with the potential for extension by Commission action if the circumstances warrant.**

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<sup>2</sup> Frazier, A.G.; Giardina, C.P.; Giambelluca, T.W.; Brewington, L.; Chen, Y.-L.; Chu, P.-S.; Berio Fortini, L.; Hall, D.; Helweg, D.A.; Keener, V.W.; et al. A Century of Drought in Hawai‘i: Geospatial Analysis and Synthesis across Hydrological, Ecological, and Socioeconomic Scales. Sustainability 2022, 14, 12023. <https://doi.org/10.3390/su1419120>

The Department suggests amendments to this measure **limiting restrictions** due to water shortage to **90 days**. This amendment is intended to address stakeholders' testimony regarding the potential impacts of restrictions that the Commission may impose on water use during periods of shortage and the lack of any current limitation to the potential duration of the shortage declaration.

Hawai'i's streams and water systems supplied by diverted stream flows are vulnerable to periods of low rainfall and drought while our rainfall is highly variable in space and time. Streams with extremely low or zero flows due to drought can be restored to average flows after rainfall conditions return to normal – which may occur within 90 days after a surface water shortage declaration. The Department does not wish to unduly restrict water uses when normal conditions return and would assess whether a water shortage should be continued after 90 days. A declared groundwater shortage may take longer than 90 days to return to pre-shortage conditions after a drought has receded. The Commission may issue subsequent water shortage declarations if a continuance of water shortage is warranted after reviewing criteria and hydrologic conditions.

## **2. Capping potential reductions to permit holders under HRS 174C-62(c) at 20% of the permit holder's last reported monthly pumpage report.**

Like the suggested amendment above, this amendment is suggested to alleviate the concern raised in stakeholders' testimony regarding the potential impacts of restrictions that the Commission may impose on water use during periods of shortage. The Pearl Harbor Water Shortage Plan<sup>3</sup>, adopted by the Commission on August 18, 2020, provides for a **maximum 20% reduction** in water use. This reduction is only for the lowest priority permits, and in the most severe water shortage circumstances (3 standard deviations below average water levels in one or more CWRM Deep Monitor Wells). The Department suggest amendments to limit all potential reductions under HRS § 174C-62(c) to a maximum of 20%. This reduction would be applied to the permittee or owner/operator's last reported monthly water usage, with no reporting in the past twelve months presumed to mean that the water source is not being used.

## **3. Removing the impacts of the climate crisis as a criterion for water shortage declarations.**

HFB's testimony before the House Committee on Judiciary & Hawaiian Affairs raised the concern that the provision referencing the climate crisis as a criterion for determining water shortages "could lead to frequent and unpredictable water shortage declarations." Commission staff believe that it is essential to apply measurable, clear, and consistent criteria for water shortage declarations. Many factors could lead to those criteria being met, including climate change; however, the Commission's decision to declare a water shortage area will focus on the measurable impacts of those factors. As such, the Department suggests deleting the language "including but not limited to impacts and effects of the climate crisis" at page 3, lines 3-4 of HD1.

## **4. Allowing parties to request mail or email notices of water shortage declarations.**

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<sup>3</sup> <https://files.hawaii.gov/dlnr/cwrmsubmittal/2020/sb20200818C1.pdf>, accessed March 10, 2025

To address concerns raised in HFB's testimony regarding the burden placed on farmers to continuously monitor for water shortage restrictions, the Department suggests amendments allowing parties to request notification of water shortage declarations by mail or email, similar to existing provisions under HRS § 92-7(c) for Sunshine Meetings.

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The Department further notes that this measure includes an administrative rulemaking process that would ensure public input, including participation from the agriculture sector, when establishing criteria for determining when a water shortage exists, formulating a water shortage plan, and developing a reasonable system of permit classification. The current process under HRS §174C-62 compared with proposed amendments is outlined below.

Action	Current Process	Proposed Amendments
<b>Formulate plan</b> for implementation during periods of water shortage  HRS §174C-62(a)	Commission action	<b>Administrative rulemaking</b>
<b>Adopt reasonable system of permit classification</b> according to source of water, method of extraction/diversion, use of water, or a combination thereof  HRS §174C-62(a)	Commission action	<b>Administrative rulemaking</b>
<b>Declare water shortage</b>  HRS §174C-62(b)	<b>Administrative rulemaking</b>	Commission action
<b>Publish a set of criteria</b> for determining when a water shortage exists  HRS §174C-62(b)	Commission action	<b>Administrative rulemaking</b>

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The highlighted text shown below are the Department's suggested amendments to language in HB510 HD1.

" [†] **§174C-62** [†] **Declaration of water shortage.** (a) The commission shall, by rule, formulate a plan for implementation during periods of water shortage. As a part of the plan, the commission shall, by rule, 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]~~ or outside of the water management area to protect water resources from serious harm. The commission shall publish, by rule, a set of criteria for determining when a water shortage exists.

(c) In accordance with the plan adopted under subsection (a), the commission may impose such restrictions on one or more classes of permits and on the owners and operators of wells and stream diversion works that are located outside of management areas 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. The restrictions to be imposed by the commission under shall not exceed 20% of the permittee or owner/operator's last reported monthly water use. If the permittee or owner/operator has not reported water use in the last twelve months, the use shall be presumed to be zero. The restrictions placed under this subsection (c) shall expire after 90 days unless extended by the commission.

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

~~-(e)]~~ (d) When a water shortage is declared, the commission shall cause a notice ~~[thereof]~~ of the water shortage 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, and once a month

thereafter until the declaration is rescinded. The notice shall remain on the commission's website 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. The commission shall maintain a list of names and postal or electronic mail addresses of persons who request notification of declared water shortages and shall mail or electronically mail a copy of the notice to such persons at their last recorded postal or electronic mail address when a water shortage is declared.

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

~~[(g)]~~ (f) 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 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."

Finally, the Department recommends that this committee amend the effective date of the bill to be July 1, **2026**, providing Commission staff more time to solicit and incorporate stakeholder input on the administrative rules to be adopted.

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

**BOARD OF WATER SUPPLY  
KA 'OIHANA WAI  
CITY AND COUNTY OF HONOLULU**

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March 14, 2025

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

Dear Chair Inouye and Members:

Subject: House Bill 510, HD1: Relating to Declaration of Water Shortage and  
Emergency

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The Honolulu Board of Water Supply (BWS) strongly supports House Bill (HB) 510, House Draft (HD) 1. The purpose of the bill is to amend the conditions, manner, and areas in which the Commission on Water Resource Management (Commission) can declare and provide notice of water shortages and emergencies pursuant to Hawaii'i Revised Statutes (HRS) chapter 174C.

The BWS supports the proposed amendments, which requires the Commission, to adopt rules, formulate a plan for implementation, adopt a reasonable system of permit classification, and set criteria for determining when a water shortage exist. This provides more transparency to the public and allows ample notification that a water shortage exist.

Thank you for the opportunity to testify in strong support of HB 510, HD 1.

Very truly yours,

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





**LATE**

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair

Senator Brandon J.C. Elefante, Vice Chair

TESTIMONY IN OPPOSITION H.B. 306 HD2 and H.B. 510 HD1

March 14, 2025, 1:00 p.m.

Room 229

State Capitol

415 South Beretania Street

Dear Chair Inouye, Vice-Chair Elefante, and Members of the Senate Committee on Water:

Earthjustice strongly supports reforming the Commission on Water Resource Management to improve the stewardship of Hawai'i's public trust water resources. However, we **oppose H.B. 306 and H.B. 510** in their current forms because these two bills propose piecemeal "tweaks" to the commission that increase the risk of abuse of the commission's authority without improving its operations or accountability to the communities seeking its help. Earthjustice would support these bills, if they were being considered in the context of critical structural changes to the commission, such as those proposed in Senate Bill 3.

Our office has decades of experience in Hawai'i water law, including numerous Hawai'i Supreme Court cases interpreting and implementing the State Water Code, HRS chapter 174C. SB 3 implements long-standing and long-overdue recommendations to improve the Code, protect the Commission on Water Resource Management from political interference and ensure its independence, and restore public confidence in the commission and the rule of law. The persistent political assaults against the commission since the Lahaina wildfire disaster underscore the need for fundamental reforms. Senate Bill 3 introduced this session details all of reforms needed to this commission, including:

- Enabling the commission to retain independent legal counsel. This is essential to ensuring the commission's independence since, throughout its history, the commission has repeatedly been deprived of effective counsel or denied legal representation altogether at critical times.

- Creating the position of executive director instead of first deputy. This also protects the commission's autonomy by increasing the independence of its administrator.
- Clarifying that the Chair of DLNR will not be the chair of the commission. Likewise, this further uplifts the commission as an independent agency, rather than a subsidiary of DLNR.
- Adding an appointee of the Office of Hawaiian Affairs to the commission nominating committee. This amendment adds an important voice to the nomination process, which has also been subjected to undue political influence.
- Enhances the commission's enforcement and regulatory powers, including under emergency and shortage conditions. These amendments have been proposed for several years running and are important updates to the commission's water management kuleana.

These improvements were first suggested in the 1994 report of the Review Commission that was established in the Water Code to evaluate the effectiveness of the water commission after 5 years of operation. That report documented the conflicts of interest and opportunities for abuse inherent in the current structure of the water commission, and proposed these meaningful changes. The proposals outlined in H.B. 306 and H.B. 510 should not be adopted without enacting these more fundamental reforms as well.

H.B. 306 HD2 proposes increasing the limit on fines imposed by the commission for violations. Currently, the commission is authorized to impose \$5,000 maximum daily fine on violators, which has proven to be an insufficient amount to deter irresponsible actions by permit holders, especially those with access to immense financial resources such as corporations diverting streams and the Defense Department with polluting facilities affecting significant water resources. Unfortunately, without added layers of protection from political interference, there is a significant risk that the commission would misuse this authority. Sadly, that is what happened in 2016 when the commission attempted to fine a kalo farming family for watering their kalo fields, while it ignored repeated permit violations and documented water "banking" by

corporate diverters.<sup>1</sup> The ability to impose higher fines, without true independence from the politically well-connected is not an improvement to the commission at all.

H.B. 510 HD1 proposes a mechanism to authorize the commission to declare emergencies when there are sudden water shortages. In 2021, after the Red Hill Bulk Fuel Storage facility contaminated the primary drinking water aquifer for the island of O'ahu, the Green Administration concluded that the commission did not have the legal authority to quickly declare a water shortage. A bill similar to H.B. 510 was proposed and passed in 2022, and then vetoed by Green Administration on the claim that the bill was not necessary. Then in the summer of 2022, wildfires ravaged Lahaina and the commission was once again confronting huge, unexpected water shortages without no ability to respond in a timely fashion. While it is clear that the commission needs authority to issue emergencies, it is also clear that the commission lacks the trust of key communities affected by its decisions. Structural reforms to the commission that address the causes for the community's mistrust are critical to ensure that emergencies declared by the commission are properly heeded. Without these structural reforms, passing H.B. 510 would further undermine the public's already-eroded trust in this institution.

Mahalo for the opportunity to testify.

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<sup>1</sup> See, Maui Couple Plants a Taro Patch, Grows a Movement for Hawaiian Water Rights, September 9, 2016, <https://earthjustice.org/article/maui-couple-plants-a-taro-patch-grows-a-movement-for-hawaiian-water-rights>



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WATER AND LAND

March 13, 2025

1:00 PM

Conference Room 229

**In SUPPORT WITH AMENDMENTS of**  
**HB306 HD2:** Relating to State Water Code Penalties  
**HB510 HD1:** Relating to Declaration of Water Shortage and Emergency

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Aloha Chair Inouye, Vice Chair Elefante, and Members of the Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS WITH AMENDMENTS** HB306 HD2 and HB510 HD1, which provide the Commission on Water Resource Management ("CWRM") greater authorities to manage our wai, but which fall short of addressing the much greater challenge to effective water management: undue political interference. **The Sierra Club accordingly urges the Committee to consider amending either of these measures to include much comprehensive solutions to enhance water management in our islands, such as those proposed in SB3 SD1 from earlier this session.**

HB306 HD2 would allow CWRM to impose meaningful fines against powerful entities who could otherwise over pump our aquifers and drain our streams dry with impunity, notwithstanding the law or the needs of our communities. CWRM's current \$5,000 maximum daily fine is wholly insufficient to hold multinational corporations or the Department of Defense accountable if and when their water code violations impact priority public needs – such as, but not limited to, affordable housing and fire prevention.

**Without the increased fines authorized under this measure, millions of gallons of water per day could be illegally monopolized by deep pocket entities for a fraction of a cent per gallon in penalties, harming our precious water resources and the houses, schools, farms, small businesses, and others that rely on access to wai.**

Notably, this measure requires CWRM to consider an explicit set of factors in setting and imposing fines, such as the gravity of a violation, any economic benefit realized by the violator, and degree of culpability. This will ensure that fines are appropriate to the circumstances of each case.

Meanwhile, **without HB510 HD1, the Water Commission must continue to undergo time consuming, months-long planning and rulemaking processes and exhaust its water shortage authorities before taking action to preserve our fresh drinking water supplies in**

**an unanticipated water shortage or emergency.** This bill would allow the Water Commission to instead take more timely action to deal with unexpected water shortages in real time.

While these proposals address longstanding water management “gaps,” the Sierra Club emphasizes that neither of these measures addresses the greatest barrier to the effective and fair management and protection of our most precious resource: the continual push by politically connected successors of the former plantation oligarchy, to maintain their control over our stream and groundwater resources.

As we have seen most recently with actions taken against CWRM staff, and in the manipulation of the nominating committee process for water commissioners, undue political influence has long confounded CWRM’s ability to properly implement the State Water Code, and uphold the public trust in wai. Unfortunately, as currently written, there are numerous vulnerabilities in the statutory structure of CWRM that have helped to perpetuate such political interference. For example, the Commission’s Chair is a member of the Governor’s cabinet, as is its legal counsel, the attorney general. Both of these individuals have considerable power over the Water Commission, its staff, and the nominating committee process; both also answer directly to the Governor. Accordingly, special interests who have the Governor’s ear could interfere, and have interfered, with the Commission’s implementation of the Water Code and effectuation of the public trust, contrary to the Legislature’s intent and to the detriment of the public interest in our wai.<sup>1</sup>

**Accordingly, we respectfully but strongly urge the Committee to consider including in either of these measures much more comprehensive provisions to address this longstanding challenge, such as those found in SB3 SD1, which the Committee approved earlier this session.** Such provisions could counteract the politicization of water management in our islands by: allowing CWRM commissioners to decide amongst themselves who among their volunteers should serve as their Chair; allowing the commissioners to collectively choose an “executive director” as the lead CWRM staff person; requiring transparent performance reviews that allow for an objective assessment of the CWRM executive director’s job performance; and allowing commissioners to hire independent legal counsel for CWRM, rather than rely on the attorney general. These provisions in addition to the existing proposals found in these bills will be critical to ensuring that CWRM and its staff are able to carry out their vitally important work to protect and manage our most islands’ precious resource.

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<sup>1</sup> See, e.g. Editorial, *Water Commission: A Decade of Disappointment*, ENVIRONMENT HAWAII, February 2005, available at <https://www.environment-hawaii.org/?p=1499> (“First, there’s the fact that the governor has made no secret of her hostility to the very idea of a statewide body to manage water resources. Alan Murakami, managing attorney with the Native Hawaiian Legal Corporation and longtime water watcher, says he believes Governor Lingle is engaged ‘in a deliberate attempt to make the commission less effective than the Legislature intended.’”); Wayne Tanaka, *State-Aided Disaster Capitalism? Governor’s administration targets stream, groundwater protection in the wake of Maui wildfires as water protectors fight back*, KA WAI OLA NEWS, Oct. 1, 2023, available at <https://kawaiola.news/aina/state-aided-disaster-capitalism/>.

Accordingly, the Sierra Club respectfully urges the Committee to **PASS WITH AMENDMENTS** these measures. Mahalo nui for the opportunity to testify.



March 10, 2025

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

**Comments and Concerns in Opposition to HB 510, H.D. 1 , Relating to Declaration of Water Shortage and Emergency (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. Effective 7/1/3000.)**

**WTL Hearing: Friday, March 14, 2025, 1:00 p.m.  
State Capitol, Conference Room 229 & Videoconference**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, and utility companies. LURF's mission is to advocate for reasonable, rational, and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to submit comments **in opposition** to this measure which proposes to afford the Commission the authority to declare and provide notice of water shortages and emergencies if the Commission itself, by its own rule, determines 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.

**HB 510, H.D. 1.**

Aside from an obvious and pointless statement that the purpose of this Act is to amend the conditions, manner, and areas in which the Commission can declare and provide notice of water shortages and emergencies, this bill fails to contain any specific, clear, or warranted reasons for this measure.

This measure states that 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, in its sole discretion, finds that the restrictions imposed upon permittees are not sufficient to protect public health, safety, or welfare, or the health of animals, fish, or aquatic life, or recreational, municipal, agricultural, or other reasonable uses, the Commission may issue orders requiring that such actions as the Commission deems necessary to meet the emergency be taken, as well as to authorize the issuance of orders and require actions as the Commission deems necessary to address the emergency be taken, including apportioning, rotating, limiting, or prohibiting the use of the water resources of the area.

In short, the bill broadly expands the Commission's authority over water resources, potentially impacting land and well owners, water permittees, and agricultural stakeholders, **even outside designated water management areas**. LURF believes this may constitute an overreach into private property rights, and the jurisdictional and control rights of the counties over water as well as planning decisions and determinations which are conferred upon the counties by statute.

Given this proposal to grant such overreaching power, a presumption could well be made that the measure may be intended as an unjustified attempt to afford the Commission expanded authority to unilaterally declare water shortages and emergencies in all areas throughout the State, including areas **outside water management areas** over which the Commission currently has no jurisdiction. Such unwarranted authority could allow the Commission to unduly and excessively limit or prohibit use of water resources in all affected areas.

Such a presumption may be reasonable given proposals similarly made by the Commission in the past to 1) expand its authority to unilaterally designate an area as a water management area by disregarding appropriate procedural vehicles, circumventing existing laws, failing to properly collaborate with county water authorities, and neglecting potential negative impacts to affected stakeholders and community members in doing so; and 2) introduce a similar measure which proposed amendments to Hawaii Revised Statutes (HRS) Section 174-C, to elevate "water shortage" issues to "water emergency" issues in order to justify an expansion of its authority to declare emergencies which would have similarly allowed the Commission itself to take actions as it deemed necessary to address any such emergency, including, but not limited to apportioning, rotating, limiting, or prohibiting the use of water resources.

LURF believes that the authority proposed to be afforded to the Commission by this bill goes far beyond the Commission's statutory role as a policy-making body and will inappropriately overstep the counties' administrative and operational jurisdiction over State and county water management issues. The expanded authority of the Commission sought by this measure also appears to be unjustified and inadvisable given that such expansive power was not intended to be afforded to the Commission, and the issues identified in this measure are already adequately and appropriately addressed by other existing provisions, making the proposed amendments to HRS Section 174-C-62 unnecessary.



### **LURF's Position.**

Throughout the State, LURF members have continued to serve as stewards of Hawaii's water resources and as active partners with the State and counties in the conservation of water resources, as well as the preservation and protection of existing and potential water sources. LURF, therefore, unquestionably supports the objectives of the Commission to preserve and protect the State's precious water resources.

Based, however, on its understanding and review of the information presented relating to the proposed bill, LURF must respectfully **oppose** the proposed expansion of the Commission's authority for the following reasons:

**A. HRS Section 174-C Should Not be Amended to Modify or Circumvent State and County Laws and Regulations Which Already Exist to Protect and Manage Water Resources.**

HB 510, H.D. 1 now proposes amendments to and **contradicts HRS 174C-62**, by **deleting** the requirement that a water shortage be **declared by rule** in accordance with the water shortage plan **before** the Commission can declare an emergency. Proposed language has also been added to expand the jurisdiction of the Commission from within a water management area to **within or outside of a water management area**.

Affording the Commission authority to unilaterally declare a water emergency within or outside of a water management area **without critical safeguards** such as an established water shortage plan and criteria for an emergency, as well as **without findings supporting implementation of restrictions on existing water permittees**, would be to allow circumvention and disregard of important established protections contained in existing laws and State Water Code which was judiciously and **collaboratively developed and vetted by all essential stakeholders**.

The use of broad terminology in the bill such as "water shortage" or "emergency" without clearly defining the thresholds for declaring such situations is concerning. Such ambiguity could provide the Commission with excessive discretion, which could potentially lead to arbitrary decisions. And LURF believes the expansion of the Commission's authority **without sufficient checks and balances** could lead to abuse of power. The Commission could possibly favor certain water users over others or make decisions based on political influence rather than scientific evidence.

Despite anticipated limited stakeholder participation in rulemaking, this measure should require **the inclusion of all stakeholders and affected parties** so as to ensure the absence of any perceived or actual inequities relating to water use restrictions that could disproportionately affect certain permittees, users, and industries, and so that the Commission may not retain sole and unilateral control over water resources. The proposed expansion of the Commission's authority raises concerns about oversight and accountability, and there should be clearer mechanisms for reviewing the Commission's decisions to ensure they are in the public interest.

**1. Laws and Regulations Relating to Water Resources Should at the Very Least, be Properly Exercised in “Collaboration” With the Counties.**

State and county laws and regulations regarding water resources that relate to land use and waterworks already exist and are properly administered by the County via powers conferred upon it by the State Legislature through Hawaii Revised Statutes (HRS), Chapters 46 and 174C.<sup>1</sup> Section 174C-2(e) of the HRS, provides that the State Water Code shall be liberally interpreted and applied in a manner which conforms with intentions and plans of the counties in terms of land use planning.

Because any water emergency orders issued by the Commission would affect the statutory powers of the counties relating to land use and waterworks, as well as impact local land use planning determinations and policy decisions made by the counties, it is LURF’s position that the authorization currently being sought by the Commission should rightfully be obtained in **full collaboration and agreement** with the counties and their respective water departments, as well as in consultation with and input from all stakeholders and affected parties.

The counties’ water departments have agreed in the past that this type of arbitrary, unregulated, and potentially unchecked power is potentially dangerous and may pose a threat to the health and safety of the public. This bill could also lead to disputes between the Commission and the counties water departments and between the Commission and water users over permit classifications and water allocation during shortages, resulting in costly legal battles and further strained water resources.

**2. The Delineated Role of the Commission is to Set Policies, Protect Resources, Define Uses and Establish Priorities Relating to the State’s Water Resources.**

Pursuant to HRS 174C, the Commission is the entity charged with the **policy-making responsibilities** of the State, as trustee of water resources, including setting policies, defining uses, establishing priorities while assuring rights and uses, and establishing regulatory procedures.

LURF believes that the Commission’s intervention into the counties’ administrative and operational jurisdiction over water issues via amendments to HRS Section 174-C may result in inconsistencies between scientific data and conclusions of the Commission, DOH, and respective county water departments; may **conflict** with the

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<sup>1</sup> HRS Chapter 46 confers certain powers, including powers relating to land use and waterworks to the counties, and HRS Chapter 174C-31 grants unto the counties the power to establish, pursuant to the State Water Code, water use development plans which include, amongst other things, future land uses and related water needs (HRS 174C-31(f)(2)); and “regional plans for water developments and relationship to the water resource protection” (HRS 174C-31(f)(3)).

counties' planning decisions; and would lead to the **confusing and chaotic** situation wherein the Commission itself would then be required to administer water laws, rules and regulations applicable to emergency situations and within designated and undesignated areas separate and apart from administration by the counties. Such action by the Commission would set a **bad precedent** and lead to **further complicated issues** relating to the management of those areas subject to such emergency designations.

**B. The Proposed Amendments May Result in Substantial Unnecessary Costs for Landowners, Businesses, and the Counties.**

No maximum term has been proposed to be set for any emergency order issued by the Commission, thus doing nothing to mitigate, and in fact exacerbating the unnecessary and potentially substantial costs which would be incurred by the counties, landowners, and businesses to comply with such orders. Should this bill be passed, landowners and businesses would be compelled to invest significant time, resources, and money to obey the emergency orders unilaterally imposed by the Commission. County water departments and their respective staff would also need to invest substantial time reviewing the orders and monitoring conditions imposed. Even given the limited duration of any emergency order, all parties would be forced to incur **substantial time and expense for legal challenges**, including those specifically and expressly authorized to be brought and prioritized pursuant to this proposed measure.

LURF believes the proposed bill is also unsound because it fails to consider or include **specific cost information** regarding the need for additional employees, equipment, and other expenses required in connection with the Commission's unilateral emergency orders which would overlap the efforts of the State and county agencies. The proposal also fails to address the aforementioned cost of legal challenges relating to emergency declarations. Approval of any expansion of the Commission's authority without determining or even identifying the potential resulting costs to the State and county taxpayers would be arguably imprudent and irresponsible.<sup>2</sup>

**C. The Proposed Designation Will Discourage Future Water Source Development Throughout the State.**

The additional requirements and restrictions that may be imposed pursuant to emergency orders by the Commission will make future development of additional ground water supplies even **more expensive and cost prohibitive**. Private landowners will be less willing to provide land for new water well sites since potential restrictions on uses on lands that surround water wells will be unknown.

The proposed designation could also create **unintended negative consequences** on the development of new water resources by the counties. To avoid restrictions and impacts on surrounding land uses and landowners, the counties may be forced to site future water sources such as drinking water wells in remote locations in areas currently zoned conservation, which will also increase the costs of new water development due to

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<sup>2</sup> Hawaii Administrative Rules §11-200.1-24(b) requires at appropriate points, **cost-benefit analyses**.

higher capital, power, and transmission costs required by such remote well locations.

**D. The Proposed Measure Will Negatively Impact Landowners by Imposing Unknown and Unanticipated Restrictions on the Use of Their Lands.**

As discussed above, the proposed authority of the Commission to impose emergency orders in **any area (including non-water management areas)** could prohibit certain uses in the vicinity of existing water sources and may require State Water Use Permits, the application process for which would entail burdensome procedural requirements, and/or legal challenges such as **Contested Case Hearings**. These potential restrictions and requirements are another strong **disincentive** for property owners to expand, reconstruct, or develop their property.

New investment in property in such areas would also be discouraged as any new land use in the vicinity could be restricted, which could affect financing or negate justification for any substantial investment.

**E. The Proposed Measure May Negatively Impact the “Vested Rights” of Landowners, Owner-Builders, and Developers of Master Planned Communities and Affordable Housing, as well as Raise Valid Due Process Concerns.**

The fact that the proposed measure may prohibit and restrict any new land use or facilities - even those which have been **fully approved and permitted** by the State or counties but not yet built, is one of the most significant and serious concerns. Expanded unilateral authority of the Commission and potential water use restrictions could lead to project delays and increased costs as developers may face difficulties in securing water permits or be forced to implement costly water conservation measures, thereby undermining the financial viability of projects and developments.

There also exists the concern that the Commission’s broad discretionary authority relating to permits and restrictions could result in arbitrary or inconsistent decision-making, making it even more difficult to navigate the already daunting regulatory process. And because interests of stakeholders and affected parties may potentially be marginalized in favor of environmental or other concerns, LURF believes stronger assurances of meaningful consultation and input should be included in the Commission's decision-making process.

The Commission’s proposed unilateral and expanded authority to subject lands to unknown emergency orders may detrimentally affect areas throughout the State that have been designated for urban and other land uses; that have obtained approved zoning for those uses; or that have secured other land use and building permits which are consistent with the counties’ General Plans and other Community Development Plans. The proposed authority of the Commission may impose new laws, rules and regulations that may change existing laws and regulations by prohibiting or restricting the approved land uses which are consistent with the above-referenced county plans, thereby rendering the prior governmental land use plans and approvals **void or ineffective**. County landowners who have already obtained government approvals and assurances for certain land uses and

developers of master planned communities and affordable housing have all expended substantial funds in reliance on those existing governmental land use approvals.

Because the proposed bill may change the existing laws and regulations to prohibit or substantially restrict a use or project **after** the government has already granted land use, subdivision, or building permit approval, and the landowner, builder, or developer of master planned communities or affordable housing has altered its position in reliance upon such governmental land use approval, the prohibitions and restrictions of the proposed designation could provoke “**vested rights**” and “**zoning estoppel**” claims against the counties, resulting in expensive and lengthy litigation.

Moreover, this measure requires immediate compliance with emergency orders, even while challenges are pending, which **raises due process concerns** for landowners, builders, and developers who may be forced to halt projects or implement costly changes before their concerns can be adequately addressed.

**F. The Commission’s Proposed Expansion of Authority Violates the Spirit and Intent of the “Right to Farm” Law and May Negatively Impact Farmers and Agricultural Operations.**

The proposed expansion of the Commission’s authority may also restrict the agricultural use of reclaimed water for agricultural irrigation, confined animal feeding operations, and the use of fumigants and pesticides on lands within the management area. These restrictions would create **major obstacles** for farmers and agricultural operators and violate the spirit and intent of the Hawaii State Planning Act and Hawaii’s “Right to Farm” law, HRS Chapter 165. Under the Hawaii State Planning Act, it is a declared policy of this State to “foster attitudes and activities conducive to maintaining agriculture as a major sector of Hawaii’s economy.” Accordingly, Hawaii’s “Right to Farm” law protects farmers from nuisance lawsuits “if the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices.” The “Right to Farm” law further creates a rebuttable presumption that a farming operation does not constitute a nuisance.

HB 510, H.D. 1 is therefore arguably inconsistent with Hawaii’s “Right to Farm” law because it may restrict farming and agricultural operations even if the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices.

**Conclusion.**

Based on the concerns above including the void of any undisputed material facts to conclusively prove that the amendments proposed to afford the Commission unilateral authority to declare emergency orders are warranted; the fact that State and county laws and regulations already exist to protect water resources during times of emergency; the fact that the proposed authority sought exceeds the role of the Commission as delineated by statute; the lack of consideration of reasonable and more practical alternatives; together with the fact that this proposal could result in significant negative practical and economic repercussions for the counties, the State, landowners, affordable and market housing

developers, agricultural stakeholders, and various businesses, LURF must, despite its steadfast support of efforts to protect and preserve Hawaii's precious water resources, respectfully **oppose** and request a **deferral** of the proposed measure.

Thank you for the opportunity to provide comments and concerns regarding this important matter.



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March 14, 2025

HEARING BEFORE THE  
SENATE COMMITTEE ON WATER AND LAND

**TESTIMONY ON HB 510, HD1**  
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

Conference Room 229 & Videoconference  
1:00 PM

Aloha Chair Inouye, Vice-Chair Elefante, and Members of the Committee:

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 respectfully opposes HB 510, HD1**, which amends the conditions, manner, and areas in which the Commission on Water Resource Management (CWRM) can declare and provide notice of water shortages and emergencies. While responsible water management is critical, this bill raises concerns about overregulation, lack of clear criteria, and the potential for unnecessary permitting burdens on farmers and ranchers who rely on consistent access to water for irrigation.

When the State Water Code was enacted, it was designed to establish a program of comprehensive water resource planning to address both the supply and conservation of water. It is based on balancing both the use and protection of water and set up the Commission on Water Resource Management (CWRM) to function as a planning and data-collecting agency on water resource matters, a body of experts, while limiting its permitting role to areas identified as having water shortages or in need of protection.. CWRM was intended to focus on big-picture water resource management, including identifying available water resources, tracking usage, and advancing scientific knowledge about water in Hawai'i. Regulation was intentionally limited to designated Water Management Areas (WMAs), which are specific regions experiencing water shortages, competition, or other challenges, as determined through a clear statutory process. Once an area is designated as a WMA, CWRM is authorized to regulate water use through a defined permitting process that ensures fairness and transparency.

HB 510, HD1 attempts to circumvent this existing structure by giving CWRM broad authority to declare water shortages and emergencies without identifying clear criteria, creating a separate and unchecked regulatory system as it would be set up by rule, rather than being included in statute. This bill allows CWRM to impose water restrictions without requiring a formal WMA designation, meaning that water users, especially farmers and ranchers, could be subjected to sudden and arbitrary regulatory changes without legislative oversight or a clear statutory framework.

## **Key Concerns with HB 510, HD1**

### **1. Potential Water Use Restrictions on Farmers**

HB 510, HD1 gives broad discretionary power to CWRM to impose restrictions on water use, including those outside of designated WMAs. This could disproportionately impact farmers who depend on wells, stream diversions, and other natural water sources for irrigation, jeopardizing crop production and livestock operations.

### **2. Emergency Orders Could Disrupt Agriculture**

The bill allows CWRM to apportion, rotate, limit, or prohibit water use during declared emergencies. However, the lack of clear prioritization for agricultural water use raises serious concerns. If agriculture is not recognized as an essential use, farms may experience severe water shortages, resulting in crop losses, reduced yields, and financial hardships.

### **3. Lack of Clear Permit Classification for Farmers**

HB 510, HD1 mandates that CWRM establish a permit classification system but fails to outline how agricultural water users will be prioritized. If urban, residential, or industrial users receive higher priority, farmers will be left with inconsistent and unreliable water access, further exacerbating food security concerns in Hawai'i.

### **4. Impact of Climate Change Considerations**

The bill references the climate crisis as a criterion for determining water shortages. While we acknowledge the realities of climate change, this provision could lead to frequent and unpredictable water shortage declarations. Farmers need long-term stability in water access to make necessary investments in irrigation and sustainable agricultural practices.

### **5. Burdensome Compliance and Notification Processes**

HB 510, HD1 requires that water shortage notices be published online and in newspapers. However, this passive notification system places the burden on farmers to continuously monitor for restrictions. Additionally, compliance with new permit restrictions or reporting requirements may add unnecessary bureaucratic hurdles for already burdened small- and medium-sized farms.

### **6. Creates a Second, Duplicative Permitting System**

CWRM already has an established process for regulating water through the WMA system, which includes statutory criteria and legislative oversight. HB 510, HD1 introduces a separate permitting process, adding uncertainty, confusion, and



unnecessary bureaucracy for water users. There is no demonstrated need for an additional permitting system, as the existing WMA framework provides CWRM with the necessary tools to regulate water use where appropriate.

**7. Risk of Arbitrary Water Restrictions Without Stakeholder Input**

HB 510, HD1 grants CWRM unchecked authority to declare water shortages and impose regulations without clear statutory guidance. The bill lacks mechanisms for public input or due process, potentially leading to arbitrary and inconsistent enforcement that disrupts Hawai'i's agricultural industry.

The State Water Code already provides a clear, balanced framework for managing water resources while allowing CWRM to step in when necessary through the WMA designation process. HB 510, HD1 sidesteps this framework, creating a regulatory loophole that could result in inconsistent water restrictions, unpredictable permitting requirements, and added burdens on Hawai'i's farmers and ranchers.

For these reasons, we urge the committee to hold HB 510, HD1. Thank you for the opportunity to testify on this measure.