

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

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DEPUTY DIRECTOR - WATER

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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 MILITARY AFFAIRS

Monday, February 3, 2024
1:05 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 3
RELATING TO THE COMMISSION ON WATER RESOURCE MANAGEMENT

Senate Bill 3 allows the Commission to retain independent counsel; repeals the position of First Deputy to the Chairperson of the Commission and establishes the position of Executive Director of the Commission; limits the Commission's placement within the Department of Land and Natural Resources (Department) to be administratively attached only; makes all members of the Commission except the Chairperson of the Board of Land and Natural Resources and Director of Health eligible to serve as chairperson; and makes conforming amendments. The bill also expands the Commission's ability to charge penalties for certain water use offenses; increases the Commission's authority to declare water emergencies and issue orders to address them; amends the Commission's ability to declare water shortages; adds the management of groundwater near the Red Hill Bulk Fuel Storage Facility to the powers and duties of the Commission; and adds one member to the nominating committee for the Commission to be appointed by the Chief Executive Officer of the Office of Hawaiian Affairs. **The Department offers the following comments.**

The Commission plays a crucial role in overseeing and managing the state's precious water resources. Established by the Hawai'i State Legislature in 1987 to implement and administer the State Water Code (HRS chapter 174C), the Commission is charged with a public trust obligation of the highest order — "to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people."

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 beneficial use of water by present and future generations. On one hand, the Commission must allocate water to support municipal needs, traditional and customary practices of Native Hawaiians, the development of Hawaiian Home Lands, agriculture, and other important uses. On the other, it must uphold critical environmental protections, ensuring long-term sustainability and the continued protection of native ecosystems. Given the growing pressures of climate change, population growth, and competing water demands, the Commission’s role is more critical than ever.

These critical duties and public trust responsibilities make the Commission an integral part of broader ‘āina management. As part of the Department of Land and Natural Resources, the Commission helps to ensure that water management decisions are made within the larger context of responsible stewardship for all of Hawai‘i’s natural resources. The Deputy Director for the Commission also serves as part of the Department’s leadership team and contributes to department-wide resource management efforts.

Conversations about the roles of the Commission and its Deputy have been taking place for decades. In 1994, the Review Commission on the State Water Code submitted a report to the State Legislature identifying structural concerns with the Commission and proposing changes to its legal framework and role within state government. Last legislative session, significant public testimony reflected continued interest in these issues, underscoring the need for thoughtful discussion and consideration of the Commission’s role as both a trustee of the state’s fresh water and an agency within the Department of Land and Natural Resources.

As we consider the future of the Commission, it is important to engage with stakeholders, including the community, Commission staff, and the Commissioners themselves to identify areas for improvement while ensuring that any reforms are practical, effective, and responsive to the needs of the public. Taking more time to carefully assess what is working, what may need adjustment, and how to avoid unintended consequences is essential to maintaining a system that serves the public interest. By moving forward in a deliberate and collaborative manner, we can ensure that any changes strengthen the Commission’s ability to manage Hawai‘i’s precious fresh water resources responsibly.

Mahalo for the opportunity to provide comments on this measure.

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

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MANAGER AND CHIEF ENGINEER
MANAKIA A ME KAHU WILIKI

ERWIN KAWATA
DEPUTY MANAGER
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February 3, 2025

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

Dear Chair Inouye and Members:

Subject: Senate Bill 3: Relating to Water

The Honolulu Board of Water Supply is in strong support Senate Bill (SB) 3. The purpose of the bill is make amendments to the state water code pursuant to Hawaii Revised Statutes (HRS) chapter 174C.

The proposed penalties in this bill are fair and will ensure violators are held accountable. The proposed reforms of the organizational leadership structure protects the Commission on Water Resource Management from political influence.

It is important that we look at establishing government structure that can help to oversee the remediation needs after the defueling of the tanks and removal of residual fuel and contaminants from the Red Hill Bulk Fuel Storage Facility (Red Hill Facility) in the long term as this effort can extend well into the future.

The BWS supports the proposed amendments that changes the title of the first deputy to an executive director of the CWRM and further outlines the duties under the direction of CWRM. The BWS strongly supports this amendment as it reduces political influence on water, which is a critical resource to life, health, and our well-being. The Red Hill crisis reinforced the importance of our aquifer. Ola I ka Wai = "Water is Life" for all the people of Hawaii. Back in the late 1920s, the territorial legislature also saw the problems with political influence over decisions related to water, which is vital for life. The BWS was created in a very similar model of what is proposed in this SB 3. Having the Commission hire its own executive director and retain independent legal counsel to serve at the pleasure of the Commission, would help to depoliticize even the perception

The Honorable Lorraine R. Inouye, Chair
and Members
February 3, 2025
Page 2

of political influence on water. The BWS strongly supports this concept being applied to the Commission. Like the BWS, this model would allow for more independence on water decisions that are vital for life for our community.

Thank you for the opportunity to testify in strong support of SB 3.

Very truly yours,


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



TESTIMONY IN SUPPORT OF SB3 WITH COMMENTS
RELATING TO WATER
Senate Committee on Water and Land
Senate Committee on Public Safety and Military Affairs
Hawai'i State Capitol

February 3, 2025

1:05 p.m.

Room 229

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

The Office of Hawaiian Affairs (OHA) **SUPPORTS and provides comments** on SB3, which: (1) authorizes the Commission on Water Resource Management (Commission) to retain independent legal counsel; (2) repeals the position of First Deputy and establishes the position of Executive Director; (3) amends the composition of the Commission and allows it independence from Department of Land and Natural Resources (DLNR); (4) increases penalties for violations of the State Water Code; (5), amends the Commission's authority to declare water emergencies and address them; and (6) affirms the Commission's power to manage groundwater near the Red Hill Bulk Fuel Storage Facility.

Support Sections 2, 3, 5, 6: Strengthening the Commission's Independence

OHA supports sections 2, 3, 5, and 6 with would give the Commission the autonomy necessary to make pono water decisions that prioritize public interests and support the State's public trust obligations by: (1) authorizing the Commission to hire independent legal counsel; (2) establishing the position of executive director to be hired by the Commission; and (3) giving the Commission the power to elect its own chairperson from among its members (rather than having the Director of DLNR serve as chairperson).

Under the proposed amendments the executive director would be hired directly by the Commission, rather than appointed by the Director of DLNR, and would have her job duties defined by the Commission. Likewise, the chairperson would be elected by the members of the Commission from among their own members, rather than having the Director of DLNR serve as the chairperson. As noted in section 1 of the bill, this structural reorganization is not a new idea. Rather, the original water code proposals sought an independent department to manage wai. Since enactment of the State Water Code, Hawai'i Revised Statutes (HRS) Chapter 174C (1987), subsequent reports have reiterated the need for an autonomous water authority to facilitate the State's constitutional public

trust obligation to protect and regulate the use of Hawai'i's water resources for the benefit of present and future generations.¹ These amendments would support these goals.

OHA also strongly supports the amendment in Section 6 that adds one individual to the commissioner nominating committee to be appointed by OHA's Ka Pouhana or Chief Executive Officer. Over the past year we heard many concerns from our beneficiaries about the nominating process, and OHA looks forward to helping to strengthen that process.

Support Section 4: Amendments to HRS § 174C-5

OHA supports the proposed addition of subsection (17) empowering the Commission to issue emergency orders (page 15, lines 3-18) to address unforeseen emergencies that may require a temporary reallocation of permitted water uses. **However, given that emergency orders address unforeseen exigencies, the orders should automatically expire after six months rather than one year, forcing the Commission to revisit the situation on the ground.** OHA notes that subsection (18) may not be necessary as the Commission already has authority to manage groundwater, but affirming this authority may help to avoid confusion given the highly charged political environment surrounding Red Hill. The Commission's authority could be further delineated and focused as proposed in HB505.

Support Section 8: Strengthening Enforcement

OHA also supports mandatory penalties for violations and an increase in the upper limit for fines. However, we suggest leaving the lower limit at \$5,000 and increasing the upper limit from \$25,000 to \$60,000, consistent with other legislative proposals. Wai is our most precious resource, and the Commission needs the power to impose penalties that will effectively deter violations. Some bad actors with deep pockets persistently violate the State Water Code, and penalties should be large enough to deter continued future violations that threaten our water resources.

Mahalo nui for the opportunity to testify in support of changes that we believe will help heal our 'āina, wai, and community. We urge this committee to **advance SB3 with the proposed amendments related to emergency powers and penalty amounts.**

¹ See, e.g., *Review Comm. on State Water Code, Final Report to the Hawaii State Legislature*, p. 18-23 (Dec. 28, 1994).



SIERRA CLUB OF HAWAI'I

SENATE COMMITTEE ON WATER AND LAND SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

February 3, 2025

1:05 PM

Conference Room 219

In **SUPPORT** of **SB3**: RELATING TO WATER

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

On behalf of our over 20,000 members and supporters, the Sierra Club of Hawai'i **SUPPORTS SB3**, which would reduce the risk of political interference, political retribution, and/or perceived or actual conflicts of interest in the management, protection, and restoration of our islands' most precious resource.

This bill would address long-standing political vulnerabilities that could allow, and have allowed, powerful special interests to unduly influence the important work of the Water Commission and its staff. Currently, the Commission's Chair is a member of the Governor's cabinet, as is its legal counsel, the attorney general. Both individuals have considerable power over the Water Commission and its staff, and both 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.¹

This bill would instead allow Commission members to decide amongst themselves who among their volunteers should serve as their Chair, and would further allow the entire Commission to choose an "executive director" as the lead Commission staff person. Annual performance reviews for the executive director would ensure that any employment decisions are based on a documented and objective assessment of their performance, rather than political opportunism or retribution. Finally, the Commission would be able to hire their own legal counsel, rather than rely on the Governor-serving attorney general. These provisions are critical to ensuring that the Water Commission, its staff, and the WAI Policy Coordinator team can objectively do their important work to protect, restore, and manage our most precious resource.

Importantly, this bill would also authorize the Water Commission to take more expeditious emergency action – including in the event that the unremediated contamination at Kapūkakī creates a water shortage for O'ahu – and further impose meaningful fines against those who could otherwise over pump our aquifers and drain our streams dry with impunity. With regards

¹ See, e.g. Editorial, *Water Commission: A Decade of Disappointment*, ENVIRONMENT HAWAI'I, 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/>.



SIERRA CLUB OF HAWAI'I

to this latter authority, the current \$5,000 daily fine the Commission is authorized to levy is wholly insufficient to hold the Department of Defense or multinational corporations accountable, if and when their water code violations impact priority public needs, including for affordable housing. Without the increased fines, 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 them.

Finally, the Sierra Club appreciates the inclusion of an Office of Hawaiian Affairs representative on the nominating committee for Commission members, ensuring that the pool of potential nominees submitted to the Governor is informed at least in part by an independent representative with a cultural understanding of the preciousness of our wai, and the ultimate importance of its protection, management, and full restoration.

Accordingly, the Sierra Club of Hawai'i urges the Committees to **PASS** SB3. Mahalo nui for the opportunity to testify.



Email: communications@ulupono.com

SENATE COMMITTEES ON WATER AND LAND
& PUBLIC SAFETY AND MILITARY AFFAIRS
Monday, February 3, 2025 — 1:05 p.m.

Ulupono Initiative supports SB 3, Relating to Water.

Dear Chair Inouye, Chair Elefante, and Members of the Committees:

My name is Mariah Yoshizu, and I am the Government Affairs Associate at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy and clean transportation choices, and better management of freshwater resources.

Ulupono supports SB 3, which authorizes the Commission of Water Resource Management (CWRM) to retain independent counsel, establishes an Executive Director position, and allows entities to challenge emergency orders under certain conditions while establishing fines for water use offenses. This measure also expands CWRM's authority to include declaring water emergencies and shortages, managing groundwater near the Red Hill Bulk Fuel Storage Facility, and assuming all water resource management duties from the Department of Land and Natural Resources, as well as modifying CWRM's composition.

Extreme changes in rainfall will result in extreme challenges to ensuring a thriving water future for Hawai'i. Compounding these challenges are events such as the historic contamination of O'ahu's aquifers, which highlight the inability of our current water governance system to prevent such large-scale disasters. We are encouraged by the intent of this bill to improve protection and management of water.

Thank you for the opportunity to testify.

Respectfully,

Mariah Yoshizu
Government Affairs Associate

Investing in a Sustainable Hawai'i



Environmental Caucus of The Democratic Party of Hawai'i

February 3, 2025

Testimony in Support of SB3: Relating to Water

Aloha Chairs Inouye and Elefante, Vice Chairs Elefante and Wakai, and Members of the Committee on Water and Land and Committee on Public Safety and Military Affairs:

We, Melodie Aduja and Alan Burdick, are testifying on behalf of the Environmental Caucus of the Democratic Party of Hawai'i in strong support of SB3, which aims to enhance water resource management in our state. This bill is crucial for safeguarding our water resources and ensuring a sustainable future for all residents of Hawai'i.

Key Points of Support:

- 1. Independent Legal Counsel:** SB3 authorizes the Commission of Water Resource Management (CWRM) to retain independent legal counsel. This is essential for ensuring that the CWRM can effectively navigate legal challenges and protect Hawaii's water resources without conflicts of interest.
- 2. Executive Director Position:** The bill establishes the position of Executive Director of the CWRM, replacing the First Deputy to the Chairperson. This change will provide dedicated leadership and oversight, enhancing the efficiency and effectiveness of the CWRM.
- 3. Emergency Orders and Water Emergencies:** SB3 authorizes entities to challenge emergency orders of the CWRM under certain conditions and amends the CWRM's authority to declare water emergencies and issue orders to address them. This ensures that the CWRM can respond swiftly and effectively to water-related crises, protecting public health and the environment.
- 4. Fines for Water Use Offenses:** The bill establishes fines for certain water use offenses, promoting responsible water use and deterring violations. This is crucial for preserving our water resources and ensuring compliance with water management regulations.
- 5. Red Hill Bulk Fuel Storage Facility:** SB3 adds the management of groundwater near the Red Hill Bulk Fuel Storage Facility to the powers and duties of the CWRM. This is vital for addressing the ongoing concerns about groundwater contamination and protecting the drinking water supply for Honolulu residents.
- 6. Transfer of Duties:** The bill transfers all rights, powers, functions, and duties of the Department of Land and Natural Resources (DLNR) relating to water resource

management to the CWRM. This consolidation will streamline water management efforts and improve coordination and accountability.

7. **Commission Composition:** Effective July 1, 2026, SB3 amends the composition of the CWRM, amends the designation of the Chairperson, limits the CWRM's placement within the DLNR for administrative purposes only, and adds one member to the nominating committee for the CWRM, to be appointed by the Chief Executive Officer of the Office of Hawaiian Affairs. These changes will ensure diverse representation and enhance the CWRM's ability to address water resource management challenges.

Examples of Water Resource Management Challenges:

- A. **Red Hill Fuel Storage Facility Leak:** The 2014 fuel leak at the Red Hill underground storage facility led to the contamination of the groundwater aquifer that supplies drinking water to Honolulu. Effective management and oversight of groundwater near the facility are crucial for preventing future contamination and protecting public health.
- B. **Water Shortages:** Hawaii has experienced periods of drought and water shortages, impacting agriculture, tourism, and daily life. SB3's provisions for declaring water emergencies and issuing orders to address them will help mitigate the effects of water shortages and ensure a reliable water supply.
- C. **Illegal Water Use:** Unauthorized water withdrawals and other water use offenses can deplete water resources and harm ecosystems. The fines established by SB3 will deter illegal water use and promote responsible water management.

In conclusion, the Environmental Caucus of the Democratic Party of Hawai'i strongly supports SB3 and urges the committees to pass this important legislation. By enhancing water resource management, promoting responsible water use, and addressing groundwater contamination, we can ensure a sustainable and secure water future for all residents of Hawai'i.

Mahalo for the opportunity to testify in support of this critical bill.

Sincerely,

Melodie Aduja and Alan Burdick

Co-chairs, Environmental Caucus of the Democratic Party of Hawai'i



COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL
AND MILITARY AFFAIRS
Senator Brandon J.C. Elefante, Chair
Senator Glenn Wakai, Vice Chair

TESTIMONY IN **STRONG SUPPORT** OF SENATE BILL 3

February 3, 2025, 1:05 p.m.
Room 229
State Capitol
415 South Beretania Street

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

Earthjustice **strongly supports Senate Bill 3**, “Relating to Water.” 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 these reforms. SB 3’s beneficial amendments include:

- Enabling the commission to retain independent 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.

In conclusion, SB 3 helps the commission fulfill its vital, constitutionally mandated role in increasingly challenging times. The bill would also help rebuild the public's trust and confidence in the commission, which has seriously eroded in the aftermath of the Lahaina wildfires. Earthjustice thus recommends and requests that **SB 3 be passed**. Mahalo for the opportunity to testify. Please do not hesitate to contact us with any further questions or for further information.

Nā Alakaʻi o ʻAhahui o Hawaiʻi

Advocates for Native Hawaiian Justice

William S. Richardson School of Law | University of Hawaiʻi at Mānoa



ʻAHAHUI
O HAWAII
Advocates for Native Hawaiian Justice

Testimony of Nā Alakaʻi o ʻAhahui o Hawaiʻi

Before the Senate Commission on Water and Land and the Senate Committee on Public Safety and Intergovernmental and Military Affairs

Monday, February 3, 2025, 1:05 p.m.
State Capitol, Conference Room 229
415 South Beretania Street
Honolulu, HI 96813

Re: Support for SB 3 Relating to Water

Aloha e Chair Inouye, Chair Elefante, and committee members,

We are the alakaʻi of ʻAhahui o Hawaiʻi (“the Hui”), an organization of student advocates at the William S. Richardson School of Law. For over 50 years, the Hui has advocated for Native Hawaiian justice in all areas of law, especially those affecting Native Hawaiian communities, traditional and customary practices, resource management, and environmental protection. Today we submit this **testimony in strong support of SB 3.**

Over the last two years, members of our organization have supported the Maui Komohana community in their efforts to ensure the more equitable distribution of water, restore streamflow, and uphold the public trust. We have witnessed firsthand the harms inflicted on the ʻāina by private water purveyors who flaunt instream flow standards and continue to illegally divert and hoard water with impunity. And in the immediate aftermath of the fires that devastated Lahaina, we watched as these same purveyors engaged in a naked water grab to wrest control of even more of Maui Komohana’s water. Most disappointing throughout this process has been the Commission on Water Resource Management’s (“CWRM”) inability or unwillingness to step in and act on its constitutional and statutory obligation to protect and manage our water resources. In a time when the Commission’s leadership and decisive action is needed more than ever, CWRM has been hamstrung by political interference from the Governor, the Department of Land and Natural Resources (“DLNR”), and large economic interests.

This bill would remove the politics from our water policy by granting CWRM independence from DLNR. The proposed amendments are not new or radical ideas, but instead are based on recommendations made in a 1994 Report by the Review Commission on the State Water Code. The report suggested a restructuring of CWRM to afford the Commission the autonomy needed to effectively protect and preserve Hawaiʻi’s precious freshwater resources. As this past year has shown, reorganization is necessary to keep the politics out of our wai. The provisions in this bill would allow

Nā Alakaʻi o ʻAhahui o Hawaiʻi

Advocates for Native Hawaiian Justice

William S. Richardson School of Law | University of Hawaiʻi at Mānoa



ʻAHAHUI
O HAWAII
Advocates for Native Hawaiian Justice

CWRM to focus on its constitutional mandate and, importantly, allow the Lahaina community to focus on recovery, which remains an issue in 2025.

Chief Justice Richardson, the namesake of our law school, set the foundation for modern water law and the public trust doctrine that we have today. His court crafted the precedent that water must be held in trust for the common good and cannot be privately owned or sold. As he would say, when it comes to water, “think of the little guy downstream.” We honor that legacy today by voicing our **support for SB 3**, a bill that protects the Commission from political interference and protects the “little guys” from commercial interests and plantation water policies that have plagued Hawaiʻi’s wai and its people for over a century.

We want to mahalo Chair Inouye for taking the initiative to reintroduce this important bill this legislative session. Despite big promises made by decisionmakers after the fires, and massive community support, we were disappointed when similar bills were killed last year. We appreciate Chair Inouye, Chair Elefante, and these committees for continuing to seek justice and a better way forward for Hawaiʻi’s public trust resources and the native culture and communities dependent upon them.

Please vote today in support of SB3 to free the Commission and free our streams.

Mahalo for this opportunity to provide this testimony.

E ola i ka wai!

Nā Alakaʻi o ʻAhahui o Hawaiʻi

Nā Alakaʻi:

B. Oriana McCallum (ʻ25)

Andrea Leialoha Mākunani (ʻ25)

Kyle K. Moriguchi (ʻ26)

Bronson Gonzales (ʻ26)

Lenei Naipo (ʻ27)

Derek Soong (ʻ27)

Senate Committee on Water and Land
Senate Committee on Public Safety and Military Affairs
Hearing: February 3 2025, 1:05PM
State Capitol Conference Room 229 and Via Zoom

LATE

Strong Support for SB 3: Relating to Water

Aloha e Chair Inouye, Chair Elefante, and Members of the Senate Committees on Water and Land and on Public Safety and Military Affairs,

Nā Kia'i Kai submits this testimony in strong support of SB 3. Thank you for hearing this important bill and considering the community's plea for better stewardship of our shared water supplies.

Nā Kia'i Kai is a community-based organization established by West Kaua'i residents, including Native Hawaiian fishers and cultural practitioners, to protect West Kaua'i's river and coastal waters, humans, and aquatic life. Waimea River is the lifeblood of our community and supports a host of protected instream public trust uses. A healthy river and nearshore ocean environment are essential for our hui to continue to engage in traditional and cultural practices and subsistence activities, and to pass on these traditions to the next generation.

No problem is more critical than the scarcity of water, and this is something especially felt by our West Kaua'i community. According to state projections, our Waimea River watershed is expected to see far less rainfall in the coming years. As we prepare for life in our new climate reality, we believe that giving the Water Commission the tools and autonomy it needs to tackle Hawai'i's diminishing water supplies is a necessary first step. We have waited 30 plus years to see this recommendation from the Review Commission come to life and are grateful to your committees for hearing this bill.

Our community knows first-hand how political interference and plantation politics can unduly influence decision-making regarding the use of 'āina and wai. For decades, plantations and their corporate successors have hoarded Waimea River water, taking far more water than they could reasonably use, resulting in the outright dumping and waste of millions of gallons of water per day. Our community fought tirelessly to restore stream flow in Waimea River and end the wholesale diversion and waste of our precious water resources. Despite the implementation of minimum flow standards for Waimea River in 2017, these corporate diverters continue to divert streamflow in excess of what they are legally allowed to take and drag their feet to make any adjustments to their diversions, which allow only minimal diverted flows to be returned to the streams.

This is why SB 3 is so important to us. This bill would enable CWRM to enforce the Water Code by imposing meaningful fines and penalties for violations. This would be especially useful to address the ongoing violations and noncompliance with interim instream flow standards occurring in Waimea River every day. Increasing penalties for violations would encourage

diverters to come in compliance with the State Water Code, and it would allow CWRM to begin to redress the ongoing harm to public trust uses and reallocate water to local communities who rely on wai for their survival.

Nā Kia'i Kai further supports providing CWRM with the true independence it was intended to have when the Constitution was amended in 1978 and the Water Code was passed by this Legislature in 1987. We believe SB 3 would enable the executive director to proactively focus on fulfilling CWRM's public trust kuleana, instead of being micromanaged by the Governor and BLNR's Chair. Administrative independence from the oversight and influence of elected and appointed officials will provide greater accountability and transparency, and result in greater protection of our precious water resources.

We are living in this climate emergency, and we are exhausted from having to constantly police the plantation water systems and the developers who currently operate them. We need this Legislature to support real and proactive solutions for our community, to prevent the water crisis from continuing to impact future generations to come.

Please vote today to support SB 3.

Mahalo for the opportunity to testify on this important bill.

Kawai Warren
President, Nā Kia'i Kai

Senate Committee on Water & Land/Senate Committee on Public Safety & Military Affairs
Hearing: February 3 2025, at 1:05PM
State Capitol Conference Room 229 and Via Zoom
Strong Support for SB 3: Relating to Water

LATE

Aloha e Chair Inouye, Chair Elefante, and Committee Members,

Pō'ai Wai Ola submits this testimony in **strong support of SB 3**. Thank you for hearing this important bill and considering the community's plea for better stewardship of our shared water supplies.

Pō'ai Wai Ola is a community-based organization of residents in West Kaua'i. Pō'ai Wai Ola members are cultural practitioners, maha'ai (farmers), and fresh water and reef lawai'a (fishers). Our roots in the West Kaua'i ahupua'a span many generations. Waimea River is the lifeblood of our community and supports a host of protected instream public trust uses. Pō'ai Wai Ola is dedicated to managing and conserving water resources for present and future generation and protecting the long-term sustainability and health of the entire Waimea River system from its mauka headwaters to makai nearshore marine areas. A healthy river and nearshore ocean environment are essential for our hui to continue to engage in traditional and cultural practices and subsistence activities, and to pass on these traditions to the next generation.

No problem is more critical than the scarcity of water, and this is something especially felt by our West Kaua'i community. According to state projections, our Waimea River watershed is expected to see far less rainfall in the coming years—this is a reality we are already seeing. As we prepare for life in our new climate reality, we believe that giving the Water Commission the tools and autonomy it needs to tackle Hawai'i's diminishing water supplies is a necessary first step. We have waited thirty plus years to see this recommendation from the Review Commission come to life and are grateful to your committees for hearing this bill.

Our community knows first-hand how political interference and plantation politics can unduly influence decision-making regarding the use of 'āina and wai. For decades, plantations and their corporate successors have hoarded Waimea River water, taking far more water than they could reasonably use, resulting in the outright dumping and waste of millions of gallons of water per day. For many years, Pō'ai Wai Ola has fought tirelessly to restore stream flow in Waimea River and end the wholesale diversion and waste of our precious water resources. Despite the implementation of minimum flow standards for Waimea River in 2017, these corporate diverters continue to divert streamflow in excess of what they are legally allowed to take and drag their feet to make any adjustments to their diversions, which allow only minimal diverted flows to be returned to the streams.

This is why SB 3 is so important to us. This bill would enable CWRM to enforce the Water Code by imposing meaningful fines and penalties for violations. This would be especially useful to address the ongoing violations and noncompliance with interim instream flow standards occurring in Waimea River every day. Increasing penalties for violations would encourage diverters to come it compliance with the State Water Code, and it would allow CWRM to begin

to redress the ongoing harm to public trust uses and reallocate water to local communities—like West Kaua‘i—who rely on wai for their survival.

Pō‘ai Wai Ola further supports providing CWRM with the true independence it was intended to have when the Constitution was amended in 1978 and the Water Code was passed by this Legislature in 1987. We believe SB 3 would enable the executive director to proactively focus on fulfilling CWRM’s public trust kuleana, instead of being micromanaged by the Governor and BLNR’s Chair. Administrative independence from the oversight and influence of elected and appointed officials will provide greater accountability and transparency, and result in greater protection of our precious water resources.

We are living in this climate emergency, and we are exhausted from having to constantly police the plantation water systems and the developers who currently operate them. We need this Legislature to support real and proactive solutions for our community, to prevent the water crisis from continuing to impact future generations to come. **Please vote today to support SB 3.**

Mahalo for the opportunity to testify on this important bill.

John A‘ana
Vice-President, Pō‘ai Wai Ola

To: Senate Committee on Water and Land

RE: Testimony in support of SB3: Relating to the Water Commission

Date: February 3, 2024, 1:00PM

LATE

Aloha Chair Inouye and Committee Members,

My name is Candace Fujikane, and I live in Kāneʻohe. I'm testifying in strong support of SB3. I am an English professor at the University of Hawai'i where I teach my students about struggles to protect lands and waters in Hawai'i, and always encourage my students to follow bills related to water so that they can gain direct experience in the efforts to ensure our water is well protected for future generations.

Thank you for hearing SB3. As I have noted my testimony in previous sessions on similar bills, the amendments proposed to the Water Code in this bill are long over due. In 1994, the Review Commission assessing the implementation of the Water Code made several key recommendations to address key obstacles to the full success of the Commission of Water Resource Management (CWRM).

The Review Commission's recommendations for improving the Code emphasized: 1. Reorganizing the administrative structure of the Commission on Water Resource Management to ensure independence from the Department of Land and Natural Resources CWRM was established under Article XI, section 7 of the Hawaii State Constitution within the Department of Land and Natural Resources (DLNR). The Review Commission found that CWRM required increased independence from DLNR to protect and manage water for the use of all residents of Hawai'i. I cannot understand why this well-reasoned recommendations have not already been implemented. Unfortunately, we are seeing the cautions and concerns raised in that 30-year-old report playing out today.

I was one of the hundreds of people who gave testimony for twelve hours at the September 19, 2023 CWRM meeting demanding the reinstatement of Deputy Director Kaleo Manuel, who had been wrongly accused of denying the people of Lahaina water they needed for the August wildfires, and was "redeployed" without an investigation. The public is fully understands the political nature of that "redeployment" of Manuel by the Chair of BLNR. The public learned about the corporate attempts of West Maui Land Company to take down newly established June 2022 Water Management Area protections for Maui Komohana by suggesting that kuleana land holders and Water Commission Deputy Director Kaleo Manuel were at fault for preventing water from being used to fight the fire. The public followed along as the Supreme Court heard an deputy attorney general for BLNR argue that stream protections in East Maui undermined firefighting efforts in Lahaina, when there was no evidence to support that claim, and significant evidence showing that argument to be false.

The public now knows the truth. Kaleo Manuel was targeted by developers precisely because of his pono leadership. During the fires, water diverters in multi-million dollar homes filled their pools, and reservoirs and the streams ran dry, leaving kuleana landholders vulnerable to the fires. When the DLNR Director "redeployed" Manuel, the public immediately saw the political nature of that decision, and it underscored for everyone the need for CWRM to have its own Executive Director and attorney. In that moment, DLNR lost the public trust, and we see how vulnerable CWRM is to the political interests of the wealthy.

Politics have no role in our Water Code or the operation of the Water Commission. The people of Maui Komohana cannot focus on the water issues that directly affect their communities if CWRM is under constant threat by the BLNR chairperson and the influence of the governor. As the system is set up now, the Governor appoints the Board of Land and Natural Resources Chairperson who chairs the Water Commission. In addition, the Attorney General who provides legal advice to the Water Commission is also a Governor appointee. As we have seen, those with influence over the Governor, including corporations who engage in water banking, have obstructed the work of the Commission. SB3 will do the right thing by enabling the Commission to choose its own Chair, select its own executive director, and retain its own legal counsel.

This measure will ensure that the CWRM Director can make decisions that will benefit all people in Hawai'i without fear of political retribution. I urge you to pass SB3.

Candace Fujikane
Professor of English
University of Hawai'i

Senate Committees on Water & Land and Public Safety & Military Affairs
Hearing: February 3, 2025 at 1:05 pm
State Capitol Conference Room 229 and Via Zoom
Strong Support for SB3: Relating to Water

Aloha Chair Inouye, Chair Elefante, and Committee Members,

My name is Lauren Palakiko and I am privileged to live in Kaua‘ula Valley on ‘āina kuleana. My husband is a kalo farmer and our entire ‘ohana has been deeply engaged in the battle over wai in Maui Komohana and Kaua‘ula Valley in particular. **Mahalo to Chair Inouye** for reintroducing such an important bill and to these committees for hearing it today.

The events over the last year have made it clear that politics is poisoning our water. Last August, when fires ripped through Maui Komohana and devoured Lahaina, the Governor’s first response was to suspend the Water Code, stripping away hard-won constitutional protections with the stroke of a pen. Then, the governor-appointed chair of BLNR removed CWRM’s deputy director without cause, leaving the Commission leaderless and impotent so that large private interests could tighten their grasp on our wai in Kaua‘ula in particular. Even after our ‘ohana and community stood up to get the Code reinstated and made our voices heard, CWRM has taken no action on our water use permit applications, meanwhile, the IIFS for Kaua‘ula Stream continues to be violated while other streams across Maui Komohana run dry.

When major landowners and private developers such as West Maui Land Company pick up the phone or send a letter, their demands are met overnight. Yet when our community and supporters from across ka pae ‘āina turn out in the hundreds to demand that CWRM fulfill its kuleana as ke kahuwai pono, the Commission drags its feet and refuses to act. This is hewa. SB3 will provide this legislature with an opportunity to liberate CWRM from DLNR and to get the politics out of our water policy. Under this bill, CWRM’s Executive Director would be insulated from corruption and political pressure, and empowered to deliver on the Commission’s constitutional and statutory obligations to protect and manage our wai for the benefit of all Hawai‘i’s people.

The reality is that we are living in a climate crisis. Extreme weather events are becoming more frequent each year, and the perpetuation of plantation water politics is only making our communities more vulnerable to disasters. Our hurt is not over. In fact, Lahaina is dealing with so much more now that we can’t even begin to engage with the politics of this administration. We need you folks and SB3 to protect our wai and to support our community so that we can actually focus on recovery. Please do what is pono and pass SB3 today.

Mahalo and ola i ka wai!
Lauren Palakiko

Senate Committees on Water & Land and Public Safety & Military Affairs
Hearing: February 3, 2025 at 1:05 pm
State Capitol Conference Room 229 and Via Zoom
Strong Support for SB3:
Relating to Water

Aloha Chair Inouye, Chair Elefante, and Committee Members,

My name is Charlie Palakiko and I am privileged to live in Kaua‘ula Valley on ‘āina kuleana. I am a kalo farmer and our entire ‘ohana has been deeply engaged in the battle over wai in Maui Komohana and Kaua‘ula Valley in particular. **Mahalo to Chair Inouye** for reintroducing such an important bill and to these committees for hearing it today.

The events over the last year have made it clear that politics is poisoning our water. In August 2023, when fires ripped through Maui Komohana and devoured Lahaina, the Governor’s first response was to suspend the Water Code, stripping away hard-won constitutional protections with the stroke of a pen. Then, the governor-appointed chair of BLNR removed CWRM’s deputy director without cause, leaving the Commission leaderless and impotent so that large private interests could tighten their grasp on our wai in Kaua‘ula in particular. Even after our ‘ohana and community stood up to get the Code reinstated and made our voices heard, CWRM has taken no action on our water use permit applications, meanwhile, the IIFS for Kaua‘ula Stream continues to be violated while other streams across Maui Komohana run dry.

The reality is that we are living in a climate crisis. Extreme weather events are becoming more frequent each year, and the perpetuation of plantation water politics is only making our communities more vulnerable to disasters. Our hurt is not over. In fact, Lahaina is dealing with so much more now, as benefits for fire victims lapse and our people bear an even greater burden with respect to housing security and more. Please know that many of us in Maui Komohana are tracking these issues, but are limited in our ability to engage given the pressing survival issues we are still grappling with more than a year after the fire. That is impacting our larger community’s ability to ask this legislature for something that we have needed for years. SB3 is vital to protect our wai and to support our people so that we can actually focus on recovery. Please do what is pono and pass SB3 today.

Mahalo and ola i ka wai!
Charlie Palakiko



Restore the Commons

Minday, February 3, 2025, 1:05 pm

Senate Committees on Water and Land and on Public Safety and Intergovernmental Affairs

SENATE BILL 3 – RELATING TO WATER

Position: Support Intent; seek clarification of Senate's understanding.

Me ke Aloha, Chairs Inouye and Elefante, Vice-Chairs Elefante and Wakai, and Members of the Committee on Public Safety and Intergovernmental and Military Affairs.

SB3 suggests greater independence of the Water Commission from DLNR, by allowing independent Counsel, changing the name of the First Deputy at DLNR to Executive Director of the Commission, and apparently trying to affirm duties already within the Commission's charge.

As a 25-year alumnus of the Water Commission (Hydrologist, retired), I find the preamble of SB3 rather impertinent to the changes being proposed, and several of the proposed purposes as already being denoted by the Water Code, as amended.

While there may be value in some independence from DLNR, the Commission benefits mightily from privileged interaction with the Division of Forestry, Division of Aquatics, Historic Preservation, Engineering, Land Division, Conservation and Coastal Lands, Resource Enforcement, and so on, to our mutual benefit.

The notion of independent counsel raises questions: the assignment of Attorneys General to advise the Commission has been oriented to keeping them within the various administrative laws, and matters involving the public trust are debated by attorneys from a range of perspectives, to our general benefit. It is not clear what the role of "independent counsel" would be.

A primary benefit of more independence is the intimation that the Land Board would no longer be able to consider land leases involving water. Because the determination of appropriate dispositions of water is the province of the Commission, Land Board decisions involving the value of water have caused repeated contested cases. The problem is that determining the optimum flow in streams is currently incomplete, with the Commission carefully determining, first, minimum stream flows but not optimum flows. Consequently, the Land Board awards diversions of water from streams to non-contiguous lands, benefitting dry lands at the expense of downstream lands, assigning value without complete information.

It is not clear from the preamble nor elsewhere in this bill that these issues are understood by composers. The Commission has historically been at some disadvantage at the Legislature, having cultivated state-of-the-art wisdom about stream flows, painfully evolving the incorporation of local practitioners' voices, while fielding proposals at the Legislature that appear to serve unadjudicated interests without having a robust or circumspect view of the complex process of incorporating competing legal views.

Our experience at the Commission has long been some frustration with perhaps well-intended legislative meddling with the Code. Our experience has been very difficult but salutary in its conflicts and dilemmas. Cases clarified by a thoughtful Court have enabled some progress toward better interpretation of the public trust, often characterized by antagonists as the Commission always being overturned, rather than the clarification we welcome and the opportunity to rectify ambiguous and contrary interests. That said, the Court has not always gotten the science right. To be sure, these issues all too often turn on attorneys' abilities to identify the best science and management, given extreme complexities, and for all their expertise, it falls short.

Finally, given the long history of developing the Water Code, involving so many competing but cooperating perspectives and the long history of public trust cases grinding away in the legal system, it seems odd that we arrive at this moment with this curious bill rather than a longer perspective of review. An earlier "Review Commission" based opinions on five years of early Commission experience, and rehashed opinions not incorporated into the original Water Code and Commission-enabling legislation. Of course, it did not have the advantage of many following and continuing Supreme Court evaluations and modification of practice. As witnessed by the ongoing debates (see Mark Twain), the experience of staff and the community is better served by a deeper conversation revealing special interests approaching this bill.

Mahalo for the opportunity to address this issue,

/s/ Charley Ice, Hoā'āina, Waimalu, O'ahu;

retired Hydrologist, Commission on Water Resource Management (25 years) and Planner at DHHL (10 years);

former Chair of O'ahu Democratic Party Region 5 ('Aiea-Pearl City);

**Building the new normal with People and Land: Food Security Health Care Public Banking
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