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

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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
DAWN N. S. CHANG  
Chairperson

Before the Senate Committee on  
JUDICIARY

Tuesday, March 25, 2025  
10:01 AM

State Capitol, Conference Room 016 & Videoconference

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

House Bill 510, House Draft 1, Senate 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; limit the duration of a water shortage declaration to ninety days; limit water usage restrictions imposed on a permittee or owner and operator to twenty per cent of the permittee's or owner and operator's last reported monthly use; and require CWRM to maintain a list of names and postal or email addresses of persons who request notification of a water shortage declaration and send them a copy of a notice of a water shortage declaration whenever water shortage is declared. **The Department of Land and Natural Resources (Department) strongly supports this measure.**

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 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;
- Limit the duration of a water shortage declaration to 90 days unless conditions warrant continuance of the water shortage declaration;
- 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 while limiting the restrictions to 20% of their reported monthly water usage; and
- Enhance the requirements of public notice and permit holder notification of a water shortage, including maintaining a list of postal and email addresses of interested persons.

The Department appreciates the amendments made by the Legislature based on our previous testimony, which would allow the Commission to quickly declare a water shortage during a crisis anywhere in the state. The amendments also include sensible limitations on the Commission’s water use restrictions while enhancing the requirements for public participation and notice. 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 expects that the modifications in this version will ameliorate their concerns and mitigate negative consequences on stakeholders, particularly the agricultural industry, while still providing the Commission with the tools it needs to effectuate its mission.

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

<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 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 the proposed amendments in this measure is outlined below.

<b>Action</b>	<b>Current Process</b>	<b>Proposed Amendments</b>
<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>

Finally, the Department recommends that this committee amend the effective date of the bill to be July 1, **2026**, which would provide Commission staff adequate 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  
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March 25, 2025

The Honorable Karl Rhoads, Chair  
and Members  
Senate Committee on Judiciary  
Hawai'i State Capitol, Room 016  
Honolulu, Hawai'i 96813

Dear Chair Rhoads and Members:

Subject: House Bill 510, HD1, SD1: Relating to Declaration of Water Shortage  
and Emergency

The Honolulu Board of Water Supply (BWS) strongly supports House Bill (HB) 510,  
House Draft (HD) 1, Senate Draft (SD) 1.

The BWS supports the proposed amendments of SD1, 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, SD 1.

Very truly yours,

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



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March 21, 2025

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair  
Senate Committee on Judiciary

**Comments and Concerns in Opposition to HB 510, H.D. 1, S.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. Limits the duration of a water shortage declaration to ninety days. Limits water usage restrictions imposed on a permittee or owner and operator to twenty percent of the permittee's or owner and operator's last reported monthly use. Requires the Commission to maintain a list of names and postal or email addresses of persons who request notification of a water shortage declaration and send them a copy of a notice of a water shortage declaration whenever water shortage is declared. Effective 7/1/2040.)**

**JDC Hearing: Tuesday, March 25, 2025, 10:01 a.m.**  
**State Capitol, Conference Room 016 & 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, S.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 S.D. 1 version of the bill still fails to contain any specific, verifiable, or warranted reasons for this measure, and more specifically, for the expansion of the Commission’s authority from within to outside designated water management areas over which the Commission presently has no jurisdiction.

The bill attempts to point to recent drought conditions which could potentially cause water shortages and emergencies to somehow support the expansion of the Commission’s authority, however no findings or evidence whatsoever is presented to further the proposition that such expansion of authority of the Commission to areas **outside** of designated water management areas will somehow improve the ability of the Commission to respond to water shortages and emergencies, let alone better perform all duties and responsibilities conferred upon it by statute.

This measure simply asserts without bases 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.

Although this S.D. 1 version now includes language seemingly attempting to make the measure more acceptable by limiting the duration of water shortage declarations, as well as reducing the extent of restrictions imposed by the Commission on permittees and owner/operators, what remains lacking is legitimate justification for the expansion of the Commission’s statutory authority sought to be granted pursuant to this bill. In short, the bill proposes, without credible support or justification, to broadly expand the Commission’s authority over all water resources throughout the State, potentially impacting land and well owners, water permittees, and agricultural stakeholders, **even outside designated water management areas**. LURF believes this may constitute an overextend into private property rights, and into 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 bestow such overreaching power upon the Commission, the presumption could still 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.

Moreover, any presumption of power overreach should not be deemed unreasonable given proposals similarly made in the recent past including measures introduced to 1) expand the Commission's 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) propose 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 likewise 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.

This Committee is respectfully urged to note that the latter and very similar attempt made in 2023 by HB 1088 which proposed to amend the conditions, manner, and areas in which the Commission can declare and provide notice of water shortages and emergencies was **vetoed by Governor Josh Green on July 7, 2023, via Gov. Msg. No. 1371.**

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, S.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 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

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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)).

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 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.

**3. Enabling the Commission to Declare Water Emergencies Without a Prior Water Shortage Declaration by Rule Would Preempt the Executive Authority of the Governor or Mayors to Declare State of Emergencies in the State or Counties.**

As discussed above, the State Water Code in Section 174C-62, HRS, mandates that any water shortage **must be declared by rule** in accordance with the water shortage plan **before the Commission can declare an emergency**. This bill, however, would allow the Commission to circumvent that mandate and declare a water emergency without such declaration by rule, thereby conflicting with, preempting, and seizing the executive authority afforded to the governor or mayors to be the sole judge of the existence of danger, threat, or circumstances giving rise to a declaration of a state of emergency in the State or county, pursuant to HRS Section 127A-14(c).

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

Despite language now inserted into the S.D. 1 version of this bill limiting the duration of a water shortage declaration to 90 days, further language has also been included authorizing the Commission to extend the duration of the shortage under certain

(undefined) conditions, thereby in effect negating the initial 90-day duration limit. No maximum duration period has therefore been 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 a 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 and the notification requirements now included in the S.D. 1 version of this bill, which may overlap the efforts of other 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 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

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

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.

Furthermore, 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, S.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.**

Over the past decades and 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 facts and information underlying and relating to H.B. 510, H.D. 1, S.D.1, LURF has significant concerns relating to this bill, and must respectfully **oppose** the expansion of the Commission’s authority as proposed for the following reasons:

- the lack of undisputed material facts or evidence to conclusively indicate that the Commission’s unilateral and untenable authority to declare emergency orders is warranted and necessary;
- the fact that the proposed authority sought exceeds the role of the Commission as delineated by statute;
- the unjustified expansion of the Commission’s authority to assert jurisdiction over non-designated water management areas, thereby eliminating procedural and substantive due process protections afforded under the State Water Code;

- the lack of initiation and consideration of plans and reasonable alternatives to address concerns relating to water shortages and emergencies established through collaboration with other experts and essential stakeholders;
- the fact that State and county laws and regulations already exist to protect water resources during times of emergency;
- the potential circumvention and preemption of the executive authority of the governor or mayors to solely declare state of emergencies in the State or counties; and
- the fact that this bill could result in significant negative practical and economic repercussions for the State, counties, landowners, affordable and market housing developers, agricultural stakeholders, and various businesses.

Given all of the above, LURF and its members must, despite its continued steadfast support and 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 express our concerns regarding, and opposition to this important matter.



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March 25, 2025

HEARING BEFORE THE  
SENATE COMMITTEE ON JUDICIARY

**TESTIMONY ON HB 510, HD1, SD1**  
RELATING TO DECLARATION OF WATER SHORTAGE AND EMERGENCY

Conference Room 016 & Videoconference  
10:01 AM

Aloha Chair Rhoads, Vice-Chair Gabbard, 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 provides comments for HB 510, HD1, SD1**, 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.

First, we want to express our sincere appreciation to the Commission on Water Resource Management (CWRM), the Legislature, and especially the Senate Committee on Water and Land, for making amendments that respond to concerns raised by the agricultural community. The cap on water use restrictions and the 90-day time limit for water shortage declarations are meaningful steps toward balancing water resource protection with the operational needs of farmers and ranchers.

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.

While the amendments made in the WTL committee move in a positive direction, we still have a few concerns and suggestions we hope the Legislature will consider as this bill advances:

### **1. Ninety-Day Duration of Water Shortage Declarations**

The 90-day limit is an important safeguard, and we appreciate its inclusion. However, we encourage further discussion with farmers about whether 90 days under reduced water access—particularly at 80% of typical use—is feasible for certain crops or production systems. For some growers, especially those with crops already in the ground, even a short-term reduction could result in significant losses.

### **2. Basis for the 20% Reduction Cap**

We appreciate the effort to place a ceiling on water reductions. However, the bill currently bases this limit on the *last reported monthly usage*, and this approach could present two key issues:

- If a farmer has not reported monthly usage within the past year, their usage is considered zero. This is problematic and does not reflect actual operational water needs.
- If the last reported month was during a period of unusually low use—such as high rainfall months—the 20% reduction could be disproportionately severe.

We suggest considering a more stable benchmark, such as the average monthly water usage over the past 12 months, to better reflect the seasonality and fluctuations in agricultural water use.

### **3. Criteria for Declaring Water Shortage in Non-WMA Areas**

The language allowing CWRM to declare a shortage “to protect the water resource from serious harm” is vague. While we understand that more detailed criteria will be developed through rulemaking, we recommend clarifying that the harm should be of a *serious, long-term* nature. This would help ensure that declarations are tied to sustained threats to water systems—not just temporary fluctuations.

### **4. Need for Ongoing Stakeholder Input**

We acknowledge that rulemaking will provide an opportunity for public input, but we continue to urge that agricultural stakeholders be proactively included in shaping criteria, reporting requirements, and prioritization frameworks, especially as new processes emerge outside designated Water Management Areas.

HFB remains committed to the responsible stewardship of Hawai'i's water resources. We appreciate the collaborative efforts thus far and offer these comments in the spirit of constructive dialogue to ensure that water regulations are both effective and workable for our farming communities.

Mahalo for the opportunity to testify.

**HB-510-SD-1**

Submitted on: 3/21/2025 2:16:58 PM

Testimony for JDC on 3/25/2025 10:01:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Frank Schultz	Individual	Support	Written Testimony Only

Comments:

I support this initiative.