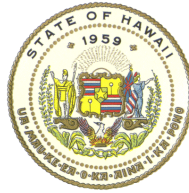


DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Monday, June 29, 2020
12:30PM
State Capitol, Conference Room 229**

**In consideration of
SENATE CONCURRENT RESOLUTION 230/SENATE RESOLUTION 190
URGING THE BOARD OF LAND AND NATURAL RESOURCES TO DISPOSE OF
THE LONG-TERM WATER RIGHTS LEASES FOR HAWAIIAN ELECTRIC'S NON-
CONSUMPTIVE WATER USE ALONG THE WAILUKU RIVER BY DIRECT
NEGOTIATION AND PROVIDE GUIDANCE ON DETERMINING THE VALUE OF
THE ANNUAL WATER LEASE RENT**

Senate Concurrent Resolution 230/ Senate Resolution 190 propose to urge the Board of Land and Natural Resources (Board) to: 1) Dispose of the long-term water leases for Hawaiian Electric's (HECO) non-consumptive use along the Wailuku River by direct negotiation; 2) Provide guidance on determining the value of the annual water lease rent; and 3) Base the lease rent on the FERC charges calculated by the amount of energy produced by the hydroelectric generating plant. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department is currently working with HECO to determine a method of disposition in compliance with Chapter 171, Hawaii Revised Statutes. The Department is also working to determine a method to appropriately value the water used for the hydroelectric project that furthers the State's interest in expanding renewable energy production and fulfills the Department's public trust obligations.

Thank you for the opportunity to comment on these resolutions.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON WATER AND LAND
HEARING ON JUNE 29, 2020 AT 12:30PM IN CR 229

**SCR 230/SR 190 URGING THE BOARD OF LAND AND NATURAL RESOURCES TO
DISPOSE OF THE LONG-TERM WATER RIGHTS LEASES FOR HAWAIIAN
ELECTRIC'S NON-CONSUMPTIVE WATER USE ALONG THE WAILUKU RIVER BY
DIRECT NEGOTIATION AND PROVIDE GUIDANCE ON DETERMINING THE VALUE
OF THE ANNUAL WATER LEASE RENT**

June 28, 2020

Aloha Chair Kahele, Vice Chair Keith-Agaran, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on these resolutions. **DHHL and its beneficiaries have three very significant interests in this proposed disposition and DHHL is concerned with how passage of the proposed resolutions as worded may affect one of these interests.**

DHHL Water Reservations. First, we note that under the provisions of HRS 171-58 that governs the disposition of any water by the state, it is required in part (g) that "...After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section 221 of the Hawaiian Homes Commission Act."

DHHL's water reservation interests have already been partially addressed during the pursuit of this water disposition by Hawaiian Electric (HECO). On July 31, 2017, DHHL mailed a beneficiary consultation meeting invitation letter and map to 938 Hilo lessees, including all residential and agricultural lessees, and 1,142 Hawai'i Island Wait List applicants who currently reside in the Hilo zipcode (96720 and 96721) area for a total of 2,080 invitation letters. Working closely with the Department of Land and Natural Resources (DLNR), DHHL staff held the beneficiary consultation meeting on this matter on August 15, 2017. Representatives from HECO presented their proposed water use at the meeting as well. The Hawaiian Homes Commission at their October 16-17, 2017 meeting approved a beneficiary consultation report on this matter and authorized the request of a reservation from the Commission on Water Resource Management (CWRM). Finally, CWRM granted a reservation of surface waters from the Wailuku River to DHHL on March 17, 2020. While the terms of this reservation

remain to be included by BLNR if any lease is awarded, DHHL will continue to assert the interests of its beneficiaries.

Traditional and Customary Rights. Our second interest in this matter is that our beneficiaries may exercise constitutionally and statutorily protected traditional and customary rights related to these waters. In this instance, the HRS 343 document prepared and accepted for this disposition found no impacts from the proposed disposition on the exercise of traditional and customary rights.

Water Lease and License Revenue. DHHL's third significant interest in this matter is that it is entitled by Constitutional provision to 30% of the revenue generated by state water leases (Hawai'i Constitution Article XII Section I). Funds generated are devoted to the Native Hawaiian Rehabilitation Fund, which supports projects on DHHL lands and for beneficiaries. Awarded as both grants in support of regional priority projects, they fund agricultural training and other related projects (such as training on farm lot preparation, commercial farm development, and related matters) across Hawai'i. It is important to note that the provision of funds from water leases to fulfill the purposes the Hawaiian Homes Commission Act is one of the Act's original provisions.

Passage of these resolutions would allow for both a move by BLNR toward direct negotiation of lease pricing and would encourage the use of a pricing methodology developed for large rivers on the US continent, whose express goals were to develop cheap electricity. DHHL is very concerned that the recommendation to utilize the Federal Energy Regulatory Commission pricing method is both not clearly transparent and not suited to Hawai'i law and circumstances. While DHHL beneficiaries along with all direct and indirect ratepayers may benefit from lower electricity rates, our distinct interests in water leases means that our interests in the pricing methodology and our goals are distinct from those held by the "general public." **Without further clarification, the proposed pricing process could lead to a breach of the State's fiduciary duty to the Hawaiian Home Lands Trust, as no provision for serving beneficiary interests is noted.**

DHHL appreciates that further guidance and thought on water license pricing is needed; the tools and methods suggested by the law have not been updated in decades. However, passage of a statement by the Legislature on a preferred pricing method by resolution to authorize a lease may not be the most appropriate manner to address this complex issue and a significant native Hawaiian right.

DHHL remains committed to work with the interested parties to ensure our beneficiaries rights are protected.

Thank you for your consideration of our testimony.



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
WATER AND LAND**

SCR 230/SR 190

**URGING THE BOARD OF LAND AND NATURAL RESOURCES TO DISPOSE OF
THE LONG-TERM WATER RIGHTS LEASES FOR HAWAIIAN ELECTRIC'S NON-
CONSUMPTIVE WATER USE ALONG THE WAILUKU RIVER BY DIRECT
NEGOTIATION AND PROVIDE GUIDANCE ON DETERMINING THE VALUE OF THE
ANNUAL WATER LEASE RENT**

Monday, June 29, 2020
12:30 p.m.
State Capitol, Conference Room 229

Jennifer L. Zelko
Director, Government and Community Affairs
Hawaiian Electric Company, Inc.

Aloha Chair Kahele, Vice Chair Keith-Agaran and Members of the Committee,

My name is Jennifer Zelko and I am testifying on behalf of Hawaiian Electric Company in support of SCR 230/SR 190. This resolution urges the Board of Land and Natural Resources to dispose of long-term water rights leases for Hawaiian Electric's non-consumptive water use along the Wailuku River by direct negotiation and provides guidance on determining the value of the annual water lease rent.

Hawaiian Electric has had year-to-year water permits for decades which has enabled us to operate our two hydroelectric plants on the Wailuku River in Hilo. Generating electricity by using falling water to turn a turbine and then returning it to its source is the oldest renewable energy resource in Hawaii, and one of its least expensive. These hydroelectric plants play an important role in meeting the State's 100% renewable energy goal and is an important resource in our renewable energy portfolio.

One of the benefits of hydroelectricity is its very low cost, enabling Hawaiian Electric to pass those savings on to our customers. One of the key goals of the 100% renewable energy mandate is to reduce and stabilize costs by getting off oil. Having a long-term water lease is especially critical for us to invest in the rebuilding of the Waiau Hydroelectric Plant, which was nearly a century old, when it was damaged and taken offline during Hurricane Lane in August 2018.

In 2016, a circuit court judge ruled that the holdover of revocable permits for multiple one-year permits is not consistent with the statute providing for temporary use of State lands. In response, and to avoid the abrupt stoppage of water being used by about a dozen permittees, including Hawaiian Electric, Act 126 (2016) was giving permittees three years to convert year-to-year permits to long-term leases.

Upon passage of Act 126 (2016), Hawaiian Electric immediately embarked on fulfilling the requirements for obtaining a long-term water lease. We had an environmental assessment prepared and obtained a Finding of No Significant Impact. In cooperation with the Department of Hawaiian Home Lands (“DHHL”) and the Department of Land and Natural Resources (“DLNR”), a DHHL beneficiaries meeting was held in Hilo to enable DHHL to make a request for a reservation of water from the Wailuku River, and determine that Hawaiian Electric’s **non-consumptive use of water** for its hydroelectric plants would not interfere with DHHL’s need for water.

Nevertheless, at this time Hawaiian Electric is still without a long-term water lease. There remain some unresolved questions on some of the requirements for issuance of a long-term water lease, such as the minimum content for a watershed management plan and how to determine the fair value of a water lease. Until these

questions are answered, Hawaiian Electric's application for a long-term water lease is on hold.

Hawaiian Electric is also cognizant that the other water permittees have had a variety of problems in fulfilling the requirements for obtaining long-term water leases. We understand that some of the small farmers and ranchers have not had the resources to meet the environmental disclosure requirements, and other permittees have been saddled with litigation that has made it impossible for them to complete the long-term water lease application process in the three years allowed under Act 126 (2016).

SCR 230/SR 190 provides guidance to DLNR to dispose of the long-term water leases for Hawaiian Electric's non-consumptive use along the Wailuku River by direct negotiation. Hawaiian Electric's lease application is unique, as it involves water only and no public lands are involved. Hawaiian Electric owns the land where the hydroelectric plants are located and does not require the use of any diversion works or State land. As such, there is no other entity that would be qualified to bid on the water lease since it would require another entity to divert water at different locations.

SCR 230/SR 190 also provides guidance in calculating the lease rent using Federal Energy Regulatory Commission ("FERC") rates, which is calculated by the amount of energy produced by the hydroelectric plant. The FERC rate is used in many other jurisdictions to charge hydroelectric generators for the use of federal dams and reservoirs, which is a similar application/use as Hawaiian Electric's hydroelectric plants. FERC determined that using this method to set rates, provides a reasonable return to the government, encourages the development of smaller hydroelectric projects, and minimizes the cost to customers.

SCR 230/SR 190 will help to further the State's 100% Renewable Portfolio Standards goal, and will help to improve Hawaii Island's energy resiliency. Accordingly, Hawaiian Electric strongly supports SCR 230/SR 190. Thank you for the opportunity to testify.