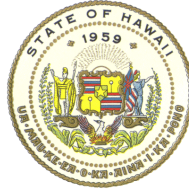
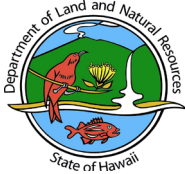


DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
WATER & LAND**

**Tuesday, February 8, 2022
9:00 AM**

State Capitol, Conference Room 430, Via Videoconference

**In consideration of
HOUSE BILL 2164
RELATING TO DISPOSITION OF WATER LICENSES BY THE BOARD OF LAND
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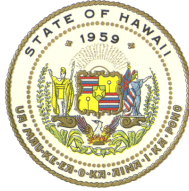
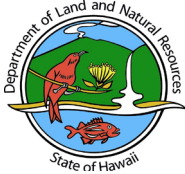
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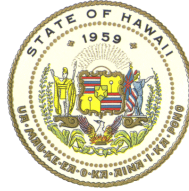
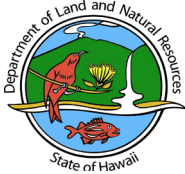
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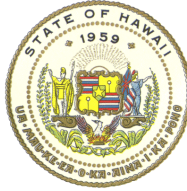
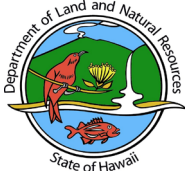
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WILLIAM J. AILA, JR.
CHAIRMAN
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TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
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**TESTIMONY OF WILLIAM J. AILĀ, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
HEARING ON February 8, 2022 AT 9:00 AM VIA VIDEOCONFERENCE**

**HB 2164 RELATING TO DISPOSITION OF WATER LICENSES BY THE BOARD OF
LAND AND NATURAL RESOURCES**

February 8, 2022

Aloha Chair Tarnas, Vice Chair Branco, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) submits comments on this bill that clarifies the conditions and manner in which the Board of Land and Natural Resources (BLNR) may dispose of water by license. This bill as drafted fails to address – and threatens to harm – particular rights held by native Hawaiians and the DHHL.

In general, DHHL and its beneficiaries hold three distinct rights that are impacted by any proposed disposition of water by the BLNR. First, under HRS 171-58(g), no water lease or license can be issued until after “a reservation of water rights sufficient to support current and future homestead needs” is adopted.¹ Second, our beneficiaries may exercise traditional and customary practices related to the waters that are being disposed. Third, in section 213 of the Hawaiian Homes Commission Act (HHCA) and Article XII, section 1 of the State Constitution, DHHL is entitled to 30% of the revenue from water licenses, and those moneys are deposited into the Native Hawaiian Rehabilitation Fund (NHRF), which finances grants across the islands to achieve the purposes of the HHCA.

While this bill has implications for both the first and second of these rights, in this testimony DHHL will focus on how the bill raises significant concerns related to DHHL’s revenues. Understanding the significance of, and harm from, the bill as proposed requires a longer review than normal legislative testimony. We begin by reviewing the origins of tying DHHL funding to water licenses.

¹ DHHL at its own expense has cooperatively supported this process, working with the Department of Land and Natural Resources, in every instance when asked, for proposed water licenses on the Wailuku River (Hilo), for farming, ranching and domestic purposes in Ka`ū, for kalo farmers in Wai`oli, Kaua'i, and for the East Maui Irrigation System.

Origin of Water license revenue to fund the HHCA and racially based opposition to the same

The source of funding for implementation of the HHCA, as stated in the original language of Section 213 of the HHCA, was “30 per centum of the Territorial receipts derived from the leasing of cultivated sugar-cane lands under any other provision of law or from water licenses.” This funding source was one of many compromises that Territorial Delegate Jonah Kūhiō Kalanianaʻole made in order to secure support in Hawaiʻi for passage of the HHCA, as well as the votes required for Congressional passage.

A reliance on sugar land leases and water licenses for revenue for the homesteading program was tied in part to other compromises that were made as the HHCA developed. Famously, the HHCA excluded of the most agriculturally viable lands from the lands available for homesteading, in Section 203 of the Act. That land exclusion provision came at the insistence of the plantation oligarchy who had continued to use these lands (which had been controlled by the Kingdom until the overthrow) for their private businesses.² The inclusion of water license revenue in addition to land revenue was an additional compromise recognizing the significant sums would be required to prepare the lands included for homesteading for these purposes.³

However, even these compromises in the early 1920 bill draft were still not enough for quiet opponents of the Act. On December 14, 1920, the US Senate Committee on Territories held a hearing on the bill in the Senate Office Building in Washington, D.C. Among those who travelled from Hawaiʻi to testify on the measure was A.G.M. Robertson. Mr. Robertson had been a member of the Honolulu Rifles, and later served in various capacities to the “Republic of Hawaiʻi”. In 1911 he became Chief Justice of the Hawaiʻi Supreme Court in the Territory and stayed until his resignation effective January 1, 1918, when he returned to private practice. He travelled to Washington representing the Parker Ranch, which controlled lands that could be still withdrawn under the draft of the HHCA being considered.

Despite his client’s direct interests, Mr. Robertson did not limit his opposition narrowly, but centered his arguments against the bill including its funding mechanisms, as discriminatory against “whites” in the Territory. In one part of his testimony he claimed “There are hundreds of white men out there who feel they are absolutely

² McGregor, Davianna Pōmaikaʻi. 1990. “Āina Hoʻopulapula: Hawaiian Homesteading. The Hawaiian Journal of History, vol. 24, 1-38.

³ McGregor 1990, p. 21.

against this bill and they are being discriminated against by it...”⁴ Moreover he decried the proposed funding mechanisms: in the hearing he rallied against the funding of the bill because **“These moneys, mind you, come out of the pockets of the white taxpayers of the Territory and are handed over to or are used for the benefit of the Hawaiian population—as we find it stated in the bill here – of one thirty-second Polynesian blood.”** Delegate Kūhiō had to clarify to the Committee that “Mr. Robertson says that these moneys are to come out of the white taxpayers’ pockets of the Territory. That is not correct.” Yet even then Mr. Robertson interjected: “I was coming to that point further in my argument. It does not make any difference where this \$1,000,000 ...comes from....it is money that comes out of the pockets of the white taxpayers of the Territory.”

Delegate Kūhiō later in the hearing tried to clarify the record at length:

...Judge Robertson objects to the bill for reasons that are not well founded. He strains the point that the money to be raised for the purpose of carrying out this bill will be by taxation...and that the Americans or whites, as he calls them, would be subject to increased taxation for the benefit of the Hawaiian, discriminating against the whites for the benefit of the Hawaiian. This statement is absolutely untrue...Section 213 of this bill provides for the creation of a revolving fund to be derived from 30 per cent of the Territorial receipts derived from the leasing of the cultivated sugar-cane lands and water licenses.

Despite the opposition of Robertson and others, and because the compromise to fund the HHCA avoided using general government tax revenues and hence any racial claims about that, the Act passed with the provision of water license revenue as a source of funding intact.

Performance of the NHRF over time

In the early years of the HHCA, sugar cane land lease and water license revenue were significant sources of support for implementation of the Act, even as the Act remained woefully underfunded. In recent years, however, the revenue into the NHRF as a whole, particularly from water license revenue, has declined precipitously. Data from DHHL files shows the following decline in water license flow into the NHRF between 1981 and 2017:

⁴ Testimony of Mr. AGM Robertson, attorney of Honolulu, Representing Parker Ranch, at a December 14, 1920 hearing on HR 13500

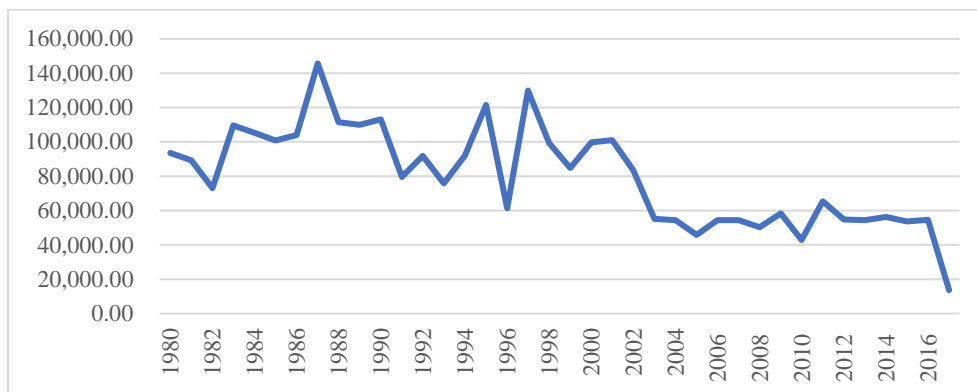


Figure 1. Data from the DHHL, showing water license revenue into the NHRF, 1980-2017.

Reasons for decline in funding to the NHRF

The decline and demise of the sugar industry is certainly one reason that land lease and water license revenues into the NHRF have declined, but they are not the only reason. As the legislature is well aware, the Department of Land and Natural Resources (DLNR) has not converted the many Revocable Permits (RPs) into long term licenses after the original licenses expired. These include well known instances such as the agreements covering water in the East Maui Irrigation System and serving small farms and ranchers in Ka`ū, and other less well-known dispositions. Only recently, and at the request and suggestion of DHHL, did a consumer price indexed inflation adjustment begin to be applied to these year-to-year RPs.

Second, DLNR has also repeatedly failed to require users of water emanating from state lands to apply for even a revocable permit. Examples from Hawai`i Island included the private uses of water for agricultural purposes (from the Kehena Ditch) and hydroelectric purposes (from Wai`a`ama Stream). Lands have also been transferred to other state entities, like the Agribusiness Development Corporation, with no explicit provision for water licenses. This has continued despite direct requests from DHHL to DLNR to determine why they believe that continued diversions from these sources do not required dispositions under HRS 171-58.

Finally, we note that DLNR has opposed pursuing new pricing mechanisms for water licenses. At our request in 2021, a bill was introduced (HB 501) that would have addressed the fundamental and inescapable problem of both the current statute and this bill. That fundamental and inescapable problem is that the statute and this bill utilize reliance on an appraisal to determine a fair market value. However, because

water in Hawai'i is a public trust, there is no trading market in water in Hawai'i where prices are set and no "fair market value" can be said to exist.

In one regard this bill offers the appearance of addressing this problem, but only further obfuscates the issue. By adding language that an appraiser *may* consider a laundry list of items to determine "fair market value," but providing no meaningful guidance on how those items may affect "fair market value", an impression is given that consideration of these factors affect whatever price the appraiser determines. Such a practice would allow the BLNR to ostensibly justify the price that is set without making it clear or transparent how that price was chosen.

Absent a market mechanism or a clear and transparent method for setting the price, the setting of the upset price is essentially a policy decision. Indeed, the testimony on these previous measures before the House Committee on Water and Land in 2021 made this clear. Lobbyists advocated for water pricing to support particular industries, illustrating the ingrained interests which seek to benefit from the private use of public trust resources without regard to other policy considerations, including the state's obligations to DHHL.

In another aspect, this bill makes the problem of determining a "fair market" value even worse than under current statute, by allowing the issuance of such dispositions to avoid public auction entirely, instead using direct negotiation. Currently, the only potential market mechanism that might exist for competing bidders to signal their willingness to pay is via a public auction. This would eliminate this possibility, essentially at the sole discretion of the BLNR.

Absent the provisions in HB 501, this bill would present further, additional challenges to the BLNR in fulfilling their fiduciary duties under the HHCA and State Constitution. One specific example will illustrate our point well.

One example: The Wailuku River Hilo Hydropower proposed Lease

DHHL's cooperation with DLNR but lingering pricing concerns with these leases is best illustrated with the nearly completed proposed lease for the Wailuku River (Hilo) Hydropower proposed lease.

On August 16, 2016, Hawaiian Electric (then known as Hawaiian Electric Light Company or HELCO) submitted to DLNR an application for a long-term water lease. Specifically, HELCO requested a 65-year lease to continue to divert water from the Wailuku River for a non-consumptive use to continue to operate the Waiau and Pu'u'e'o

hydroelectric facilities located alongside the Wailuku River in Hilo. In addition to the long-term water lease, HELCO is proposing to repower the Waiau Plant.

As part of that water leasing process, Chapter 171-58(g) states:

“The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. 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.”

DLNR and HELCO both consulted with DHHL on how to best to consult with beneficiaries in order to meet this statutory mandate, as well as to discuss the overall project and water leasing process. In order to meet the mandate of Chapter 171-58(g), it was determined that a joint beneficiary consultation meeting with presentations by HELCO, DLNR, and DHHL would be required in order to submit a report of findings to the Hawaiian Homes Commission to ensure that beneficiary concerns are properly documented, compiled and reported.

Progress after that agreement has been consistent. At its own expense in July 2017 DHHL mailed an invitation letter for a beneficiary consultation on this matter 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 zip codes (96720 and 96721) for a total of 2,080 invitation letters. Beneficiaries were invited to attend a consultation meeting on August 15, 2017, and were provided a 30-day period after to provide comments.

In October of 2017, the HHC formally adopted a beneficiary consultation report from the beneficiary meeting and authorized the Chairman to seek a water reservation from the Wailuku River for DHHL lands in lower Pi'ihonua in conjunction with the proposed lease. In October of 2018 DLNR transmitted the Final Environmental Assessment and Finding of No Significant Impact (FEA-FONSI) for the Wailuku River Hydroelectric Facilities Long-Term Water Lease and Waiau Repowering Project to the Office of Environmental Quality Control. In March 2020, the Commission on Water Resource Management approved the requested water reservation.

One of the only remaining approval issues needed to complete this project is to execute a lease with Hawaiian Electric, and before doing so to determine a proper price. In information that Hawaiian Electric prepared for DLNR and shared with DHHL, they noted various pricing mechanisms that could be applied to properly price the lease. These included a consideration of rates charged by the Federal Energy Regulatory Commission (or FERC), which were developed for massive hydroelectric and irrigation projects on the US continent, which ultimately Hawaiian Electric proposed to DLNR. The FERC rates for a water lease are one mil per kWh.⁵ By Hawaiian Electric's own calculations, this would generate a lease payment to the state of \$17,556.52 per year. **Payment into the NHRF at the rate Hawaiian Electric proposes (at 30% the proposed state lease revenue) for the next 65 years would be \$5,266.96 annually.**

Hawaiian Electric also included in its analysis the concept of "shared net benefit" fee approach, which was sometimes also used by FERC. In that method, the benefit of using hydropower to produce electricity is compared to the avoided cost of generation from other existing sources, and the financial benefit of that is "shared" by evenly splitting the savings between the water lessee and operator. Again by their own data, use of the hydropower as opposed to existing generation would save \$509,077.30 annually, and that benefit could be shared equally between the ratepayers and the state, for an annual lease rate of \$254,538.65. **Under the scenario where benefit is equally shared equally between the ratepayers and the state, payment into the NHRF (at 30% the proposed state lease revenue) for the next 65 years would be \$76,361.56 annually.**

Adoption of HB 2164 would allow the DLNR to negotiate the ultimate lease for this project behind closed doors, bring it to the BLNR only after an agreement to charge the much lower rate was reached, and force DHHL to request a contested case hearing on the proposed lease. This would further delay this worthy project.

Thank you for your consideration of our testimony.

⁵ A mil is one tenth of one cent, or 1/1000 of a dollar.



Environmental Caucus of The Democratic Party of Hawai'i

Saturday, February 5, 2022

To: House Committee on Water and Land
Hon. David Tarnas, Chair
Hon. Patrick Pihana Branco, Vice Chair

Re: HB 2164 relating to Water Leases by BLNR
Hearing: Tuesday, February 8, 2022, 9:00 a.m., Room 430 & videoconference

Position: Strong opposition

Aloha, Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

The Environmental Caucus of the Democratic Party of Hawai'i strongly opposes this bill, which would allow the Board of Land and Natural Resources to negotiate directly with stream diverters for long-term water licenses -- instead of going through a public auction -- without mechanisms to safeguard the environment and the rights and interests of the public. As written, this bill would enable the inappropriate exploitation of our water resources by allowing for the direct issuance of water licenses, for as long as 55 years at a time.

In our view, the human environment fundamentally includes water, and 55 year leases, without public bidding, in a situation where Environmental Impact Statements would not necessarily be required, is just too much to allow, especially without additional safeguards, including review by the Commission on Water Resource Management. Water is a public trust under our State Constitution, and we believe that this bill would violate that trust.

Mahalo for the opportunity to testify,

Melodie Akiya

Alan Burdick

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

Email: legislativepriorities@gmail.com



SIERRA CLUB OF HAWAI'I

HOUSE COMMITTEE ON WATER & LAND

February 8, 2022 9:00 AM Conference Room 430

In OPPOSITION to HB2164: Relating to Disposition of Water Licenses by the Board of Land and Natural Resources

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Water & Land Committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **OPPOSES HB2164**, which would facilitate the issuance of long-term licenses for our water resources without critical safeguards to protect the rights and interests of the public in our public trust water resources.

The Sierra Club recognizes that the public trust character of our islands' water can significantly complicate in the issuance of water licenses pursuant the appraisal and public auction requirements of HRS Chapter 171. However, the public trust in water also requires all government entities to ensure that our islands' most precious resource is carefully administered, to prioritize public trust purposes and appropriately balance competing beneficial uses while preventing waste or the inappropriate privatization of our streams and aquifers. Unfortunately, historical decisions, including the issuance of revocable permits for water through direct negotiation, have in some cases led to the generations-long monopolization of our water resources to the detriment of our environment and the rights and interests of the public otherwise protected under the public trust doctrine.

This measure risks perpetuating this historical undermining of the public trust, by allowing entities with significant political and financial capital to "negotiate" for the generations-long commitment of our limited and precious water resources to the detriment of the public and the environment. For example, this measure could allow for licenses that completely dewater streams, foreclosing cultural, recreational, and subsistence practices and uses and eliminating habitat necessary for stream and estuarine life; commit streams and springs to corporate uses for decades at a time, without considering potentially dynamic climate change impacts on our water sources including the aquifers they replenish; result in the waste of millions of gallons of water per day due to the use of antiquated and unlined irrigation infrastructure; and undermine the rights and needs of the Department of Land and Natural Resources, the Department of Hawaiian Home Lands, and the Office of Hawaiian Affairs, who may depend upon water license revenues for their respective missions.

Much more work is clearly needed to ensure that the provision of direct negotiation authority for water licenses is subject to concrete mechanisms and safeguards that can better uphold the public trust in water. Rather than provide the broad authority proposed in this measure, the Sierra Club urges the Committee to consider the creation of a task force, with members possessing appropriate expertise in water rights, climate change, riparian and estuarine ecology, cultural

practices, agricultural practices, stream- and ocean- related recreational activities, hydrology, and engineering, as well as directly impacted agencies such as the Water Commission, the Department of Hawaiian Home Lands, and the Office of Hawaiian Affairs, to discuss and develop such mechanisms and safeguards over the next year.

For the reasons described above, the Sierra Club of Hawai'i respectfully urges the Committee to **HOLD** this measure, or explore the creation of a task force as described above.

Mahalo nui for the opportunity to testify.



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

February 8, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 2164
RELATING TO DISPOSITION OF WATER LICENSES BY THE BOARD OF LAND AND
NATURAL RESOURCES

Conference Room 430 & Videoconference
9:00 AM

Aloha Chair Tarnas, Vice-Chair Branco, and Members of the Committee:

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

The Hawaii Farm Bureau supports HB 2164, which clarifies the conditions and manner in which the Board of Land and Natural Resources may dispose of water by license.

Water is an essential element in farming and ranching. Farmers invest heavily in order to provide food and other products to their communities. They take financial risks that no other occupation requires. They are at the mercy of unpredictable weather, market fluctuations, worker availability, energy and transportation costs, pest pressures, and much more. They need stability to keep farming.

HB 216 would provide a more rational means of allocating water leases by allowing direct negotiation under the stringent, but effective and reasonable provisions outlined in the bill. The current method of public auction, especially for farmers and ranchers already holding leases, is patently unfair and unpredictable especially after the producer has invested years in the land to create a successful business.

Thank you for this opportunity to testify on this important subject.



REP. DAVID A. TARNAS, CHAIR
REP. PATRICK PIHANA BRANCO, VICE CHAIR
HOUSE COMMITTEE ON WATER AND LAND

February 8, 2022, 9:00 a.m.
Room 430, State Capitol
415 South Beretania Street

Testimony in Opposition to House Bill 2164 and Proposing a Task Force

Aloha Chair Tarnas, Vice Chair Branco, and Members of the Water & Land Committee,

Earthjustice is a non-profit environmental and clean energy law firm with decades of experience litigating cases to protect the public trust in Hawai'i's natural resources. One of Earthjustice's primary practice areas is restoring stream flows to communities across Hawai'i that have cultural, subsistence, and environmental interests in healthy streams flowing mauka to makai.

Earthjustice supports efforts by the Department of Land and Natural Resources ("Department") to improve its decades-old water leasing program. House Bill (H.B.) 2164, however, does not address or remedy the most critical problem plaguing the program, namely, the Board of Land and Natural Resources' ("Board's") ongoing failure to uphold its constitutional duty to protect instream water uses, including the exercise of traditional and customary practices. Specifically, the Board has a pattern and practice of rubber-stamping existing diversions, without safeguarding public trust purposes, holding diverters to their burden of proof, and requiring mitigation of impacts, including use of alternative water sources.

Further, H.B. 2164 perpetuates the Department's **outdated practice of leasing water for over half a century as a baseline lease term**. This provision completely fails to conform to the best science concerning climate change and modern water management practices. Recent studies indicate that streamflow levels may already be decreasing in specific watersheds across the islands. Allowing a baseline term of 55 years when it is unclear how much water will even be flowing in our streams half a century from now is a complete abdication of the State's duties to carefully manage and protect Hawai'i's stream resources.

Accordingly, in order to ensure that any revisions to the Department's water leasing program are made in a comprehensive, science-based manner, taking account of the various interests that depend on streams for cultural, subsistence, economic, agricultural, aesthetic, recreational and environmental benefits and values, **Earthjustice respectfully asks that the Committee hold this bill**.

Additionally, Earthjustice urges the Committee to consider the creation of a task force, with members possessing appropriate expertise in water rights, climate change, riparian and estuarine ecology, cultural practices, agricultural practices, stream- and ocean- related recreational activities, hydrology, and engineering, as well as directly interested agencies such as the Commission on Water Resource Management, the Department of Hawaiian Home Lands, and the Office of Hawaiian Affairs, to discuss and develop updated, science-based, and legally compliant guidelines for the Department's leasing program that may be incorporated into future legislation.

Thank you for the opportunity to testify on this bill.

Leinā'ala L. Ley



Attorney
Earthjustice



Native Hawaiian LEGAL CORPORATION

1164 Bishop Street, Suite 1205 • Honolulu, Hawai'i 96813
Phone (808) 521-2302 • www.nativehawaiianlegalcorp.org



HB2164 RELATING TO DISPOSITION OF WATER LICENSES BY THE BOARD OF LAND AND NATURAL RESOURCES

HOUSE COMMITTEE ON WATER & LAND

February 8, 2022

9:00 a.m.

Conference Room 430

Aloha e Chair Tarnas, Vice Chair Branco, and Members of the Committee,

The Native Hawaiian Legal Corporation **OPPOSES** HB2164, which would authorize the direct negotiation of up to 55-year water licenses without sufficient protections for the rights of the public as well as the public trust resource itself.

In Hawai'i, water has always been considered a public trust resource to be managed for the benefit of present and future generations. Traditionally, stream and spring water was treated as a community resource that belonged to everyone; it was respected and shared in such a way to address Native Hawaiians' social, ecological, and spiritual needs. This traditional view is enshrined in our constitution and water code, which mandate that this fundamental resource be managed and used to fulfill specific public trust purposes – the maintenance of waters in their natural state, domestic water use, the exercise of Native Hawaiian traditional and customary rights, and the Department of Hawaiian Home Land's ("DHHL's") reservations of water. See *Kauai Springs, Inc v. Planning Comm'n of the County of Kaua'i*. 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014).

The documented history of mismanagement of water resources is exactly why a critical eye must be given to any measure that further skews the process toward private interests and away from public trust purposes. We have seen in East Maui, for example, how the continued issuance of revocable permits for water through direct negotiation has prolonged a generations-long monopoly of water by a large scale diverter despite significant impacts to Native Hawaiian communities, practitioners, natural and cultural resources, and ecosystems. Indeed, while this practice has served politically influential commercial interests well, resulting harms have invited protracted litigation by affected communities deprived of similar access and opportunity to inform decisionmaking. These history lessons teach that the continued passive management of our State's scarce and commercially coveted water resource is irresponsible, and negotiations shielded from public scrutiny invite abuses. Public trust duties are best discharged in full view of the public, whose participation is key to advancing the mandate that trustees "must take the initiative in considering, protecting, and advancing

public rights in the resource at every stage of the planning and decisionmaking process." *In Re Water Use Permit Applications*, 94 Hawai'i 97, 143, 9 P.3d 409, 455 (2000).

Although NHLC fully supports updating HRS § 171-58 to strengthen procedural mechanisms to ensure the Board of Land and Natural Resources fulfills its kuleana as trustee of this critical public trust resource, the measure before you today misses the mark. Not only does it perpetuate the highly-criticized, multi-generational license term, but it also enables financial and political capital to influence negotiations behind in ways that result in all the harms discussed previously. If the intent truly is to improve the water license program, maintaining the status quo is not the answer.

Instead, NHLC supports the idea of creating a task force to discuss and develop safeguards to refine the water licensing process, provide transparency, and ensure the public trust is upheld. This task force must necessarily include experts in water rights, stream ecology, hydrology, Native Hawaiian traditional and customary practices, agriculture, engineering, and stream and ocean recreational uses as well as representatives from agencies, including the Commission on Water Resource Management, DHHL, and the Office of Hawaiian Affairs.

With all that is at stake, pressing pause to allow stakeholders to discuss and develop a more pono path forward is a prudent decision and consistent with this State's duties to the public trust and to restoring trust statewide. For that reason, NHLC urges this Committee to reject water-related measures like these that maintain the now widely-discredited and injurious aspects of the status quo.

Mahalo for the opportunity to testify.



Ashley K. Obrey
For the Native Hawaiian Legal Corporation

HOUSE COMMITTEE ON WATER & LAND
ATTN: CHAIR DAVID A. TARNAS & VICE CHAIR PATRICK PIHANA BRANCO

Testimony on HB2164

Relating to Disposition of Water Licenses by the Board of Land and Natural Resources

February 8, 2022, 9:00am

Via Videoconference

Conference Room 430

415 South Beretania Street

Honolulu, Hawai‘i

Aloha nui e Chair Tarnas, Vice Chair Branco and Members of this Honorable Committee,

Mahalo for the opportunity to provide comments on HB2164 on behalf of the Wai‘oli Valley Taro Hui. As kalo farmers, the subject of water use is critical to us, our Hui, and all of our ‘ohana. Many of us are Native Hawaiian farmers, born and raised on Kaua‘i, who continue to care for the same ‘āina that our families have stewarded for more than a century; for some, it has been many centuries.

As a Hui, it is our mission to support and enhance the ma uka to ma kai biocultural resources in the Wai‘oli Stream and Hanalei Valley Watersheds, protect the natural and cultural resources that enable traditional and customary Native Hawaiian practices, maintain habitat for endangered Hawaiian waterbirds, and engage the greater Kaua‘i community through educational outreach programs and initiatives relating to taro farming and community-based stewardship of water resources. Although our community has always been close, we did not formally organize as a nonprofit until 2019 after devastating floods made it painfully clear that our entire community and way of life was at risk. As a part of the disaster relief effort, the Department of Land and Natural Resources informed us that portions of our centuries-old kalo irrigation system, which predates modern zoning laws and even this water licensing provision, was located on conservation land. So, we are now subject to HRS 171-58, even though our farms have operated in essentially the same way for centuries.

As you well know, our mānowai (traditional, Native Hawaiian break-away dam), po‘owai (dam at the head of the ditch), and entire ‘auwai (ditch) systems were completely devastated after those 2018 floods. Our river changed course and some described what we experienced as a thousand year flood event. As you also know, we steward these lands for kalo cultivation and subsistence. Almost four years after the 2018 floods, and despite significant kōkua from the State of Hawai‘i and County of Kaua‘i, we are still in basic recovery mode. While the flooding and related damage to our farms is not the topic of today’s hearing, access to water is.

We share our mana‘o on HB2164 because its passage will impact our farms, families, and livelihoods — like so many other kalo farming communities throughout Hawai‘i. We understand that the issue of water leases is a highly controversial and complex topic, and as relative newcomers to the issue of regulation under HRS 171-58, we defer to the expertise of others on the technical aspects, such as the Sierra Club, Earthjustice, and the Native Hawaiian Legal Corporation. **We do, however, implore this committee to consider the fact that instream, in-watershed use of water for wetland kalo cultivation is unique and beneficial to the overall health of the land, especially when done in a traditional manner.**

In Wai‘oli, we use a traditional mānowai to take some water from Wai‘oli Stream. That water flows through our ‘auwai, into our taro patches, then back to either Wai‘oli Stream or the lower reaches of Hanalei River. Like other kalo farmers, we need throughflow — water flowing through our taro patches — but we do not “consume” water like most offstream users because it returns to the streams. All of our use is within the watershed where our water supply originates. So, any seepage, for example, also goes back to feed our water cycle in the larger Hanalei Bay Kalana.

For these reasons, Hawai‘i’s Constitution (including Article XI sections 1 and 7 and Article XII, section 7), Water Code (HRS 174C-101), and court decisions (*Waiāhole*), grant special protection and respect to traditional instream, in-watershed cultivation of kalo. Our water use is fundamentally different than most of the “big users” regulated under HRS 171-58, such as EMI/Mahi Pono’s use of East Maui water where water is taken out of the watershed, distributed across the island, and never returns to its ahupua‘a of origin.

Given these important distinctions, if this committee passes out HB2164, we ask that you amend section (i) to respect the special legal status of the traditional, Native Hawaiian practice of kalo farming, and replace it with:

“(i) This section shall not apply to any authorization of instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner.”

We recognize that as written, HB2164 section (i) proposes to exempt water licenses for taro cultivation done in a traditional manner from the public auction requirement, but we would humbly assert that this is insufficient to provide “crucial support for the practice” as intended. The 171-58 process is still incredibly burdensome for small ‘ohana farmers like us. Over the course of three years, 33 law students and 4 attorneys spent over two thousand hours supporting us in applying for a water lease including: securing a right of entry, an easement, a revocable permit, a watershed management plan, an environmental assessment and finding of no significant impact, a cultural impact statement, a concurrent resolution urging the issuance of a water lease by direct negotiation, amending the interim instream flow standards for Wai‘oli Stream, and

completing beneficiary consultation with DHHL. Under HB2164, all of that work would still be required. Even with HCR163, HD1, SD1 – the resolution that passed last session enabling direct negotiation – our Wai‘oli farmers still have no water lease.

We humbly ask this committee to exempt traditional wetland kalo cultivation from HRS 171, and we request a hearing on HB1768 as that bill better addresses the kalo exemption issue. We are family-run farms, planting kalo the way our kūpuna taught us. Please, let us continue to live the way we have for hundreds of years, feeding our ‘ohana and the community from our ancestral lo‘i. Given the complexity of the water leasing process, a task force may be necessary to resolve the other issues in HB2164.

Mahalo for your time and consideration.

Reid Yoshida
President, Wai‘oli Valley Taro Hui
Kaua‘i, Hawai‘i
r-yoshida@hotmail.com



Testimony Before the House Committee on Water & Land

By David Bissell
President and Chief Executive Officer
Kaua'i Island Utility Cooperative
4463 Pahe'e Street, Suite 1, Lihu'e, Hawai'i, 96766-2000

Tuesday, February 8, 2022; 9:00 am
Conference Room #430 & Via Teleconference

House Bill No. 2164 - Relating to Disposition of Water Licenses by the Board of Land and Natural Resources.

To the Honorable Rep. David A. Tarnas, Chair, Rep. Patrick Pihana Branco, Vice Chair and Members of the Committee:

Kaua'i Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

KIUC supports this measure, because it will assist us in diversifying our renewable energy mix and move us significantly forward toward the state mandate of 100% renewable generation by 2045. However, KIUC offers amendments to this bill.

Over the past 10 years, KIUC has significantly increased its renewable generation. In 2020, KIUC's energy mix included 67% renewable generation: leading the state. Renewable production is expected to be similar for 2021. For the past three years, KIUC has operated the Kaua'i electric grid at 100% renewable for thousands of consecutive hours on sunny days.

Solar facilities and battery storage systems connected to utility-scale solar facilities account for roughly two-thirds of our renewable production. Hydropower, as a "firm" energy resource, is an important complement to the intermittent nature of solar and contributes roughly 14% of our renewable production. Additional hydropower will be essential to KIUC meeting the State's 100% renewable mandate with the ability to deliver reliable and affordable electricity to our members. The West Kaua'i Energy Project (WKEP), which will utilize pumped storage hydro technology, is especially critical to KIUC's effort to deliver 100% renewable generation by 2045. In fact, if WKEP is successfully placed into service on the current development timeline, KIUC will achieve 85% renewable by 2026, significantly reducing greenhouse gas emissions well-before the state's established benchmarks.

Water licenses must be executed with the Department of Land and Natural Resources (DLNR) to enable the continued operation of the KIUC-owned Waiahi hydropower facilities and the successful development of WKEP.

Access to a long-term water license of up to fifty-five years is necessary for the financial feasibility of highly capital-intensive projects such as WKEP, which involves not only the construction of the renewable energy production facilities, but also the rehabilitation of state-owned legacy irrigation infrastructure which will deliver irrigation water to expand agricultural opportunities on the west side of Kauaʻi.

We appreciate the effort of DLNR to clarify the license application and approval process, and offer the following amendments which would facilitate timely adjudication of license applications:

Amend 171-58 (c) (1) (D) as follows (highlighted portion added):

The closing date and manner by which a person shall indicate interest and submit a statement of qualifications **which shall not exceed 60 days from the publication date;** and

Amend Page 3, lines 15-18 as follows (highlighted portion added):

If the board determines that there is more than one potential qualified bidder, then the board shall dispose of a license for water by public auction, **which shall commence no later than 120 days following such determination.**

We have made incredible progress on our renewable goals in large part due to your support. Mahalo for your consideration of this bill and our proposed amendments.



House Committee on Water & Land

Tuesday, February 8th, 2022, 9a.m. Conference Room 430

Hawai'i Alliance for Progressive Action Opposes: HB2164

Aloha Chair Tarnas, Vice Chair Branco and Members of the Committees,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA) I am submitting testimony in opposition of HB2164.

HB2164 concerns us greatly as it allows the Land Board to negotiate directly with stream diverters for long-term water licenses -- instead of going through a public auction -- without mechanisms to ensure that the environment and the rights and interests of the public are adequately protected.

While we agree that the current appraisal and public auction process may not be appropriate for the issuance of licenses for public trust water resources, the public trust and historical water disposition practices demand better safeguards in any alternative water disposition approach. HB2164 does not prevent streams from being completely dewatered, does not ensure that climate change impacts to our streams and aquifers will be considered, does not require water waste issues to be addressed, and does not provide an objective or concrete starting point for license appraisals, among many other deficiencies.

As written, HB2164 would enable the inappropriate exploitation of our water resources. HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years.

Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation.

Please defer HB2164.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read 'Anne Frederick', is written above the printed name.

Anne Frederick
Executive Director



Feb 7, 2022

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

The Ko'olau Waialua Alliance would like to express opposition HB2164, which could facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. More conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Please HOLD HB2164.

Mahalo nui for the opportunity to testify

Angela Huntemer for the members of the Ko'olau Waialua Alliance.

808-224-3101

koolauwaialuaalliance@protonmail.com

The Ko'olau Waialua Alliance is a grassroots network of residents and community groups across Oahu's north and windward shores that believes that our health and well-being are woven together in the same cloth, that problems affecting one community in the region threaten us all, and that works to foster a just and sustainable region for current and future generations.

HB-2164

Submitted on: 2/7/2022 11:03:14 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Pete Doktor	Wai Ola Alliance	Oppose	No

Comments:

Aloha `aina e Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

Please consider **OPPOSITION to** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for your commitment to public safety and health.

HB-2164

Submitted on: 2/5/2022 9:46:01 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
jennifer valentine	Individual	Oppose	No

Comments:

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD HB2164**.

Mahalo nui for the opportunity to testify,

HB-2164

Submitted on: 2/5/2022 9:55:18 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Amy Harlib	Individual	Oppose	No

Comments:

STOP GREEDY CORPORATE INTERESTS FROM STEALING OUR WATER!*Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,****I totally support the below statement from The Sierra Club of Hawaii:***

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD HB2164**.

*Mahalo nui for the opportunity to testify,**Amy Harlib*

HB-2164

Submitted on: 2/5/2022 11:02:02 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rik Masterson	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo nui for the opportunity to testify,
Rik Masterson

HB-2164

Submitted on: 2/5/2022 11:28:14 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Dylan Ramos	Individual	Oppose	No

Comments:

Aloha Chair Tarnas, Vice Chair Branco, and WAL Committee Members,

I strongly oppose HB2164. The ultimate responsibility of our water regulators is to protect and perpetuate Hawaii waters by organizing a sustainable resource management system serving the public interest. This bill fails to ensure protections for either the environment or public trust water resources. Please oppose any bills that do not include such protections, and furthermore, make sure that the Water Commission, DHHL, OHA, Native Hawaiian cultural practitioners, ecologists, rural and subsistence communities, and other key experts and stakeholders all have a greater say in the protection and management of our water.

Mahalo,
Dylan Ramos

HB-2164

Submitted on: 2/5/2022 11:39:01 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Patricia Blair	Individual	Oppose	No

Comments:

Absolutely not. This is a shameful bill promoted by DLNR.

HB-2164

Submitted on: 2/5/2022 11:48:44 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Denise Boisvert	Individual	Oppose	No

Comments:

Dear Chair Tamas, Vice Chair Branco, and House Water & Land Committee members,

Please kindly accept my **STRONG OPPOSITION** to HB2164.

It is very troubling in that there would be no transparency regarding the issuance of water licenses without a public auction. As much as all citizens hope that decisions would be fairly and honestly made, the lack of a transparent public auction clearly invites the opportunity for less than ethical practices in decision-making.

As public figures, I am sure that you would never want your constituents to have doubts, even if unmerited, about the decisions that you and others in government make.

Another astonishing component of this bill is the 55 year licenses! That is truly unfair to others who would want to apply for the rights but would have to wait practically their entire professional lifetime.

Please do not pass this bill.

Sincerely,

Denise Boisvet

HB-2164

Submitted on: 2/5/2022 12:04:55 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kim Jorgensen	Individual	Oppose	No

Comments:

Aloha. I am testifying to OPPOSE HB2164. The issuance of water rights should not be made "behind closed doors" but at a public auction. The lease term of 55 years is far too long, and especially when it comes to water - the essence of life - that should be readily accessible to all.

This is a very lop-sided bill that would ultimately only benefit large entities and possibly those who decide who gets the leases, and would be seriously detrimental to the environment, stream fishing, and rural farmers.

Thank you for your kind consideration of how this is not a good bill in any way, shape or form.

Testimony before WAL Committee

February 8, 2022

Regarding HB2164

I respectfully OPPOSE HB2164 , which may unduly facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time.

Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others in order to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation.

Water is too important in Hawaii—this Bill is absolutely cavalier in its loose terms for leasing such a valuable commodity. It may have been the way decades before, but we need modern, more careful and logical methods for now and in the future.

Accordingly, I respectfully urge you to HOLD HB2164.

Thank you for the opportunity to testify,

William Reese Liggett

HB-2164

Submitted on: 2/6/2022 4:56:42 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anne Massie	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo nui for the opportunity to testify,

Anne Massie

HB-2164

Submitted on: 2/6/2022 6:05:46 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ramona Hussey	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo nui for the opportunity to testify

Ramona Hussey

HB-2164

Submitted on: 2/6/2022 7:52:11 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
cheryl hendrickson	Individual	Oppose	No

Comments:

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD HB2164**.

Mahalo nui for the opportunity to testify,

HB-2164

Submitted on: 2/6/2022 9:12:57 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Linda Lyerly	Individual	Oppose	No

Comments:

Aloha Committe members and Chair:

I respectfully oppose this licensing bill as it does not give due process to water rights to the citizens/public of Hawaii. This bill is unfair an gives large corporate interests a giant advantage in procuring water (55yrs.!!) that quite possibly can dry up streams and/or stop reparian rights of smaller water users. Please oppose this bill and give our citizens the right to fair process and meaningful application to sharing our most precious resource.

Sincerely with Aloha,

Linda Lyerly, Lahaina, HI 96761

HB-2164

Submitted on: 2/6/2022 9:15:53 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Arnold Kotler	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo nui for the opportunity to testify.

HB-2164

Submitted on: 2/6/2022 12:16:26 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
tia pearson	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Until we can have reassurances that we are protected, this bill looks like it will take away our lives, liberties and the pursuit of our happiness.

Mahalo nui for the opportunity to testify,

HB-2164

Submitted on: 2/6/2022 3:02:41 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shannon Rudolph	Individual	Oppose	No

Comments:

OPPOSE

HB-2164

Submitted on: 2/6/2022 9:21:28 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shay Chan Hodges	Individual	Oppose	No

Comments:

My name is Shay Chan Hodges and I am a resident of Maui and the recent Chair of the Maui County Board of Water Supply. (My term ended in March of 2021.)

I respectfully OPPOSE HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time.

HB2164 allows the Land Board to negotiate directly with stream diverters for long-term water licenses -- instead of going through a public auction -- without mechanisms to ensure that the environment and the rights and interests of the public are adequately protected.

Protection of our public trust resources is vital. A 55-year lease would span more than two generations – and more and more often, potential lessees are global financial entities whose track records may not be immediately familiar to our residents and decision-makers.

One such entity is Mahi Pono, which is currently seeking 30-year leases for the Nāhiku, Ke'anae, Honomanū, and Huelo License in East Maui. The sole owner of Mahi Pono is a Canadian Pension Fund – the \$160 billion Public Sector Pension Investment Board – also known as PSP.

In December 2019, PSP was involved in a controversial water privatization initiative in [Australia's Murray-Darling Basin](#) that occurred during the midst of a crippling national drought and destructive forest fires. Last year, PSP was in the news for negligence and understaffing at their Revera elder care homes in Canada, followed by allegations of tax avoidance for the same elder care homes in the United Kingdom.

More recently, PSP's investment in Pretium Partners – which is listed in its 2021 Annual Report -- has been making headlines and catching the attention of US Senators. Pretium Partners is a New York-based investment firm whose business plan and investors are revealed in the [Pandora Papers](#), a trove of offshore financial records obtained by the [International Consortium of Investigative Journalists](#) (ICIJ).

Two months ago, the Washington Post reported on how Pretium Partners raised more than \$1 billion for the Progress Residential real estate venture, which reaped big profits from stressed American renters amid the housing affordability crisis by buying up housing and

aggressively evicting tenants. Progress makes money by reducing costs on maintenance and overhead, and raising rents and charging fees. According to the Washington Post:

While buying up block after block, Progress also has been accused of aggressively evicting tenants. Congress is investigating whether Progress and other major rental firms violated a national moratorium on evictions during the pandemic. Sen. Sherrod Brown (D-Ohio), chairman of the Senate Banking Committee, has requested that Progress explain why its pandemic-era eviction filings appear to have fallen more heavily on majority-Black communities.

A year ago, the Toronto Star published an article called: Why a Canadian Crown corporation is banking on the downfall of the American Dream. According to that article:

Pretium is in business, to the tune of almost \$900 million, with a Canadian Crown corporation called the Public Sector Pension Investment Board, or PSP...PSP's mission is to maximize returns without taking undue risks. And they're good at it. Canadian public pension funds generally are extremely effective and are the envy of the world.

Last month, Senator Elizabeth Warren wrote to Chaz Mueller, CEO of Progress Residential, noting:

Your tenants and former employees report seeing rent increases as high as 30% over the past five years and excessive fees for late rent payments, maintenance requests, and "eviction administration." These practices by Progress Residential and other private equity and investment firms have contributed to the greatest one-year increase in the cost of shelter for American consumers since 2007.

Mahi Pono/PSP is not the first extractive investor to see dollar signs in our islands -- nor will they likely be the last.

That is why it is of the utmost urgency that we ensure that the process for accessing water licenses includes sufficient statutory safeguards that can appropriately protect the rights and interests of the public, including reducing the length of time that a private entity can enter into a water lease.

Accordingly, I respectfully urge you to HOLD HB2164.

HB-2164

Submitted on: 2/7/2022 12:21:02 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Emma Stierhoff	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately people of the water they are rightfully entitled to. Further discussion is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license. HB2164 could deprive the public of necessary safeguards to protect their access to their most valuable resource. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to testify,

Emma Stierhoff

HB-2164

Submitted on: 2/7/2022 1:49:03 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sherry Pollack	Individual	Oppose	No

Comments:

I strongly oppose HB2164 that would allow the DLNR to issue 55-year water licenses through direct negotiation, rather than through the appraisal and public auction process currently required. I urge you to not pass this ill-advised measure.

HB-2164

Submitted on: 2/7/2022 2:01:17 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jason Mark Alexander	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to testify,

Jason Mark Alexander

HB-2164

Submitted on: 2/7/2022 9:24:14 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ashley Lee	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to testify,

Ashley Lee

HB-2164

Submitted on: 2/7/2022 10:20:49 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Laura Ramirez	Individual	Oppose	No

Comments:

Aloha,

I **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. I respectfully urge you to **HOLD** HB2164.

Mahalo,

Laura Ramirez and the Bettencourt family

HB-2164

Submitted on: 2/7/2022 10:35:40 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Greg Puppione	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo for your service to our community,

Greg Puppione

Mo'ili'ili

HB-2164

Submitted on: 2/7/2022 1:25:23 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Sheila Dean	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to HOLD HB2164.

Mahalo nui for the opportunity to testify,

HB-2164

Submitted on: 2/7/2022 1:41:55 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Robin Prais	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164 , which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to ***HOLD HB2164***.

Mahalo nui for the opportunity to testify,
Robin H. Prais

HB-2164

Submitted on: 2/7/2022 3:05:27 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Alexandra Skees	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to testify,

Alexandra Skees

HB-2164

Submitted on: 2/7/2022 5:08:47 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jessica Kuzmier	Individual	Oppose	No

Comments:

Aloha, I respectfully OPPOSE HB 2164, which as written may cause the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. At the minimum, its vague statutes need to be further discussed and quantified so that the needs of individual people, particularly kalo farmers and those who are preparing our land for a sustainable future.

Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation.

Accordingly, I respectfully urge you to HOLD HB2164.

Mahalo for taking the time to hear my testimony.

HB-2164

Submitted on: 2/7/2022 5:17:37 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jonilee Polanco	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to HOLD HB2164.

Mahalo nui for the opportunity to testify,

Jonilee Polanco

HB-2164

Submitted on: 2/7/2022 10:34:35 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Malachy Grange	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to HOLD HB2164.

Mahalo nui for the opportunity to testify,

Malachy Grange

HB-2164

Submitted on: 2/7/2022 11:38:55 PM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Rebecca Mattos	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to testify,

Rebecca Mattos

HB-2164

Submitted on: 2/8/2022 5:01:39 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ileana Ruelas	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully **OPPOSE** HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to **HOLD** HB2164.

Mahalo nui for the opportunity to provide testimony.

Ileana H Ruelas

HB-2164

Submitted on: 2/8/2022 5:39:02 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mary McClung Law	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee, I respectfully OPPOSE HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time.

55 years is not a timeframe that we can afford right now. We are already experiencing drought conditions on a regular basis, which means everyone draws more from the aquifers and also, rain is not replenishing the aquifers. This is the wrong moment in time to think about such long term leases. DLNR wants to rubber stamp these things and be done with them. But their job is to protect our resources, so if they won't, who will? It's left to you.

Do you realize some of the big boys don't worry about wells going saline? They say, oh there are some already. That is totally burying their head in the sand. Everyone knows that at some point it will be one too many, or too high and our aquifer will be ruined. How would you like to pin your name to that legacy?

I am a farmer, and we grow crops that do well within our rainfall, so we do not irrigate. This is more beneficial for the aquifers and should be taken into consideration when farming.

"Saltwater intrusion decreases freshwater storage in the aquifers, and, in extreme cases, can result in the abandonment of wells. Saltwater intrusion occurs by many ways, including lateral encroachment from coastal (Hawaii is all coastal) waters and vertical movement of saltwater near discharging wells. The intrusion of saltwater caused by withdrawals of freshwater from the groundwater system can make the resource unsuitable for use. Thus, groundwater management plans should take into account potential changes in water quality that might occur because of saltwater intrusion."

https://www.usgs.gov/mission-areas/water-resources/science/saltwater-intrusion?qt-science_center_objects=0#overview

Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public

and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to HOLD HB2164.

I also urge you to have conversations and study about how vulnerable island aquifers can be, including the state of Hawaiian aquifers, which are much lower than in the 1940s.

Mahalo nui for the opportunity to testify,

Mary McClung Law

HB-2164

Submitted on: 2/8/2022 7:32:30 AM

Testimony for WAL on 2/8/2022 9:00:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Makaiwa kanui	Individual	Oppose	No

Comments:

Dear Chair Tarnas, Vice Chair Branco, and members of the House Water & Land Committee,

I respectfully OPPOSE HB2164, which may facilitate the issuance of water licenses that inappropriately deprive our streams, estuaries, and aquifers, as well as the people, practices, and living things that depend on them, from the water they are rightfully entitled to, for up to 55 years at a time. Much greater conversation is needed between DLNR, the Water Commission, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, Native Hawaiian cultural practitioners, rural and subsistence communities, climate change experts, biologists, and others to develop sufficient statutory safeguards that can appropriately balance the rights and interests of the public and water licensees in the issuance of any water license through direct negotiation. Accordingly, I respectfully urge you to HOLD HB2164.

Mahalo nui for the opportunity to testify,

Makaiwa Kanui