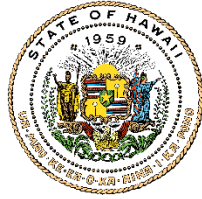
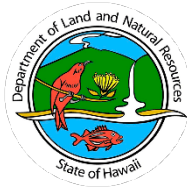


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

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DAWN N.S. CHANG
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M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
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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
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Monday, February 13, 2023
12:30 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 790
RELATING TO PROTECTION OF STREAMS

Senate Bill 790 proposes to prohibit the Board of Land and Natural Resources (Board) from approving any water use permit that authorizes diverting water from East Maui streams on public lands for commercial purposes, except for existing water uses by the Maui County Department of Water Supply. **The Department of Land and Natural Resources (Department) opposes this measure.**

The Department acknowledges that over the last 100 years diversions of water from streams in East Maui for commercial agricultural production has disproportionately and adversely impacted stream ecosystems, traditional and customary kalo cultivation, and downstream communities. However recent court decisions and actions by the Commission on Water Resource Management (CWRM) to balance the protection of water resources with reasonable and beneficial uses have provided a framework for a more equitable distribution of water from streams in East Maui to address the historic impacts to downstream uses, traditional and customary uses, and ecosystems. We believe that framework provides the Board the ability to more equitably allocate water distribution from the streams in East Maui to support both traditional and customary practices and stream ecosystems, and commercial agricultural production in a manner consistent with the public trust.

Article XI, section 2, firmly places the public trust duty to manage public lands and waters on the Board and CWRM. While CWRM's framework provides for equitable distribution of the waters from the streams in East Maui, it is the authority of the Board to appropriately approve the disposition of water rights, by either revocable permit or lease pursuant to Sections 171-55 and -58, Hawaii Revised Statutes, including the diversion of water from the east Maui streams. Additionally, this measure as drafted could

detrimentally impact the County of Maui Department of Water Supply's (DWS) ability to deliver water to Upcountry Maui water users. Withholding permits for water to the owners of the transmission system that delivers water to DWS to provide water service to residents of Upcountry Maui and to irrigate agricultural fields in Central Maui consisting of approximately 33,000 acres could jeopardize their ability or willingness to continue to operate the transmission system.

While the Department disagrees with the legislative findings that the Board has failed to: 1) comply with state laws regarding environmental impact statements, 2) limit diversions from public lands, 3) protect aquatic life, and 4) enforce permit condition, we understand the frustration. However, denying the Board the authority to approve water use permits is not the solution. Also, the Board has taken meaningful action to address these issues. A Final Environmental Impact Statement (FEIS) was completed, which was extensively reviewed by Department staff and accepted by the Board at its meeting on September 24, 2021, under agenda item D-4. Additionally, the Board has limited the amount of water diverted under the revocable permit to a current maximum of 40.49 million gallons per day (mgd), which is lower than the previous limit of 45mgd. Furthermore, the Board requires that diversions shall always comply with the Interim Instream Flow Standard (IIFS) as determined by CWRM. As part of the IIFS determination, CWRM considers the preservation of the instream environment, including stream life habitat, as well as protecting instream uses such as traditional and customary practices including kalo cultivation. Finally, the Board has continually updated revocable permit conditions as appropriate as part of the annual renewal process.

We respectfully ask that the Committee to reconsider this measure and permit the Board to continue to exercise its statutory authority.

SB-790

Submitted on: 2/12/2023 9:44:00 AM

Testimony for WTL on 2/13/2023 12:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Testifying for DLNR	Oppose	Remotely Via Zoom

Comments:

Request for Zoom link to testify on behalf of DLNR. Written testimony was submitted under the main DLNR testimony account and additional staff will be present to testify at the hearing. Thank you!



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February 13, 2023

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON SB 790
RELATING TO PROTECTION OF STREAMS

Conference Room 229 & Videoconference
12:30 PM

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

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

The Hawai'i Farm Bureau respectfully opposes SB 790, which would prohibit the use of diverted water from East Maui streams to irrigate small, medium, and larger farms on Maui Island, including kalo farmers.

SB 790 language:

"§171- Diversion of water from east Maui county streams. The board shall not approve any water use permit that authorizes the diversion of water from east Maui streams on public land for commercial purposes; provided that supplying water to existing water users under the Maui county department of water supply shall not be considered a commercial use."

The State Constitution, Article XI, Section 7, Water Resources, provides that the State has an obligation to protect, control, and regulate the use of Hawai'i's water resources for the benefit of its people. **One of those beneficial uses is to provide water for agriculture.** Under Section 3, Agricultural Lands, the State is obligated to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands. Without water for irrigation, this is not possible.

HRS §174C-2 (c) provides that the state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, **irrigation and other agricultural uses**, power development, and commercial and industrial uses while protecting traditional and customary Hawai'ian rights, fish and wildlife, ecological balance and scenic beauty, and the preservation and

enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. These objectives are declared to be in the public interest.

The Commission on Water Resource Management (CWRM) has the difficult job of issuing stream water diversion permits, but only after taking into account all of the many public interest objectives identified in the Constitution and all of the policies, procedures, and rules on stream protection and instream flow standards, water development and usage established in conformance with the State Water Code. CWRM also administers the investigation and enforcement actions necessary to ensure permit conformance.

HFB strongly supports the protection of Hawai'i's natural resources *and* the sharing of those precious resources for the benefit of our residents. Hawai'i's people clearly benefit from farming and ranching in the state but this bill would, unfortunately, have a detrimental impact on agriculture on Maui.

Thank you for the opportunity to testify on this matter of great importance to the agricultural community.



Senate Committee on Water and Land
Monday, February 13, 2023
12:30 PM
State Capitol Conference Room 229 & Videoconference

**In Opposition to
Senate Bill 790, Relating to Protection of Streams**

Good afternoon, Chair Inouye, Vice Chair Elefante, and members of the Senate Committee on Water and Land.

Mahi Pono strongly opposes Senate Bill No. 790, Relating to Protection of Streams.

Mahi Pono is a local Maui farming company that owns and operates over 41,000 acres of agricultural land in Central Maui. With our team of more than 300 Maui residents, we have planted approximately 1.7 million trees on 8,600 acres of land, including our current orchard and row crops of lime, lemon, orange, tangerine, coffee, avocado, macadamia nut, 'ulu, onion, kale, lettuce, watermelon, bananas, coconut, and lilikoi. In addition we have prepared more than 9,000 acres of pastureland to support Maui Cattle Company's grass-fed beef operations. The majority of the water used on our farm comes from East Maui via the East Maui Irrigation system. This bill, should it be enacted, would eliminate the primary source of irrigation water for almost 20,000 acres of currently active agriculture.

Mahi Pono complies with all state laws and regulations relating to water use, including terms and conditions set by the Board of Land and Natural Resources and the Commission on Water Resource Management. Our team also meets quarterly with East Maui water stakeholders to provide updates on our water use and farming progress.

Mahi Pono is committed to practicing sustainable agriculture, growing food for local consumption, and providing high-quality agricultural employment. We believe that Mahi Pono's farming activities will continue accelerating Hawaii's economic diversification while increasing local food production for our state.

Thank you for the opportunity to provide testimony on this measure.

SB-790

Submitted on: 2/10/2023 10:40:38 AM

Testimony for WTL on 2/13/2023 12:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Regina Gregory	Individual	Support	Written Testimony Only

Comments:

support

SB-790

Submitted on: 2/12/2023 2:55:55 PM

Testimony for WTL on 2/13/2023 12:30:00 PM

Submitted By	Organization	Testifier Position	Testify
penny levin	Individual	Support	Written Testimony Only

Comments:

in support

SB-790

Submitted on: 2/12/2023 7:36:12 PM

Testimony for WTL on 2/13/2023 12:30:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support SB790.