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Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Tuesday, March 21, 2023
2:00 PM

State Capitol, Conference Room 325 & Videoconference

In consideration of
SENATE BILL 44, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO STATE WATER CODE PENALTIES

Senate Bill 44, Senate Draft 2, House Draft 1 proposes to: 1) create a minimum penalty of \$50 for every violation of the State Water Code. Raises the maximum penalty to \$60,000 for every violation of the State Water Code. Clarifies that each day a violation exists or continues is a separate offense; 2) require the Commission on Water Resource Management (Commission) of the Department of Land and Natural Resources (Department) to determine the amount of the penalty based on the circumstances of the violation; and 3) appropriate funds for two-full-time equivalent (2.0 FTE) general professional positions in the Commission. **The Department strongly supports this measure.**

The Department appreciates the clarification of a continuing violation and the guidance for the determination of the penalty amount in the newly added subsection (c) to Hawai'i Revised Statutes (HRS) Section 174C-15. The guidance in subsection (c) corresponds with the Commission on Water Resource Management's (Commission) Administrative and Civil Penalty Guideline (G14-01)¹ that the Commission adopted on October 1, 2014.² The Department notes that G14-01 provides for an initial administrative fee of \$500, if the Commission issued a written notice of alleged violation, in addition to any fine.

The Department also appreciates the amendment made to the bill in Senate Draft 2, House Draft 1 to raise the penalty ceiling from \$25,000 to \$60,000 per violation to be consistent with Senate Bill 445, Senate Draft 2, House Draft 1 that proposes to increase the penalty ceiling of the Department of Health to \$59,973

¹ https://files.hawaii.gov/dlnr/cwrm/planning/wrpp2019update/WRPP_AppP_201907.pdf

² <https://files.hawaii.gov/dlnr/cwrm/submittal/2014/sb201410D1.pdf>

to increase deterrence and match penalties promulgated by the United States Environmental Protection Agency (EPA) for similar violations.

Finally, the Department also appreciates the amendment made to the bill in Senate Draft 2 to add an appropriation for two full-time equivalent (2.0 FTE) general professional positions.

This bill will support the Commission in its affirmative duty “*to protect, control and regulate the use of Hawaii’s water resources*” as articulated in article XI section 7 of the Constitution of the State of Hawai‘i. Currently, the Commission is overseeing 5,334 groundwater wells, 1,226 surface water diversion, and 376 perennial streams, 100 of which have a numeric interim instream flow standard that requires monitoring and enforcement. The Commission regulates the use of water in water management areas on the islands of O‘ahu, Moloka‘i and Maui with the total amount of 411 groundwater use permits and 176 surface water use permits. Many violations go unchecked due to the limited number of Commission staff, none of which are dedicated solely to investigating and correcting violations.

Mahalo for the opportunity to provide testimony in strong support of this measure.