

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

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Tuesday, March 19, 2024
9:30 AM

State Capitol, Conference Room 430 & Videoconference

In consideration of
HOUSE CONCURRENT RESOLUTION 158 / HOUSE RESOLUTION 137
REQUESTING A TASK FORCE TO BE ESTABLISHED TO RECOMMEND CHANGES
TO THE STRUCTURE AND ADMINISTRATION OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT TO IMPROVE ITS
OPERATIONS AND FUNCTIONS AND PROTECT ITS MISSION.

House Concurrent Resolution 158 and House Resolution 137 requests that a task force be established to recommend changes to the structure and administration of the Commission on Water Resource Management (Commission) to improve its operations and functions and protect its mission. **The Department of Land and Natural Resources (Department) strongly opposes this measure.**

To properly fulfill the Department's and Commission's missions, the consideration of water and land together is integral. Water and land are interconnected in a cultural and ecosystem 'āina based management process, which the Department deploys. The Department finds that the Commission regularly addresses highly complex water issues in close collaboration with numerous government agencies and community organizations, where the Chairperson often serves as the delegated representative on behalf of the entire Commission. Thus, the Department views any changes to the structure and administration of the Commission as disruptive.

If the Legislature intended the Commission to be administratively attached to the Department only, an express statement of such would have been included in the State Water Code, Hawai'i Revised Statutes Chapter 174C. It appears the proposed task force is being made in response to the Maui wildfires and the deployment of the Commission's Deputy Director and not necessarily in the best interest of

improving the Commission's operations and functions or protecting the Commission's mission. Thus, the Department does not support the establishment of a task force to recommend changes.

Thank you for the opportunity to testify in opposition of this measure.

BOARD OF WATER SUPPLY
KA 'OIHANA WAI
CITY AND COUNTY OF HONOLULU

630 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96843
Phone: (808) 748-5000 • www.boardofwatersupply.com

RICK BLANGIARDI
MAYOR
MEIA

ERNEST Y. W. LAU, P.E.
MANAGER AND CHIEF ENGINEER
MANAKIA A ME KAHU WILIKI

ERWIN KAWATA
DEPUTY MANAGER
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GENE C. ALBANO, P.E., Ex-Officio

March 19, 2024

The Honorable Linda Ichiyama, Chair
and Members
House Committee on Water and Land
Hawai'i State Capitol, Room 430
Honolulu, Hawai'i 96813

Dear Chair Ichiyama and Members:

Subject: HCR 158/ HR 137: Requesting a Task Force to be Established to Recommend Changes to the Structure and Administration of the Commission on Water Resource Management to Improve Its Operations and Functions and Protect Its Mission

The Honolulu Board of Water Supply (BWS) supports House Concurrent Resolution (HCR) 158, House Resolution (HR) 137, requesting a task force to be established to recommend changes to the structure and administration of the commission on water resource management (Commission) to improve its operations and functions and protect its mission.

The BWS has provided testimony on a similar measure this legislative session on supporting an amendment to replace the chairperson of the Commission to an executive director. The BWS strongly supported this amendment, but that measure is no longer moving through this session, as it has missed its referral deadline. Water is a critical resource to life, health, and our well-being. The Red Hill crisis reinforced the importance of our aquifer. Ola I ka Wai = "Water is Life" for all the people of Hawai'i. When the BWS was created back in the late 1920s, the territorial legislature also saw the problems with political influence over decisions related to water, which is vital for life.

Establishing a task force as a separate entity outside the Commission may serve well in identifying the strengths and weaknesses of the structure and administration of the Commission and its mandate to have the waters protected for the benefit of the citizens of the State. State Administrative Rules (Administrative Rules) add specificity, clarify,

The Honorable Linda Ichiyama, Chair
and Members
March 19, 2024
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and provide uniform administrative procedures for all state and county boards, commission, departments or offices. Administrative Rules allow or afford all interested persons the opportunity to submit data, views, or arguments, orally or in writing.¹ The establishment of a task force may be helpful to revisit or amend the Administrative Rules and formulate a water shortage plan, which is long overdue since the inception of the State Water Code [L 1987, c45, pt of §2].

Thank you for the opportunity to testify on HCR 158 / HR 137.

Very truly yours,



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



¹ Hawaii Revised Statutes, §91-3 – Procedure for adoption, amendment, or repeal of rules.



REPRESENTATIVE LINDA ICHIYAMA, CHAIR
REPRESENTATIVE MAHINA POEPOE, VICE CHAIR
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY IN OPPOSITION TO HOUSE CONCURRENT RESOLUTION NO. 158

March 19, 2024, 9:30 a.m.
Room 430 State Capitol
415 South Beretania Street

Dear Chair Ichiyama, Vice-Chair Poepoe, and Committee Members:

Earthjustice submits this testimony in **opposition to House Concurrent Resolution No. 158**. Our office has decades of experience in Hawai'i water law, including precedent-setting Hawai'i Supreme Court cases interpreting and implementing our Water Code, Hawai'i Revised Statutes ("HRS") chapter 174C. Earthjustice appreciates the extensive findings made in HCR 158, particularly the recognition that the Water Commission faces "political and legal vulnerabilities" that "unduly impede its important work," and the acknowledgement that the BLNR Chair and the Attorney General "wield considerable influence" over the Commission and its staff. Yet, despite these findings and the confirmation that "it is crucially important to provide greater layers of political and legal insulation" to the Commission, the resolution takes no concrete action to help the Commission fulfill its vital, constitutionally mandated role free from political interference.

The Commission needs proactive solutions *now*. Senate Bill 3327 SD1 HD 1, would implement solutions to address the concerns raised in this resolution by implementing long-overdue recommendations to improve the Code and help protect the Commission from undue political influence and interference, ensure its independence and objectivity, and restore the public's trust and confidence in the Commission and the rule of law. We oppose the creation of a task force to duplicate work done 30 years ago by the 1994 Review Commission and, instead, strongly urge members of the House to support and move SB 3327 SD 1 HD 1.

Mahalo for the opportunity to testify. Please do not hesitate to contact us with any further questions or for further information.


Elena L. Bryant, Esq.

Earthjustice, Mid-Pacific Office

MID-PACIFIC 850 RICHARDS STREET, SUITE 400 HONOLULU, HI 96813

T: 808.599.2436 F: 808.521.6841 MPOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

STATE OF HAWAI‘I
KĀNE‘OHE BAY REGIONAL COUNCIL

P.O. Box 621
Honolulu, Hawai‘i 96809

House Committee on Water and Land
Hearing: March 19, 2024, at 9:30 AM
State Capitol, Conference Room 430

Aloha Chair Ichiyama, Vice Chair Poepoe, and Honorable Committee Members,

The Kāne‘ohe Bay Regional Council (KBRC) submits this testimony in **opposition** to HCR No. 158. The KBRC was established by the State Legislature in 1993 to, among other things, serve as the advocate for Kāne‘ohe Bay; advise the State and County regarding public policy and legislative matters impacting Kāne‘ohe Bay; and implement the goals and recommendations set forth in the Kāne‘ohe Bay Master Plan. Pono stewardship of our limited freshwater resources is critical to the health and resiliency of Kāne‘ohe Bay.

The KBRC opposes this measure because, despite finding that “it is crucially important to provide greater layers of political and legal insulation” to the Water Commission, this resolution offers nothing actionable to address the serious and ongoing concerns regarding the Commission’s “political and legal vulnerabilities.” Last week, this Committee passed SB 3327 SD 1 HD 1, which proposes amendments to strengthen the Water Code by ensuring the Water Commission’s independence and objectivity and granting the Commission the administrative tools it needs to kahuwai pono according to its constitutional and statutory mandates. SB 3327 would address the concerns raised in HCR No. 158 now. Please do not continue to kick the can down the road; we need a kahuwai pono now more than ever.

In sum, the KBRC urges members of the House to oppose HCR No. 158 and, instead, continue to support and move SB 3327 forward. Thank you for the opportunity to provide testimony.

Respectfully submitted,
KBRC Legislative Committee
on behalf of the *Kāne‘ohe Bay Regional Council*

Tuesday, March 19, 2024 @ 9:30 AM
House Committee on Water and Land
State Capitol Conference Room 430 and via Videoconference

Written Testimony in Opposition of HCR158: Establishment of Water Commission Task Force

Aloha Chair Ichiyama, Vice Chair Poepoe, and Honorable Committee Members,

My name is Chiemi Bryant, and I live in Kāneʻohe. I am a second-year law student at the William S. Richardson School of Law participating in the Native Hawaiian Rights Clinic.

Thank you so much for acknowledging the concerns raised by the community about the inherent conflicts between the Department of Land and Natural Resources and Water Commission. While I appreciate the good intentions behind this resolution, I am writing to urge you to be bold in this time of great uncertainty. The people of Lahaina are looking to you to act in the public's best interest. Please do not be a bystander in this decades long struggle to uphold protections for Hawaii's public trust waters.

Instead of passing HCR158, please urge the House Judiciary and Hawaiian Affairs Committee to hear SB3327, SD1 HD1 and make it effective immediately. HCR158 will not help the Water Commission hold violators accountable. It will not allow the Water Commission to be more responsive in times of emergency, including with temporary housing for Maui fire victims, Red Hill, and beyond. A 1994 Review Commission established by the legislature for this purpose has already produced an extensive report detailing recommended changes to the State Water Code. These amendments are contained in SB3327, SD1 HD1.

For these reasons, I respectfully request that the Committee defer HCR158 and support SB3327, SD1 HD1. Mahalo for the opportunity to testify.

Ola i ka wai!

Chiemi Bryant