

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
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

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

Testimony of
RYAN K.P. KANAKA'OLE
Acting Chairperson

Before the House Committee on
WATER & LAND

Thursday, February 12, 2026
9:00 AM
State Capitol, Conference Room 411

In consideration of
HOUSE BILL 2434
RELATING TO WATER

House Bill 2434 establishes a new framework in Chapter 171, Hawai'i Revised Statutes, governing the issuance of state water licenses. The bill requires the Department of Land and Natural Resources (Department) to provide counties and their subdivisions priority and a right of first refusal to enter into intergovernmental agreements for the disposition of water resources or water infrastructure before considering applications from other entities. The bill presumes that county or subdivision applications serve the public interest, subject to compliance with the public trust doctrine, and limits approval of non-county applications unless the county declines or an intergovernmental agreement would be inconsistent with the public trust. For non-county applicants, the bill establishes a rebuttable presumption that certain ownership, financing, or management structures are inconsistent with the public trust and requires applicants to satisfy specified criteria to rebut that presumption. The bill further limits water licenses issued to non-county applicants to a maximum term of five years, with a possible one-time extension, and grants counties a right of first refusal upon license expiration. **The Department offers the following comments.**

First, the Department has concerns regarding the administrative and workload impacts on the Land Division. Under existing practice, Land Division review of water licenses considers whether a proposed use is reasonable and beneficial, consistent with public trust purposes, and compatible with other applicable requirements. As drafted, the bill would require additional procedural steps for water license processing, including mandatory county notification, tracking of rights of first refusal, application of rebuttable presumptions, and more frequent license renewals due to the proposed five-year term limit for non-county applicants. These requirements would substantially increase staff workload. The bill does not provide additional staffing or

resources to support these new responsibilities, and the Department is concerned about the potential for increased backlogs and delays affecting all land and water dispositions. The Department also notes that it may be difficult to implement county prioritization in situations where water diversion or delivery infrastructure is privately owned, and counties may not have access to or control over the facilities necessary to convey the water.

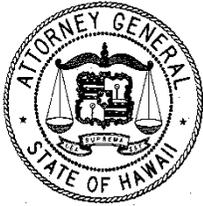
Second, the Department notes that, in practice, counties are generally able to request set-asides of State lands, and those requests can often be processed more efficiently than formal water licenses. These existing tools allow for coordination with other divisions and agencies as appropriate. From an operational perspective, set-aside requests provide an existing mechanism to facilitate State-to-county disposition of water for public purposes, when appropriate.

Third, the Department has concerns regarding the five-year cap on water licenses issued to non-county applicants. Short license terms can disincentivize long-term planning, infrastructure investment, and system improvements, all of which are important to responsible water management and stewardship. Longer-term licenses, when appropriately conditioned and monitored, can provide the stability needed to support efficient use while still preserving the State's ability to protect public trust resources.

Finally, the Department emphasizes the importance of fact-specific, case-by-case analysis in water management decisions. Hawai'i's public trust doctrine, as articulated by the Hawai'i Supreme Court, requires the State and its subdivisions to weigh competing public and private water uses, as well as instream and offstream uses, on a case-by-case basis. Existing tools under the State Water Code, such as instream flow standards, are designed to be targeted and specific, with thorough analysis and fact-finding. The Department has concerns that broad presumptions based on applicant type may not fully account for the specific proposed use or actual needs being served, which are typically evaluated on a case-by-case basis under existing law.

For these reasons, the Department respectfully offers these comments and encourages continued discussion regarding how best to achieve the bill's stated objectives while maintaining consistency with existing law, administrative capacity, and effective water resource management.

Mahalo for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:
H.B. NO. 2434, RELATING TO WATER.

BEFORE THE:
HOUSE COMMITTEE ON WATER & LAND

DATE: Thursday, February 12, 2026 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 411

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Alyssa-Marie Y.H. Kau, Deputy Attorney General

Chair Hashem and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments on this bill.

The purpose of this bill is to establish a framework that provides counties or their subdivisions priority and a right of first refusal to obtain intergovernmental agreements related to the disposition of water resources for public purposes. This bill also establishes criteria to be applied when determining that the issuance of a state water license is in the best interests of the State.

I. Vagueness and Unequal Application Concerns

The Department has several concerns regarding this bill's use of undefined and potentially selectively applied standards in the water licensing process.

First, this bill raises potential vagueness concerns under principles of due process. The terms "functional characteristics of ownership or management structures" contained on page 2, line 14, through page 3, line 5, and "layered ownership or control that obscures ultimate decision-making authority" on page 2, lines 16-17, lack definition or objective criteria. It is unclear whether the provisions are intended to apply to non-county applicants, private applicants, or another class of entities. Although the bill later refers to "functional control review" and "functional characteristics of ownership or management structures," the terminology is not defined or used uniformly, which creates ambiguity and may present challenges in implementation and enforcement.

The Department is also concerned that this bill appears to apply these undefined standards primarily to private applicants for water licenses. If this bill is interpreted or applied in a manner that primarily or exclusively scrutinizes private applicants, private applicants could be subject to additional qualitative scrutiny not imposed on public applicants that are competing for the same water license, and this bill fails to articulate a clear governmental objective justifying that differential treatment.

II. Conflict With Chapter 171, HRS, and Public Auction Framework

In addition to definitional concerns, the bill may conflict with existing statutory licensing structures. The bill also categorically limits a water license to non-county entities to no more than five years on page 7, lines 8-10. Chapter 171 generally vests the Board of Land and Natural Resources (BLNR) with broad discretion over the terms and conditions of dispositions of public lands and interests. Section 171-58, HRS, authorizes the BLNR to issue water licenses through a public auction process. The public auction framework establishes an upset rent based on fair market value and awards the license to the highest qualified bidder. An absolute five-year maximum term could discourage participation by bidders whose investments require a longer amortization period, depress fair market calculations, and undermine the economic structure assumed by the public auction process that would render section 171-58, HRS, impracticable.

Further, requiring BLNR to simultaneously conduct a qualitative analysis of "functional" ownership or management characteristics could undermine the public auction process. It is also unclear whether BLNR possesses discretion to select among private applicants outside of the auction framework if BLNR were to overcome the rebuttable presumption as outlined under this bill. Such discretion would appear to conflict with the statutory structure governing public auctions for water licenses.

III. Public Trust Doctrine and Statutory Conflicts

This bill also defines "public trust uses" on page 3, line 20, through page 4, line 5. Hawaii's public trust doctrine arises from article XI, section 7, of the Hawai'i State Constitution. The Hawai'i Supreme Court has repeatedly emphasized that public trust purposes are not limited to a fixed set of categories. *See, e.g., In re Water Use Permit*

Applications, 94 Hawai'i 97, 135, 9 P.3d 409, 447 (2000) (citations omitted) ("The public trust, by its very nature, does not remain fixed for all time, but must conform to changing needs and circumstances."). Rather than fixing rigid categories, the Hawai'i Supreme Court endorsed an ongoing balancing framework administered through the Commission on Water Resource Management (CWRM) and implemented through chapter 174C, HRS, particularly following the designation of a water management area.

Water use permitting involves the regulation of the quantity of water that existing users may withdraw or use. By contrast, a water license is a disposition authorizing the use of water where no such common law right exists. Even where a water license is issued, the licensee remains subject to water use permitting requirements administered by CWRM. This bill's provisions may conflate these distinct statutory roles and processes and may be interpreted as reallocating responsibilities to BLNR.

IV. Definition of "Subdivision"

Finally, the term "subdivision" as defined on page 4, lines 6-8, appears to mean a county government administrative agency "that manages water resources or infrastructure." In view of the word "subdivision" being commonly used to refer to a subdivided parcel of land, perhaps another word could be used to refer to the county government administrative agencies that manage water resources or infrastructure to avoid misinterpretation.

Thank you for the opportunity to submit comments.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



WENDY GADY
EXECUTIVE DIRECTOR

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
HUI HO'OU LU AINA MAHIAI

TESTIMONY OF WENDY L. GADY
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE HOUSE COMMITTEE ON WATER & LAND
February 12, 2026
9:00 AM
Conference Room 411 & Videoconference

HOUSE BILL NO. 2434
RELATING TO WATER

Aloha Chair Hashem, Vice Chair Morikawa, and Members of the Committee:

The Agribusiness Development Corporation (ADC) respectfully submits testimony in opposition to HB 2434.

While we recognize the importance of the public trust doctrine, this measure as drafted poses significant risks to the stability of Hawaii agricultural infrastructure and the long-term viability of the farming community.

As the state agency responsible for managing vital irrigation systems across the islands including the Waiahole Water System on Oahu and the Kekaha Ditch and Drainage System, the Kokee System, and the East Kauai Irrigation System on Kauai, the ADC finds the proposed framework fundamentally unworkable for agricultural stewardship. These Kauai systems are essential for the west side and eastern agricultural regions, providing the necessary water for thousands of acres of productive farmland.

HB 2434 introduces provisions that would disrupt the long-term planning horizons essential for successful agribusiness operations. The bill limits water licenses for non-county applicants to a five-year term with only a single five-year extension. Agricultural operations, particularly those involving perennial crops and large-scale irrigation systems, require decades of reliable water access to justify the massive capital investments needed for infrastructure and soil conservation. A five-year limit introduces critical uncertainty and makes long term financing of

infrastructure nearly impossible. Furthermore, by establishing a rebuttable presumption that non county applicants are inconsistent with the public trust based on complex ownership or financial structures, the bill creates an adversarial environment for legitimate agricultural water operators.

The ADC primary mission is to protect and advance the interests of Hawaii diverse agricultural community, and this bill threatens that mission. Water allocation decisions must be guided by public trust responsibilities rather than jurisdictional status. By granting counties a priority right of first refusal, the bill creates a presumption favoring certain applicants before a full public trust analysis is conducted. The Hawaii Constitution recognizes the promotion of agriculture as a vital public purpose. Statutory priority for counties should not supersede the state's duty to ensure water remains available for food security and rural economic stability. A county right of first refusal at the expiration of a license could strip the ADC of its ability to manage the irrigation resources it was specifically created to oversee.

HB 2434 would create unintended uncertainty for the agricultural water users and landowners who provide the foundation for our state food security. A balanced framework must support responsible water management while preserving long term agricultural viability.

For these reasons the Agribusiness Development Corporation respectfully requests that this committee hold HB 2434.

Mahalo for the opportunity to provide testimony on this measure.

February 10, 2026

Lahaina, HI 96761

Representative Mark Hashem, Chair
Committee on Water and Land
State of Hawaii

To: Chair and Committee Members
Subject: H.B. No.2434

I am a resident of Maui, a scientist who studies water and a member of the Board of Water Supply for Maui County. I am writing here, as a private citizen, in support of HB2434.

The water problems on Maui derive from hundreds of years of mis-management by plantations and subsequent decades of irrational land-use under multiple County administrations. These structural planning problems are exacerbated by the confusion of water utilities that operate on Maui and *the fact that no single entity has responsibility, and authority, for and over, the integrity of the water supply as a whole; as a system. More fundamentally, there is no coherent, enforceable legal framework that encompasses all water producers and protects the public trust.*

Bill HB2434 is a opportunity to change this slow-moving train-wreck that will lead to irreversible damage to our water supplies. The evidence is already apparent and supported by data that should not be ignored. The current approach is not sustainable and this bill is a hopeful sign that it could change for the better.

Below are suggestions for amendments that the committee might consider to tighten up apparent loopholes lurking in the language of the current draft. The amendments strengthen enforcement and close procedural loopholes without altering the bill's core intent.

1. **County Priority Protection.** Require affirmative written declination by counties and allow tolling of the 90-day response period when additional time is justified, preventing loss of priority through inaction.
2. **Defined Good-Faith Negotiation** Establish minimum standards for intergovernmental negotiation and documentation to ensure meaningful engagement and transparency.
3. **Structural Presumption for Non-County Applicants** Apply the rebuttable presumption to all non-county applicants as a class, preventing corporate structuring to

evade review.

4. **Enforceable Community Participation** Require written findings demonstrating that community input materially influenced decisions affecting water resources.
5. **Limits on Delegation** Restrict long-term delegation of operational control or rate-setting authority by counties to private entities without public-trust findings and approval.
6. **Automatic Reversion** Provide that water licenses held by non-county entities revert to the county upon expiration unless affirmatively inconsistent with the public trust.
7. **Enforcement Authority** Explicitly authorize inspections, audits, penalties, suspension, and revocation to ensure compliance.
8. **Non-Waiver of Public Trust** Clarify that no agreement or license may waive or limit the State's public-trust obligations.

Mahalo for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Helly". The signature is written in a cursive, flowing style with a large initial "J".

John J. Helly, PhD

Mayor



JOSIAH K. NISHITA
Managing Director

OFFICE OF THE MAYOR
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

TO: Representative Mark J. Hashem, Chair
Representative Dee Morikawa, Vice Chair
Committee on Water & Land

Representative David A. Tarnas, Chair
Representative Mahina Poepoe, Vice-Chair
Committee on Judiciary & Hawaiian Affairs

FROM: Richard T. Bissen, Jr., Mayor
Gina Young, Director of East Maui Water Authority

DATE: February 11, 2026

SUBJECT: **SUPPORT OF HB2434, RELATING TO WATER**

Thank you for the opportunity to testify in **SUPPORT** of this important measure.

The Act establishes a framework that provides counties or their subdivisions priority and the right of first refusal to obtain intergovernmental agreements related to the disposition of water resources for public purposes. The act also establishes criteria to be applied when determining whether the issuance of a state water license is in the best interest of the State.

We **SUPPORT** this measure for the following reasons:

Providing counties or their subdivisions with the right of first refusal advances the ability of departments like the East Maui Water Authority to carry out the principles and purposes of the Public Trust Doctrine and provide public management of water resources in the public's interest.

Mahalo for your consideration.

HB-2434

Submitted on: 2/10/2026 5:03:10 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Brandon Makaawaawa | Nation of Hawai'i | Support | Written Testimony Only |

Comments:

Testimony in support of HB2434

The Nation of Hawai'i recognizes the vital importance of water resources to the well-being, culture, and self-determination of Native Hawaiians. H.B. 2434 is an important and welcome measure because it reaffirms that water is a public trust resource and establishes a governance framework that prioritizes public stewardship, transparency, and long-term responsibility over opaque or extractive control. By recognizing county and subdivision responsibility for water resources and applying heightened scrutiny to non-county applicants, the bill advances water governance that is more accountable and consistent with Hawai'i's constitutional public trust obligations.

For Native Hawaiians, water is not merely an infrastructure resource, but the foundation of the ahupua'a system and a living element of cultural practice, subsistence, and identity. H.B. 2434's explicit recognition of Native Hawaiian traditional and customary practices as public trust uses is therefore especially significant. The bill's emphasis on transparency, reinvestment in infrastructure and watersheds, and meaningful community participation reflects principles long advanced by Native Hawaiian communities.

Recent experience in Hawai'i demonstrates that county-linked governance can meaningfully empower communities when it is structured at the watershed level and grounded in democratic legitimacy. The East Maui Water Authority provides a concrete example of how voter-mandated, community-governed water stewardship can align county responsibility with public trust obligations while centering Native Hawaiian rights, traditional and customary practices, and long-term watershed health. The East Maui experience shows that county priority, when paired with community-based governance, can strengthen rather than dilute Native Hawaiian participation and stewardship.

To fully realize the promise of H.B. 2434, the Nation of Hawai‘i respectfully urges that the bill’s county-priority framework be clarified to encourage and prioritize governance structures modeled on the East Maui Water Authority and similar community water authorities. Conditioning the presumption afforded to county or subdivision proposals on the adoption of watershed-level, community-governed structures would ensure that county priority advances equity, cultural continuity, and constitutional fidelity alongside reliability and accountability.

Such an amendment would strengthen H.B. 2434 by making explicit that county priority is most appropriate where counties or subdivisions operate through, or in partnership with, community water authorities that include meaningful Native Hawaiian representation, enforceable protections for traditional and customary practices, and robust transparency and public oversight.

With these clarifications, H.B. 2434 can serve as a durable and equitable model for water governance—one that honors Native Hawaiian rights, fulfills the State’s public trust obligations, and promotes long-term stewardship for present and future generations. For these reasons, the Nation of Hawai‘i supports H.B. 2434 and respectfully requests consideration of amendments that further align county priority with the East Maui Water Authority model of community-based water governance.

Aloha,

Brandon Maka'awa'awa

Vice President, Nation of Hawaii



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e-mail info@hfbf.org; www.hfbf.org

February 12, 2026

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 2434
RELATING TO WATER

Conference Room 411 & Videoconference
9:00 AM

Aloha Chair Hashem, Vice-Chair Morikawa, 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 provides comments on HB 2434, which establishes a framework that provides counties or their subdivisions priority and the right of first refusal to obtain intergovernmental agreements related to the disposition of water resources for public purposes and establishes criteria to be applied when determining that the issuance of a state water license is in the best interest of the State.

Water is essential to agriculture in Hawai'i. Reliable, predictable, and long-term access to irrigation water is necessary for food production, land stewardship, infrastructure investment, and the economic viability of farming operations. Perennial crops, irrigation systems, and soil conservation practices are built around long planning horizons that depend on water stability.

HFB recognizes the importance of the public trust doctrine and the role of counties and state agencies in ensuring responsible water management. We also recognize that transparency, accountability, and long-term stewardship are critical components of Hawai'i's water system.

At the same time, HB 2434 raises concerns regarding how changes to the water license framework may affect agricultural water users. Limiting non-county water licenses to five-year terms, with only a single extension, may introduce uncertainty for agricultural operations that require long-term planning and capital investment. Water systems serving agricultural lands often involve significant infrastructure, maintenance, and financing commitments that extend well beyond a five-year horizon.

In addition, the establishment of rebuttable presumptions based on ownership structure or governance characteristics may create unintended uncertainty for legitimate agricultural water operators and landowners. Clear, objective standards are important to ensure that water allocation decisions remain focused on beneficial use, stewardship, and public interest considerations.

Hawai'i's Constitution recognizes both the protection of natural resources and the promotion of agriculture as public purposes. A balanced framework that supports responsible water management while preserving long-term agricultural viability is essential to the State's food security and rural economy.

The Hawai'i Farm Bureau respectfully encourages careful consideration of how HB 2434 may affect agricultural water stability and long-term planning, and we look forward to continued dialogue on policies that support both responsible stewardship and local food production.

Thank you for the opportunity to provide testimony.



TESTIMONY IN STRONG SUPPORT OF HB2434, RELATING TO WATER

HOUSE COMMITTEE ON WATER & LAND

February 12, 2026

To the Honorable Chair and Members of the Committee:

The Democratic Party of Hawai'i strongly supports HB2434. This measure is vital for the protection of Hawai'i's most precious resource, ensuring that water management remains transparent, public-centered, and aligned with our state's long-term sustainability goals. This bill directly advances our Party's legislative priorities regarding the public trust doctrine, ecological restoration, and food self-sufficiency.

Upholding the Public Trust and State Ownership

Our platform is clear: we support policies that recognize state ownership of water and the public trust doctrine. HB 2434 strengthens these principles by:

- **Prioritizing Public Use:** By granting counties the right of first refusal for intergovernmental agreements, the bill ensures that water is managed by public agencies for the public good, rather than being diverted for private gain without sufficient oversight.
- **Diligent Stewardship:** The bill's requirement for a "functional control analysis" ensures that the state maintains its ultimate responsibility for sustainable management, preventing the transfer of resource control to entities that do not prioritize the community's long-term health.

Cultivating Food Security and Self-Sufficiency

The preservation and cultivation of our land and marine agricultural resources are entirely dependent on equitable water distribution. Without secure access to water, Hawai'i cannot achieve true food security. HB 2434 supports our agricultural goals by:

- **Ensuring Water Availability:** Protecting the supply for current and future generations of farmers and food producers.
- **Equitable Distribution:** Creating a framework where water is shared safely and healthily among all residents, supporting the diversified agriculture necessary to feed our islands.

Ecological Restoration and Community Planning

True water security requires "ecological restoration, community stewardship, and planning." HB 2434 fosters this environment by encouraging collaboration between the State and Counties. This intergovernmental approach ensures that water management is informed by local knowledge and specific ecological needs, protecting the integrity of our watersheds.

The Democratic Party of Hawai'i respectfully urges the Committee on Water & Land to PASS HB2434. We must ensure that our water resources remain a public trust, managed with the transparency and care that the people of Hawai'i deserve.

Mahalo nui loa for the opportunity to testify in strong support of HB2434. Should you have any questions or require further information, please contact the Democratic Party of Hawai'i at legislation@hawaiidemocrats.org.

HB-2434

Submitted on: 2/10/2026 3:10:16 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--------------|--------------------|------------------------|
| Toni Eaton | Individual | Support | Written Testimony Only |

Comments:

Aloha Chair, Vice Chair, and Members of the Committee:

My name is Toni Eaton, and I respectfully submit testimony in strong support of HB2434.

HB2434 represents a monumental and historic step forward in strengthening Hawai‘i’s water governance framework at a time when climate change, population pressures, wildfire risk, and competing demands are testing the resilience of our public trust resources. Water is not simply a commodity in Hawai‘i — it is a public trust resource protected under Article XI, Section 7 of the Hawai‘i Constitution. This bill advances that constitutional mandate.

First, HB2434 reinforces the State’s obligation to actively manage and protect water resources for present and future generations. The Hawai‘i Supreme Court has repeatedly affirmed, in cases such as *Waiahole Ditch* and subsequent public trust decisions, that the State has an affirmative duty to protect instream flows, Native Hawaiian traditional and customary rights, ecological integrity, and reasonable-beneficial uses. Strengthening statutory authority and administrative clarity ensures that this duty is not merely theoretical, but operational.

Second, modern water management must reflect today’s realities. Hawai‘i is facing:

- Increased drought frequency and severity
- Heightened wildfire risk due to unmanaged or misallocated water systems
- Aging plantation-era infrastructure
- Competing municipal, agricultural, ecological, and cultural demands

HB2434 acknowledges that legacy systems designed for a different era cannot meet 21st-century challenges without reform. By improving oversight, accountability, and adaptive management tools, this bill positions Hawai‘i to respond proactively rather than reactively to water crises.

Third, this legislation supports long-term watershed health and sustainability. Healthy forests, functioning streams, and restored aquifers are foundational to economic stability, food security, and disaster resilience. Water policy cannot be separated from land use, wildfire prevention, or housing development. Strengthening water governance provides the structural backbone necessary for responsible growth and environmental stewardship.

Fourth, HB2434 promotes transparency and public confidence. Water conflicts in Hawai'i have historically eroded trust between communities, government agencies, and private interests. Clear statutory guidance and enforceable standards help ensure that decision-making is consistent, evidence-based, and aligned with the public trust doctrine.

Importantly, this bill is not anti-development nor anti-agriculture. Rather, it promotes responsible and reasonable-beneficial use consistent with constitutional and cultural mandates. Sustainable economic activity depends on reliable, equitably managed water systems.

In a time when many regions of the country are experiencing severe water scarcity and governance failures, Hawai'i has the opportunity to lead. HB2434 reflects forward-thinking policy grounded in constitutional principles, cultural recognition, and environmental stewardship.

For these reasons, I strongly urge the Committee to pass HB2434.

Mahalo for the opportunity to testify.

HB-2434

Submitted on: 2/10/2026 6:25:42 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Justin Hughey | Individual | Support | Written Testimony Only |

Comments:

TO: COMMITTEE ON WATER & LAND

Rep. Mark J. Hashem, Chair and members of the committee

DATE: Thursday, February 12, 2026 TIME: 9:00 AM PLACE: VIA VIDEOCONFERENCE

Conference Room 411, State Capitol

TESTIMONY IN STRONG SUPPORT OF HB 2434

RE: Protecting Water as a Public Trust for Our Future Generations

Aloha Chair Hashem, and Members of the Committee,

My name is Justin Hughey, and I have the privilege of serving as a second-grade special education teacher here at Kahului Elementary. I am writing to you today in strong support of HB 2434.

While I am not a policy expert, I am an expert on the future of our islands. Every day, I work with children who face unique challenges. My job is to ensure they have the resources, stability, and support they need to grow into independent, healthy adults. Water is the most fundamental of those resources.

A Lesson in Equity

In my classroom, we talk a lot about fairness. In special education, we know that "fair" doesn't always mean everyone gets the same thing; it means everyone gets what they need to succeed.

- **Public Priority:** HB 2434 ensures that our counties have the right of first refusal for water agreements. This is common-sense equity. It ensures that the needs of the public—including the families and students I serve—come before the profits of private entities.

- Predictability for Families: Many of my students' families struggle with the rising cost of living. If our water resources are privatized or managed by outside interests with opaque "functional control," we risk price hikes and scarcity that hit our most vulnerable populations first.

Stewardship for the Next Generation

My students understand instinctively that the water belongs to the land and the people, not to a corporation.

When we allow private entities to bypass county oversight, we are teaching our children that their heritage is for sale. By passing HB 2434, you are sending a message to my second graders that their government is committed to the Public Trust Doctrine and is acting as a diligent steward of their future.

Water Security is Student Security

We cannot achieve food security or a healthy environment for our children if we do not have local, transparent control over our water. Our students deserve to grow up in a Hawai'i where safe, clean water is a guaranteed right, not a luxury regulated by an intergovernmental agreement they have no say in.

I urge you to pass HB 2434 to keep our water in public hands, for the sake of my students and all the keiki who will inherit these islands.

Mahalo for your time and for your commitment to our children's future.

Sincerely,

Justin Hughey,
Second Grade Special Education Teacher,
Kahului Elementary

HB-2434

Submitted on: 2/10/2026 8:05:40 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Elizabeth Clapper | Individual | Support | Written Testimony Only |

Comments:

I strongly support HB2434 as we need to keep the water resources in community control, not developers or corporations monopolizing for their own agenda and profit.

HB-2434

Submitted on: 2/10/2026 9:02:00 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Leo Nahe Smith | Individual | Support | Written Testimony Only |

Comments:

I support this bill because it protects the public trust and prioritizes community control of our water resources over private entities.

Leo Nahe, Nu‘uanu

HB-2434

Submitted on: 2/10/2026 10:34:46 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Amy Chang | Individual | Support | Written Testimony Only |

Comments:

Aloha and thank you for caring about my testimony in deep support of this bill.

I teach music at different public schools currently at Hā'iku elementary with 100 young students. Water is Life and we must prioritize our community needs for residents over private investment profit. We have climate change global warming how will we know there won't be a coming severe drought ? We must mālama/ protect our public resources and think about longterm consequences of what choices we are making Now that will affect not only our current reality but of generations to come. Please think longterm.

Thank you.

Amy Joyce Chang

HB-2434

Submitted on: 2/11/2026 5:12:03 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Lisa Seikai Darcy | Individual | Support | Written Testimony Only |

Comments:

Support HB 2434

Aloha Chair Hashem and Vice Chair Morikawa,

Mahalo to all committee members for hearing and supporting HB 2324. These actions are important steps in regaining balance. Water resources for public purposes have long been overlooked and this bill sets parameters which recognize many needs including of Native Hawaiian cultural practices along with other continuously overlooked community needs.

Mahalo for your time and consideration,

Lisa Darcy, Kula, Maui, HI

HB-2434

Submitted on: 2/11/2026 7:33:12 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Stacey Alapai | Individual | Support | Written Testimony Only |

Comments:

Aloha,

Please support HB 2434 to prioritize public management of our most important public trust resource.

Counties and local subdivisions have a legal and moral kuleana to serve the public good. Private entities have a legal duty to maximize profits and mitigate risk for shareholders. By giving counties right of first refusal, we put the public good before profitability. The mechanisms in place to still allow private management of water licenses but with guard rails are a great compromise for moments when private entities receive licenses and the additional public trust kuleana that comes with managing this vital resource we all share.

Mahalo,

Stacey Alapai, Maui

HB-2434

Submitted on: 2/11/2026 8:12:17 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|------------------|--------------|--------------------|------------------------|
| Shay Chan Hodges | Individual | Support | Written Testimony Only |

Comments:

Aloha Chair, Vice Chair, and Members of the Committee:

Thank you for the opportunity to testify on HB2434, Relating to Water. My name is Shay Chan Hodges, and I am a consultant for the Maui County Water Authority; however, I am testifying on my own behalf.

I strongly support HB2434's focus on the *functional characteristics* of non-county water license applicants.

Hawai'i's Constitution makes clear that water is not just another asset. It is a *public trust resource* held for the benefit of present and future generations. The State has an ongoing duty to protect Native Hawaiian traditional and customary practices, domestic water uses, appurtenant rights, and the health of our streams and ecosystems.

In practice, whether that duty is fulfilled depends greatly on how an entity is structured, financed, governed, and incentivized over time.

In today's economy, many large water-related operations are owned through complex, layered arrangements. A local operating company may be owned by a mainland holding company, which in turn is controlled by an international investment fund or institutional investor. Decision-making authority may thus sit far from the watershed itself. When ownership and control are spread across multiple entities, it becomes difficult for regulators and communities to understand who ultimately decides on capital investments, water allocations, or long-term reinvestment.

Focusing on *functional characteristics* allows the Department of Land and Natural Resources to look beyond surface ownership and examine the real-world governance structures that determine whether the public trust standard can be meaningfully enforced.

HB2434 enables state agencies to distinguish between entities that are structurally committed to long-term stewardship and those designed to maximize short-term extraction, externalize risks, and disengage when problems arise. This distinction is particularly critical for water licenses, where impacts on watersheds, instream flows, and downstream communities can last for decades beyond any single business cycle.

Examples include:

Layered ownership or control. When a water system is owned through several tiers of subsidiaries or investment vehicles, accountability can become indirect. If infrastructure fails or reinvestment lags, it may be unclear whether decisions are made locally or by distant financial managers with different priorities. Functional review ensures that the license-holding entity has clear and accountable decision-making authority.

Financial structures built around defined return targets. Some entities are backed by institutional investors with fixed performance expectations or payout timelines. While lawful, such structures may create pressure to prioritize returns over reinvestment unless safeguards are built in. The bill allows the State to assess whether reinvestment in maintenance, climate resilience, and habitat protection is structurally supported—not merely promised.

Limited reinvestment commitments. When revenue distribution policies or debt structures leave little room for continuous infrastructure upgrades, critical improvements can be delayed. Water systems require ongoing reinvestment. The bill ensures that applicants demonstrate *durable* funding for maintenance and watershed protection.

Restricted disclosure. When beneficial ownership, management agreements, or financial arrangements are opaque, effective oversight becomes difficult. Transparency is essential when managing a constitutional trust resource.

These examples are not about labeling any organization as good or bad, but about recognizing structural patterns that affect whether long-term stewardship is realistically achievable. Such patterns can be *presumptively inconsistent* with the public trust.

HB2434 does not prohibit non-county participation. Instead, it creates a *rebuttable presumption* based on identifiable structural characteristics and provides a clear path for responsible applicants to demonstrate transparency, enforceable reinvestment commitments, alignment with long-term stewardship, and meaningful community and government oversight.

Water licenses shape watersheds for generations. It is both reasonable and constitutionally required for the State to consider whether an applicant's internal structure supports sustained protection of public trust uses.

For these reasons, I strongly support HB2434's balanced and forward-looking approach to ensuring that stewardship of Hawai'i's water resources is transparent, accountable, and aligned with our constitutional obligations.

Mahalo.

Shay Chan Hodges

Haiku, Maui

HB-2434

Submitted on: 2/11/2026 10:03:19 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Tina Wildberger | Individual | Support | Written Testimony Only |

Comments:

Aloha Chair, Vice Chair & Committee Members,

Thank you for taking time to hear this important & prescient measure. The DLNR can not be trusted to protect our public trust resources. Please consider the protections this bill offers to give local control and prioritizing of water that best suits the needs of people who live in each county.

This issue was long settled. The stream flows were to be restored to east Maui streams. Don't let foreign interests like Canadian Pension Fund PSP water bank at the expense of Maui residents.

Mahalo.

HB-2434

Submitted on: 2/11/2026 11:48:01 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Kapulei Flores | Individual | Support | Written Testimony Only |

Comments:

Aloha,

I am writing in SUPPORT of Hb2434 that help local control of water resources. This would require non-county applicants to prove their interests do not conflict with the public trust doctrine. As climate change continues to rise at alarming rates, it is more important now than ever to truly protect our natural resources to the best of our ability. Hawai'i has seen our fair share of water crisis' and as an island fresh water is something we can not lose or afford to be reckless about. We must protect our resources so that our communities, people, and 'āina will be able to survive for the next 7 generations and beyond.

Mahalo, Kapulei

HB-2434

Submitted on: 2/11/2026 12:03:27 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|--------------|--------------|--------------------|------------------------|
| Jamie Opunui | Individual | Support | Written Testimony Only |

Comments:

Aloha,

Mahalo for the opportunity to submit testimony in strong support of HB2434.

I support the intent of this measure to strengthen public trust protections, increase transparency, and prioritize community stewardship in the issuance of water licenses. The bill appropriately recognizes Native Hawaiian traditional and customary practices and the present and future needs of the Hawaiian Homes Commission as public trust uses. This recognition is essential and aligned with Article XI, Section 1 and Section 7 of the Hawai‘i State Constitution.

However, I respectfully urge the Committee to amend HB2434 to ensure that the protections for Native Hawaiian water and cultural rights are not only acknowledged, but clearly prioritized, codified, and enforceable.

Specifically, I recommend the following additions:

- Protection from County or Political Override
While counties are granted priority under the bill, county infrastructure projects, subdivisions, or business developments must not override or diminish existing or future Native Hawaiian water access. The statute should clearly prohibit approval of any project that would reduce water availability necessary to protect Native Hawaiian cultural practices, kalo cultivation, subsistence uses, or homestead needs. Economic development should not supersede constitutionally protected rights.
- Codified Enforcement Mechanisms
Recognition without enforcement is insufficient. The bill should:
 1. Explicit Prioritization of Native Hawaiian Water and Cultural Rights

The bill should clearly state that Native Hawaiian traditional and customary practices, as well as existing and future Hawaiian homestead and housing water needs (kuleana lands, DHHL, and other Hawaiian homes that fall outside of those two scenarios but support Native Hawaiian constitutionally protected rights), shall receive the highest level of protection and priority in any allocation, licensing, or management decision. This prioritization should not be implied — it should be explicit and binding.

- Require written findings demonstrating how Native Hawaiian rights were protected and prioritized in each decision.
- Establish measurable standards for determining compliance with public trust obligations.
- Provide clear remedies if agencies or counties fail to uphold these obligations.
- Require periodic review to ensure ongoing protection of Native Hawaiian water access (kuleana lands, DHHL, and other Hawaiian homes that fall outside of those two scenarios but support Native Hawaiian constitutionally protected rights).

1. Tangible and Enforceable “Meaningful Community Participation”

The concept of “meaningful community participation” must be defined with enforceable standards. Community input must not be procedural only. The bill should require:

- Transparent disclosure of water impact assessments.
- A requirement that community-supported alternatives be adopted when legally consistent with Native Hawaiian rights and the public trust.
- In cases where county or developer interests conflict with community input, either (a) community-supported alternatives must be implemented, or (b) a documented, good-faith negotiated compromise must be reached and publicly justified in writing.
- Early consultation with Native Hawaiian practitioners (selected or volunteered by the community), homestead communities, and impacted residents.

1. Clear Definition of the Public Trust Doctrine

The bill should codify a robust definition of the Public Trust Doctrine that explicitly includes:

- Native Hawaiian traditional and customary practices;
- Instream flow protections necessary to sustain cultural ecosystems;
- Intergenerational equity and long-term watershed protection.
- Present and future Hawaiian homesteads and housing (kuleana lands, DHHL, and other Hawaiian homes that fall outside of those two scenarios but support Native Hawaiian constitutionally protected rights)water needs;

A clear statutory definition will reduce ambiguity and prevent inconsistent interpretation.

HB2434 has the potential to strengthen stewardship and accountability in Hawai‘i’s water management system. By incorporating these amendments, the Legislature can ensure that this measure truly fulfills the State’s constitutional obligation to protect Native Hawaiian rights and uphold water as a public trust resource for present and future generations.

Mahalo for your consideration and for your commitment to protecting Hawai‘i’s most precious resource.

Mālama Pono,

Jamie 'Ōpunui

HB-2434

Submitted on: 2/11/2026 10:19:44 PM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|-------------------------|--------------|--------------------|------------------------|
| Mavis Oliveira-Medeiros | Individual | Support | Written Testimony Only |

Comments:

Aloha WAL Chair & Committee,

Thank you for the opportunity to testify in strong support of H.B. 2434, Relating to Water.

This bill appropriately recognizes that water is a public trust resource under article XI, section 7 of the Hawai‘i State Constitution and acknowledges the counties’ primary responsibility for providing safe and reliable water for our communities. By giving counties and their own procured subdivisions priority and a right of first refusal for intergovernmental water agreements, this bill promotes accountability, transparency, and long-term reliability for residents while preserving the State’s continuing public trust obligations.

H.B. 2434 also establishes a critical framework to evaluate non-county applicants for state water licenses. The rebuttable presumption and functional control analysis help safeguard against opaque ownership structures and short-term, profit-driven decision-making that can undermine watershed health and public trust uses. Requiring transparency in beneficial ownership, enforceable and adequately funded commitments to maintenance, climate resilience, and watershed protection, and meaningful community participation and government oversight will better align non-county operations with long-term stewardship.

Other states, including Oregon, are now adopting laws to shield core community services like health care from private equity extraction; H.B. 2434 similarly safeguards our communities by protecting public trust water from opaque, profit-driven control.

The bill’s five-year term limit, with only one allowable five-year extension, creates a vital trustee checkpoint for DLNR and the public to ensure active and continuing protection of Native Hawaiian traditional and customary practices, maintenance of waters in their natural state, domestic water uses, and the needs of the Hawaiian Homes Commission.

For these reasons, I respectfully urge the Committee to pass H.B. 2434. Mahalo for your consideration.

Mahalo,

Mavis Oliveira-Medeiros

Earle Medeiros, Sr.

Earle Medeiros, Jr.

Megan Medeiros

HB-2434

Submitted on: 2/12/2026 12:15:41 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|----------------------|---------------------|---------------------------|------------------------|
| Jade Alohalani Smith | Individual | Support | Written Testimony Only |

Comments:

Strongly support. Please establish the framework that provides counties or their subdivisions priority and the "right of first refusal" to obtain intergovernmental agreements related to the disposition of water resources for public purposes.

Please establish the criteria to be applied when determining that the issuance of a state water license is in the best interest of the State.

HB-2434

Submitted on: 2/12/2026 1:25:54 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Lucille N Lecker | Individual | Support | Written Testimony Only |

Comments:

Aloha

"I support HB2434 because it protects the public trust and prioritizes community control of our water resources.

Mahalo

HB-2434

Submitted on: 2/12/2026 8:35:46 AM

Testimony for WAL on 2/12/2026 9:00:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| pahnelopi mckenzie | Individual | Support | Written Testimony Only |

Comments:

Support HB2434