



**Department of Land and Natural Resources  
Aha Moku Advisory Committee  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

March 22, 2019

**In Support of D-11 with Recommended Amendment**  
Before the Board of Land and Natural Resources

BLNR Agenda Item D-11

**Approval of Watershed Management Protection Cost Share Formula and Contribution for Leases of Water Rights Pursuant to Section 171-58(e), Hawaii Revised Statutes (HRS); and Adoption of Guidelines to Determine Whether a Lease of Water Rights May Be Exempted from the Preparation of an Environmental Assessment or Environment Impact Statement Under Chapter 343, HRS.**

Aloha Chair Case and members of the Board of Land and Natural Resources,

**The Aha Moku Advisory Committee (AMAC), and the Aha Moku support the Land Division Submittal, Agenda Item D-11 as described above. However, we recommend that Exhibit “A” be removed from the submittal.**

Please know that much thought and mana’o was given from moku and ahupua’a representatives of Moku O Keawe (Hawaii, particularly Ka’u), Moku O Piilani (Maui), Moku O Kakuhihewa (Oahu) and Manokalanipo (Kauai) on this Land Board agenda item. We were not able to consult with our Aha Moku representatives from Molokai Pule Oo (Molokai) or Nanai Kaula (Lanai) given the time frame to submit testimony on this issue. Moku O Kanaloa (Kahoolawe) and Ka Aina O Kawelonakala (Niihau) do not have RP’s or water leases on their islands.

Revocable Permits (RP’s) and Water Leases are issues that hold very real and deep concerns for the Aha Moku statewide as our participants are not only from the Native Hawaiian communities, which bring forth the Native Hawaiian generational and traditional knowledge of natural and cultural resources of the ahupuaa of each moku, but of the Public Trust as well. We bring the voices of the people forward and encourage collaboration and sharing of traditional knowledge with the Department of Land and Natural Resources (DLNR) so that concerns about resources, both natural and cultural, are brought to the attention of the different divisions. Often, submittals to the Land Board reflects this collaboration. This usually takes much effort and time on the part of the people and DLNR.

In the case of RP’s and water leases, we are very much aware that the Land Division, The Commission on Water Resource Management (CWRM), and the Division of Forestry and Wildlife (DOFAW) have, for the past 2 years, been working on a formula that will address watershed management and how RP’s and water leases must, in the long run, support and protect watersheds that are pivotal to the health of an ecosystem. Understandably, a formula such as this must allow all RP’s and water leases to be individually structured as each is distinctly different, yet each must conform to 171.58 (e).

The statute requires a lessee to both develop and implement a watershed management plan. However, because it is often economically difficult for small ranches and farmers to comply with this mandate, DLNR divisions worked to develop an alternative to today’s current situation of having countless RP’s asking for extensions, many of them ending up extending for years because of the difficulty in complying with the statute.

And, while generally the ahupuaa representatives of the islands that we spoke to support DLNR’s submitted formula, it is because a process and formula is so desperately needed. With the formula, it will be easier for RP holders, jointly with DLNR, as mandated, to fulfill the overall goal of protecting a watershed connected to them, know what their management

strategies and cost are, and determine the best management practices that will not adversely impact others who are also dependent on water from the same source.

With their very real appreciation of what this formula can mean for lessees, yet with the understanding that each lessee must be distinguished as individuals, our kupuna have cautioned that we should not “throw the baby out with the bath water”! With that understanding in mind, our people support the formula and process as submitted if amended. Our recommendation to the Land Board is that they approve the submittal but remove Exhibit “A” as it is misleading and confusing as the example of this formula.

Respectfully yours,

Leimana DaMate

On behalf of the Aha Moku Advisory Committee (AMAC) and the Aha Moku

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**From:** simon@farm-maui.com  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony with comments on Section D-11 of tomorrows hearing  
**Date:** Thursday, March 21, 2019 8:30:51 AM  
**Attachments:** [image001.png](#)

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3-21-19

Farm Maui LLC Testimony to the BLNR regarding Agenda Item D-11

Aloha Chair Case and honorable members of the Board of Land and Natural Resources,

Mahalo for your service to our State and for your stewardship of our public trust resources.

Regarding agenda item D-11 and the exemptions from the preparation of the EIS or EA, instead of doing that, I would propose to you that a fund be created using a legislative appropriation or revenues from water leases to conduct and certify these studies/statements across the board. Then lessees will be clear to have stable long term leases. It seems unfair that some leases would be exempted, then perhaps inviting litigation around unequal treatment under the law. It seems that it certainly is not in keeping with the spirit of HRS 171-58 whereby watershed management plans must precede any lease, or lease renewal. I am also very eager to see the watershed management plans made for all of our watersheds where waters are being leased by DLNR. Water is life, and they who control the water control the future. Water is a public trust, and it is the limiting factor to development. Plantations used to control the water systems of our state, now they are gone and that is your responsibility. Your work here is vital to our future, so please keep that in your hearts as you decide how our water is allocated.

As a farmer who recently had my farm lease revoked (the property sold, and the new owner won't issue a lease), and lost everything there at great personal cost, I urge you to expedite the leasing processes statewide, of your agriculture lands, and of the waters used for agriculture. I believe that the month-to-month revocable permits (and their legally questionable holdovers for decades) are destabilizing for any farmers' business plans, and long term (10-60) year leases must be issued for land and water use. This will have the effect of creating a level playing field for many of our agriculturalists, and will bring much needed stability to our agriculture industries.

In addition, I urge you to consider as an agenda item in the near future (ASAP) the full implementation of Act 90 in as short a time frame as possible. Under that law your Department must transfer its agricultural lands and agriculture leases over to the HDOA. That law passed in 2003. It is my opinion that 16 years is should be enough time for you to make it a priority that the DLNR come into compliance with the law.

My reason for wanting that law to be implemented is that private landowners are buying up much of the former plantations, and agriculture district. Under Article XI Section 3, the state must make agriculture lands available to farmers on as widespread a basis as possible. Agriculture lands are not very "available" as there are mostly short term year to year leases on the market, and farmers are priced out of owning agriculture land today. On Maui there is no state agriculture park. I believe it would be beneficial to move the agriculture lands out of the DLNR, and over to HDOA, and then the

HDOA and USDA will be more able to effectively support farmers and ranchers on those lands. Their rents would also decrease, creating a higher profit margin for them, and also increasing the likelihood of their economic viability.

It is one of my greatest ambitions to support your department and the rest of the state of Hawaii government to help our society evolve out of the plantation era and towards diversified agriculture, as the constitution commands. To do this, we must hui up, keep a positive can do attitude and help inspire young people to smile, take up the plow and go into agriculture. Implementing the incentives in HRS 205-46 regarding Important Agriculture Lands Incentives and implementing Act 90 are vital to the success of that effort in my opinion. Hawaii needs food security, and we must not totally rely on out of state private corporations to do it for us, we must empower locals to grow food. To some degree, we need food sovereignty now.

We must retain our local and indigenous farming knowledge by encouraging the next generation of farmers to go into agriculture. We must hedge against the risks associated with climate change, the fragile food distribution system, lack of fresh water and political instability.

There's a lot of work to do, and I very much look forward to a future of doing that work with you. Thank you for reading and hearing my testimony today.

With gratitude, appreciation and respect,

Me ka ha'aha'a

Simon Russell  
Managing Member



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"You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete"

-Buckminster Fuller



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# North Shore Hydrological Services

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Matt Rosener, MS, PE, Principal

3/20/19

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

To whom it may concern:

These comments are being submitted in reference to proposals sent by DLNR Land Division staff to the Board of Land and Natural Resources in advance of a meeting scheduled for 3/22/19. The specific proposals I am commenting on include the following:

“Approval of Watershed Management Protection Cost Share Formula and Contribution for Leases of Water Rights Pursuant to Section 17 1-58(e), Hawaii Revised Statutes (HRS); and Adoption of Guidelines to Determine Whether a Lease of Water Rights May Be Exempt from the Preparation of an Environmental Assessment or Environmental Impact Statement Under Chapter 343, HRS”

As a hydrologist and water resource engineer with a long record working in Kauai’s watersheds, I have serious concerns about the watershed management cost-sharing framework that is proposed by DLNR in a staff submittal titled, “Watershed Management Cost-Share Guidelines for Chapter 343, HRS Exemption”, and dated 22 March 2019. While I see value in the cost-sharing concept, and I generally agree with the idea of water users contributing to watershed management expenses, I feel strongly that the system being proposed, including the cost-share formula, is based on questionable assumptions and flawed analyses which will limit its viability. As such, while I would encourage the implementation of this concept at some point in the near future, I do not think it has been developed to a suitable point for the board to make a decision on this matter at this time.

My comments and concerns about the staff submittal are outlined below as bullet points:

- There is an alarming general lack of information contained within the watershed management cost-sharing proposal, including the source(s) of referenced watershed management plans and watershed management operating budget figures.
- The proposal suggests that there “are watershed management plans in existence for the water lease areas” but fails to identify which plans are applicable. For diversions 714 and 716 on Wai`ale`ale and Waikoko Streams, respectively, is there a Līhu`e-Kōloa Forest Reserve watershed management plan? If not, what other watershed management plan is applicable in this case?
- The formula used to calculate the cost-share proportion based on the ratio of water used to total water yield from a watershed or aquifer may have merit, but for the Kauai diversions within the Wailua River basin, why is the total water yield computed by adding 2 median streamflow values to a median flow value from a ditch gage?
- I get that watershed protection in the Alaka`i Swamp could help preserve water quality and quantity in Wai`ale`ale and Waikoko Streams, but what about the actual watershed area that drains to these streams? There are almost 2,000 acres of catchment area within the Līhu`e-Kōloa

# North Shore Hydrological Services

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Matt Rosener, MS, PE, Principal

Forest Reserve that feed water to these streams near their points of diversion into the Ili'ili'ula/North Wailua Ditch system. The diverter of these streams, KIUC, has been using most if not all of the water flowing in these streams, at least part of the time, and it makes sense that they should contribute substantially to the watershed management in the upstream drainage basins. These areas not only include the eastern portion of the Alaka'i Swamp referenced in the staff submittal, but also the rest of the catchment area which has obvious issues with invasive plants and feral ungulates that adversely impact water supply and quality.

- If one really wanted to parse out the proportion of water flowing into Wai'ale'ale and Waikoko Streams from the Alaka'i Swamp area, the flow contributions to other drainage basins would have to be included in the analysis (e.g. Olokele/Waimea, Kō'ula/Hanapepe, Ili'ili'ula, etc.). The abbreviated nature of the analysis presented shows that the subject has not been properly evaluated and thus makes a poor basis for the proposed cost-share scheme.
- The entity that uses water from diversions 714 and 716 on Wai'ale'ale and Waikoko Streams, respectively, also uses substantial amounts of water from the nearby Ili'ili'ula Stream and several of its tributaries. Why would these diversions not be subject to the proposed cost-sharing scheme?
- In "Exhibit A" that is attached to the DLNR staff submittal, a figure of \$587,347.00 is listed as the Estimated Annual Watershed Management Cost for the "Blue Hole/East Kauai" location. I have to wonder what is the source of this information and how accurate it might (or might not) be.
- In "Exhibit A", the East Kauai Waters Users Coop is shown as using 2 MGD of an available 74 MGD (median streamflow), but where is the latter figure coming from? Was a method similar to that used for KIUC used in this case? There does not seem to be consistency in this regard.

As the diverters of Wai'ale'ale and Waikoko waters have for many years been taking a large share of water from these streams with little regard for downstream impacts or upstream watershed management, it seems only fair that they finally start to contribute to the protection of public trust resources by 1.) observing and following the Instream Flow Standards when they are properly developed and 2.) substantially contributing to watershed management activities and operations in all of the watershed areas that deliver water to the stream diversions.

Once again, I generally appreciate the concept of the proposed cost-sharing system for watershed management expenses, but this proposal in its current form is full of holes that beg for further development, including more complete hydrologic analyses and sound justification for the formula ultimately applied to calculate the real costs of effective watershed management in Hawaii's stream and river basins. My hope is that the board will return this matter to the staff to address the various pukas before a decision is made. The production of proper watershed management plans will guide future resource protection and conservation efforts, and the cost-sharing mechanism will become a viable means to implementation, but based on this proposal it seems like we're skipping important steps.

Sincerely,



Hydrologist / Water Resource Engineer

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