



June 25, 2025

Via Electronic Mail

Board of Land and Natural Resources, State of Hawai'i  
Commission on Water Resource Management  
Nominating Committee for the Commission on Water Resource Management  
1151 Punchbowl Street, Room 227  
Honolulu, Hawai'i 96813  
[dlmr.cwrmm@hawaii.gov](mailto:dlmr.cwrmm@hawaii.gov)

Re: June 27, 2025 Nominating Committee Meeting for the Commission on Water Resource Management

Dear Chair Chang, Commission Members, and Nominating Committee Members,

Earthjustice hereby submits this testimony regarding the nominating committee's June 27, 2025 meeting to interview applicants for the upcoming vacant positions on the Commission on Water Resource Management ("commission").<sup>1</sup> Failing to disclose select applicants and conducting their interviews in executive session violates Haw. Rev. Stat. ("HRS") ch. 92 *et seq.*, ("Sunshine Law"). The commission and this nominating committee must conduct the nomination process in a manner that complies with Sunshine Law. Particularly, given prior problems with the nomination process, utmost attention and commitment should be given to complying with the law and avoiding any questions that may taint and undermine the nominating committee's efforts.

Hawai'i's Sunshine Law requires that "every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the state constitution or as closed pursuant to sections 92-4 and 92-5." HRS § 92-3. In implementing this policy, the legislature declared its intent to "protect the people's right to know," as "the people are vested with the ultimate decision-making power" and "opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest." *Id.* § 92-1(1). The legislature also declared that "the provisions requiring open meetings shall be liberally construed" and "the provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings." *Id.* § 92-1(2)-(3).

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<sup>1</sup> Earthjustice did not receive the e-mail notification of the public notice for the nominating committee's June 9, 2025 meeting, so we did not submit testimony to ask the commission to conduct all interviews in open session prior to the June 9 meeting.

Boards and commissions are permitted to conduct their meetings in executive session, closed to the public, if the matter involves “matters exempted by [HRS] section 92-5.” *Id.* § 92-4. HRS § 92-5(a)(2) allows a meeting to be conducted in executive session “to consider the hire, evaluation, dismissal, or discipline of an officer or employee.” The Office of Information Practices (“OIP”), the office tasked with administering Sunshine Law, has determined that § 92-5 applies to “the hire . . . of an officer or employee” —not a volunteer commissioner who serves without compensation. *See id.* § 174C-7(c); *see also* OIP Op. Ltr. No. 05-04 (ruling that the Kaua‘i County Council could not conduct interviews of individuals appointed to county boards and commissions in executive session because appointees do not receive compensation for their services and are thus not “hires” under HRS § 92-5(a)(2)).

The June 9 and June 27 agendas provide that for “any candidate whose name has not been disclosed and wishes to be interviewed in a closed session” the committee will go into an executive meeting “pursuant to HRS §§ 92-4 and 92-5(a)(2), for consideration of matters affecting privacy, to consider and evaluate the applications of individuals seeking a nomination to the Commission on Water Resource Management.” As stated, however, § 92-5 does not permit the nominating committee to conduct interviews of applicants for water commission vacancies in executive session because applicants are not “hires” within the meaning of the exception. We urge the commission and the nominating committee to disclose the names of applicants interviewed at the June 9 meeting and conduct the interviews of all applicants at the June 27 meeting in open session.

The commission has a constitutionally mandated trustee kuleana to protect our water resources for the public, including future generations. Part of fulfilling this trustee duty is ensuring that applicants for commissioner vacancies are vetted through a process that complies with the law and is transparent to the public. We urge the commission and nominating committee to ensure this process complies with Sunshine Law by disclosing the names of all applicants interviewed at the nominating committee’s June 9 meeting and conducting the interviews for all applicants at the June 27 meeting in open session. Mahalo nui for this opportunity to provide testimony. We look forward to the necessary corrective steps being taken to ensure the appointments to these vacant commissioner positions are conducted through a lawful and pono process.

Respectfully submitted,  
/s/ Harley M. Broyles  
Harley M. Broyles  
EARTHJUSTICE