

JAN 19 2007

A BILL FOR AN ACT

RELATING TO AGRICULTURAL WATER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 1978, voters approved article XI, section 3,
2 of the Constitution of the State of Hawaii, which sets out the
3 framework for state policies to promote agriculture and the
4 conservation of productive agricultural lands in the state.
5 Article XI, section 3 reads as follows:

6 "The State shall conserve and protect
7 agricultural lands, promote diversified agriculture,
8 increase agricultural self sufficiency and assure the
9 availability of agriculturally suitable lands. The
10 legislature shall provide standards and criteria to
11 accomplish the foregoing.

12 Lands identified by the State as important
13 agricultural lands needed to fulfill the purposes
14 above shall not be reclassified by the State or
15 rezoned by its political subdivisions without meeting
16 the standards and criteria established by the
17 legislature and approved by a two-thirds vote of the



1 body responsible for the reclassification or rezoning
2 action."

3 Act 183, Session Laws of Hawaii 2005 (Act 183) provides
4 standards, criteria, and procedures to fulfill the intent and
5 purpose of article XI, section 3, of the Constitution of the
6 State of Hawaii and facilitates the implementation of its
7 constitutional mandate.

8 Act 183 also recognized that while land is the basic
9 resource for agriculture and the supply of lands suitable for
10 agriculture is an irreplaceable resource, the long-term
11 viability of agriculture also depends on factors that affect the
12 profitability of agriculture, such as:

- 13 (1) Commodity prices;
- 14 (2) The availability of water for irrigation;
- 15 (3) Agricultural research and outreach;
- 16 (4) The application of production technologies;
- 17 (5) Marketing; and
- 18 (6) The availability and cost of transportation services.

19 One of the most important of these is the availability of
20 water for irrigation. The legislature finds that to promote the
21 long-term viability of agriculture, the State must establish



1 mechanisms that promote the availability of irrigation water for
2 agricultural activities.

3 The purpose of this Act is to further implement Act 183 by
4 amending the state water code to require that:

5 (1) The state water plan, including the water resource
6 protection, water use and development, and water
7 projects plans; and

8 (2) The provisions of the water code regulating the use of
9 stream waters,

10 recognize and support the importance of making sufficient
11 irrigation water available for agricultural activity on lands
12 identified and designated as important agricultural lands under
13 part III or chapter 205.

14 SECTION 2. Section 174C-2, Hawaii Revised Statutes, is
15 amended by amending subsection (c) to read as follows:

16 "(c) The state water code shall be liberally interpreted
17 to obtain maximum beneficial use of the waters of the State for
18 purposes such as domestic uses, aquaculture uses, irrigation and
19 other agricultural uses, power development, and commercial and
20 industrial uses. However, adequate provision shall be made for
21 the protection of traditional and customary Hawaiian rights, the
22 protection and procreation of fish and wildlife, the maintenance

1 of proper ecological balance and scenic beauty, and the
 2 preservation and enhancement of waters of the State for
 3 municipal uses, public recreation, public water supply,
 4 agriculture[7] and irrigation for agricultural activity on lands
 5 identified and designated as important agricultural lands
 6 pursuant to part III of chapter 205, and navigation. Such
 7 objectives are declared to be in the public interest."

8 SECTION 3. Section 174C-31, Hawaii Revised Statutes, is
 9 amended as follows:

10 1. By amending subsections (a), (b), (c), (d), (e), (f),
 11 and (g) to read:

12 "(a) The Hawaii water plan shall consist of four parts:

13 (1) [a] A water resource protection plan which shall be
 14 prepared by the commission;

15 (2) [~~water~~] Water use and development plans for each
 16 county which shall be prepared by each separate county
 17 and adopted by ordinance, setting forth the allocation
 18 of water to land use in that county;

19 (3) [a] A state water projects plan which shall be
 20 prepared by the agency which has jurisdiction over
 21 such projects in conjunction with other state
 22 agencies; and

1 (4) [~~a~~] A water quality plan which shall be prepared by
2 the department of health.

3 (b) All water use and development plans shall be prepared
4 in a manner consistent with the following conditions:

5 (1) Each water use and development plan shall be
6 consistent with the water resource protection and
7 water quality plans;

8 (2) Each water use and development plan and the state
9 water projects plan shall be consistent with the
10 respective county land use plans and policies
11 including general plan and zoning as determined by
12 each respective county;

13 (3) Each water use and development plan and the state
14 water projects plan shall be consistent with the water
15 needs of agricultural activity on lands identified and
16 designated as important agricultural lands pursuant to
17 part III of chapter 205;

18 [~~3~~] (4) The water use and development plan for each
19 county shall also be consistent with the state land
20 use classification and policies;

21 [~~4~~] (5) The cost to develop the initial water use and
22 development plan for each county shall be funded by



1 the State in an amount not exceeding \$150,000 per
2 county;

3 ~~[(5)]~~ (6) The cost of maintaining the water use and
4 development plan shall be borne by the counties; state
5 water capital improvement funds appropriated to the
6 counties shall be deemed to satisfy ~~[Article]~~ article
7 VIII, section 5, of the State Constitution; and

8 ~~[(6)]~~ (7) Each county in order to be eligible for state
9 appropriations for county water projects ~~[must]~~ shall
10 have developed an acceptable water use and development
11 plan within the time frame established by this
12 chapter.

13 (c) To prepare the water resource protection and water
14 quality plans, the commission shall:

- 15 (1) Study and inventory the existing water resources of
16 the State and the means and methods of conserving and
17 augmenting such water resources;
- 18 (2) Review existing and contemplated needs and uses of
19 water, including state and county land use plans and
20 policies and agricultural activity on lands identified
21 and designated as important agricultural lands
22 pursuant to part III of chapter 205 and study their



1 effect on the environment, procreation of fish and
2 wildlife, and water quality;

- 3 (3) Study the quantity and quality of water needed for
4 existing and contemplated uses, including irrigation,
5 power development, geothermal power, agricultural
6 activity on lands identified and designated as
7 important agricultural lands pursuant to part III of
8 chapter 205, and municipal uses;

- 9 (4) Identify rivers or streams, or a portion of a river or
10 stream, which appropriately may be placed within a
11 wild and scenic rivers system, to be preserved and
12 protected as part of the public trust. For the
13 purposes of this paragraph, the term "wild and scenic
14 rivers" means rivers or streams, or a portion of a
15 river or stream of high natural quality or that
16 possess significant scenic value, including but not
17 limited to[-] rivers or streams which are within the
18 natural area reserves system. The commission shall
19 report its findings to the legislature twenty days
20 prior to the convening of each regular legislative
21 session; and



1 (5) Study such other related matters as drainage,
2 reclamation, flood hazards, floodplain zoning, dam
3 safety, and selection of reservoir sites, as they
4 relate to the protection, conservation, quantity, and
5 quality of water.

6 (d) The water resource protection plan shall include [7]
7 but not be limited to:

8 (1) Nature and occurrence of water resources in the State;

9 (2) Hydrologic units and their characteristics, including
10 the quantity and quality of available resource,
11 requirements for beneficial instream uses and
12 environmental protection, desirable uses worthy of
13 preservation by permit, and undesirable uses for which
14 permits may be denied;

15 (3) Existing and contemplated uses of water, as identified
16 in the water use and development plans of the State
17 and the counties, their impact on the resource, and
18 their consistency with objectives and policies
19 established in the water resource protection and water
20 quality plans;

21 (4) Programs to conserve, augment, and protect the water
22 resource; and

1 (5) Other elements necessary or desirable for inclusion in
2 the plan.

3 Thereafter, the commission in coordination with the
4 counties and the department of health shall formulate an
5 integrated coordinated program for the protection, conservation,
6 and management of the waters in each county based on the above
7 studies. This program, with such amendments, supplements, and
8 additions as may be necessary, shall be known as the water
9 resource protection and water quality plans.

10 Thereafter, each county shall prepare a water use and
11 development plan and the appropriate state agency shall prepare
12 the state water projects plan.

13 (e) The department of agriculture shall prepare a state
14 agricultural water use and development plan for agricultural
15 uses in the State in accordance with chapter 167 and this
16 chapter, and subsequently modify and update the plan as
17 necessary. The state agricultural water use and development
18 plan shall include but not be limited to a master irrigation
19 inventory plan which shall:

20 (1) Inventory ~~the~~ public and private irrigation water
21 systems;

- 1 ~~[(2) Identify the extent of rehabilitation needed for each~~
- 2 ~~system,~~
- 3 ~~(3) Subsidize the cost of repair and maintenance of the~~
- 4 ~~systems,~~
- 5 ~~(4) Establish criteria to prioritize the rehabilitation of~~
- 6 ~~the systems,~~
- 7 ~~(5) Develop a five year program to repair the systems; and~~
- 8 ~~(6) Set up a long range plan to manage the systems.]~~
- 9 (2) Assess the condition of public and private irrigation
- 10 water systems and the costs of rehabilitation;
- 11 (3) Identify the sources of water serving public and
- 12 private irrigation water systems;
- 13 (4) Identify sources of water used by agricultural
- 14 operations on lands identified and designated as
- 15 important agricultural lands pursuant to part III of
- 16 chapter 205;
- 17 (5) Identify the threats to agricultural use of water,
- 18 including threats to the sources and the
- 19 rehabilitation of water systems; and
- 20 (6) Identify current and future water needs for
- 21 agricultural operations on lands identified and

1 designated as important agricultural lands pursuant to
2 part III of chapter 205.

3 The commission shall coordinate the incorporation of the state
4 agricultural water use and development plan into the state water
5 projects plan.

6 (f) Each county water use and development plan shall
7 include but not be limited to:

8 (1) Status of water and related land development,
9 including an inventory of existing water uses for
10 domestic, municipal, and industrial users,
11 agriculture, aquaculture, hydropower development,
12 drainage, reuse, reclamation, recharge, and resulting
13 problems and constraints;

14 (2) Availability of water needed to sustain viable
15 agricultural activity on lands identified and
16 designated as important agricultural lands pursuant to
17 part III of chapter 205;

18 ~~[-2-]~~ (3) Future land uses and related water needs; and

19 ~~[-3-]~~ (4) Regional plans for water developments, including
20 recommended and alternative plans, costs, adequacy of
21 plans, and relationship to the water resource
22 protection and water quality plans.



1 (g) The Hawaii water plan shall be directed toward the
2 achievement of the following objectives:

3 (1) The attainment of maximum reasonable-beneficial use of
4 water for such purposes as those referred to in
5 subsection (a);

6 (2) The proper conservation and development of the waters
7 of the State;

8 (3) The control of the waters of the State for such public
9 purposes as navigation, drainage, sanitation, and
10 flood control;

11 (4) The attainment of adequate water quality as expressed
12 in the water resource protection and water quality
13 plans; [and]

14 (5) The adequate provision of water needed to sustain
15 viable agricultural activity on lands identified and
16 designated as important agricultural lands pursuant to
17 part III of chapter 205; and

18 [~~5~~] (6) The implementation of the water resources policies
19 expressed in section 174C-2."

20 2. By amending subsections (k) to read:

21 "(k) The commission shall give careful consideration to
22 the requirements of public recreation, the protection of the



1 environment, [~~and~~] the procreation of fish and wildlife[~~-~~], and
2 the water requirements to sustain viable agricultural activity
3 on lands identified and designated as important agricultural
4 lands pursuant to part III of chapter 205. The commission may
5 prohibit or restrict other future instream or offstream uses on
6 certain designated streams which may be inconsistent with these
7 objectives."

8 SECTION 4. Section 174C-71, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§174C-71 Protection of instream uses. The commission
11 shall establish and administer a statewide instream use
12 protection program. In carrying out this part, the commission
13 shall cooperate with the United States government or any of its
14 agencies, other state agencies, and the county governments and
15 any of their agencies. In the performance of its duties the
16 commission shall:

17 (1) Establish instream flow standards on a stream-by-
18 stream basis whenever necessary to protect the public
19 interest in waters of the State;

20 (A) The commission, on its own motion, may determine
21 that the public interest in the waters of the

1 State requires the establishment of an instream
2 flow standard for streams;

3 (B) In acting upon the establishment of instream flow
4 standards, the commission shall set forth in
5 writing its conclusion that the public interest
6 does or does not require, as is appropriate, an
7 instream flow standard to be set for the stream,
8 the reasons therefor, and the findings supporting
9 the reasons;

10 (C) Each instream flow standard shall describe the
11 flows necessary to protect the public interest in
12 the particular stream. The public interest shall
13 include but not be limited to the protection of
14 adequate fishery, wildlife, recreational,
15 aesthetic, and scenic instream uses as well as
16 offstream uses such as the support of
17 agricultural activity and domestic and municipal
18 uses. Flows shall be expressed in terms of
19 variable flows of water necessary to protect
20 [~~adequately fishery, wildlife, recreational,~~
21 ~~aesthetic, scenic, or other~~] beneficial instream
22 uses in the stream in light of existing and

1 potential water developments, including the
2 economic impact of restriction of such use;

3 (D) Establishment or modification of an instream flow
4 standard shall be initiated by the commission by
5 providing notice of its intention to set an
6 instream flow standard in a newspaper of general
7 circulation published in the vicinity of the
8 stream in question, to the mayor of the
9 appropriate county, and to persons who have
10 previously requested such notice in writing;

11 (E) After giving notice of its intention to set an
12 instream flow standard, the commission or other
13 agencies in participation with the commission
14 shall investigate the stream. During the process
15 of this investigation, the commission shall
16 consult with and consider the recommendations of
17 the department of health, the aquatic biologist
18 of the department of land and natural resources,
19 the natural area reserves system commission, the
20 University of Hawaii cooperative fishery unit,
21 the United States Fish and Wildlife Service, the
22 department of agriculture, the mayor of the



1 county in which the stream is located, and other
2 agencies having interest in or information on the
3 stream, and may consult with and consider the
4 recommendations of persons having interest in or
5 information on the stream. In formulating the
6 proposed standard, the commission shall weigh the
7 importance of the present or potential instream
8 values with the importance of the present or
9 potential uses of water from the stream for
10 noninstream purposes, including the economic
11 impact of restriction of such uses. [~~In order~~
12 ~~to~~] Priority shall be given to water used to
13 support agricultural activity on lands identified
14 and designated as important agricultural lands
15 pursuant to part III of chapter 205. To avoid or
16 minimize the impact on existing uses of
17 preserving, enhancing, or restoring instream
18 values, the commission shall consider physical
19 solutions, including water exchanges,
20 modifications of project operations, changes in
21 points of diversion, changes in time and rate of



1 diversion, uses of water from alternative
2 sources, or any other solution; and
3 (F) Before adoption of an instream flow standard or
4 modification of an established instream flow
5 standard, the commission shall give notice and
6 hold a hearing on its proposed standard or
7 modification;
8 (2) Establish interim instream flow standards;
9 (A) Any person with the proper standing may petition
10 the commission to adopt an interim instream flow
11 standard for streams [~~in order~~] to protect the
12 public interest pending the establishment of a
13 permanent instream flow standard;
14 (B) Any interim instream flow standard adopted under
15 this section shall terminate upon the
16 establishment of a permanent instream flow
17 standard for the stream on which the interim
18 standards were adopted;
19 (C) A petition to adopt an interim instream flow
20 standard under this section shall set forth data
21 and information concerning the need to protect
22 and conserve beneficial instream uses of water

1 and any other relevant and reasonable information
2 required by the commission;

3 (D) In considering a petition to adopt an interim
4 instream flow standard, the commission shall
5 weigh the importance of the present or potential
6 instream values with the importance of the
7 present or potential uses of water for
8 noninstream purposes, including the economic
9 impact of restricting such uses[+]. Priority
10 shall be given to water used to support
11 agricultural activity on lands identified and
12 designated as important agricultural lands
13 pursuant to part III of chapter 205;

14 (E) The commission shall grant or reject a petition
15 to adopt an interim instream flow standard under
16 this section within one hundred eighty days of
17 the date the petition is filed. The one hundred
18 eighty days may be extended a maximum of one
19 hundred eighty days at the request of the
20 petitioner and subject to the approval of the
21 commission; and

1 (F) Interim instream flow standards may be adopted on
2 a stream-by-stream basis or may consist of a
3 general instream flow standard applicable to all
4 streams within a specified area;

5 (3) Protect stream channels from alteration whenever
6 practicable to provide for fishery, wildlife,
7 recreational, aesthetic, scenic, and other beneficial
8 instream uses;

9 (A) The commission shall require persons to obtain a
10 permit from the commission prior to undertaking a
11 stream channel alteration; provided that routine
12 streambed and drainageway maintenance activities
13 and maintenance of existing facilities are exempt
14 from obtaining a permit;

15 (B) Projects which have commenced construction or
16 projects reviewed and approved by the appropriate
17 federal, state, or county agency prior to July 1,
18 1987, shall not be affected by this part;

19 (C) The commission shall establish guidelines for
20 processing and considering applications for
21 stream channel alterations consistent with
22 section 174C-93; and



1 (D) The commission shall require filing fees by users
2 to accompany each application for stream channel
3 alteration;

4 and

5 (4) Establish an instream flow program to protect,
6 enhance, and reestablish, where practicable,
7 beneficial instream uses of water. The commission
8 shall conduct investigations and collect instream flow
9 data, including fishing, wildlife, aesthetic,
10 recreational, water quality, and ecological
11 information and basic streamflow characteristics
12 necessary for determining instream flow requirements.

13 The commission shall implement its instream flow standards
14 when disposing of water from state watersheds, including that
15 removed by wells or tunnels where they may affect stream flow,
16 and when regulating use of lands and waters within the state
17 conservation district, including water development."

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect upon its approval.

21

INTRODUCED BY:

Russell Kohl B/R



Report Title:

Water for Important Agricultural Lands; Water Code

Description:

Incorporates into the Water Code, consideration of the water needs of Important Agricultural Lands.

