

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
FEBRUARY 6, 2008**

MEASURE: H.B. No. 2738
TITLE: Relating to Irrigation.

Chair Ito and Members of the Committee:

DESCRIPTION:

This bill proposes to exempt from the purview of the Public Utilities Commission ("Commission") any person who controls, operates or manages irrigation facilities for transmitting nonpotable water for private nondomestic use.

POSITION:

The Commission respectfully offers the following comments on this measure.

COMMENTS:

- **The Commission defers to the Legislature on whether persons controlling, operating or managing irrigation facilities for transmitting nonpotable water for private nondomestic use should be exempted from Commission regulation under chapter 269, Hawaii Revised Statutes ("HRS").**
- **However, the description of the type of entity to be exempted is unclear. In particular, the Commission requests that the bill clarify the phrase, "private nondomestic use."**
 - Under HRS § 269-1, a "public utility" includes "every person who may own, control, operate, or manage ... any plant or equipment, or any part thereof, directly or indirectly for public use, ... for the production, conveyance, transmission, delivery, or furnishing of ... water..." (Emphasis added.) As such, this bill may not be necessary if it is intended to exempt providers of nonpotable water for "private" use.

Thank you for the opportunity to testify.



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**HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**

ATTN: CHAIR KEN ITO & VICE-CHAIR KARAMATSU

Testimony Opposing HB 2738: Relating to Irrigation

February 6, 2008, 8:30 a.m.

Conference Room 312

Aloha Chair Ito, Vice-Chair Karamatsu, and Members of the Committee:

Earthjustice opposes HB 2738 based on our concerns regarding the ambiguity and ultimate effect of the proposed amendment. We believe that this bill would create the negative result of excluding from Public Utilities Commission (PUC) regulation entities that are operating as de facto utilities, using old plantation ditch systems to sell nonpotable water to members of the public.

A prime example of this is the "Wailuku Water Company" on Maui. This company is the remnants of the old Wailuku Sugar plantation after it sold off all its former lands, except for watershed lands and the ditch system that diverts nonpotable water from public streams. Now, Wailuku Water Company is pursuing the business of selling public water resources to various customers such as golf courses, residential subdivisions, and construction companies, for purposes such as landscaping, agriculture, and dust control -- at unregulated rates.

Water companies such as Wailuku Water Company should be regulated by the PUC. However, it is unclear whether HB 2738 exemption of "nonpotable water for private nondomestic use" would eliminate such oversight. At the very least, further study is needed to examine entities such as Wailuku Water Company, and to improve the language of HB 2738 and similar measures so that such operations will not escape PUC regulation.

Very truly yours,

Isaac H. Moriwake
Attorney
Earthjustice