

---

**From:** Kinohine@aol.com [mailto:Kinohine@aol.com]

**Sent:** Friday, February 01, 2008 8:33 AM

**To:** WLHtestimony

**Subject:** Testimony on HB 2808 & HB 2820

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs And AGRICULTURE

Attn: Chairs Ken Ito & Cliff Tsuji

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Roselle Bailey and I am testifying in strong opposition to HB 2808 and HB2820, which seek to ammend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawaii, water is a public trust in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such ammendments are unnecessary because the water code already provides for the "maximum beneficial use of the water of the state for purposes such as....irrigation and other uses" HRS174C-2(c). In addition, the Hawaii Supreme Court--the body charged with interpreting our state constitution--has already determined that although the public has an interest in offstream uses such as agiculture, agriculture uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Do not enslave us once more by taking the public trust asunder!!

Thank you for the opportunity to testify.

Sincerely,  
Roselle Bailey  
485 Lilihua Place  
Wailuku 96793  
808 244 6225  
[kinohine@aol.com](mailto:kinohine@aol.com)

---

Who's never won? [Biggest Grammy Award surprises of all time on AOL Music.](#)

---

**From:** pennysfh@hawaii.rr.com [mailto:pennysfh@hawaii.rr.com]  
**Sent:** Friday, February 01, 2008 9:03 AM  
**To:** WLHtestimony  
**Subject:** Joint hearing on HB 2808 and HB 2820

**House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND  
AGRICULTURE  
Attn: Chairs Ken Ito & Clift Tsuji**

**Testimony Opposing HB 2808: Agriculture; Important Ag Lands  
Testimony Opposing HB 2820: State Water Code; Important Ag Lands**

**February 1, 2008, 8:30 a.m.  
Conference Room 325**

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Penny Levin and I am testifying in strong opposition to HB2808 or HB20820. These measures are unnecessary and inappropriate, and must be killed.

Public trust protection of water is a Supreme Court protected law in Hawaii. Both bills these bills use the "important agricultural lands" as the latest attempt to cut the heart out of our Water Code, contrary to the Hawai'i Supreme Court's rulings in In re Waiahole Ditch Combined Contested Case Hearing, 94 Haw. 97 (2000) (Waiahole). The amendments proposed by these bills attempt to provide corporate ag interests with an absolute priority to water -- greater even than public trust uses, such as environmental protection, traditional and customary Native Hawaiian rights and practices, and domestic water use.

As legislators, the following are critical issues for you to consider. There are numerous reasons that HB2808 and HB2820 should not be made into law, most particularly because:

- 1) HB 2808 & 2820 ARE UNECESSARY. The law already recognizes the public interest in maintaining agricultural water uses and provides ample protection of existing uses, including agriculture. In every single case, including Waiahole, the Commission has given ag. uses all the water they needed and more. Even as these interests got that water (e.g., Del Monte) they are still closing up shop; water is not the issue.
- 2) HB 2808 & 2820 ARE INAPROPRIATE SPECIAL INTEREST FAVORITISM. Waiahole made clear that even public trust uses don't enjoy an absolute preference. Yet these bills give certain ag. uses, which the Waiahole case made clear aren't public trust uses, an absolute priority that even public trust uses don't enjoy.
- 3) HB 2808 & 2820 ARE SIMPLY BAD WATER POLICY. Carving out an absolute preference for ag uses is antithetical to the comprehensive planning and management principles underlying the Code's complex regulatory framework. It effectively exempts these uses from the Code's permitting scheme. Had such a provision been applied to Waiahole, none of the water would have been required to be returned to the windward streams.

4) THE SYSTEM WORKS; IT JUST NEEDS LEGISLATIVE SUPPORT FOR RESOURCES TO DO ITS JOB. The legislature should let the existing law run its course and support community efforts – such as those in Na Wai `Eha, Maui – to restore water to streams for public trust uses, instead of making things more difficult for those communities. Almost all of the sugar and pineapple plantations have closed, yet water from our streams continues to be taken and dumped. Instead of changing the law to allow these former plantation interests to do whatever they please with public trust resources (including continuing to use public trust resources for their private commercial gain, i.e. development), the legislature should provide the Water Commission with the staff and funding necessary to do their jobs, e.g, establish instream flow standards.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai`i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,  
Penny Levin

Wailuku, Hawaii

-----Original Message-----

From: STEVEN HOOKANO [mailto:emiout@earthlink.net]  
Sent: Friday, February 01, 2008 9:15 AM  
To: WLHtestimony  
Subject: testimony for water code bill

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND  
AGRICULTURE  
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands  
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.  
Conference Room 325

SAMPLE TESTIMONY:

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Steven Hookano and i am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai`i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,  
Steven Hookano  
taro farmer, Wailuanui, Maui  
245 Wailua Rd.  
Haiku hi 96708

---

**From:** Pauahi Hookano [mailto:pauahi.hookano@gmail.com]  
**Sent:** Friday, February 01, 2008 9:08 AM  
**To:** WLHtestimony  
**Subject:** water bill testimony

**House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs  
AND AGRICULTURE  
Attn: Chairs Ken Ito & Clift Tsuji**

**Testimony Opposing HB 2808: Agriculture; Important Ag Lands  
Testimony Opposing HB 2820: State Water Code; Important Ag Lands**

**February 1, 2008, 8:30 a.m.  
Conference Room 325**

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is L. Pauahi Hookano and i am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai`i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,  
Pauahi Hookano  
245 Wailua Rd.  
Haiku Hi  
96708  
808-248-7847

--

Maka'ala ke kanaka kahea manu

aloha,  
Pauahi

---

**From:** Alan Murakami [mailto:almurak67@gmail.com]  
**Sent:** Friday, February 01, 2008 1:52 PM  
**To:** WLHtestimony  
**Subject:** Re: Hearing on HB 2808 and 2820

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS  
Rep. Ken Ito, Chair  
Rep. Jon Riki Karamatsu, Vice Chair

HOUSE COMMITTEE ON AGRICULTURE  
Rep. Clift Tsuji, Chair  
Rep. Tom Brower, Vice Chair

DATE: Friday, February 1, 2008  
TIME: 8:30 AM  
PLACE: Capitol Room 325

**RE: HB 2808 and 2820**

From: Alan T. Murakami

I OPPOSE both HB 2820 and 2820. These bills would insert similar objectionable language as part of the water code, HRS sec. 174C-2 Declaration of Policy:

(d) The public trust doctrine shall guide the actions of the commission. In the planning and allocation of water resources, to the extent feasible, the commission shall recognize the public trust purposes of resource protection, domestic uses, upholding the exercise of native Hawaiian traditional and customary rights, and the conservation and protection of agricultural activity on important agricultural lands under part III of chapter 205.

The effect of this amendment would gut the meaning of the public trust doctrine, which was designed originally to PROTECT and CONSERVE important natural resources, not used to justify EXPLOITATION and CONSUMPTION, especially when it serves big corporate ag interests. Currently, the Hawai'i Supreme Court has ruled that "...the burden [is] on the applicant to justify the proposed water use in light of the trust purposes and 'weigh competing public and private water uses on a case-by-case basis[.],' requiring a higher level of scrutiny for private commercial water usage Waiahole II, 105 Haw. 1, 16; 93 P.3d 643, 658 (2004). If the commercial uses of water suddenly rank on par with truly public trust purposes (like the protection of the ecology of streams and water associated with traditional and customary practices), the rights of the environment and Hawaiians will be stripped of any meaning.

Note that while the public trust relates to such uses as taro irrigation, such uses return water back to the watershed of origin. In contrast, in the case of plantations, the water is

exported out of a watershed and totally disrupts the ecosystem and cultural practices within and makai of the watershed of origin. You can imagine the complete disruption of our system of laws protecting water resources.

These measures are ill-advised and should be rejected because:

Hawai`i has a good system for water regulation already. Over the past 3 decades, Hawai`i affirmed through case decisions and legislative enactments to protect water as a public trust resource which belonged to all the people of Hawai`i, with no rights of private ownership.

Under this system our state constitution and Water Code balance: (1) important environmental and cultural rights are protected, so species can survive and traditions and customs can continue in streams and along our invaluable shorelines; and (2) "reasonable beneficial use" of our water, such as irrigation to grow food and other important crops, subject to regulation by the Water Commission. The Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c).

HB 2808 and HB 2820 would upset that carefully crafted balance now regulated under the Code. Water being used for important food crops already is recognized as a reasonable beneficial use that is respected under the Water Code. Agricultural uses are clearly NOT, and by definition cannot be, a public trust purpose, even if important agricultural lands deserve protection. Farmers who truly farm currently get the water they need. There is no documented problem supporting these true farmers when they need water that can be addressed by changing the public trust doctrine by legislation.

It would gut the very foundation of it by inserting irrigation water use for important ag lands as a public trust purpose. The premises in these bills that lead to the proposal to elevate a consumptive use of water as a public trust purpose is both a distortion and injustice to the concept of the public trust doctrine.

Please kill HB 2808 and HB 2820.

Thank you for this opportunity to testify.





# Food Company Hawaii

1116 Whitmore Avenue Wahiawa, Hawaii 96786

## LATE TESTIMONY

February 1, 2008

Honorable Ken Ito, Chair, Committee on Water, Land, Ocean Resources & Hawaiian Affairs  
Honorable Clift Tsuji, Chair, Committee on Agriculture  
Hawai'i State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, HI 96813

**RE: HB 2807 RELATING TO LAND USE and HB 2808 RELATING TO IMPORTANT AGRICULTURAL LANDS – SUPPORT**

Chairs Ito and Tsuji and Members of the Committee:

I am Dan Nellis, Operations Director of Dole Food Company Hawaii (“Dole”). Thank you for the opportunity to testify in support of HB 2807, Relating to Land Use, and HB 2808, Relating to Important Agricultural Lands. We also ask for your support to pass an HD1 to further define an incentive that would allow landowners to petition the LUC to voluntarily designate agricultural lands to IAL in exchange for a district reclassification of other Agricultural lands to Rural, or to Urban so long as the reclassification is consistent with the relevant county’s general, urban or sustainability plan.

Dole supports the establishment of meaningful incentives for all impacted landowners who voluntarily designate their valuable agricultural lands as a condition to implementing the Important Agricultural Lands (IAL) Act. But it is imperative that such a comprehensive package of incentives include meaningful and adequate options for all land owners in different situations, not just independent farmers and small land owners. These bills provide a comprehensive set of incentives to entice large and small operations and large and small land owners to voluntarily designate their properties as IALs.

As you consider IAL legislation, please remember that it is important that any IAL package include a sufficient variety of incentives such that there is attraction for voluntary designation in a multitude of scenarios. The intent of the IAL was to set policies for and to establish the framework for identifying important agricultural lands; however, it should also provide for the development of true incentives for agricultural viability in Hawai'i.

While we supported the multitude of the incentives introduced last year that were geared toward tenant farmers and owners of relatively small parcels of agricultural land, we believed the offering fell short of addressing the needs or concerns of owners of larger parcels of contiguous agricultural land for the following reasons:

- Owners of larger, fallow agricultural land incur higher property taxes;
- Higher operational and maintenance costs associated with trash removal, insurance, maintenance of irrigation systems, maintenance of roads, security, removal of abandoned cars, squatters, cutting of fire breaks, liability issues, lease administration, and so forth are also incurred by large property owners; and
- While we support diversified agriculture, leasing land is not very profitable – it is merely a means of minimizing operational and maintenance costs by occupying vacant land with some form of agricultural pursuit, in which small agriculture operators often struggle to break even.

If the support of diversified agriculture is a constitutional mandate to meet a compelling public interest and our agricultural land is to be down-zoned to achieve this purpose, we believe it is unreasonable to expect landowners to bear the brunt of subsidizing this public interest. Instead we should broaden incentives that (in addition to those that may help tenant farmers) promote agriculture through benefits and compensation to owners of large parcels of contiguous agricultural land.

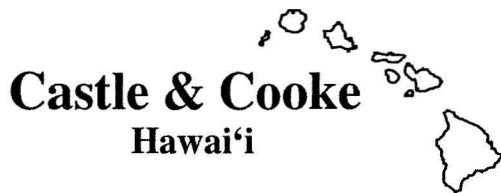
Landowners would receive a true incentive, benefit and compensation for the down-zoning of their land resulting from IAL designation at no cost to the counties or State. In fact, the counties and the State would receive a tax benefit from this arrangement. The counties will benefit through higher property tax collections on the land that gets developed. The state will benefit through increased farm revenue plus the GET and income tax on the development activity. In addition, the land in the rural district will serve as a buffer between the urban district and the agricultural district, thus mitigating the conflicts between the uses.

For these reasons, we support the incentives in HB 2807 and HB 2808 that help achieve the goal of providing real incentive to owners of large contiguous parcels of agricultural land.

As always, we are grateful for the opportunity to share our views with you.

Sincerely,

Dan Nellis  
Operations Manager, Dole Food Company Hawaii



100 Kahelu Avenue  
Mililani, Hawaii 96789-3997  
P.O. Box 898900  
Mililani, Hawaii 96789-8900  
(808) 548-4811 Fax (808) 548-6670

February 1, 2008

## LATE TESTIMONY

Honorable Ken Ito, Chair, Committee on Water, Land, Ocean Resources & Hawaiian Affairs  
Honorable Clift Tsuji, Chair, Committee on Agriculture  
Hawai'i State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, HI 96813

**RE: HB 2807 RELATING TO LAND USE and HB 2808 RELATING TO IMPORTANT AGRICULTURAL LANDS – SUPPORT**

Chairs Ito and Tsuji and Members of the Committee:

I am Harry Saunders, President of Castle & Cooke Hawai'i. We appreciate the opportunity to express our support for HB 2807, which would provide incentives to landowners who designate their land as important agricultural lands, and for HB 2808, a bill to provide comprehensive list of incentives and protections to establish and sustain viable agricultural operations on important agricultural lands. We also ask for your support to pass a HD1 to further refine an incentive that would allow landowners to petition the LUC to voluntarily designate agricultural lands to IAL in exchange for a district reclassification of other Agricultural lands to Rural, or to Urban so long as the reclassification is consistent with the relevant county's general, urban or sustainability plan.

Over the interim, the Land Use Research Foundation (LURF) and the Hawaii Farm Bureau Federation ("Farm Bureau") have been at work developing a comprehensive package of Important Agricultural Lands (IAL) incentives. Together members of LURF and the Farm Bureau have come together on several incentives that target active agribusiness operators and draw landowners like Castle & Cooke Hawai'i to commit substantial lands for IAL designation. The fruition of this consensus building exercise is HB 2807 and HB 2808, which we support.

From our perspective, agricultural production is not always the highest and best use of agricultural lands otherwise we would grow and/or lease more fields to encourage active cultivation. And, as our population continues to increase, we see that the need for new housing will continue to grow. How do we balance the state's mandate to designate IALs to promote diversified agriculture and the state's mission to provide more affordable homes for residents while maintaining our assets to minimize our financial losses?

Castle & Cooke Hawai'i consists of the Hawai'i subsidiaries of Castle & Cooke, Inc. which include Castle & Cooke Homes Hawai'i, Inc., Castle & Cooke Properties, Inc., Castle & Cooke Resorts, LLC and other subsidiaries

As a landowner in Hawaii, Castle & Cooke must balance and diversify our business operations and ventures to sustain and continue our presence in Hawaii if we expect to continue the legacy established by Mr. Cooke and Mr. Castle in 1851. Income generated by leasing agricultural lands is negligible and does not cover operating and maintenance costs such as insurance, road or irrigation maintenance, trash removal and the like. Leasing has become a means to minimize our operational and maintenance costs. We in effect subsidize the operation of tenant farmers on our agricultural lands. Thus, maintaining a program of supporting diversified agriculture (i.e. cultivating crops and leasing property to tenant farmers) must be subsidized by our other operations, like developing homes for our island families.

To draw in large landowners like us to voluntarily designate large tracts for IAL, one must consider that landowners need a fair incentive to offset the diminishing value of assets dedicated to IAL. For landowners, incentives like those in HB 2807 and HB 2808 allow greater flexibility of permissible uses for agricultural lands that are not dedicated as IAL. It also allows landowners to petition the LUC to voluntarily designate agricultural lands to IAL in exchange for a district reclassification of other Agricultural lands to Rural, or to Urban so long as the reclassification is consistent with the relevant county's general, urban or sustainability plan. And by allowing properties in Rural districts to include agribusiness activities (i.e. horticulture, apiculture, aquaculture, livestock, plant nurseries), farm-worker housing, and affordable housing for households with incomes at or below 140% median as established by HUD, we will have the infrastructure we need to build a community in support of diversified agriculture in Hawaii.

We would like to note that this incentive does not create a drain on the state's treasury since this is not a monetary incentive. On the contrary, this incentive will create jobs, tax revenue, and affordable housing while protecting important agricultural lands.

For these reasons we ask you to support the passage of HB 2807 and HB 2808.

Mahalo for your interest in hearing our position. Should you have any questions, feel free to contact Carleton Ching, Vice President of Government and Community Relations, at 548-3793, or Mark Takemoto, Natural Resources Administrator at 548-6656.

Sincerely,

Harry A. Saunders  
President