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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND
COMMERCE

THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

Monday, February 11, 2008
2:05 p.m.

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS TO THE HONORABLE REPRESENTATIVE HERKES,
CHAIR AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 2810 – RELATING TO WATER RATES.

DESCRIPTION:

This measure establishes a process for just and reasonable water rates for “farming operations” with Hawaii Public Utilities Commission (“Commission”) oversight, but excludes the water supplier from the definition of a “public utility” set forth in section 269-1, HRS.

POSITION:

The Division of Consumer Advocacy (“Consumer Advocate”) appreciates the intent of this measure, which provides that water rates for a “farming operation” shall be established by agreement between the farming operation and the supplier, subject to approval by the Commission. Exempting the water provider from Commission regulation – if it meets the definition of a “public utility” – may impair the Consumer Advocate’s and Commission’s abilities to adequately review the proposed rates. We offer the following comments for this Committee’s consideration.

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H.B. No. 2810
House Committee on Consumer Protection and
Commerce
Monday, February 11, 2008, 2:05 p.m.

COMMENTS:

By exempting providers of water to "farming operations" from Commission regulation under chapter 269, HRS, it appears that the measure intends to provide fewer regulations with which such providers must comply. Requiring such water providers to submit water agreements with "farming operations" for Commission approval will likely prove to be challenging for the Consumer Advocate (ex officio a party to every proceeding before the Commission), the Commission, and the water provider.

Many of the other provisions within chapter 269, HRS, (to which such water provider will be exempted) are intended to provide the Consumer Advocate and the Commission with adequate information to render a sound recommendation and a reasoned decision, respectively. The absence, then, of such standard information, likely would extend the approval process, since the Consumer Advocate and the Commission may need to ask numerous questions and data requests to determine whether the rates charged are just and reasonable.

It would appear that the existing law is adequate to protect both the "farming operation" customer and the provider of the water service. If the water provider is a public utility, any rates charged must be approved by the Commission. After approval, the customer is charged a just and reasonable rate and the public utility is assured an opportunity to earn a fair rate of return.

If, however, the water provider is not furnishing water service to the public (for example, when a water provider supplies water to itself), it would not be subject to Commission regulation. In the event of a dispute as to the reasonable rate, the parties of a non-regulated service could merely engage in typical dispute resolution measures to resolve their disagreement.

Thank you for this opportunity to testify.

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LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
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SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION & COMMERCE

FEBRUARY 11, 2008, 2:05 P.M.

HOUSE BILL NO. 2810
RELATING TO WATER RATES

Chairperson Herkes and Members of the Committee:

Thank you for the opportunity to comment on House Bill No. 2810. The purpose of this bill is to establish a process for just and reasonable water rates for farming operations with PUC oversight, but excludes the water supplier from the definition of a "public utility". The department recognizes the intent of this bill, however, defers to the PUC regarding the feasibility of this measure.

The Department of Agriculture supports agricultural production and any assistance that can be provided to make agriculture more successful. We also are very cognizant of the role that water plays in the growth of crops. We appreciate the language in this bill that allows the farming operation and supplier to negotiate acceptable terms first, prior to the PUC stepping in. However, we also recognize that many of these private utilities are small and have a limited customer base which need to

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TESTIMONY OF SANDRA LEE KUNIMOTO
HOUSE BILL NO. 2810
FEBRUARY 11, 2008, 2:05 P.M.
PAGE 2

collectively contribute a certain dollar amount in order to operate and maintain the system. Based on testimony heard last year on related bills, if the legislature wishes for the PUC to give preferential rates for agricultural water, the legislature must give it such guidance to do so.

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HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

FEBRUARY 11, 2008

HEARING BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION
AND COMMERCE

TESTIMONY ON HB 2810
RELATING TO WATER RATES

Chairs Herkes and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation respectfully requests an amendment to HB 2810.

While we support the intent of this bill which gives the Public Utility Commission the ability to provide discounted water rates for agriculture, we believe that the existing language of the bill does not provide for the PUC enough flexibility to guide them in providing reduce rates for agricultural water users. We ask that this bill be drafted in accordance with a recent study that provided findings and recommendations for the PUC in this matter.

The Hawaii State Constitution, Article XI, section 3, states that agriculture should be promoted and protected and, thus we believe that giving the PUC the ability to provide discounted agricultural water rates is justified and necessary to ensure the viability of Hawaii's agricultural industry. Furthermore, as our agricultural industry makes this transition and the irrigation systems once servicing large mono-crop industry begin to service other smaller farm operations, we need to ensure that affordable and reasonable agricultural rates are provided.

We respectfully ask for this amendment to be inserted in place of the existing language of this measure.

Thank you.

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Hawaii Agriculture Research Center

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Ph: 808-487-5561/Fax: 808-486-5020

TESTIMONY BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

HOUSE BILL 2810

RELATING TO WATER RATES

February 11, 2008

Chairman Herkes and Members of your Committee:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

HARC supports House Bill 2810 Relating to Water Rates which provides the opportunity for a farmer to have input into the rate charged by a water supplier. Many agricultural subdivisions have few bone fide agricultural businesses operating within their boundaries. Where an agricultural operation exists the rates charges may be prohibited with respect to the economic viability of the agricultural operation. This measure interjects the PUC into the water rate agreement if one of the parties feels aggrieved.

Thank you for the opportunity to testify.

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House of Representatives
Twenty-Fourth Legislature
Regular Session of 2008

COMMITTEE ON AGRICULTURE
and
COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Hearing
Wednesday, January 30, 2008
8:30 a.m.

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Testimony relating to HB 2810 RELATING TO WATER RATES

Chairperson Tsuji
Chairperson Ito
Honored Representatives,

On behalf of the Hawai'i County Council, I would like to raise the following concerns regarding House Bill 2810. House Bill 2810's stated intent is to establish a process for just and reasonable water rates for farming operations with PUC oversight, but it excludes the water supplier from the definition of a "public utility."

Last session HB1121 RELATING TO WATER RATES FOR AGRICULTURAL USES was introduced. The House Committee on Agriculture and the Committee on Water, Land, Ocean Resources and Hawaiian Affairs both passed HB 1121, HD1 with 7 Ayes and 0 Noes. HB1121, HD1 was then referred to the House Committee on Commerce and Consumer Protection. It passed that Committee with amendments. The vote was 12 Ayes and 0 Noes.

HB1121, HD2 was passed over to the Senate where it was referred to Senate Committees Agriculture & Hawaiian Affairs and, Water and Land. The Senate passed Senate Concurrent Resolution #3, S.D. 1 – REQUESTING THE PUBLIC UTILITIES COMMISSION TO STUDY THE RATE STRUCTURES OF PRIVATE ENTITIES THAT FURNISH WATER USED FOR AGRICULTURAL PURPOSES.

The above referenced study was completed and a report was submitted to the Legislature in November 2007. The Summary and Recommendation of this report states:

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“The rate structures of the county water boards and some privately-owned water companies currently provide for relatively lower agricultural water rates, as compared with residential user rates. According to their responses, these entities have priced agricultural rates low by having other customer segments subsidize the costs to serve the agricultural customers, based on an effort to sustain the local agricultural industry. The counties are able to design their rates in this manner without significant burdens on these other customers by spreading costs over the large numbers of total customers they serve throughout their respective counties, while the private water companies are apparently having their parent companies provide the support.

Those privately-owned companies that have relatively higher rates based on cost have expressed concerns that a requirement to lower those rates to levels comparable to their local county water board may mean others – non-agricultural customers or the companies themselves – would have to make up for the loss in revenues.

If it is the Legislature’s objective to encourage and foster growth in the agricultural industry by providing all agricultural water users with more favorable water rates, as compared with rates of other water customers, the Commission recommends that the Legislature establish a state policy expressly calling for such favorable treatment. The policy must include clear direction on (1) how and from whom the providers of water to agricultural users will recover the loss in revenues as a result of discounted agricultural rates (e.g. subsidies from other types of water customers, government or other funding); and (2) the criteria by which water providers will determine whether a customer qualifies for the discounted agricultural rates. Guided by such a clearly-defined state policy, the water service providers and the Commission, in its regulation of water utilities, would then be able to act and set rates accordingly.” My emphasis.

The question becomes, is it the Legislature’s objective to encourage and foster growth in the agricultural industry? If so, is providing favorable water rates to agricultural users a means to meet this objective?

Hawaii’s agricultural industry provides home-grown products. Products that foster our self-sufficiency, sustainability and reduce the overall adverse effect on our environment by reducing our dependence on products shipped from distant locations. A significant portion of our agricultural industry has been surviving on reduced water rates by obtaining their “subsidized” water from the county water systems.

HB2810 appears to remove those agricultural industries from the current system that is working in their favor to a separate class of water users – “water rates for farming operations.” HB2810 removes direct oversight by the public utility commission. The commission would step in if the farmers and suppliers were unable to negotiate a rate for the water. The commission would then step in to “establish a just and reasonable rate for the water supplier.” Currently, the commission establishes “just and reasonable rates” for water for public utilities. The commission allows suppliers to recover cost and earn a ‘small’ amount of income beyond the cost of obtaining and providing the water. The overall cost of water for all users reflects that criteria. “Subsidized” agricultural users are given rates, by the suppliers, that are lower than those costs. If the

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commission uses the same criteria in implementing this Bill and water for farmers is considered separate and apart from all users [public utilities], the water rates will most likely go up for the farmers.

We ask that you consider the possible adverse consequences of this Bill.

We ask that the Legislature consider the report of the Public Utilities Commission relating to water rates for agricultural purposes.

And, if it is the intent of the Legislature to foster the growth of our agricultural industry, we ask that the Legislature adopt and implement the recommendations of the Public Utilities Commission as printed in their report.

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LIFE OF THE LAND

Ua Mau Ke Ea O Ka 'Aina I Ka Pono

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COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Chair: Rep. Robert N. Herkes

Vice Chair: Rep. Angus L.K. McKelvey

Monday, February 11, 2008

2:05 pm

Conference Room 325

HB 2810 (HSCR196-08) RELATING TO WATER RATES. Establishes a process for just and reasonable water rates for farming operations with PUC oversight, but excludes the water supplier from the definition of a "public utility." AGR/WLH, CPC

Aloha Chair Herkes, Vice Chair McKelvey and Members of the Committee,

Life of the Land is Hawai'i's own environmental and community action group advocating for the people and the `aina since 1970. Our mission is to preserve and protect the life of the land through sustainable land use and energy policies and by promoting open government through research, education, advocacy, and litigation.

This bill states that an agricultural water supplier must establish rates through the PUC, but the water company is not a public utility and therefore need not register with the PUC as a water company. Thus they don't have to provide the PUC with a fee to cover their regulation. Furthermore, their farming customers are unlikely to know that the water company must be regulated by the PUC, so are unlikely to approach the PUC to discuss rates. Furthermore, there is no penalty provision for non-compliance by the water company. Thus in all likelihood this bill would result in less water companies coming before the PUC. This will benefit gentleman estates on agricultural lots with private water systems (such as Poamoho Estates on O`ahu's North Shore) which seek to avoid sunshine. These fake farmers are paying less than their share of taxes, which the rest of us have to make up for. And they are abusing the use of agricultural lands.

Henry Curtis
Executive Director

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PALILA GROWERS, LLC
59-429 PALILA PLACE
KAMUELA, HAWAII 96743
PHONE: (808) 880-1902

House Committee on Consumer Protection & Commerce

Hearing: Monday, February 11, 2008
2:05 pm, Conference Room 325

Testimony relating to: HB 2810

“Establishes a process for just and reasonable water rates for farming operations with PUC oversight, but excludes the water supplier from the definition of a ‘public utility’”

Testimony by: Peter W. Eising

Chairman Herkes and Committee members:

My name is Peter Eising. We have developed what has become the largest grower of grapefruit on the Big Island, and, perhaps, in the State. Our situation is just an example of the problem that HB 2810 is seeking to correct.

Our orchard consists of over 300 trees. The land is zoned – Agriculture. We have sold in excess of 63,000 lbs of fruit in the last five years. We sell all of the fruit that we produce and could sell much more, if we had it. We are continually getting calls from grocers asking, “When will you have more fruit for us?” However, because of the extremely high cost of irrigation water, instead of expanding to accommodate the market, we are facing the sad prospect of going out of business. It seems very wrong if a viable agricultural business, producing a highly desired and unique product on agricultural land, and providing steady employment for local people, is put out of business because of having to pay an exorbitant residential water rate to irrigate its crops. This also seems contrary to our State’s expressed intent to encourage and support agriculture, but it illustrates the problem that we face – which is that viable agricultural businesses, such as our company, that operate on land zoned – agriculture, and have no choice but to pay residential water rates for irrigation, cannot survive, because the private water companies that provide water to them are not directed by the PUC to provide agricultural rates.

Agricultural water rates provided by both county and some private water systems average about \$1.00 per thousand gallons plus a power cost factor, which varies from month to month. If we could connect to the Hawaii County water system, we would qualify for their current agricultural water rate, which is \$0.85 per thousand gallons plus the power cost factor. Last year the PUC approved an increase in the rate for the private company that provides our water. They offer only a residential water rate. That rate, which we are now having to pay, is \$5.63 per thousand gallons, plus the power factor - over six times what Hawaii County would charge. As a result, all of our receipts from selling our fruit go just to pay for water. There is nothing left to pay our other expenses. Therefore, if we do not receive a reasonable agricultural water rate, we will be forced to let our trees die and go out of business.

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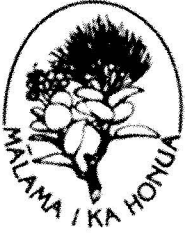
I came before your committee last year to discuss HB 1121, which dealt with this problem. The House recognized the problem and passed the bill. It did so without a “no” vote and it crossed over to the Senate. The Senate, then, sponsored, and the Legislature enacted, SCR3, SD1, which requested that the PUC study the rate structures of private entities that furnish water for agricultural purposes. That study was completed and published, and it describes in detail the very sizeable difference between residential and agricultural water rates. It also states that if it is the Legislature’s objective to encourage and foster growth in the agricultural industry through favorable agricultural water rates, the Legislature needs to establish a state policy expressly calling for such favorable treatment. It goes on to ask for direction as to how the providers of water to agricultural users will recover the loss in revenues as a result of discounted agricultural rates. The PUC also asks for guidance as to the criteria by which water providers will determine whether a customer qualifies for the agricultural rates. It finishes by saying, “Guided by such a clearly defined state policy, the water service providers and the Commission would then be able to act and set rates accordingly”. It seems to me that the bill that you are considering needs to be responsive to the findings of this study.

The effect of a reduced agricultural water rate on the residential users will be minimal, since there are far more residential users than there are agricultural users over which to spread the relatively small difference in revenue, while still providing the private water companies with the return on investment deemed suitable by the PUC. The county water systems have recognized this fact. Furthermore, they have very specific criteria that they require a user to meet before an agricultural water rate is granted. The private water companies can utilize similar criteria.

I am certainly in support of the intent of HB 2810. However, the bill takes away from the PUC the responsibility of establishing “just and reasonable rates”. Under the bill the PUC would step in only if the water supplier and the user could not agree on a rate. Secondly, the bill needs to respond fully to the expressed needs of the PUC as described in their study. In particular, the bill needs to provide the PUC with the specific legislative authority, that they have requested. It also needs to set a workable deadline by which time agricultural water rates will be in place. Otherwise, it might be years before any particular private utility refiles for adjusted water rates. Also, I am unclear as to the reason for excluding suppliers of water to farming operations from the term “Public Utility as defined in Section 269-1” of the Hawaii State Code. I am taking the liberty of submitting to you a draft of an amended bill that we feel is responsive to the recommendations of the PUC study as well as both the needs of private water companies and the agricultural water users. It is comprehensive and workable, and it should help to avoid conflict between the parties.

Please note, also, that this is one bill that will not cost the State a penny.

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Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803

808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

February 11th, 2008, 2:05 P.M.

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO HB 2810

Chair Herkes and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes HB 2810. While we have no comments about the provision for the Public Utilities Commission (PUC) to offer better agricultural water rates, we are concerned about exempting non-potable irrigation facilities from PUC oversight. We believe this measure will decrease public oversight and deliberative decision making in regards to diverted stream water. On Maui in particular, commercial operations are interested in increasing their control over public water assets. Some would like to "bank" the water—water that could be later used for landscaping—to increase the value of their assets.

House Bill 2810 facilitates that control by reducing public oversight by the PUC.

We agree with the Water Commission that the proposed subsection (b) should be deleted and that suppliers of water to farming operations not be excluded from the definition of "public utility" as set forth in HRS § 269-1.

Thank you for the opportunity to testify.

00094

mckelvey3

From: Warren Watanabe [warrenmcfb@hotmail.com]
Sent: Sunday, February 10, 2008 6:01 PM
To: CPCtestimony
Cc: Alan Takemoto
Subject: Testimony HB2810 PUC Rates - CPC Monday

TO Whom it May Concern
Please find attached testimony for
CPC Hearing Feb 11, Monday @ 2:05 pm

HB 2810 Water Rates

Thank you.

Warren K. Watanabe
Executive Director
Maui County Farm Bureau 2819718

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House of Representatives
Twenty-Fourth Legislature
Regular Session of 2008

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing
Monday, February 11, 2008
2:05 p.m.

Testimony relating to **HB 2810 RELATING TO WATER RATES**

Chairperson Herkes
Vice Chair McKelvey
Honored Representatives,

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Thank you for this opportunity to provide testimony on HB2810.

The Hawai'i County Council supports the provision of reduced water rates for bonafide agricultural operations.

On behalf of the Hawai'i County Council, I would like to raise the following concerns regarding House Bill 2810. House Bill 2810's stated intent is to establish a process for just and reasonable water rates for farming operations with PUC oversight. HB2810 excludes the water supplier from the definition of a "public utility."

HB2810 was heard by the House Agriculture and Water, Land, Ocean Resources & Hawaiian Affairs Committees on January 30, 2008. It was reported out of these Committees unamended. However, the report by these Committees, Standing Committee Report #196-08, acknowledges the concerns raised in testimony on HB2810.

I am including a copy of my testimony to the Agriculture and Water, Land, Ocean Resources & Hawaiian Affairs Committees. That testimony addresses our concerns with HB2810. It is included at this time because these concerns have not yet been addressed. [Attachment A.]

On behalf of the Hawai'i County Council, I request that HB2810 be amended to: 1) remove the exclusion of suppliers of water for agricultural usage from the definition of "public utilities"; and, 2) add a clearly defined policy statement in the bill to guide the PUC in setting favorable agricultural water rates for bonafide agricultural users.

Should these concerns be addressed, we would be in **support** of **HB2810**.

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**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE
FEBRUARY 11, 2008**

MEASURE: H.B. No. 2810
TITLE: Relating to Water Rates.

Chair Herkes and Members of the Committee:

DESCRIPTION:

This bill proposes to establish a new section in Chapter 269, Hawaii Revised Statutes ("HRS") that would require the Public Utilities Commission ("Commission") to approve agreements on water rates between farming operations and suppliers of water, and where agreements cannot be reached, the Commission would establish just and reasonable rates for the supply of water. The bill would also exclude suppliers of water to farming operations from coverage under the term "public utility" as defined in § 269-1, HRS.

POSITION:

The Commission has some concerns with the bill as drafted and offers the following comments and recommendations.

COMMENTS:

- **By excluding suppliers of water to farming operations from coverage under the term "public utility" as defined in § 269-1, HRS, the Commission is limited in terms of its powers and authority over such suppliers.**
 - For example, the Commission would not have the powers to conduct investigations and examinations into fares and rates charged by a supplier of water or to require the supplier to furnish any information the Commission may deem necessary in approving a water rate. It would also not be able to assess penalties.
 - The Commission recommends that the proposed subsection (b) be deleted and that suppliers of water to farming operations not be excluded from the definition of "public utility" as set forth in § 269-1, HRS.

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- **If the objective of this bill is to provide farming operations with more favorable rates as compared with rates of other classes of water customers, then the bill should expressly state that water rates should be set with that objective in mind.**
 - Such an express policy statement would guide the Commission in implementing this policy as it carries out the requirements of this bill to approve water rate agreements and establish just and reasonable rates for water suppliers to farming operations.

Thank you for the opportunity to testify.