

HB 2810 HD1

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
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LATE

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND
THURSDAY, MARCH 13, 2008, 2:45 P.M.
ROOM 224

HOUSE BILL NO. 2810, H.D. 1
RELATING TO WATER RATES

Chairpersons Tokuda and Hee and Members of the Committees:

Thank you for the opportunity to comment on House Bill No. 2810, H.D. 1. The purpose of this bill is to establish preferential potable water rates to be used for agricultural activities. As an advocate for agriculture in Hawaii, the Department strongly supports this bill that would reduce the cost of irrigation water in agricultural areas serviced by private water systems thereby improving the likelihood of farmers establishing new farms and continuing existing operations.

The Department of Agriculture supports efforts to make agricultural production more successful, such as offering farmers irrigation water available at rates lower than domestic water. Irrigation water is fundamental to agricultural production throughout the state. All counties provide preferential water rates for county-supplied agricultural irrigation and are based on county land and water policies in support of agricultural production. For example, the County of Maui in 2005 produced an average of 35.6 million gallons/day (MGD) of surface and ground water of which 32.1 MGD (90 percent) was for potable or domestic use and 3.4 MGD (10 percent) was for agricultural irrigation. The agricultural water rate to qualified customers is \$0.90 per thousand gallons and the domestic rate ranges from \$2.60 to \$3.50 per thousand. The

incremental increase to domestic water users' bills resulting from the agricultural rate subsidy is much less apparent when there are many more domestic than agricultural water users.

Private water systems supplying water to agricultural subdivisions whose customers have farm dwellings and have planted crops with potable and irrigation water needs may face a different situation as the amount of water used for irrigation is likely to be much greater than that of domestic water. Also, private water systems are likely to require much higher per-unit operating and maintenance costs. As proposed in this measure, a subsidy of agricultural irrigation users by domestic water users serviced by the same system would make agricultural production more likely and in consonance with Chapter 205 which requires farm dwellings to be used in connection with a farm. On the other hand, a subsidy of agricultural irrigation users may raise the cost of water to all domestic users, whether farming or not, to maintain a revenue stream sufficient to operate, maintain, and service the debt for the private water system.

The effect of a subsidy on the irrigation water rate will have a significant positive effect on farm families. Assume the PUC sets a subsidized agricultural irrigation water rate at \$1.00 per thousand gallons, roughly equivalent to most counties' agricultural water rates. In our example of a fictitious agricultural subdivision (see end of testimony), the total water cost (domestic use and irrigation) for the households that farm or not farm their land remains the same, however the monthly water bill for farming families declines significantly from \$600/month (\$552 irrigation plus \$48 domestic) to \$393/month (\$138 irrigation plus \$255 domestic), a savings of \$207 per month. The monthly water bill for households that do not farm their land (domestic use only) increases significantly from \$48/month to \$255/month.

To summarize, the Department of Agriculture supports the provision of lower irrigation water rates in areas served by private water providers to encourage the growth and maintenance of agricultural production.

Fictitious agricultural subdivision scenario without subsidy:

Subdivision of agricultural land consisting of 250 acres with 50, 5-acre lots with farm dwellings on each lot for a total of 50 dwellings. Twenty-five of the 50 lots have at least two acres of agricultural production requiring irrigation water for a total of 50 acres of crops that require irrigation water. A private water company designated as a public utility by the PUC produces sufficient water to meet both the needs of domestic and irrigation water users in the subdivision. Total monthly water demand for the entire subdivision, assuming 2,300 gallons/acre/day for irrigation and 400 gallons/dwelling/day for each household, is 3.45 million gallons/month for irrigation and 600,000 gallons/month for household use, totaling 4.05 million gallons/month for both uses. Assuming the cost to cover pumping, storage, transmission operations/maintenance, debt retirement on the capital improvements, and profit for the amount of water pumped works out to \$4.00 per thousand gallons, the total monthly cost of water is \$16,200 for the 4.05 million gallons/month or \$48/month for each of the 50 dwellings and an additional \$552/month for each of the 25 lots with 2 acres of agricultural production.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
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TO THE SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND

THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

Thursday, March 13, 2008
2:45 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY OF CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR,
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, TO THE HONORABLE SENATORS TOKUDA AND
HEE, CHAIRS, AND MEMBERS OF THE COMMITTEES

HOUSE BILL NO. 2810, HOUSE DRAFT 1 – RELATING TO WATER RATES.

DESCRIPTION:

This measure: (1) authorizes the Public Utilities Commission to establish preferential potable water rates for agricultural activities in a public utility's service area; and (2) requires public utilities, upon application and proof of qualification, to provide preferential rates for potable water used only for agricultural activities

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") appreciates the intent of this measure and offers the following comments for these Committees' consideration.

H.B. No. 2810, H.D. 1
Senate Committees on Agriculture and Hawaiian Affairs and
Water and Land
Thursday, March 13, 2008, 2:45 p.m.

COMMENTS:

The original version of the measure did not make clear that the intent of this bill is to grant the Hawaii Public Utilities Commission the authority to provide bona fide agricultural businesses with preferential water rates. While this version of the measure clearly articulates the intent to authorize reduced rates for agricultural businesses, the measure may be improved to provide greater detail and clarity about the procedure and effects of the establishment of such reduced rates. The Consumer Advocate reviewed a proposed draft of this measure, which was developed by the farmer-proponent of this measure, that appears to provide greater detail relating to these issues.

Thank you for this opportunity to testify.

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND
MARCH 13, 2008**

MEASURE: H.B. No. 2810 H.D. 1
TITLE: Relating to Water Rates.

Chairs Tokuda and Hee and Members of the Committees:

DESCRIPTION:

This bill proposes to establish a new section in Chapter 269, Hawaii Revised Statutes ("HRS") that would authorize the Public Utilities Commission ("Commission") to establish preferential potable water rates for agricultural activities in a public utility's service area.

POSITION:

The Commission supports this bill as drafted if it is the intent of the legislature to require public utilities to provide preferential potable water rates for agricultural activities.

COMMENTS:

- **In Section 2 of the bill, the policy statement supports preferential water rates for potable water used for agricultural activities.**
 - The bill clearly states that the preferential rates for potable water used for agricultural activities may be subsidized by the water rates charged to other ratepayers of the public utility.
 - The Commission respectfully notes this practice is not consistent with the Commission's regulation of rates and ratemaking procedures under HRS § 269-16 and thus requires the express policy statement.

Thank you for the opportunity to testify.



Hawaii Farm Bureau
F E D E R A T I O N

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MARCH 13, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON HB 2810, HD 1
RELATING TO WATER RESOURCES

Chair Tokuda and Chair Hee 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.

Hawaii Farm Bureau Federation on behalf of our member farmers, ranchers and agricultural organizations, supports HB2810 HD1, requiring the PUC to establish agricultural water rates, **with clarification of the definition of agricultural activities.**

Private water companies, applying to the PUC are sometimes faced with a situation of being required to provide for fully compensatory rates. Consumer water rates are for personal use. Agricultural water is used for growing crops or raising livestock at affordable prices for everyone. As such, the water is not used for personal benefit but for public good. The State Constitution also recognizes agriculture to be critical to long term sustainability.

The Bill as amended reflects the recommendations of the PUC. The PUC urged the Legislature to provide policy guidance in its decisionmaking of agricultural water rates. We agree with the position that agricultural water rates do not need to be fully compensatory within the rate structures. The presence of a farm within the system indicates that the system exists within an Agricultural District. Higher land use classifications would not normally be used for new farming ventures. As such the primary land use within the area should be agriculture – justification for requiring non agricultural entities to subsidize agricultural uses is reasonable. Existing farms on lands that have been rezoned to a higher land use category should be grandfathered as an operation not requiring compensatory water rates.

The current draft recommends that “agricultural activities” be identified as:

“crop production, flower growing, fruit and other orchard growing, stock raising, dairy farming, and aquacultural farming, on a commercial basis. The term does not include growing of ornamental plants and flowers or canneries, mills, markets, or establishments engaged in the conversion, treatment, or packaging of agricultural products.”

While the beginning part of the definition recognizes “flower growing”, in the second part it excludes the growing of ornamental plant and flowers. We believe the intent of the language was to exclude actual landscape activities versus growing of nursery plants which is a legitimate and growing agricultural activity.

Currently in State Statute, various definitions of agricultural operations exist. We believe a consistent definition would best serve the industry. HRS 165-2, pertaining to the right to farm contains the following definition.

“Farming operation” means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.”

Reference to this definition will be clear and appropriate.

Some have raised concern that approval of this measure will result in other small businesses and interests requesting a similar discount. Agriculture is unique as an industry recognized in the Hawaii State Constitution for protection for future generations. Agriculture is the industry that provides the food and energy so others may choose the lifestyles of their choice rather than work the fields to support themselves. As such, approval of this discount should be based on the State Constitution, thus differentiating it from other interests.

Thank you for this opportunity to provide our comments on this important measure. We strongly urge amending this bill to provide clarity in qualified agricultural operations and its timely passage to provide the necessary policy guidance for the PUC as recommended in their report.

Thank you for this opportunity to provide our opinion on HB 2810.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

March 11, 2008

HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS AND COMMITTEE ON WATER AND LAND

TESTIMONY HB 2810 HD1 RELATING TO WATER RATES

Chair Tokuda, Chair Hee and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

MCFB on behalf of our member farmers, ranchers and agricultural organizations, supports HB2810 HD1, requiring the PUC to establish agricultural water rates, **with clarification of the definition of agricultural activities.**

The intent of this measure is to provide guidance to the PUC for providing agricultural water rates within the PUC tariff structure. To-date legitimate farmers within "ag subdivisions" with private water systems are faced with higher water rates due to a compensatory rate structure required by the PUC. Commercial growing of crops using homeowner water rates is unreasonable. The report submitted by the PUC recommends that the Legislature provide policy guidance on this matter as well as suggest who should pay the difference in price. The amended Bill addresses this matter.

The devil is often in the details as it is in this bill. The question will be who qualifies? We believe the proposed definition inadvertently exempts nursery operations. The intent, we think, was to exempt actual landscape plantings such as at a hotel or botanical gardens. However, the wording can be broadly interpreted that water for plants used for ornamental purposes e.g. landscape would not be included.

There are many definitions of agricultural activities in law and rules. To identify legitimate beneficiaries, each County should be encouraged to develop a definition of what it sees as "agriculture". The Farm Bureau's mission is to advocate for commercial agricultural interests – not gardens. Just as the PUC would require a clarification of what entities would qualify for these discounted agricultural rates, Counties need to decide who receives lower property taxes and water rates for agricultural production. Clarification on behalf of the Counties would

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ensure that only true agricultural interests received the agricultural benefits. These benefits are "repaid" to the County in the form of taxes through increased employment and sale of products.

Also, in HRS, various definitions of agricultural operations exist. We believe referencing one, such as, HRS 165-2 Right to Farm definitions, would be appropriate. An exclusion statement could be added to reflect the intent in the current drafted definition. Suggested language would be:

For purposes of this Act, "agricultural activities" shall be those identified in HRS 165-2. However, the term shall not include canneries, mills, markets, or establishments engaged in the conversion, treatment, or packaging of agricultural products.

Thank you for this opportunity to provide our comments on this important measure. We strongly urge amending this bill to provide clarity in qualified agricultural operations and its timely passage to provide the necessary policy guidance for the PUC as recommended in their report.

Thank you for this opportunity to provide our opinion on this matter.



PALILA GROWERS, LLC
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PHONE: (808) 880-1902

Senate Committee on Agriculture and Hawaiian Affairs

Senate Committee on Economic Development and Taxation

Senate Committee on Commerce, Consumer Protection, and Affordable Housing

Senate Committee on Water and Land

Hearing: Thursday March 13, 2008, 2:45 P.M.
Conference Room 224

Testimony relating to: HB 2810 HD1 (HSCR901-08)

“Authorizes the Public Utilities Commission to establish preferential potable water rates for agricultural activities in a public utility’s service area. Requires public utilities, upon application and proof of qualification, to provide preferential rates for potable water used only for agricultural activities.”

Testimony by: Peter W. Eising

Chairs Tokuda, Fukunaga, Kokubun, Hee 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 HB2810 HD1 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 being provided to us by a private water company, 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, because the private water company, that provides water to it, is not directed by the PUC to provide agricultural rates. This also seems contrary to our State’s expressed intent to encourage and support agriculture.

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. We are zoned for agriculture, but cannot afford to perform it.

Last year, the House passed HB 1121, which dealt with this problem. 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 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.

As a result, this session, the House has passed HB 2810 HD1, also without a “no” vote. The wording is responsive to the expressed needs of the PUC in that the PUC, itself, drafted this new bill. The bill provides the PUC with the needed authority. In addition, we feel that certain wording needs to be included to assure that only qualified agricultural water users are considered for reduced water rates. Each of our County water systems has a similar procedure to evaluate and monitor valid agribusinesses that merit reduced ag water rates. It would seem that the private water companies and the PUC should do the same. The bill also needs to have a time line set for implementation, which is the recommendation of the House Consumer Protection Committee. I have included with my written testimony a draft of the House bill with a limited number of changes that we feel enhance and clarify the bill.

Incidentally, 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.

Furthermore, it is noteworthy to point out that this bill will not cost the State one penny.

Report Title:

Agricultural Water Rates; Public Utilities Commission

Description:

Authorizes the Public Utilities Commission to establish preferential potable water rates for agricultural activities in a public utility's service area. Requires public utilities, upon application and proof of qualification, to provide preferential rates for potable water used only for agricultural activities. (HB2810 HD1)

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 2810
H.D. 1

A BILL FOR AN ACT

RELATING TO WATER RATES.

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

SECTION 1. Agriculture in Hawaii depends on many factors, including access to water for irrigation purposes at affordable rates. Although many farmers are able to access lower agricultural water rates provided by the county water systems, other farmers who are unable to access the county water systems must rely on the more expensive residential water rates provided by public utilities. Without affordable water rates, agriculture cannot be sustainable and competitive in Hawaii.

The legislature finds that it is in the public interest to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water used for agricultural activities.

The purpose of this Act is to establish a policy of providing [~~preferential~~] reduced potable water rates for qualified agricultural activities and to authorize the public utilities commission to establish [~~preferential~~] reduced water rates for potable water used for qualified agricultural activities.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"§269- [~~Preferential~~] Reduced water rates for qualified agricultural activities. (a) It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for [~~preferential~~] reduced rates for potable water for qualified agricultural activities. The public utilities commission shall have the authority to establish [~~preferential~~] reduced rates for potable water used for qualified agricultural activities in a public utility's service area.

(b) Upon receipt of a bona fide request for [~~preferential~~] reduced rates for potable water to be used for qualified agricultural activities, and proof that the customer engages in qualified agricultural activities, a public utility shall provide [~~preferential~~] reduced rates for potable water to be used only for qualified agricultural

activities. All such rates may be subsidized by the water rates charged to other customers of the public utility."

Applications under this bill for reduced water rates shall be decided upon within 180 days from the date of application.

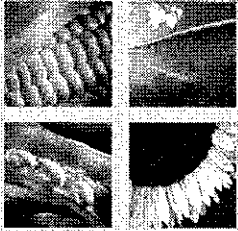
SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"**Qualified Agricultural activities**" means crop production, flower growing, fruit and other orchard growing, stock raising, dairy farming, and aquacultural farming, on a **viable** commercial basis. The term does not include growing of ornamental plants and flowers or canneries, mills, markets, or establishments engaged in the conversion, treatment, or packaging of agricultural products."

"**Viable commercial basis**" means sufficient production and sales of the agricultural product(s) to meet standards of production and sales as approved by the Public Utilities Commission."

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.



Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture in Hawaii

Testimony by: Sarah Styan
HB 2810hd1, Water Rates
Senate AHW/WTL Committees
Thursday, March 13, 2008
Room 224: 2:45 pm

**HCIA 2007-2008
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Alicia Maluaiffi

Position: Support

Chairs Tokuda and Hee, and Members of the Senate AWH /WTL Committees:

My name is Sarah Styan. I am a Kauai resident, President of HCIA and research scientist of Pioneer Hi-Bred International, Waimea Research Station. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

As Hawaii looks towards a more sustainable presence, focus on strengthening our agricultural industry is needed. The high cost of land, water, workforce and housing adds to the challenges of farming, from too much or too little rain, pest management, getting product to market and the consumer.

This measure proposes that there be an agricultural discount for services regulated by the Public Utilities Commission, which oversees areas such as water rates, inter-island shipping rates, and electrical rates. There is already a discounted rate for inter-island shipping and this discounted rate should be made available to other regulated areas of the PUC.

We urge your support of this measure. I can be reached at 808-338-8300 ext. 113 if there are any questions.

Thank you for the opportunity to provide testimony.

**KOHALA RANCH
WATER COMPANY**
Administration and Operations Office
59-916 Kohala Ranch Road
Kamuela, Hawaii 96743
Telephone: (808) 880-1081

March 12, 2008

Senate Committees on
Agriculture and Hawaiian Affairs
Economic Development and Taxation
Commerce, Consumer Protection and Affordable Housing
Water and Land

Dear Chairs and Members of the Committees

Subject: HB 2810 HD 1 Relating to Water Rates

Thank you for the opportunity to testify on the matter. I am the Vice President of Kohala Ranch Water Company, a small privately-owned public utility company serving approximately 350 customers on the North Kohala/South Kohala boundary of the Island of Hawaii. Our service area includes the Kohala Ranch, Kohala Estates, Kohala by the Sea and Kohala Waterfront projects. In addition, we provide water to the 200 lot Hawaiian Home Lands residential subdivision at Kawaihae.

We are in support of providing preferential water rates to bona fide commercial agricultural activities, such as the Palila Growers grapefruit orchard which is within our service area. We understand that in order to do so however, the Public Utilities Commission requires authority under Chapter 269, Hawaii Revised Statutes to allow such subsidy. Our support is subject to two conditions:

1. The criteria established to qualify for the preferential rate is rigorous enough to ensure only viable commercial agricultural enterprises can qualify; and
2. The public utility can obtain the rate of return and revenues authorized under Section 269-16, HRS in implementing any preferred agricultural rates.

In addition, we are concerned with the cost of establishing preferential rates for a limited number of potential beneficiaries. The rate making process under Chapter 269, HRS is rigorous, time consuming and costly. Accordingly, we seek to ensure that the utility can recover any reasonable costs incurred to implement the preferred agricultural rates.

In this regard, we have included a draft of changes to HB 2810, HD 1 which addresses these concerns. We respectfully request your consideration of these amendments.

Thank you for the opportunity to provide you with our thoughts on this matter.

Sincerely,



Bill Moore, Vice President
Kohala Ranch Water Company

cc: Peter Eising, Palila Growers, LLC

___B. NO. ___

A BILL FOR AN ACT

RELATING TO WATER RATES.

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

1 SECTION 1. Agriculture in Hawaii depends on many factors,
2 including the access to water for irrigation purposes at
3 affordable rates. Although many farmers are able to access
4 lower agricultural water rates provided by the county water
5 systems, many other farmers who are unable to access the county
6 water systems must rely on the more expensive potablereidential
7 water rates provided by privately-owned public utilities.
8 Without affordable potable water rates from these privately-
9 owned public utilities, certain types of agriculture cannot be
10 sustainable and competitive in the state of Hawaii.

11 The legislature finds that it is in the public interest to
12 promote the long-term viability of agriculture by providing and
13 allowing for the establishment of ~~establishing mechanisms that~~
14 ~~provide for~~ preferential rates for potable water used for
15 qualified agricultural activities to be charged by privately-
16 owned public utilities, as defined under section 269-1, Hawaii
17 Revised Statutes, that furnish potable water used for

.B. NO.

1 | agriculture or related irrigation purposes in areas zoned for
2 | agricultural use.

3 | The purpose of this Act is to establish a policy of
4 | providing preferential potable water rates for qualified
5 | agricultural activities and to provideauthorize the Public
6 | Utilities Commission with the authority to establish
7 | preferential water rates for potable water used for agricultural
8 | activities, as compared to water rates charged for all other
9 | purposes, in a manner that does not interfere with the ability
10 | of the owner(s) of the public utility to obtain its rate of
11 | return and authorized revenue requirement in any rate case
12 | proceeding under section 269-16, Hawaii Revised Statutes.

13 | SECTION 2. Chapter 269, Hawaii Revised Statutes, is
14 | revised by adding a new section as follows:

15 | "**§269- Preferential Water Rates For Agricultural**
16 | **Activities.** (a) It is the policy of the state to promote the
17 | long-term viability of agriculture by establishing a mechanisms
18 | that provides and allows for the establishment of ~~for~~
19 | preferential rates for potable water used for qualified
20 | agricultural activities. ~~The public utilities commission shall~~
21 | ~~have the authority to establish preferential rates for potable~~

____.B. NO. _____

1 ~~water used for agricultural activities in a public utility's~~
2 ~~service area.~~

3 (b) The public utilities commission shall have the
4 authority to establish preferential rates for potable water used
5 for qualified agricultural activities in a public utility's
6 service area; provided that prior to establishing such
7 preferential rates, the commission shall establish the criteria
8 to determine those agricultural users that should have the
9 ability to qualify for preferential rates. The criteria shall
10 assure that only bona fide agribusinesses qualify and shall
11 assure that water provided under this preferential water rate
12 structure is used solely for agricultural purposes. In
13 providing preferential potable water rates for qualified
14 agricultural users as determined by the commission, the
15 commission shall assure that non-agricultural rates are adjusted
16 to maintain, and not negatively impact, the ability of public
17 utilities to obtain the rate of return and revenues authorized
18 under section 269-16, including the recovery of any reasonable
19 costs incurred by the public utility to implement these new
20 rates. In making the determination set forth in subsection (a),
21 the commission shall consider and/or establish the criteria and
22 any preferential rates on a case-by-case basis when a public

.B. NO.

1 utility either seeks to establish new rates in accordance with a
2 general rate case proceeding under section 269-16 and/or when a
3 customer or customers of a public utility requests a
4 preferential rate under this subsection as part of that
5 proceeding. In considering the preferential rate, if any, that
6 should apply to a public utility's service area, the commission
7 shall also consider the different types of customer classes in
8 the public utility's service area, and the extent of the
9 financial impact on the customers in the public utility's
10 service area that will not be entitled to the preferential rate
11 established under this subsection.~~Upon receipt of a bona fide~~
12 ~~request for preferential rates for potable water to be used for~~
13 ~~agricultural activities, and proof that the customer qualifies~~
14 ~~for preferential rates under the definition of agricultural~~
15 ~~activities, a public utility shall provide preferential rates~~
16 ~~for potable water to be used only for agricultural activities.~~
17 ~~All such rates may be subsidized by the water rates charged to~~
18 ~~other customers of the public utility.~~

19 ~~SECTION 3. §269-1, Hawaii Revised Statutes, is amended by~~
20 ~~adding a new definition to be appropriately inserted and to read~~
21 ~~as follows:~~

1 ~~"Agricultural activities" means crop production, flower~~
2 ~~growing, fruit and other orchard growing, stock raising, dairy~~
3 ~~farming, and aqua cultural farming, on a commercial basis. The~~
4 ~~term does not include growing of ornamental plants and flowers~~
5 ~~or canneries, mills, markets or establishments engaged in the~~
6 ~~conversion, treatment or packaging of agricultural products.~~

7 SECTION 34. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 45. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

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To: Senator Jill Tokuda, Chair
Senator J. Kalani English, Vice Chair
Committee on Agriculture and Hawaiian Affairs

Senator Carol Fukunaga, Chair
Senator Will Espero, Vice Chair
Committee on Economic Development and Taxation

Senator Russell Kokubun, Chair
Senator David Ige, Vice Chair
Committee on Commerce, Consumer Protection, and Affordable Housing

Senator Clayton Hee, Chair
Senator Russell Kokubun, Vice Chair
Committee on Water and Land

From: Ralph C. Boyea
Legislative Advocate, Hawaii County Council

For: Hearing on March 13, 2008
HB 2810, HD1 – Relating to Water Rates

Testimony **in favor** of HB 2810, HD1

Chairpersons, Vice Chairpersons and Honored Senators,

On behalf of the Hawai'i County Council, I am presenting this testimony in favor of the purpose and intent of HB 2810, HD1. This Bill would establish "preferential" or reduced water rates for bona fide agricultural activities purchasing water from public utilities.

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:

“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.

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. Other agricultural users have to contend with much higher rates for water provided by private water systems. HB 2810, HD1 would establish a mechanism for providing lower water rates for this segment of the agricultural industry.

We hereby request that HB 2810, HD1 be amended to more clearly define which customers will qualify for the discounted agricultural rates:

- 1) provide greater clarity by changing the term “preferential” water rates to “reduced” water rates;
- 2) changing the definition of “agricultural activities” to “qualified agricultural activities” thus limiting the application of the reduced rates; and,
- 3) including in the definition of “qualified agricultural activities” the requirement

that the activity have a “viable” commercial basis.

The later two changes would effectively allow the Public Utilities Commission to set the criteria for agricultural activities that would qualify for the reduced rates. We recommend that the PUC utilize criteria similar to the criteria used by the county water boards in providing reduced water rates to their agricultural customers.

Thank you for the opportunity to provide this testimony.

The Hawaii County Council supports the passage of HB2810, HD1, we request that your committees consider the amendments recommended herein.