

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

**TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEES
ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
AND
AGRICULTURE**

FEBRUARY 1, 2008, 8:30 A.M.

**HOUSE BILL NO. 2820
RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS**

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to comment on House Bill No. 2820. This bill proposes to amend the state water code to support making sufficient water available for agricultural activity on important agricultural lands and proposes amendments to the state agricultural water use and development plan (Plan) and county water use plans. The department supports the intent to make sufficient water available for important agricultural lands, but defers to the Department of Land and Natural Resources, commission on water resource management (Commission) regarding portions of the bill that recommend changes to §174C-2, HRS, and offers the following comments regarding changes to the Plan.

Section 3 of this bill amends the scope of the Plan which will increase the overall cost of the Plan. Currently, the Plan is in its third phase with at least two more phases already identified, depending on funding appropriations (no appropriations are identified in this bill). We offer the following comments on this portion of the bill: **1)** changes to §174C-31 (e)(1), HRS, are unnecessary as the original language is broad enough to cover both types of systems and the current plan's intent is to comprehensively identify both types of systems; **2)** we have no comment on the deletion of existing paragraphs (e)3 or (e)4; and **3)** the department and the Commission recognized early on that water planning could be seen from two different perspectives - land availability as the limiting factor, assuming there would be unlimited water to serve these lands; or water availability, as the limiting factor assuming that agricultural land growth would be limited by the available water resources. As the name of this plan is the "agricultural water use and development plan" and the legislative intent of this plan is to focus on existing irrigation systems, the decision was made to focus on water as the controlling factor. Therefore, the department respectfully **recommends** that the proposed language for §174C-31 (e)(3), HRS, be amended to read "Identify current and potential sources of water used by the irrigation systems" and the proposed language for §174C-31 (e)(4), HRS, be amended to read "Project current and future water needs for lands currently and potentially served by the irrigation systems, using water as the limiting factor."

The language contained in the bill changes the focus of the Plan from being an independent irrigation system water study to a subservient plan to justify designation as important agricultural lands (IAL). In addition, it would overly broaden the scope to identify water sources or future needs for all agricultural lands in the state regardless of any affiliation with an existing irrigation system, changing the focus of the Plan from water as the controlling factor to land as the controlling factor. We believe this plan and the designation of IAL should complement each other by consciously preventing this plan's purpose to become a justification for designation as IAL. If lands are being considered for inclusion into IAL, this document can be reviewed to see if an existing irrigation system is available to serve the concerned lands.

Lastly, county water supplies provide a significant percentage of agricultural water and their water plans are required to include agricultural use as part of their planning process. Agricultural water planning for lands not served by an irrigation system should be included in county water plans.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

**TESTIMONY OF THE CHAIRPERSON
OF THE COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES**

on House Bill 2820 – Relating to Water for Important Agricultural Lands

**BEFORE THE HOUSE COMMITTEES ON
WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS
AND
AGRICULTURE**

February 1, 2008

The purpose of House Bill 2820 is to provide incentives for the establishment of important agricultural lands (IAL) by amending the following sections of the State Water Code: (1) §174C-2, Hawaii Revised Statutes (HRS), to establish public trust purposes to include agricultural activity on IAL; (2) §174C-31(e), HRS, to require that the agricultural water use and development plan include an inventory of public and private sources of agricultural water and current and future water needs for IAL; and (3) §174C-31(f), HRS, to require county water use and development plans to include an inventory of existing water uses for IAL. The Department of Land and Natural Resources (Department) recognizes the desire to provide water supply-related incentives for the identification and designation of IAL. However, the Department opposes the bill for the following reasons:

Proposed amendment to §174C-2, HRS, to establish public trust purposes to include agriculture activity on (IAL).

The Department does not support this proposed amendment because it attempts to add agricultural activity on IAL to the public trust purposes established by the Hawaii Supreme Court (Supreme Court). In the Waiahole decision, the opinion of the Supreme Court clearly stated that the public trust protection did not apply to uses for private commercial use or gain. Such uses would include commercial agricultural activities.

The section of the State Water Code that the bill seeks to amend already recognizes “irrigation and other agricultural uses,” which includes important agricultural lands, as a beneficial use of the waters of the State. In the same section of the State Water Code, agriculture is listed as a public interest objective for which adequate provision to preserve and enhance, shall be made.

The Department also notes that there are existing instruments for the identification of IAL. The Agricultural Water Use and Development Plan (AWUDP), a component of the Hawaii Water Plan HWP), is intended to provide comprehensive long-range planning guidelines and policies for future agriculture activity served by existing irrigation systems. By identifying the availability of water that can be provided by these irrigation systems, the AWUDP would help with the identification and designation of IAL near or adjacent to these irrigation systems. Land with sufficient quantities of water is one criterion for identification of IAL.

Each county, via its respective County Water Use and Development Plan (CWUDP), and another component of the HWP, should develop its own planning objectives including the goal of providing water for IAL. This will also help with identification and designation of IAL.

Proposed amendment to §174C-31(e), HRS, to require that the agricultural water use and development plan include an inventory of public and private irrigation systems and identify current and future water needs for IAL

The Department understands the Department of Agriculture (DOA) has some concerns regarding the proposed amendments to §174C-31(e), HRS, and the Department defers to them as the agency responsible for the development and implementation of the AWUDP. The Department's Commission on Water Resource Management (Commission) believes that there is a critical need to identify existing and future agricultural water needs and water sources for both public and private water systems. This is stated in the Commission's Framework for Updating the HWP and is reflected in the latest draft update of the AWUDP. This information is necessary for the Counties' development of their respective CWUDPs, which sets forth the allocation of water to land in each county.

Proposed amendment to §174C-31(f), HRS, to require the county water use and development plans to include an inventory of existing water uses for IAL

The Department supports the intent of this proposed amendment because it is consistent with §205-47, HRS, that requires the Counties to identify and map potential IAL within its jurisdiction. However, §174C-31(f)(1), HRS, already requires the CWUDPs to include an inventory of existing agricultural water uses, which would include existing water uses for IAL. Therefore, the proposed amendment is unnecessary.

Thank you for the opportunity to testify on this measure.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2820, RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS.

BEFORE THE:

HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES AND HAWAIIAN
AFFAIRS AND ON AGRICULTURE

DATE: Friday, February 1, 2008 **TIME:** 8:30 AM

LOCATION: State Capitol Room 325
Deliver to: Committee Vice Chair, Room 427, 5 copies (including an original)

TESTIFIER(S): Mark J. Bennett, Attorney General
or Randall K. Ishikawa, Deputy Attorney General

Chairs Ito and Tsuji and Members of the Committees:

The Attorney General objects to the portion of the bill that lists enumerated public trust purposes concerning the use of water because the list is an incomplete recitation of Hawaii law. We request that the bill be amended to add reservations of water in favor of the Department of Hawaiian Home Lands as a recognized public trust purpose.

In *In re Wai'ola O Moloka'i, Inc. (Wai'ola)*, 103 Haw. 401, 427-431, 83 P.3d 664, 690-694, (2004), the Hawaii Supreme Court recognized that a reservation of water for the Department of Hawaiian Home Lands is a recognized public trust purpose pursuant to Article XI, Sections 1 and 7 of the State Constitution, and Section 220(d) of the Hawaiian Homes Commission Act.

Section 2 of the bill proposes amendment of section 174C-2, HRS, to add subsection (e), which states:

"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 protect 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 lands identified and designated as important agricultural lands pursuant to part III of chapter 205."

Based upon the Supreme Court's ruling in *Wai`ola*, we recommend that the provisions of section 2, which amend section 174C-2(e), HRS, be revised to read as follows:

"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 protect the public trust purposes of resource protection, domestic uses, upholding the exercise of native Hawaiian traditional and customary rights, reservations of water by the department of Hawaiian home lands, and the conservation and protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205."



OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

HB 2820, RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS

House Committees on Agriculture and
Water, Land, Ocean & Hawaiian Affairs

February 1, 2008

8:30 a.m.

Room: 325

The Office of Hawaiian Affairs OPPOSES HB 2820, which would assign corporate interests on agricultural lands a priority to water and contradict a Hawai'i Supreme Court determination on the meaning and application of the Public Trust Doctrine as it pertains to water rights.

The Hawai'i Supreme Court has clearly determined that although the public has an interest in off-stream uses such as agriculture, agricultural uses are not public trust purposes. This bill attempts to provide corporate agriculture interests a higher priority to water than public trust uses, such as environmental protection, traditional and customary Native Hawaiian rights and practices, and domestic water use. The Hawai'i Supreme Court made clear in the landmark Waiahole case that even public trust uses don't enjoy an absolute preference. Yet this bill would give certain agricultural uses, which Waiahole made clear are not public trust uses, an absolute priority that constitutionally protected public trust uses don't enjoy.

Carving out an absolute preference for agricultural uses is antithetical to the comprehensive planning and management principles underlying the Water Code's complex regulatory framework. It effectively exempts agricultural uses from the Water Code's permitting scheme. Had such a provision applied to Waiahole, none of the water would have been required to be returned to the windward streams.

We are disappointed by this bill's scurrilous attempt to use language from the Hawai'i State Constitution to put agricultural uses and needs above those of the environment, the general public, and Native Hawaiians, which this very same Constitution zealously protects. Past legislation has also striven to protect public trust and Native Hawaiian rights to water as codified in the HRS, and the Hawai'i Supreme Court has similarly upheld these protectionist provisions of the Constitution and the HRS that this bill proposes to upset.

Also, as the legislature knows, the law already well recognizes the public interest in maintaining agricultural water uses. For example, 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." Hawaii Revised Statutes (HRS) 174C-2(c). Therefore, this bill is both a violation of the Public Trust, counter to the Hawai'i Supreme Court, and unnecessary.

OHA therefore urges the Committees to HOLD HB 2820. Thank you for the opportunity to testify.



Hawaii Agriculture Research Center

99-193 Aiea Heights Drive, Suite 300

Aiea, Hawaii 96701

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

**TESTIMONY BEFORE THE HOUSE COMMITTEES
ON WATER LAND OCEAN RESOURCES & HAWAIIAN AFFAIRS
AND
AGRICULTURE**

HOUSE BILL 2820

RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS

February 1, 2008

Chairmen Ito and Tsuji and Members of your respective Committees:

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 strongly supports HB 2820 Relating to Water for Important Agricultural Lands which preserves water only for important agricultural lands.

This bill provides a clear statement regarding the need to preserve water where it is needed for agriculture and restricts it to only important agricultural lands. It is important that the state policy is clear on the need for the agricultural use of the state's waters. This is in keeping with the constitutional mandate to "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Those engaged in the practice of agriculture recognize the necessary requirements for water to achieve this goal.

The proposed language in this bill clarifies the need to preserve agricultural uses of the state's waters. We owe this to the generations to come that there is at least some good land with water preserved to sustain life in these islands.

This addition will help to define and limit the legislative intent with respect to water use to important agricultural lands.

Thank you for the opportunity to provide testimony in **STONG SUPPORT** on this matter.

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

JANUARY 30, 2008

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

TESTIMONY ON HB 2820
RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS

Chair Ito, Chair Tsuji and Members of the Committees:

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 **strongly supports HB2820, providing mechanisms to provide water for Important Agricultural Lands.** As an organization whose mission is to advocate for a strong agricultural industry in Hawaii, we regard this issue as one of our top priorities.

There will be many coming before this hearing opposing this bill. The **strength of their opposition is testament to the urgency** of passing this measure. This is the level of opposition that farmers and ranchers are facing and will face in the future as they try to secure water to grow their crops. Every day a farmer or rancher is at a hearing or courtroom, justifying his right to have water is a day he is not in the field tending his crops or livestock. Neglect will result in failure. At that point, having water will be meaningless as there will not be a farmer to grow the crops ...he will have gone broke.

Some may say that our statements are melodramatic. The reality is the viability of our farmers and ranchers is in jeopardy after decades of drought. Some have already left the business. If we need to take a backseat all the time to other uses, we as an industry cannot assure the people of Hawaii that we can provide locally grown agricultural products. Chances are you will need to depend on sources outside of Hawaii. Lifestyle farming will be all you have leftthose who farm not to provide for the masses but for themselves and a few other people.

The passage of this Bill is urgent. Policies of how agricultural water is allocated must be clear. Farmers and ranchers should not spend their time in courtrooms. They are needed in the fields.

HFBF respectfully requests your strong support in passing this measure to ensure long term agricultural viability in Hawaii. Thank you.



Maui County Farm Bureau

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

JANUARY 30, 2008

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

TESTIMONY ON HB 2820
RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS

Chair Tsuji and Ito 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.

Maui County Farm Bureau, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORTS** HB 2820 identifying the process to providing agricultural water on important agricultural lands.

Farmers across the State have experienced consecutive years of drought during the past years. At the same time, we hear of questions raised about our continued access to the limited water supplies we currently have. It is ironic that living in a State surrounded by water, we find ourselves engaging in water disputes. Farmers on Maui have lost income due to droughts. We are working on drought mitigation projects but larger source development projects will take many years for fruition. Large scale expansion of farming, requiring large capitol investments may not happen if there is uncertainty about the most important resource for crop production. Will a banker, told that the farm has a high likelihood of undergoing droughts on a regular basis, be willing to approve large loans?

Maui has already lost many farmers. This must stop. Farmers need water during the summer – the same time during which streams may be at its' lowest flows. If we can agree that farmers and ranchers provide food and fiber important for day to day living, shouldn't there be minimum amounts of water provided to ensure that crops can grow?

We appreciate this opportunity to address this important topic. Clear State policies for agricultural water is needed if we expect to increase our State's self sufficiency. Farmers cannot grow crops in a courtroom. Please help keep us in the fields by passing this legislation. Thank you.

P.O. Box 148
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email:mauicountyfb@hotmail.com

**Hawaii
Crop
Improvement
Association**

Sarah Styan, President
P.O. Box 609
Waimea, Hawaii 96796
Phone: 808- 338-8300 ext 113

Testimony by: Sarah Styan
HB 2820, Relating to Water for IAL
House WLH/AGR Committees
Friday, Feb. 1, 2007
Room 325: 8:30 am

Position: Support

Chairs Ito and Tsuji, and Members of the House WLH/AGR Committee:

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.

This measure seeks to amend the State Water Code to require that the state water plan, including water resource protection, water use and development, and water project plans, and the provisions of the water code regulating the use of waters, recognize and support the need for sufficient water supply for agriculture on IALs. This policy change goes hand in hand with increasing Hawaii's ability to preserve and protect a sustainable agricultural industry that provides Hawaii with a range of user products from alternative energy, food, and other consumer products.

Please support this measure. Thank you for the opportunity to present testimony.



TESTIMONY TO THE HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES
& HAWAIIAN AFFAIRS & AGRICULTURE
FRIDAY, FEBRUARY 1, 2008 AT 8:30 A.M.
ROOM 325, STATE CAPITOL

RE: H.B. 2820 Relating to Water for Agricultural Lands

Chairs Ito and Tsuji, Vice Chairs Karamatsu and Brower, Members of the Committees:

The Chamber of Commerce of Hawaii supports HB 2820.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 2820 proposes to provide incentives and protections to establish and sustain viable agricultural operations on important agricultural lands by amending the state water code to require that the state water plan, including the water resource protection, water use and development, and water projects plans, and the provisions of the water code regulating the use of waters, recognize and support the importance of making sufficient water available for agricultural activity on important agricultural lands.

Act 183, SLH 2005 established a process to identify important agricultural lands (IAL). The IAL designation was established during the 1978 Constitutional Convention. Twenty-seven years passed before Act 183 was passed.

Act 183 was based on promoting agricultural viability and identifying agricultural lands believed to be important. Act 183 provides for incentives to be enacted that would assist in making agribusinesses viable and thus, allow for designation of IAL based on "growing" agribusiness.

Over the past two sessions, legislation has been introduced to create incentives to promote agricultural viability in Hawaii. In addition, efforts were made to have the Counties enact incentives to promote agricultural viability in their respective counties. So far, these incentives have not been put in place.

Therefore, we strongly support HB 2820 in its entirety. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

Thank you for this opportunity to submit testimony.



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HB 2820
RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS

House Committee on
Water, Land, Ocean Resources and Hawaiian Affairs

Public Hearing – February 1, 2008
8:30 a.m., State Capitol, Conference Room 325

By
Peter Rappa, Environmental Center
Richard Bowen, Natural Resources and Environmental Management
Ryan Riddle, Environmental Center

HB 2820 amends the State Water Code to support making sufficient water available for agricultural activity on important agricultural lands. Our statement on this measure does not represent an institutional position of the University of Hawaii.

The State Constitution (Article XI, §§1 & 7), the State Water Code, and the Hawai'i Supreme Court have established water as a public trust resource. This bill tries to make "the conservation and protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to Part III of Chapter 205" another public trust purpose equivalent to resource protection, domestic uses, upholding the exercise of native Hawaiian traditional and customary rights. While agriculture is important to the state as it attempts to become more sustainable, the use of water for this activity is still a private use of a public resource and should not be accorded the same status as other public uses. We also believe that if you insert agriculture, then others may justify the inclusion of industries such as tourism and other private sector activities as public trust purposes.

We feel that the Water Code §174C -2(c) makes it clear that "The [Code] shall be liberally interpreted to obtain maximum beneficial use of the waters of the state for purposes such as ...irrigation and other agricultural uses...." which provides adequate protection for agricultural uses. The state's draft Water Protection Plan also protects the use of water for agriculture along with other uses. Once that plan is finalized and implemented, water for agriculture should not be an issue.

Thank you for the opportunity to comment on this bill.

**HB 2820
RELATING TO WATER FOR IMPORTANT AGRICULTURAL LANDS**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

FEBRUARY 1, 2008

Chair Ito, Chair Tsuji, and Members of the House Committees on Water, Land,
Ocean Resources & Hawaiian Affairs and Agriculture:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its
agricultural companies Hawaiian Commercial & Sugar Company and Kauai Coffee
Company, Inc. on HB 2820, "A BILL FOR AN ACT RELATING TO WATER FOR
IMPORTANT AGRICULTURAL LANDS." We support this bill.

After over twenty five years of debate, negotiation, and compromise, the IAL Law
was finally passed in the 2005 Legislative Session. After years of pursuing a land-use
approach to this constitutional mandate, the IAL law that was successfully passed was
one premised on the principle that the best way to preserve agricultural lands is to
preserve agricultural businesses and agricultural viability. As such, Act 183 (2005) not
only provides the standards, criteria, and processes to identify and designate important
agricultural lands (IAL) to fulfill the intent and purpose of Article XI, Section 3 of the
Hawaii State Constitution, it also provides for the passage of a package of incentives
designated to support and encourage sustained, viable agricultural activity on IAL—prior
to the designation of IAL. Once the package of incentives is passed, IAL may be
designated in one of two ways --- by voluntary petition by the farmer/landowner to the

State Land Use Commission (LUC); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. In either case, the LUC must find that the lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law prior to designation.

One of the most important factors in determining the long term viability of an agricultural operation on IAL is the availability of water for irrigation purposes. Water is the basic natural resource that may directly determine the success or failure of agricultural operations on IAL. We believe that the establishment of a water policy that provides crops and livestock on IAL with a dependable source of affordable water will provide an opportunity for sustaining agricultural operations on IAL.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

Thank you for the opportunity to testify.



MAUI LAND & PINEAPPLE COMPANY, INC.

January 31, 2008

The Honorable Representative Ken Ito, Chair
The Honorable Representative Jon Riki Karamatsu, Vice Chair
Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair
Committee on Agriculture
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Subject: HB 2820 – Relating to Water for Important Agricultural Lands

Dear Honorable Chair Ito, Honorable Vice Chair Karamatsu, Honorable Chair Tsuji,
Honorable Vice Chair Brower and Committee Members:

Maui Land & Pineapple Company, Inc. strongly supports HB 2820 – Relating to Water for Important Agricultural Lands.

Maui Land & Pineapple Company, Inc., through our agricultural subsidiary Maui Pineapple Company, Ltd., is the largest farmer of pineapple in the State. The availability of water for irrigation purposes is critical for the long term viability of our agricultural operations. The designation of agricultural land as Important Agricultural Lands will not insure the success of the agricultural operations. Insuring the availability of water for irrigation purposes will assist in insuring the long term viability of agriculture on Important Agricultural Lands.

Maui Land & Pineapple Company, Inc. respectfully requests your support of the subject legislation.

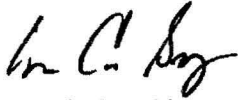
The Honorable Representative Ken Ito, Chair
The Honorable Representative Jon Riki Karamatsu, Vice Chair
The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair

January 31, 2008

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We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss our testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,

A handwritten signature in black ink, appearing to read "Warren A. Suzuki". The signature is written in a cursive, flowing style.

Warren A. Suzuki
Senior Vice President



EARTHJUSTICE

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**HOUSE COMMITTEES ON:
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
AGRICULTURE**

**ATTN: CHAIRS KEN ITO & CLIFT TSUJI,
VICE-CHAIRS KARAMATSU & BROWER**

**Testimony Opposing HB 2808: Relating to Important Agricultural Lands, and
Testimony Opposing HB 2820: Relating to Water for Important Agricultural Lands**

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

Aloha Chairs Ito and Tsuji and Members of the Committees:

Earthjustice strongly opposes House Bills 2808 and 2820. While we support protecting important agricultural lands (IAL) and bona fide, long-term agriculture, these bills are not about protecting agricultural lands or agriculture. Rather, HB 2808 and HB 2820 simply use IAL as a ruse to undermine the public trust in water resources and promote a plantation-era agenda of water as private domain. It eviscerates the State Water Code, HRS ch. 174C, to benefit a single special interest -- modern plantation agriculture, *i.e.*, corporate agribusiness on old plantation lands supported by old plantation stream diversions.

The Hawai'i Constitution (art. XI, §§ 1 & 7), the Code, and Hawai'i Supreme Court decisions all establish that water is a public trust resource that belongs to all the people, including present and future generations. Certain narrow special interests are not happy with this principle and would rather return us to the old plantation system, in which a few large landowners dominated water as their private property. HB 2808 and HB 2820 present a "wish list" for overhauling the Code for their benefit. It has nothing to do with IAL or agriculture. It has everything to do with restoring private domination over public water.

HB 2808 and HB 2820, in fact, are practically identical to other bills that were widely opposed and ultimately defeated in committee in previous years. We reiterate our testimony in opposition to those bills:

- First, HB 2808 and HB 2820 seek to distort the policy statement of the Code, HRS § 174C-2 for the benefit of commercial agriculture. These changes are unnecessary because the Code already amply protects

agricultural uses. The first part of § 174C-2(c) makes clear that “The [Code] shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as . . . irrigation and other agricultural uses” (Emphasis added.) The section completes the balance with the further mandate that “adequate provision shall be made” for various public uses such as Native Hawaiian rights and the preservation and enhancement of waters. *Id.* Thus, the first part of § 174C-2(c) already recognizes agricultural use as an important use to be promoted in the public interest. Adding a special provision for agricultural uses as a public trust purpose is unnecessary and would, in fact, give agricultural uses double protection under the Code, more than any other use.

In effect, HB 2808 and HB 2820 improperly attempt to make commercial agriculture a “public trust use.” The Hawai`i Supreme Court made clear in the Waiāhole case that “the public trust has never been understood to safeguard rights of exclusive use for private commercial gain.” In re Waiāhole Ditch Combined Contested Case Hearing, 94 Haw. 97, 138 (2000). Citing Haw. Const. art. XI, § 3, the Hawai`i Supreme Court held “the public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture.” *Id.* at 141 (emphasis added). However, it maintained such uses are not one of the limited and long-established “public trust purposes” under the state constitutional public trust doctrine. *Id.* at 138. The Code follows these public trust principles in establishing its careful balance between uses under § 174C-2(c). HB 2808 and HB 2820, however, would destroy this balance, cast needless uncertainty and confusion into the Code’s complex regulatory scheme, impair the Water Commission’s regulatory function, and ultimately violate the constitutional public trust doctrine.

- Similarly, the Code’s provisions regarding the Hawai`i Water Plan already requires full consideration of agricultural uses, yet HB 2808 and HB 2820 propose amendments to require specific consideration of Important Agricultural Lands. See, e.g., HB 2820 § 3 (amending HRS § 174C-31(e) and (f)). These amendments are unnecessary.

The rhetoric in support of HB 2808 and HB 2820 and similar measures has prominently featured the refrain that “agriculture needs water.” Simply stating the obvious does not justify overhauling the Code, as HB 2808 and HB 2820 propose. The Code already adequately protects agricultural interests. Notably, advocates of this bill cannot point to a single agricultural user that has been denied water under the Code. Instead, as seen in the Waiāhole case, offstream landowners received all the water they requested and are still abandoning agriculture for urban development (having conveniently banked the water).

In conclusion, we note this session marks the 21st anniversary of the Code. Over two decades ago, the legislature fulfilled its constitutional public trust mandate and established this comprehensive regulatory framework for the benefit of all the people of Hawai`i. HB 2808 and HB 2820 improperly attempt to undermine the Code's public trust principles and skew its overall balance in favor of the single special interest of modern plantation agriculture. We strongly urge you to kill this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Isaac H. Moriwake', written in a cursive style.

Isaac H. Moriwake
Attorney
Earthjustice

From: Makaala Kaaumoana [mailto:makaala@hawaiian.net]
Sent: Thursday, January 31, 2008 10:03 AM
To: WLHtestimony
Subject: Testimony in opposition: HB2820

Testimony in Opposition to HB 2820

The Hanalei Watershed Hui ,(HWH), is a community based 501c3 implementing the Hanalei Watershed Action Plan. We are engaged in the assessment and management of the resources of the Hanalei Bay area. Water is the most important resource we have. Hanalei produces over 73% of Hawaii's taro and HWH actively partners with agricultural interests to better understand and manage the water we share. HWH strongly opposes HB 2820 because:

1. The State Constitution (article XI, §§1 & 7), the State Water Code, and Hawai'i Supreme Court decisions establish that water is public trust resource belonging to all people for present and future generations.
2. Amending the Water Code to include water for land identified as Important Agricultural Land flies in the face of our guiding doctrines by allowing a few to financially benefit from this public trust resource.
3. The recommended amendment is unnecessary because the Water Code §174C -2(c) makes it clear that "The [Code] shall be liberally interpreted to obtain maximum beneficial use of the waters of the state for purposes such as....irrigation and other agricultural uses...."
4. Commercial agriculture is not a public trust use. In their Waiahole case decision the Hawai'i Supreme Court stated that "the public trust has never been understood to safeguard rights of exclusive use for private commercial gain."
5. Hawai'i constitution Article XI, Section 7 states "The state has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." Nowhere in the Constitution, Water Code or court rulings does it say to the extent feasible, the commission shall protect the public trust.... as HB 2820 proposes.
6. The Waiahole court ruled "We therefore hold that [the constitution adopt[s] the public trust doctrine as a fundamental principle of constitutional law in Hawai'i."

We urge the committee to kill HB2820 and protect the Hawaii State Water Code which is serving us all well.

Me ka pono, Makaala

Maka'ala Ka'aumoana
Executive Director
Hanalei Watershed Hui
P.O.Box 1285
Hanalei, HI 96714
808-826-1985

The Hanalei Watershed Hui mission is to support and protect the ecology, cultures and sustainable economies of Hanalei.

Council Chair
G. Riki Hokama

Vice-Chair
Danny A. Mateo

Council Members
Michelle Anderson
Gladys C. Baisa
Jo Anne Johnson
Bill Kauakea Medeiros
Michael J. Molina
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

January 31, 2008

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:

As the Maui County Council has not had opportunity to take a formal position on these measures, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I strongly oppose House Bill 2808 (HB2808) and House Bill 2820 (HB2820). HB2808 and HB2820 are NOT about conserving and protecting important agricultural lands (IAL) and activity. Instead, these bills are clear examples of "greenwashing", or the dissemination of misleading information to conceal their abuse of the State Water Code in order to present a positive public image. In reality, these bills are yet another attempt to use IAL to undermine the Hawai'i Constitution (art. XI, §§ 1 & 7) and the state Water Code's public trust principles for the sole benefit of specific private interests – large-scale corporate agribusiness.

HB2808 and HB2820, in fact, advance the same arguments used for essentially an identical bill that was fervently opposed and ultimately defeated in committee last year.

As in past years and previous bills, I strongly oppose HB2808 and HB2820 for the following reasons:

- First, the proposed amendments are absolutely unnecessary. The State 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) (emphasis added). The amendments proposed by HB2808 and HB2820, seeking to prioritizing water for IAL, would only disrupt the delicate balance between the protection and beneficial use of our water resources as created by our state constitution and Water Code, and cast needless uncertainty and confusion into the

To Honorable
January 31, 2008
Page 2

Code's already complex regulatory scheme, and ultimately, violate the constitutional public trust doctrine.

- Second, the Hawai`i Supreme Court, in the Waiahole case, has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are not public trust purposes. HB2808 and HB2820 improperly attempt to make commercial agriculture a "public trust use."

The Hawai`i Supreme Court made clear in the Waiähole case that "the public trust has never been understood to safeguard rights of exclusive use for private commercial gain." In re Waiähole Ditch Combined Contested Case Hearing, 94 Haw. 97, 138 (2000). Citing Haw. Const. art. XI, § 3, the Hawai`i Supreme Court held "the public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture." *Id.* at 141 (emphasis added). However, it maintained such uses are not one of the limited and long-established "public trust purposes" under the state constitutional public trust doctrine. *Id.* at 138.

While I strongly support protecting important agricultural lands and bona fide, long-term agriculture, HB2808 and HB2820 promote a plantation-era agenda of monopolizing water to benefit specific special interests while sacrificing all other public trust purposes.

For the foregoing reasons, I strongly urge you to put these bills to a final rest.

Sincerely,
Michelle Anderson,
Council Member

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

From: randy ching [mailto:oahurandy@yahoo.com]
Sent: Thursday, January 31, 2008 4:23 PM
To: WLHtestimony
Subject: In strong opposition to HB2808 and HB2820

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 Randy Ching 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.

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 when these interests got that water (e.g., Del
Monte) they are still closing up shop; water is not
the issue.

Waiahole made clear that even public trust uses don't
enjoy an absolute preference. Yet these bills give
certain ag uses, which Waiahole made clear aren't
public trust uses, an absolute priority that even
public trust uses don't enjoy.

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 applied to Waiahole, none of the water would
have been required to be returned to the windward
streams.

Please kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,

Randy Ching
Sierra Club, Oahu Group chair
oahurandy@yahoo.com
942-0145

Never miss a thing. Make Yahoo your home page.
<http://www.yahoo.com/r/hs>

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

From: iwaxman@wesleyan.edu [mailto:iwaxman@wesleyan.edu]
Sent: Thursday, January 31, 2008 9:26 AM
To: WLHtestimony
Subject: Testimony Opposing HB 2808: Agriculture; Important Ag Lands +
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

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 Ilana Waxman 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,

Ilana Waxman
3035 Kiele Ave
Honolulu, HI 96815
808-285-8699

From: Sunny Greer [mailto:sunnygreer@yahoo.com]
Sent: Thursday, January 31, 2008 10:24 AM
To: WLHtestimony
Subject: Testimony for HB 2808 & HB 2820 -- Strong Opposition

House Committees on Water, Land, Ocean Resources & Hawaiian Affairs & Agriculture

Attn: Rep. Ken Ito & Clift Tsuji, Chairs

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 E. Sunny Greer. I was born, raised, and living in the Ahupuaa of Kahana, which is the beginning of the Waiahole Ditch. My family is the last subsistence family in Kahana. I am also a 2nd year law student in pursuit of specialized certificates in both Environmental Law and Native Hawaiian Law.

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 hold these terrible bills.

Thank you for this opportunity to submit testimony on these measures.

Sincerely,
E. Sunny Greer

Ahupuaa o Kahana
Koolauloa, Oahu
(389-1809)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. Try it now.

From: Kekahuna Keaweii [mailto:kekahunakeaweii@yahoo.com]

Sent: Thursday, January 31, 2008 11:03 AM

To: WLHtestimony

Cc: Myrna Ah Hee; Foster Ampong; Clayton Baybayan; Robert Brito; Charles Morales; Gordon Cockett; Daniel Garcia; Kenny Hoopai; Michele Hoopii; Greg Johnson; George Joy; Willie Kahaialii; Wilmont Kahaialii; Keeaumoku Kapu; Josephine Keliipio; Tony Kincannon; Clifford Naeole; Maria C. Ornellas; Lynette Ramos; Tony Vierra; alohaspiritt@aol.com; blb@maui.net; Shannan Chan; chandrika@savemakena.org; Karen Chun; damauionion@aol.com; daoust@hawaii.rr.com; Lucienne de Naie; djp@darrylpaul.com; Laural Douglas; glavenson@aol.com; helaine@maui.net; Lance Holter; jahinalan@aol.com; jreily99@gmail.com; kaluapoi@yahoo.com; kiheisharon@hotmail.com; kumuao@mauigateway.com; ramon lopez-reyes; losmon1@hawaiiantel.net; mauirhodes@aol.com; Dick Mayer; McCarty; Meleanna; moj@mauiappraisal.com; Theo Morrison; mrmahalo@yahoo.com; Iokepa Naeole; naokomaui@yahoo.com; norm@mauicomcommunicators.com; pat@makenastables.com; k Ralar; robparsons@earthlink.net; Nani Rogers; rosieh@eramaui.com; sharynmatin@savewestmaui.com; shawn@savehonolua.org; Cindy Sheehan; Stephanie Tabata; LeeannT Tashiro; teresainparadise@yahoo.com

Subject: Testimony Opposing HB 2808 & HB 2820

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

January 31, 2008

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

Attn: Chairs Ken Ito & Cliff 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 Foster Ampong 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,
Living Being in the HuMan function with the attached name
Foster Robin Ampong
Phone: (808) 281-3894
Email: kekahunakeaweiwi@yahoo.com

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From: Lynette Ramos [mailto:lynramos@sbcglobal.net]
Sent: Thursday, January 31, 2008 11:03 AM
To: WLHtestimony
Subject: Testimony Opposing HB 2808 & HB 2820

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

January 31, 2008

**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 Lynette Ramos 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,

Lynette Ramos

12567 Toulouse

Houston TX 77015

Phone: (713) 453-7691

Email: lynramos@sbcglobal.net

From: vivien lee [mailto:leereppun@hotmail.com]
Sent: Thursday, January 31, 2008 1:45 PM
To: WLHtestimony
Subject: FW: Testimony Opposing HB 2820 and HB 2808

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

Attn: Chairs Ken Ito & Clift Tsuji

**Testimony Opposing HB 2808: Relating to Important Agricultural Lands,
and**

HB 2820: Relating to Water for Important Agricultural Land

February 1, 2008, 8:30 a.m.

Conference Room 325

My name is Charlie Reppun. I have been a farmer in Windward O`ahu for thirty years. In 1978, I served on the Governor's Water Commission which drafted a model water code. Then, I was on the Legislative Commission that fine-tuned that code, and was a part of the Water Code Roundtable that successfully lobbied for the adoption of a Statewide Water Code in 1988, Hawai'i Revised Statutes chapter 174C.

The primary purpose of the Water Code and Water Commission is to protect our water resources. Groundwater must be protected from saltwater intrusion caused by over-pumping and from contamination by chemicals and pesticides. Protection of surface water is much more complicated because it involves protection of stream ecosystems, including nearshore waters like Kaneohe Bay, where freshwater plays a key role in ocean ecosystems. Kaneohe once had 20+ fishponds because of streams flowing into the bay. Kona on the Big Island has good fishing because of the amount of freshwater flowing into the ocean under ground. Worldwide, over-fishing is the primary cause of declining fish stocks, but diversion of freshwater is also an important reason for that decline. Yet for many years in Hawaii, a common opinion was that water going into the ocean was "wasted". In fact, it was not until the Waiahole water case that the inter-relationship of streams and oceans was discussed in any kind of depth.

If watershed and water resource protection is critical for long-term sustainable living, then it is contradictory to give a particular use priority over protection, as is proposed by HB 2808 and HB 2820. In the ten years that it took to draft and pass the Water Code, many people across the State talked about all of these issues, which is why the Code is such a good document. The Water Commission has tough allocation decisions to make and this bill will only make that job more difficult. In addition, HB 2808 and HB 2820 is completely unnecessary: the leeward interests in the Waiahole case received all the water from the ditch that they they needed. The continuing water problem in the Waiahole case and on other islands, is that large land interests and the government continue to try and reserve ground water for for commercial residential developments. It is still common to hear that the "highest and best

use" of water is for urban development, as if residential development is a given and has nothing to do with the financial interests of development companies.

The Waiahole case established that the biggest problems facing farmers mostly don't have anything to do with water. In spite of land use planning efforts by government, the truth is that no development proposal in Central Oahu has ever ultimately been turned down. The farmers on those lands have clauses in their leases that require them to help the landowner if the landowner decides to urbanize the land. There is adequate, affordable water for agriculture and farmers don't need the amendments in HB 2808 and HB 2820.

The Code requires the Commission to use alternative sources of water, such as groundwater or wastewater, before allowing diversion of stream water. It does not forbid use of stream water, but prudent, precautionary principle planning means that the Commission, with public input, must be able to analyze alternatives. HB 2808 and HB 2820 would take that option away, resulting in irreparable harm to our planning process, and potential harm to the resource. Nothing is sustainable, not even agriculture, if we cannot protect our resources.

Please vote NO on HB 2808 and HB 2820. Thank you for this opportunity to testify.

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

From: Cameron B Black [mailto:cblack@hawaii.edu]
Sent: Thursday, January 31, 2008 2:10 PM
To: WLHtestimony
Subject: HB 2820 and HB 2808 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 Cameron Black and I am testifying in strong opposition to HB 2808 and HB 2820, which seek to modify our State Water Code. The frightening 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. Ag interests have already been granted significant rights to our public waters. HB 2808 and HB 2820 are unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. The existing Water Code reflects this commitment to our local people, customs, and resource needs. 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. We cannot afford to distribute our precious resources in a manner that will jeopardize its availability to those who have relied on it for centuries.

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, lead to more litigation, and potentially result in the inequitable distribution of our state water. I urge you to kill these bad bills.

I have submitted similar testimony to my representatives. Thank you for this opportunity to testify.

Sincerely,

Cameron Black
University of Hawai`i at Manoa
William S. Richardson School of Law
cblack@hawaii.edu
P: (808) 620-3379

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

From: Adam T. Kahualaulani Mick [mailto:kahualaulani2@yahoo.com]
Sent: Thursday, January 31, 2008 3:49 PM
To: WLHtestimony
Subject: Testimony Opposing 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 Adam T. Kahualaulani Mick, and I come
from Kailua O'ahu. I am sorry I cannot appear before
you in person today; however, I hope you will accept
this written email testimony, and give it equal
weight. Though I cannot be there, my feelings on this
matter are very strong.

I am testifying today in strong opposition to HB
2808 and HB 2820, which seek to amend our State Water
Code. These measures are unnecessary and
inappropriate, and should be swiftly killed.

In Hawai'i, water is a precious 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
agriculture 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)). Thus, carving out an absolute preference
for agriculture uses is antithetical to the
comprehensive planning and management principles
underlying the Water Code's complex regulatory
framework. Indeed, in every single case, including
Waiahole, the Commission has given agriculture uses
all the water needed and more.

In addition, the Hawai'i Supreme Court has already

determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Therefore, 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 wholly unnecessary bills.

Thank you for allowing me this opportunity to testify and share my mana'o about this important issue.

Aloha no me ka mahalo nui loa,
Adam T. Kahualaulani Mick
1132 Ilikala Pl.
Kailua, HI 96734-1854
808-254-9257

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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 Kakou,

I strongly oppose HB2808 and HB2820 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.

Mahalo,


Paulette K. Kalcikini

Phone : 668-5663

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

From: skywalker@ecomail.org [mailto:skywalker@ecomail.org]
Sent: Thursday, January 31, 2008 5:17 PM
To: WLHtestimony
Subject: Testimony in opposition to HB 2808 and HB 2820

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Evan Silberstein. I am a second year student in the environmental law program at William S Richardson School of Law. My testimony is in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and therefore must be terminated.

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 uphold the Public Trust and not to support these unnecessary bills.

Thank you for this opportunity to testify.

Sincerely,
Evan Silberstein
3315 East Manoa Rd.
Honolulu HI, 96822

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From: David H. Klipstein [mailto:dklipstein@reactiondesign.com]
Sent: Thursday, January 31, 2008 6:01 PM
To: WLHtestimony
Subject: Reject HB 2808 and HB2820

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 David Klipstein 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 rejected.

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. To not do so will inevitably open our limited water resources to short term exploitation and ultimately to the collapse of our Island society as we know it

Thank you for this opportunity to testify.

Sincerely,

David H Klipstein
280 Akaula Way
Wailea
858-882-7692

From: David H. Klipstein [mailto:dklipstein@reactiondesign.com]

Sent: Thursday, January 31, 2008 6:07 PM

To: WLHtestimony

Subject: Reject HB 2808 and HB2820

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 Donna Klipstein 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 rejected.

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. To not do so will inevitably open our limited water resources to short term exploitation and ultimately to the collapse of our Island society as we know it

Thank you for this opportunity to testify.
Sincerely,

Donna J. Klipstein
280 Akaula Way
Wailea
858-882-7692

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

From: Judy Mick [mailto:ppchawaii@yahoo.com]

Sent: Thursday, January 31, 2008 6:07 PM

To: WLHtestimony

Subject: Opposition to HB2808 and HB2820

TO House Commitees on:Water, Land, Ocean Resources and
Hawaiian Affairs and Agriculture

Attention:Chairs Ken Ito and Clift Tsuji

My name is Judith Mick and I am in opposition to HB
2808 and HB 2820.I do not think our well crafted State
Water Code should be amended by unnecessary and and
inapproapriate bills.

Water is a public trust resource in which every one of
us has an interest.It is the wealth of any society and
was always reflected by our Native Hawaiian culture
who referred to wai-wai (water) as the measure of a
person's wealth.

Our present Water Code delicately balances the
protection and use of water . Please respect the
Public Trust doctrine in our State Constitution and
interpreted by our Supreme Court. Please kill these
very bad bills for Hawaii. Thank you. Judith
Mick, Kailua, Oahu