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

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

To: WLHtestimony

Subject: Testimony on HB 2808 & HB 2820

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

Attn: Chairs Ken Ito & Cliff Tsuji

Aloha Chairs Ito and Tsuji and Members of the Committees:

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

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

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

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

Thank you for the opportunity to testify.

Sincerely,
Roselle Bailey
485 Lilihua Place
Wailuku 96793
808 244 6225
kinohine@aol.com

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

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

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

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

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

Aloha Chairs Ito and Tsuji and Members of the Committees:

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

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

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

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

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

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

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

Thank you for this opportunity to testify.

Sincerely,
Penny Levin

Wailuku, Hawaii

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

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

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

Attn: Chairs Ken Ito & Clift Tsuji

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

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

SAMPLE TESTIMONY:

Aloha Chairs Ito and Tsuji and Members of the Committees:

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

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

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

Thank you for this opportunity to testify.

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

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

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

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

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

Aloha Chairs Ito and Tsuji and Members of the Committees:

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

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

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

Thank you for this opportunity to testify.

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

--

Maka'ala ke kanaka kahea manu

aloha,
Pauahi

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

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

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

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

RE: HB 2808 and 2820

From: Alan T. Murakami

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

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

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

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

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

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

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

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

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

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

Please kill HB 2808 and HB 2820.

Thank you for this opportunity to testify.