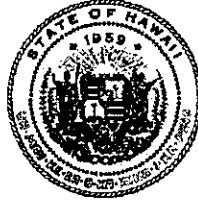


TESTIMONY
SB492

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committee on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Monday, February 22, 2010
3:00 P.M.**

State Capitol, Conference Room 229

**In consideration of
SENATE BILL 492, PROPOSED SENATE DRAFT 1
RELATING TO WATER**

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Senate Bill 492, Proposed Senate Draft 1 would amend the State Water Code by requiring that: 1) One member of the Commission on Water Resource Management (Commission) be appointed from each of the counties and the remaining member be an at-large appointee; and 2) At least one member be a person who owns or is primarily employed by a farming operation, as defined in Section 165-2, Hawaii Revised Statutes (HRS). While the Department of Land and Natural Resources (Department) recognizes the importance of statewide representation on the Commission and the importance of water to the agricultural industry, the Department does not feel this measure is necessary at this time for the following reasons.

First, unlike most state boards and commissions, the Commission has an open selection process mandated by the State Water Code. A nominating committee is formed, composed of two persons appointed by the Governor, one person appointed by the President of the Senate, and one person appointed by the Speaker of the House of Representatives. The Nominating Committee solicits applications from those interested in serving on the Commission. The Nominating Committee, not the present Commission or staff, determines three names to send to the Governor for consideration. The Governor must pick one name from among the three names transmitted for each position. All nominees are subject to Senate confirmation. The process encourages a broad base of applicants to be considered for positions on the Commission. Anyone may apply. The only requirements are that the person has "substantial water resource experience" and that "at least one member has substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage". Because the State Water Code does provide for specific protections for Native Hawaiian water rights in Section 174C-101, HRS, a requirement for such experience is reasonable. However, because the process is open, the Department believes no further change in the law is necessary.

Second, the Department believes that experience in water resource management, including traditional Hawaiian water resource management, is more important than residency requirements. Water issues are extremely complex and highly technical. The pool of candidates meeting current qualification requirements is very limited, and in the past, the Commission staff has had to advertise more than once to obtain a sufficient number of qualified individuals to move forward with the mandated selection process. The Department has concerns that further restrictions on the qualifications of candidates may make it even more difficult to recruit individuals having the necessary experience and knowledge in water resource management. Even though not currently mandated, the Department notes that the counties have been in the past and are currently well-represented on the Commission.

Third, the Commission has a broad mandate to weigh many interests, including the needs of the public and the needs of our physical environment, to effectively manage our precious water resources. As the Hawaii Supreme Court recognized in the Waiahole Case, these are not easy decisions. The Commission must represent the State as a whole, including agricultural and farming interests. To require representation of a specific interest, or multiple specific interests, could possibly create a situation whereby the overall interests of the State may not be considered. The Department strongly believes that the obligation lies with the State through the Commission to insure that agricultural interests are adequately considered.

Fourth, requiring the Commission to include a person who owns or is employed by a farming operation may result in other interests to also desire representation on the Commission and may lead to calls for increased membership with special representation. The current structure of the Commission is operating effectively and efficiently. Additional membership would increase administrative costs to the Commission's program for travel costs and reimbursement of expenses as provided by state law, and may cause additional scheduling problems for meetings.



**SB 492 SD 1
RELATING TO WATER**

Senate Committee on Water, Land, Agriculture and Hawaiian Affairs

February 22, 2010

3:00 p.m.

Room: 229

The Office of Hawaiian Affairs (OHA) expresses concern regarding the proposed SB 492 SD1, which would amend the State Water Code to require that the Commission on Water Resource Management include a member from each county and at least one farmer.

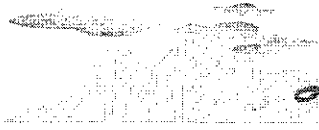
Water is one of the most important resources in Hawai'i. Native Hawaiians poetically refer to water as Ka Wai Ola a Kāne, or the life-giving waters of the god Kāne. Our ancestors diverted water from streams to irrigate huge swaths of land covered in lo'i, or taro patches. These lo'i provided Native Hawaiians with taro to make poi, the staple of the traditional Hawaiian diet.

Today, maintaining the taro cultivating traditions of our ancestors has become increasing difficult because of plantation-era ditch systems that divert staggering amounts of water from streams on nearly every island. Taro farmers represent just one of many stakeholders dependent on Hawai'i's precious water. Other types of farmers, stream life, recreational users and the general public are all affected by the state's management of our water resources.

The Commission on Water Resource Management (CWRM) is the state agency tasked with balancing the protection and beneficial use of Hawai'i's water resources. The commission faces many challenges in fulfilling this kuleana. However, changing the composition of the commission, as proposed in SB 492 SD 1, would not necessarily improve the agency's ability to do its job. While we appreciate the bill's intent to ensure that agricultural and county interests are represented on water issues, we believe that these interests have always had sufficient representation on the commission.

A shortage of resources is a more pressing issue for the commission. We understand that the commission recently underwent a series of cuts that decimated its staff. A lack of funding for the agency is another problem. This shortage of resources is affecting CWRM's ability to successfully complete its day-to-day tasks, which ultimately impacts all stakeholders. Therefore, we humbly ask that these concerns be addressed before the State Water Code is changed.

Mahalo for the opportunity to testify.



Hawaii's Thousand Friends

25 Maunulu Ave., Suite 102., PWRB 382 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair

SB 492 Proposed SD1
Relating to Water

February 22, 2010

Committee Chair and Members;

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization, opposes SB 492 Proposed SD1 that amends the State Water Code by revising the composition of the State Water Commission.

When the current compromise language in the State Water Code was approved in 1987 it explicitly rejected specifically including county appointed positions to avoid interjecting county politics into the State's public trust responsibilities for Hawaii's water resources.

The proposed SD1 further erodes the finely balanced Commission by inserting, for the first time, a special interest position for a person "who owns or is primarily employed by a farming operation".

The lack of representation on the Water Commission is not an issue since the counties and agricultural interests have *always* had representation. Including four of the five current commissioners who have been or are currently involved in agriculture.

We urge you to hold SB 492 Proposed SB1 in committee and instead direct your efforts to the real problems facing the Commission – lack of adequate funding and staff.

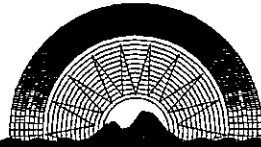
From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 20, 2010 7:41 AM
To: WTLTestimony
Cc: alohahaiku@hawaiiantel.net
Subject: Testimony for SB492 on 2/22/2010 3:00:00 PM

Testimony for WTL 2/22/2010 3:00:00 PM SB492

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Lyn Scott
Organization: Individual
Address: PO Box 596 Haiku, HI
Phone: 808-280-2359
E-mail: alohahaiku@hawaiiantel.net
Submitted on: 2/20/2010

Comments:

This position on the Commission on Water Resource Management should be represented by a kanaka maoli taro farmer. Hawaii was first farmed in kalo and this seat should be specifically held for this purpose to protect our unique and cultural values. Mahalo malama pono.



MAUI TOMORROW

Protecting Maui's Future

February 22, 2010

Senate Committees on: Water, Land, Agriculture, & Hawaiian Affairs
Attn: Chair Clayton Hee

Testimony Opposing SB 492, Proposed SD 1: Relating to Water

February 22, 2010, 3 p.m.
Conference Room 229

Aloha Chair Hee, Vice-Chair Tokuda, and Members of the Committee:

Maui Tomorrow Foundation strongly opposes SB 492, which seeks to amend our State Water Code. This bill is unnecessary and inappropriate, and should be killed.

In Hawaii, water is a public trust resource for all. Our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. SB 492 seeks to upset this balance by requiring that of the Water Commission's five appointed positions, (1) "one member shall be appointed from each of the counties," and (2) "at least one member shall be a person who owns or is primarily employed by a farming operation," as defined in HRS 165-2.

When the Water Code was enacted in 1987 quotas were expressly rejected because to do so would inject county politics into a state agency. Further, this measure is unnecessary because there is more than adequate representation from the agriculture industry now with four of the Commission's five appointed members either currently engaged in or having had careers in agriculture in the state.

Rather, the Water Commission suffers from a lack of staff, funding, and other resources. Our State Water Code is not broken and does not need SB 492 unnecessarily amending it. We urge you to, instead, provide the Commission with more funding and the authority to fill its vacant positions.

Thank you for this opportunity to testify.

Sincerely,

Irene Bowie
Executive Director

From: Sylvia Cenzano [scenzano@beachnet.com]
Sent: Sunday, February 21, 2010 11:22 AM
To: WTLTestimony
Subject: Senate Committees on: water, land, Agriculture, & Hawaiian Affairs

Senate Committees on: water, land, Agriculture, & Hawaiian Affairs
Attn: Chair Clayton Hee

Testimony Opposing SB 492, Proposed SD 1: Relating to Water

February 22, 2010, 3 p.m.
Conference Room 229

Aloha Chair Hee, Vice Chair Tokuda, and Members of the Committee:

My name is Sylvia Cenzano, I live on Maui, and I am testifying in strong opposition to SB 492, which seeks to amend our State Water Code. This bill is unnecessary, inappropriate, and should be eliminated.

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. SB 492 seeks to upset this delicate balance by requiring that of the Water Commission's five appointed positions, (1) "one member shall be appointed from each of the counties," and (2) "at least one member shall be a person who owns or is primarily employed by a farming operation," as defined in HRS 165-2.

Such quotas are ill-advised. In fact, quotas for the counties were expressly rejected when the Code was enacted in 1987 because it injects county politics into a state agency. Further, this measure is unnecessary. Since its inception in 1987, the Water Commission has consistently had representation from each of the counties and more than adequate representation from the agriculture industry. This continues today with four of the Water Commission's five appointed members being currently engaged in or having had careers in agriculture in Hawai'i.

The real problem facing the Water Commission is the lack of staff, funding, and other resources. Instead of unnecessarily amending the Water Code, we urge you to provide the Commission with more funding and the authority to fill its vacant positions.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 492, will do more harm than good. Please kill this bill.

Thank you for this opportunity to testify.

Sincerely,

Sylvia Cenzano
Cell phone 310-5657-3374
I live in Kihei and in Haiku, Maui.



EARTHJUSTICE

Because the earth needs a good lawyer

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, DC INTERNATIONAL

**SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
ATTN: CHAIR CLAYTON HEE & VICE-CHAIR JILL N. TOKUDA**

**TESTIMONY RE: SENATE BILL NO. 492, PROPOSED SENATE DRAFT 1,
RELATING TO WATER**

February 22, 2010, 3:00 p.m.
Conference Room 229

Aloha Chair Hee, Vice-Chair Tokuda, and Members of the Committee:

Earthjustice appreciates the intent of Senate Bill No. 492, Senate Draft 1 to ensure the Water Commission includes representatives of small farmers and the neighbor islands, but have serious concerns about the proposed measure. First, the Water Code's drafters specifically rejected quotas for counties on the Commission in recognition of the Commission's overarching, state-wide trust responsibilities. In fact, each of the counties have consistently been represented on the Commission. Moreover, the Commission has had difficulty finding applicants with the essential and required significant experience in the area of water resource management. We share the Commission's concern that the proposed amendment will make it even more difficult to find qualified applicants.

Second, the current definition of farmer provided by Haw. Rev. Stat. § 165-2 specifically covers agribusiness, which has always been over-represented on the Water Commission. If the intent of the measure is to provide a seat for a small family farmer or taro farmer, that must be clearly specified and defined.

More fundamentally, given the many challenges currently facing the Water Commission – including the reduction in over one-third of its staff and the elimination of its entire data collection branch – we urge this Committee to provide the Commission with the help it really needs by directing the Commission to fill vacant positions and providing more funding. With the many competing needs this legislative session, we realize this is difficult, but remain optimistic and hopeful that some assistance can be provided to enable the Commission to appropriately manage this vital natural and cultural resource. 2010 marks the 23rd anniversary of our State Water Code. Over two decades ago, this legislature fulfilled its constitutional public trust mandate and established a comprehensive regulatory framework for the benefit of all of Hawai'i's people. More support is needed to fulfill that critical framework.

In sum, we do not believe that either of the proposed amendments are necessary and prefer that this bill be held. If this issue requires further discussion, we are happy to provide information or assistance on this or any other matters related to public trust water resources.

Very truly yours,

/s/

D. Kapua`ala Sproat
Isaac H. Moriwake
Koalani L. Kaulukukui

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 21, 2010 2:09 PM
To: WTLTestimony
Cc: sosfarminfo@yahoo.com
Subject: Testimony for SB492 on 2/22/2010 3:00:00 PM

Testimony for WTL 2/22/2010 3:00:00 PM SB492

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Kelly Sato
Organization: Individual
Address: 4150 Momi Street Kilauea, HI 96754
Phone: 808-346-6843
E-mail: sosfarminfo@yahoo.com
Submitted on: 2/21/2010

Comments:

Aloha Chair Hee, Vice Chair Tokuda, and Members of the Committee:

My name is Kelly Sato and I am testifying in strong opposition to SB 492, which seeks to amend our State Water Code. This bill is unnecessary and inappropriate, and should 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. SB 492 seeks to upset this delicate balance by requiring that of the Water Commission's five appointed positions, (1) "one member shall be appointed from each of the counties," and (2) "at least one member shall be a person who owns or is primarily employed by a farming operation," as defined in HRS 165-2.

Such quotas are ill-advised. In fact, quotas for the counties were expressly rejected when the Code was enacted in 1987 because it injects county politics into a state agency. Further, this measure is unnecessary. Since its inception in 1987, the Water Commission has consistently had representation from each of the counties and more than adequate representation from the agriculture industry. This continues today with four of the Water Commission's five appointed members being currently engaged in or having had careers in agriculture in Hawai'i.

The real problem facing the Water Commission is the lack of staff, funding, and other resources. Instead of unnecessarily amending the Water Code, we urge you to provide the Commission with more funding and the authority to fill its vacant positions.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 492, will do more harm than good. Please kill this bill.

Thank you for this opportunity to testify.

From: jeff munoz [lungta@maui.net]
Sent: Sunday, February 21, 2010 2:20 PM
To: WTLTestimony
Subject: WTL testimony

Aloha Chair Hee, Vice Chair Tokuda, and Members of the Committee:

My name is Jeff Munoz and I am testifying in strong opposition to SB 492, which seeks to amend our State Water Code. This bill is unnecessary and inappropriate, and should 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. SB 492 seeks to upset this delicate balance by requiring that of the Water Commission's five appointed positions, (1) "one member shall be appointed from each of the counties," and (2) "at least one member shall be a person who owns or is primarily employed by a farming operation," as defined in HRS 165-2.

Such quotas are ill-advised. In fact, quotas for the counties were expressly rejected when the Code was enacted in 1987 because it injects county politics into a state agency. Further, this measure is unnecessary. Since its inception in 1987, the Water Commission has consistently had representation from each of the counties and more than adequate representation from the agriculture industry. This continues today with four of the Water Commission's five appointed members being currently engaged in or having had careers in agriculture in Hawai'i.

The real problem facing the Water Commission is the lack of staff, funding, and other resources. Instead of unnecessarily amending the Water Code, we urge you to provide the Commission with more funding and the authority to fill its vacant positions.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 492, will do more harm than good. Please kill this bill.

Thank you for this opportunity to testify.

Sincerely,
Jeff Munoz
po box 477
Kula, HI 96790
808-878-6016
lungta@maui.net

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 21, 2010 2:35 PM
To: WTLTestimony
Cc: oahurandy@yahoo.com
Subject: Testimony for SB492 on 2/22/2010 3:00:00 PM

Testimony for WTL 2/22/2010 3:00:00 PM SB492

Conference room: 229
Testifier position: oppose
Testifier will be present: No
Submitted by: Randy Ching
Organization: Individual
Address:
Phone:
E-mail: oahurandy@yahoo.com
Submitted on: 2/21/2010

Comments:

The legislature should let the existing law work and support the Water Commission by providing the help that it needs in the form of funding and positions.

The current Water Commission is already overrepresented by agricultural interests. What we need is a broader public policy perspective. Instead of requiring more ag people, we should require a Native Hawaiian cultural practitioner and/or a hydrologist and/or a person with experience in setting water use policy.

Senate Committee on Water, Land, Agriculture, & Hawaiian Affairs
Senator Clayton Hee, Chair
Senator Jill Tokuda, Vice Chair
Monday, February 22, 2010,
3:00 p.m.
Conference Room 229

STRONG OPPOSITION - SB492 - SD 1

Aloha Senator Hee, Senator Tokuda, and members of the committee,

I am adamantly opposed to SB492. This bill is unnecessary and opens the door for those who would like to bypass the Water Code. Hawaii has suffered under unfair usurpation of water rights for over a century.

In order for Hawai'i to regain agricultural sustainability and food security, we must safeguard the water code so that water will continue to be available to Native Hawaiians, small family farmers, and our natural and cultural resources.

Please file SB492.

Mahalo for hearing my concerns,

Netra Halperin, MA
Kihei, Maui



Office
1149 Bethel St., Ste. 415
Honolulu, HI 96813
877.585.2432 toll-free ph/fx

Mailing Address
P.O. Box 37368
Honolulu, HI 96837

www.KAHEA.org
kahea-alliance@hawaii.rr.com

S.B. 492 To Amend the Water Code
WTL Room 229 3:00 pm
February 22, 201-

Aloha e Chairman Senator Hee and members of the Water, Land, Agriculture, and Hawaiian Affairs Committee,

Mahalo for this opportunity to express our **opposition to SB 492, SD 1**. We strongly urge you to NOT open Hawai'i's Water Code to any amendments. Please do not advance this bill to the House of Representatives.

KAHEA is a network of nearly 10,000 people throughout the Hawaiian Islands and the world working to protect Hawai'i's unique natural and cultural resources. We work with taro farmers and conservationists to ensure Hawai'i's streams are adequately protected for a healthy environment.

This bill is a threat to the very backbone of Hawai'i's visionary water code. Any attempt to open this statute up for modification will be used by corporate interests to dilute and weaken current protections for Hawai'i's streams, wildlife, and culture.

Any failures of the Water Code or its commission is due to lack of funding and staffing, not the composition of the commission itself. At least one third of the current positions at the Commission are vacant and funding for the Commission is inadequate to fulfill it's mission. To help protect the water as a resource for taro farmers, native ecosystems, and future generations, this Committee should abandon this proposal and pursue funding for the Commission. KAHEA, as you know, is an advocate for charging fair market rent for the use of public lands on the summit of Mauna Kea by private corporations and foreign governments.

Mahalo,

Marti Townsend
Program Director

PAMELA W. BUNN
1001 Bishop Street, Suite 1300
Honolulu, HI 96813
February 21, 2010

TO: Chair Clayton Hee and Vice-Chair Jill N. Tokuda, Senate Committee on Water,
Land, Agriculture, and Hawaiian Affairs

RE: TESTIMONY OPPOSING SENATE BILL NO. 492, PROPOSED SENATE
DRAFT 1, RELATING TO WATER

HEARING: February 22, 2010, 3:00 p.m., Conference Room 229

Aloha Chair Hee, Vice-Chair Tokuda, and Members of the Committee:

Having participated in several matters before the Commission on Water Resource Management (the "Commission"), I write to express my opposition to Senate Bill No. 292, Senate Draft 1, which would amend the Water Code to require that the Commission include one member from each of the counties and one member who owns or is primarily employed by a farming operation as defined in section 165-2.

In the process leading up to the enactment of the Water Code, proposals to appoint Commission members by county or by special interest were debated and ultimately rejected, for very good reason. The role of the Commission is to serve as Trustee of Hawaii's public trust water resources. Politicizing the Commission by appointing members to represent particular constituencies is fundamentally at odds with the duty of the Commission to establish policies and make decisions that protect Hawaii's water resources for the benefit of *all* of Hawaii's people, including future generations. Accordingly, in their wisdom, the framers decided on only one qualification for Commission Members – that they be experienced in water resource management.

There is a practical as well as a policy reason not to make residence in a particular county or association with a particular special interest a qualification to serve on the Commission. Given the difficulty in finding well-qualified people willing to take on the demanding and often thankless task of serving on the Commission, SB 492, SD1 would unnecessarily limit the pool of qualified candidates.

Ultimately, this bill appears to be a solution for a problem that does not exist. Without any statutory requirement, there have been Commission members from each of the counties, and commercial agricultural interests have been well-represented (and some would say overrepresented) on the Commission. The impediment to the Commission's effectiveness is not its composition; it is the chronic lack of resources devoted to the Commission and its mission. That is the problem which needs to be addressed.

Thank you for the opportunity to testify and for your consideration of these concerns.

TESTIMONY
SB492
(END)