

**TESTIMONY**  
**SB492**  
**LATE**

# LATE TESTIMONY

ATT: Senator Clayton Hee, Chair  
Senate Committee on Water, Land, Agriculture, & Hawaiian Affairs  
Conference Room 229

FROM: Penny Levin

DATE: Sunday, February 21, 2010 (Submitted by email)

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

Aloha honorable Chair, Vice Chair and Committee members;

I am testifying as an individual and a taro farmer from Maui in strong opposition to SB492. I am also a member of the Taro Security and Purity Task Force formed by the legislature in 2008 to address the challenges faced by taro farmers statewide as they struggle to survive.

In Hawai'i, water is, by law, recognized as a public trust resource in which all citizens have an interest. Our state constitution and Water Code were carefully written to strike a balance between the protection and beneficial use of Hawaii's water resources. SB492 seeks to upset this delicate balance by proposing to amend the Water Code to require that of the five members appointed to the Water Commission, (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.

This bill is ill-advised and unnecessary. The Water Commission is required by law to have as its members those with expertise in water resources management. In fact, the Water Codes expressly states "*Each member shall have substantial experience in the area of water resource management; provided that at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage such as those preserved by section 174C-101.*"

The county-by-county idea was expressly rejected when the Water Code was enacted in 1987 because it injects county politics into a state agency. Each county has its own water board and water development and management plans for such purposes.

The Commission has always had representation from the counties and the agriculture industry since its inception in 1987. Currently on the Commission, agriculture experience is represented in four out of five seats by Sumner Erdman, a rancher; Neil Fujiwara, retired District Conservationist for NRCS on Maui and Kauai, and now a small farmer; Lawrence Miike, a coffee farmer on the Big Island; and Bill Balfour, retired from Kauai sugar.

There has, however, never been a taro farmer on the Commission, despite language in the Water Code which requires one seat to be filled by someone with substantial experience in traditional Hawaiian water resources management and practice. Nor has there been a hydrologist or stream

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ecologist. In fact, the Commission has been predominantly made up of water users, rather than water resource specialists.

Since agriculture and county interests have been and continue to be well-represented on the Commission, SB492 is wholly unnecessary.

SB492 fails to address the real problems facing the Water Commission. The Commission is understaffed and underfunded. Right now, one-third (seven of the Commission's 24 positions) have been cut or remain vacant, including their chief hydrological engineer, a critical position. The lack of staff and funds makes it extraordinarily difficult for the Commission to fulfill its constitutional and statutory mandates to protect and regulate Hawaii's water resources for present and future generations.

Members of the legislature received the Taro Security and Purity Task Force *2010 Legislative Report* in December of 2009. Task Force members met with the staff and director of CWRM on several occasions during its year of information gathering. Our primary recommendation on Water in that report was as follows (pg39):

**A. Support and enforce the State Constitution and the State Water Code.**

1. Support the full implementation of the existing legal framework for managing Hawai'i's precious freshwater resources and stewardship of these resources as a Public Trust per the State Constitution, Articles XI Sections 1 and 7 and the State Water Code, HRS 174C.

The report goes further to say "*The Task Force believes that the existing regulatory framework; including the Water Commission and Water Code, can best manage our resources if more funding and staff are provided to better implement fundamental mandates...*" (pg37) and follows with equivalent recommendations (pg 39-40).

Given the larger and more important challenges that are currently facing the Water Commission – particularly loss of 1/3 of its current staff - what the Commission really needs is more funding and staff so that it can do the job it is *mandated* to do in order to protect and better manage Hawai'i's precious water resources.

Instead of unnecessarily amending the Water Code, I urge you to provide the Commission with more funding and the authority to fill its vacant positions and fulfill its mandate.

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.

Respectfully,

Penny Levin  
Wailuku Maui

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Senate Sgt at Arms

1-800-586-6659

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 Pauahi Lozano and I am a small farmer here on the island of Maui 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.

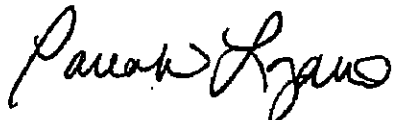
Such quotas are ill-advised. In fact, quotas for the counties were expressly rejected when the Code was enacted in 1987 because it injects county politics into a state agency. Further, this measure is unnecessary. Since its inception in 1987, the Water Commission has consistently had representation from 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,  
Pauahi Lozano  
P.O. Box 2082  
Wailuku, HI 96793  
(808) 442-2315





# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.538.6616 hawaii.chapter@sierraclub.org

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## SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

February 22, 2010, 3:00 P.M.  
(*Testimony is 1 page long*)

### TESTIMONY COMMENTING ON SB 492 SD1 WITH A PROPOSED AMENDMENT

Aloha Chair Hee and Members of the Committee:

The Hawai'i Chapter of the Sierra Club offers the following comments on SB 492 SD1, which requires at least one member on the Water Commission be someone who owns or is primarily employed by a farming operation.

While we support the intent of this bill, we are concerned that the largest representative of the agricultural community -- the Hawaii Farm Bureau -- has taken positions contrary the interest of a small or traditional farmer. For example, the Hawaii Farm Bureau recently testified in support of a development project at Koa Ridge that, based on the developer's expert, would result in the loss of 5% of O'ahu's available agricultural land (see attached). It's hard to see how any farmer benefits in the loss of one of the largest commercially viable, prime agricultural parcels with easy access to the biggest market in the state.

We suspect this bill is designed to ensure small farmers are represented on the Water Commission. Based on the traditional makeup of the Water Commission -- typically representatives of the biggest landowners in the State -- we support the intent of this bill. If this bill proceeds, we suggest it be amended to include the appointment of an environmentalist and a traditional/cultural farmer. For example, language could be included stating "at least one member shall be a person who practices traditional Hawaiian farming techniques, and at least one member shall be a person who is a member of a Hawai'i environmental organization." While we recognize this language may not be perfect, we offer it as a starting point to continue the dialogue.

Mahalo for the opportunity to testify.



2343 Rose Street, Honolulu, HI 96819  
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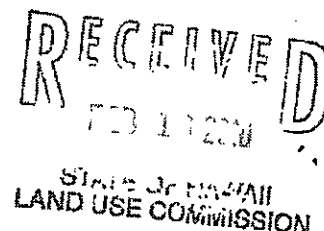
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Submitted by:  
Sierra Club

FEBRUARY 18, 2010

HEARING BEFORE THE  
LAND USE COMMISSION

TESTIMONY ON A07-775  
Castle & Cooke Homes Hawaii, Inc. (Oahu)



The Hawaii Farm Bureau Federation is testifying in support of Castle & Cooke's proposed Koa Ridge Development in Central Oahu. The Hawaii Farm Bureau Federation is a non-profit organization of farming families with over 1,600 members united for the purpose of analyzing problems and formulating action to ensure the future of agriculture thereby promoting the well-being of farming and the State's economy.

The Koa Ridge property is within the Urban Growth Boundary established under the City and County of Honolulu's Central Oahu Sustainability Plan. Central Oahu is designated as an area for urban growth. The Hawaii Farm Bureau Federation respects and supports the City's long-range planning policies which consider the public interest, the need for growth as well as the needs for agriculture.

The urbanization of Koa Ridge will not result in a net loss of farmed lands. Aloun Farms, which is the second largest diversified agricultural grower in Hawaii, presently farms a variety of truck crops on the Koa Ridge property. Castle & Cooke has secured an excellent relocation site for Aloun Farms' Koa Ridge operation above Wahiawa and adjacent to its Dole Plantation operations. Castle & Cooke's relocation efforts of Aloun Farms from Koa ridge could result in an increase in farmed land.

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Submitted by: Sierra Club

It is our understanding that Castle & Cooke is also moving forward with the identification of their agricultural lands suitable for voluntary Important Agricultural Lands designation to preserve these lands for agricultural use. Castle & Cooke's relocation of its farming tenant and its voluntary dedication of Important Ag Lands demonstrates their strong support of agriculture and agricultural operations in the State of Hawaii.

While the Hawaii Farm Bureau Federation regrets the loss of farmable agricultural lands, we support the City and County of Honolulu's Central Oahu Sustainability Plan and long-range planning policies. Castle & Cooke's relocation and transitioning arrangements for continued farming operations of Aloun Farms and its plans for voluntary designation of Important Agricultural Lands are testaments to sound planning and their continued support of Hawaii's agriculture industry. Castle & Cooke deserves our full support.

Dean J. Okimoto  
President  
Hawaii Farm Bureau Federation

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## Senate Committees on Water, Land, Agriculture, & Hawaiian Affairs

### 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:

Although submitted a bit late, I submit this testimony to strongly oppose SB 492, which seeks to amend our State Water Code. This bill unnecessarily wastes the time of your committee, is inappropriate, and should be killed.

In Hawai'i, water is a public trust resource in which all citizens have an interest – regardless of the island of residence. Hawaii's 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 Water Commission's main problem right now 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. You should also investigate the record of the Lingle Administration, which has questionably and severely defunded many key components of the Water Commission staff, giving it no fiscal priority for years and interfering with operations designed to protect natural resources. A recent February 2010 *Hawai'i Fishing News* article bears this point out quite elaborately.

Our State Water Code is not broken and does not need fixing – instead, please find a way to ensure proper staffing of the Water Commission. Altering the Code, as per SB 492, will do more harm than good. So, please kill this bill. Thank you very much for your consideration of my testimony.

Sincerely,

Nancy Walsh

P.O. Box 262  
Aiea, HI 96701  
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Email: [NAWJ64@aol.com](mailto:NAWJ64@aol.com)



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

2343 Rose Street, Honolulu, HI 96819  
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### Re: SB 492SD1 Relating to the Water

Chair Hee and Members of the Committee:

HFBB on behalf of our member farm and ranch families and organizations **supports the intent of SB492SD1** requiring a person from each County, one of who is a farmer on the Water Commission **and provides the following comments.**

HFBB agrees that having a person knowledgeable in agriculture has merit. If one agrees that Agriculture is critical to Hawaii's food and energy security as has been referenced in many other hearings, then decisions regarding its' most critical resource must be done with information of the industry's needs. And this can only be accomplished with assurance that there is a presence within the Commission of people with an indepth understanding of agriculture's needs.

The current Water code requires

Five members shall be appointed by the governor subject to confirmation by the senate, in a manner prescribed in subsection (d). Each member shall have substantial experience in the area of water resource management; provided that at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage such as those preserved by section 174C-101. The chairperson of the board of land and natural resources shall be the chairperson of the commission. The director of health shall serve as an ex officio voting member.

The requirements establish a person knowledgeable of Hawaiian culture. The chair of DLNR is named as a chair since water is a natural resource of the State and the director of health, to address health concerns. In the interests of State food and energy security, it would be reasonable to require the Chairperson of the Department of Agriculture to serve in a similar capacity. As Chair of the Department they will have an expansive knowledge of the industry, and can provide the insights of what is needed for the industry to provide Food and Energy Security for Hawaii. All three positions can be justified as they are constitutionally recognized interests in regards to water.

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We believe the stated requirements of the 5 members to have a substantial knowledge of water resource management is relevant and placing further requirements will open the door to addressing special interest needs which can be unlimiting and chaotic. Rather a careful analysis of the overall qualifications for selection of candidates for the Water Commission during the confirmation process is important. We strongly believe that what is critical is a person's ability to consider, analyze and determine the various roles water must play in Hawaii. All members of the Commission must be willing to take a proactive role in addressing the water needs for an ever growing society. These qualifications go beyond residence in a particular County or knowledge of agriculture.

Thank you for this opportunity to testify and request that the measure be **amended to include the Chair of the Department of Agriculture as an ex-officio voting member of the Water Commission.**

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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:

I am testifying in strong opposition to SB 492, which seeks to amend our State Water Code by requiring one of the commissioners to be a farmer. Although I myself am a taro and vegetable farmer, I think that this proposed requirement would only serve those who have larger acreages in agriculture and or those who speak for the seed companies which don't produce any food for our people. Who will speak for the many small diversified family farms that are in need of water and put food on the table for their families and communities and keep the dollars circulating in our islands? At present, there seems to be commissioners with agricultural backgrounds. So therefore, I feel that this bill is unnecessary and will not be addressing our present pressing water needs toward us seriously producing at least 50% if not 90% of our own food. There is nothing but talk talk talk from all the agencies, legislators and government, who should be assisting in making Hawaii be sustainable. Time is ticking. Maybe everyone has a different definition of sustainable.

I offer a suggestion to focus instead on getting more funding for staff to uphold the State Water Code.

Please reconsider and kill the bill.

Thank you.

Chris Kobayashi  
808-826-7836

# LATE TESTIMONY

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**From:** jtluvmw@lava.net  
**Sent:** Monday, February 22, 2010 11:16 AM  
**To:** WTLTestimony  
**Subject:** Testimony Opposing SB 492, Proposed SD 1: Relating to Water

aloha senators,  
please accept this testimony in opposition to SB 492. SB 492 is an unnecessary change to the existing commission structure. The make up of the Water Board is not the issue that should be addressed. SB 492 will not make up for the deficiencies in the state's management of its water resources. Our Water Code is not the issue, nor is the framework of the Water Board. Vote no on SB 492 and focus on supporting staff to increase its capacity to manage one of our state's most important resources.

with respect and aloha,

james g trujillo  
po box 33  
kapaa, HI  
96746

# LATE TESTIMONY

**SENATE COMMITTEE ON: WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS**  
**ATTN: CHAIR CLAYTON HEE, AND VICE-CHAIR JILL TOKUDA**  
**Testimony Opposing SB:492 Relating to water**

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

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. For many years before we had 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 SB492. The Water Commission has tough allocation decisions to make and this bill will only make that job more difficult, and will also open the door to other interest groups calling for representation.

The Waiahole case established that the biggest problems facing farmers 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.

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. Unfortunately, the Commission has improperly reserved groundwater for future residential development. Why is future development given a higher priority than present or future agriculture? That needs to be changed, but putting a person on the Commission with a specific bias, is not the way to correct the problem. Nothing is sustainable, not even agriculture, if we cannot protect our resources. Everyone who is appointed to the Commission should receive broad training in all aspects of water resource protection.

Please vote NO on SB492. Thank you for this opportunity to testify.

**TESTIMONY**  
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**(END)**