

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
WATER, LAND & OCEAN RESOURCES

Monday, January 30, 2012
9:15 A.M.
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 1946
RELATING TO WATER

House Bill 1946 proposes to amend three sections of the State Water Code, (Chapter 174C, Hawaii Revised Statutes (HRS)), to fundamentally change the guidance, to define “augmenting” in a new way, and to limit who may object to a water use application. The Commission on Water Resource Management (Commission) and the Department of Land and Natural Resources (Department) **STRONGLY OPPOSE** this measure for the following reasons:

1. Section 174C-2, HRS, Declaration of Policy. This measure proposes to eliminate subsection (c) in its entirety and replace it with a whole new section restating and redefining the public trust doctrine in a manner inconsistent with the purpose of the law and contrary to the decisions of the Hawaii Supreme Court. This measure would insert “agriculture” into the definition of the public trust in a manner that is contrary to the Public Trust doctrine and the protection of public trust resources. This language would upset constitutional protections, reverse the burden of proof in natural resource law, and undermine the long term protection of the State’s water resources. The State Water Code was adopted after decades of litigation and negotiations. The State’s obligation to protect water resources and integrate water uses is a carefully structured process. This measure would undo that careful balance in order to satisfy special interest groups.
2. Section 174C-31, HRS, Hawaii water plan. This measure proposes to redefine “augmenting” in subsections (c)(1) and (d)(4) to include types of water capture, storage, and recharge. This change is unnecessary and could be misleading. The current Water Resource Protection Plan (2008) already discusses plans and programs for wastewater and stormwater

capture, storage, and reuse. Work is underway to update the Water Resources Protection Plan to include an inventory of statewide surface water storage reservoirs. Future updates of the Agricultural Water Use and Development Plan will also provide inventories of water storage means and methods for agricultural uses.

This measure proposes to modify language in subsection (c)(4) to pluralize the form of the words “portion,” “river” and “stream.” This is unnecessary. It is already covered in existing language.

Finally, this measure proposes change the basis of the Water Resource Protection Plan from “above studies” to “requirements of the section.” This is unnecessary. The same requirements still apply.

3. Section 174C-53, HRS, Permit issuance. This measure seeks to limit the ability of some persons with property interests in hydrologic units to object to water use permit applications. Water use permit applications are complex and unique often in ways different from standard land use permits. This issue goes to due process in water cases. The proposal is ill advised and contrary to established law regarding the standing of persons with a variety of water interests to due process. The Commission must examine objections on a case-by-case basis. The Commission determines in each instance whether the person filing the objection has a legitimate and valid basis for objecting. The Commission and the Department oppose this change.

CONCLUSION

The Commission and the Department **strongly oppose** all aspects of this measure. The changes are unnecessary, unwise, and simply wrong. They would seriously disrupt and upset the careful balance between reasonable and beneficial water use with resource protection in the State of Hawaii. There are no amendments that can cure these problems. This bill should be held and not go forward.

Thank you for the opportunity to comment.

Aloha Chair Chang and Members of the Committees:

I am a member of the Taro Security and Purity Task Force, although I am testifying as an individual today.

I am in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary, improper and must be killed.

The Taro Security and Purity Task Force took a clear stand in regards to the Water Code in its 2010 Report to the Legislature (pg36), in which it stated:

The Taro Security and Purity Task Force strongly supports the existing legal framework for managing Hawai'i's precious freshwater resources, and recognizes the importance of stewarding these resources as a Public Trust for the benefit of present and future generations. Article XI sections 1 and 7 of the State Constitution and the State Water Code, Hawai'i Revised Statutes chapter 174C, should be enforced and implemented and must also be protected from attempts to dilute the Public Trust in Hawai'i's water resources.

Our state Constitution and Water Code were carefully crafted to strike a careful balance between the protection and beneficial use of our water resources. The Water Code is not merely a guide, as HB1946 suggests, but a *constitutional mandate*.

Allow me to speak for a moment as a restoration ecologist. To consider manipulation of the Water Code for private for-profit benefit before the benefits to ecosystem health and Native Hawaiian rights (which are in alignment with ecosystem health), is a failure to understand the fragile conditions of our already overtaxed watersheds and aquifers. No amount of money made, food grown, or legislation passed will make more water appear. This is a simple truth. Handing more water over to the very industry whose agricultural practices have put our freshwater resources in jeopardy in the first place does not solve the problem, nor give us greater food self-sufficiency.

To explain, historic and ongoing agricultural practices have caused the loss of massive amounts of topsoil from agricultural lands across the islands that now smother our reefs. Without healthy topsoil, complete with the full complex of organic matter, microbes and fungi that make good soil, water can not be retained and drains rapidly through taking more soil with it (along with the applied ag chemicals) straight to our oceans. Maui is standing testimony to this on a daily basis. The sediment from this runoff smothers our reefs and fisheries whose value as a food resource and primary draw for the tourist industry is critical to our physical and economic survival. Directing more water to commercial agriculture lands without a dramatic change in agricultural practices will, in effect, continue to drain down the "bank" of freshwater and soil by continuing to support conditions and practices that further aggravate the situation.

Only when we change current agriculture practices will we be able to rebuild our soils. And, only when our soils are rebuilt will they be able to hold more moisture and will there be more water in our aquifers. That is a law - of nature.

As lawmakers and business people, is it good business to keep lending money to someone who keeps mismanaging funds? No. The same common sense must apply to our precious freshwater resources. The water coming out of your tap or your shower, the water available to grow food in this decade or for your grandchildren's children depends on you, as legislators, protecting the Water Code and forest- to-stream-to-aquifer and reef cycles.

But let us look at another side of this equation – economics and political sway. Do agricultural lands need more water? At the peak of the sugar industry in the 1930's, an estimated 200,000 acres were in production. A little more than half that land is in agriculture today (all crops; approximately 1.1 million acres of which only 103,000 acres were harvested and barely half those acres 58,630 were irrigated in 2007, the latest year that statistics were available in the 2011 DOA report to the Governor). In 2010, sugar was as estimated 17,000 acres, the biotech industry an additional 8,000 acres, ranching, fruit trees and fallow lands (many slated for rezoning) had the largest share. There are approximately 7,500 farmers in Hawaii; perhaps 3,000 acres in small organic farms (accounting for growth from 2007-2010; statistics from the Hawaii Agricultural Statistics Service). Yet, not only has the amount of water taken from Hawaii's streams remained the same or increased, the industry continues to come before you to argue they need greater and more privileged allocations of water! This is absurd.

In *Turning Red Dirt into Pay Dirt* (Hawaii Business Aug2003), Harry Saunders, President of Castle & Cooke Homes Hawaii, says, "In some ways, development has become more stable than agriculture." The article continues, "the view is worth a lot more than fruits of the soil. Leave it to an old kamaaina hand to turn red dirt into even more pay dirt than the sweet fruits of the past." It is clear that the demand for more water is not about agriculture but for land and water banking - the private sale of water to future development. This has already occurred with the Koa Ridge development on the best prime agricultural land on Oahu (which Representative Har on this Committee, along with Dean Okimoto of the Farm Bureau, was involved in brokering and should consider recusing herself from this hearing for vested interest) and has been attempted on Maui through legislation and requests to the PUC by Wailuku Water Company.

The Water Code spells out clearly the protective purposes of the priorities outlined for public trust resources and maintains a delicate balance of those purposes, including environmental protection, Native Hawaiian rights, appurtenant rights and priorities for private, for-profit diversion of water for important agricultural lands. The Code recognizes public interest in offstream uses and provides ample protection for agricultural lands water use.

Plantation landowners, water diverters and in recent years the Farm Bureau, have repeatedly attempted to undermine the public trust principles in our state Constitution, Water Code, and the Hawai'i Supreme Court's rulings beginning with the landmark 2000 Waiahole decision. This year's version, HB 1946, attempts a slightly subtler approach of recognizing the public trust, but then seeks to skew the balance against public trust purposes such as environmental protection and Native Hawaiian rights, and in favor of special interests such as plantation diversions. The

bill would: (1) shift the Water Commission's "primary duties" away from protecting the public trust; and (2) make private commercial water use for agriculture on "important ag lands" a protected "public trust use." This violates the fundamental principles of the public trust.

The amendments proposed under HB1946 are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. Instead of catering to private special interests, I would urge the legislature to provide the Water Commission with the staff and funding necessary to do its job for ALL the people of Hawai'i, including future generations.

I urge you to kill this terrible bill.

Don't erode the Code.

Thank you for this opportunity to testify.

Sincerely,
Penny Levin [by email]
Wailuku, Maui



HB 1946
RELATING TO WATER

House Committee on Water, Land, and Ocean Resources

January 30, 2012

9:15 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on HB1946, which would, in defiance of principles of the public trust doctrine, amend the Hawai'i Water Code, Haw. Rev. Stat. § 174C (Code), in an attempt to recognize all agricultural activity on important agricultural lands as a public trust purpose.

The OHA administration will recommend that the OHA Board of Trustees strongly oppose HB1946.

HB 1946, while expressly acknowledging the public trust doctrine, ignores its fundamental principles. As the Hawai'i Supreme Court explained in its landmark *Waiāhole* decision, with respect to water resources in particular, "history and precedent have established the public trust as an inherent attribute of sovereign authority that the government . . . **'cannot surrender.'**" *In re Waiāhole*, 94 Hawai'i 97, 130 (2000) (emphasis added). Indeed, the "basic premise" of the public trust doctrine is that "the state has certain powers and duties **which it cannot legislatively abdicate.**" *Id.* at 130-131 (emphasis added). Moreover, the people of Hawai'i "elevated the public trust doctrine to the level of a constitutional mandate" when it adopted Article XI § 1 of Hawai'i's Constitution. Therefore, "[e]ven with the enactment and future development of the Code, the doctrine continues to inform the Code's interpretation, define its permissible 'outer limits,' and justify its existence." *Id.* at 133. The duties imposed by the public trust doctrine cannot be legislatively extinguished or diminished; to the contrary, as articulated by the Hawai'i Supreme Court: "the doctrine would invalidate measures, sanctioned by statute but violative of the public trust[.]" *Id.* at 131.

The state's highest court has unequivocally held that commercial agriculture is not a protected public trust use. The proposal to amend the Code to redefine public trust purposes to include private commercial use for agriculture on important agricultural lands is beyond the "permissible outer limits" of the Code, as defined by the public trust doctrine. The Hawai'i Supreme Court has expressly rejected the notion that commercial agriculture is a public trust use, explaining that "the public trust has never been understood to safeguard rights of exclusive use for private commercial gain," and that "such an interpretation, indeed, eviscerates the trust's basic purpose of reserving the resource for use and access by the general public without preference or restriction."

Id. at 138. Because the public trust doctrine is a state constitutional doctrine and based on precedence that pre-exists the existence of the State, “the ultimate authority to interpret and defend the public trust in Hawai‘i rests with the courts of this state.” *Id.* at 143. The state’s highest court has unequivocally held that commercial agriculture is not a protected public trust use.

Hawai‘i’s legal regime for the management of its precious water resources was established in direct response to decades of repression by plantation agribusinesses of Native Hawaiian communities, their land, their culture, and their access to fresh water. A large majority of Hawai‘i’s resources still remain in the hands of plantations and their predecessors in interest, at the expense of Native Hawaiian practitioners attempting to continue and revitalize cultural practices that connect them to their ancestors. Pursuant to its constitutional and statutory mandates, OHA advocates on behalf of its beneficiaries and their rights to fresh water to support lo‘i kalo, loko i‘a, subsistence farming, gathering of native stream resources, and the exercise of spiritual practices.

Mahalo for the opportunity to testify on this important measure.

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
ATTN: CHAIR JERRY CHANG

Testimony Opposing HB 1946, Relating To Water

January 30, 2012, 9:15 a.m.
Conference Room 325:

Aloha Chair Chang and Members of the Committees:

My name is Mark Alapaki Luke and I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. I am the Chairman for the State of Hawai'i Taro Security and Purity Task Force created by ACT 211 signed by the Governor in July, 2008. In our 2010 Legislative Report we recommended the following:

The Taro Security and Purity Task Force strongly supports the existing legal framework for managing Hawai'i's precious freshwater resources, and recognizes the importance of stewarding these resources as a Public Trust for the benefit of present and future generations. Article XI sections 1 and 7 of the State Constitution and the State Water Code, Hawai'i Revised Statutes chapter 174C, should be enforced and implemented and must also be protected from attempts to dilute the Public Trust in Hawai'i's water resources. (pg 36)

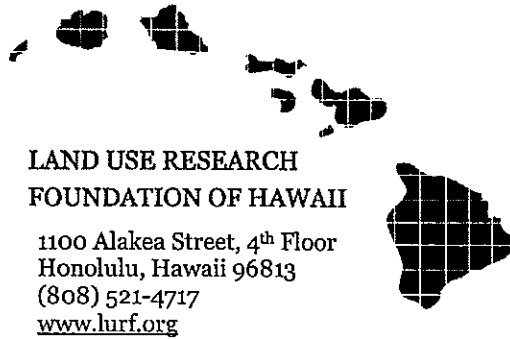
In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. Therefore, our state Constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important agricultural lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946. These measures are unnecessary and improper and must be killed.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Mark Alapaki Luke
Chair, State of Hawai'i Taro Security and Purity Task Force



January 27, 2012

Representative Jerry L. Chang, Chair
Representative Sharon E. Har, Vice Chair
House Committee on Water, Land & Ocean Resources

Support of HB 1946 Relating to the State Water Code (Makes the public trust doctrine the guide for the actions of the commission.)

Monday, January 30, 2012, 9:15 a.m., in CR 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **support of HB 1946**, and to offer encouragement to the various agricultural stakeholder groups who defend the goals of viable agricultural operations, and the conservation and protection of important agricultural lands (IAL) in Hawaii.

In strong support of the use of agricultural lands for purposes allowed under state and county laws and ordinances, LURF has worked with agricultural stakeholders to pass the IAL legislation, which provides for the voluntary and government designation of IAL, as well as incentives to support productive and sustainable farming operations on agricultural lands. LURF has also continued to support legislation specifically to provide irrigation water to agricultural lands and farmers.

HB 1946. This bill makes the public trust doctrine the guide for the actions of the commission on water resource management (the "commission"), and specifically identifies public trust purposes for the planning and allocation of water resources, including the conservation and protection of agricultural activity on lands identified and designated as important agricultural lands.

LURF's Position. The amendments to Section 174C-2 of the Hawaii Revised Statutes (HRS) which are proposed by this bill are necessary for **agriculture** to be expressly recognized as one of the enumerated public trust purposes warranting the reservation, allocation, and use of water. This measure could also be amended to include water for all agricultural activities, including water storage.

As with the other public trust uses identified in HB 1946 and supported by the Hawaii Constitution, the designation of **agriculture** as a public trust use is reinforced by the IAL laws

(HRS, Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

The failure to identify water for agriculture as a public trust use will, in effect, authorize the commission to make dangerous decisions and take unwarranted actions such as inadvisably setting instream flow standards to the detriment of farmers which will increasingly jeopardize the viability of agriculture and the agricultural community.

Opponents may argue that HB 1946 will have the effect of giving corporate interests on agricultural lands a priority on water. It is, however, senseless to view agriculture solely as a commercial interest undeserving of designation as a public trust use, when it is indisputably a concern vital for the self-sufficiency and the well-being of our state.

Passage of the long-awaited IAL legislation would be meaningless without acknowledgement that the protection and preservation of viable agricultural activity is critical to Hawaii. Water policies must therefore expressly recognize and state that water for agricultural activities is essential and one of the identified public trust purposes for which water resources must be allocated.

Thank you for the opportunity to present testimony in support of this bill.

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
ATTN: CHAIR JERRY CHANG

Testimony Opposing HB 1946, Relating To Water

January 30, 2012, 9:15 a.m.
Conference Room 325

Jan. 29, 2012

Aloha Chair Chang and Members of the Committees:

Maui Tomorrow Foundation, Inc. is in strong opposition to HB 1946, which seeks to upset the balance between protection and beneficial uses of our precious water resources.. This bill, if passed, would undermine the public trust doctrine for the benefit of private special interests.

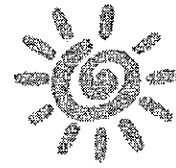
Water, under Hawaii law, is a public trust resource and should be protected for all the people of our state, now and in the future. HB 1946 would diminish environmental protection and Native Hawaiian rights and prioritize private, for-profit diversions for important ag lands. Our State Water Code is strong and should not be tampered with. Any amendments to it are unnecessary and go against the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court. Please kill HB 1946.

Mahalo for the opportunity to testify.

Sincerely,

Irene Bowie

Executive Director
Maui Tomorrow Foundation, Inc.
55 N. Church St. Ste. A5
Wailuku, HI 96793
808.244.7570



LIFE OF THE LAND

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House Committee on Water, Land and Ocean Resources

Rep. Jerry L. Chang, Chair

Rep. Sharon E. Har, Vice Chair

DATE: Monday, January 30, 2012

TIME: 9:15 a.m.

PLACE: Conference Room 325

BILL: HB 1946, Relating To Water

OPPOSE

Aloha Chair Chang, Vice Chair Har and Members of the Committee

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The Hawaii Supreme Court:

"We therefore hold that [the constitution] adopt[s] the public trust doctrine as a fundamental principle of constitutional law in Hawaii. ... [t]he public trust doctrine applies to all water resources without exception or distinction [including surface and underground water]. ... Under the public trust and the Code, permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource. [t]he public trust effectively creates this burden through its inherent presumption in favor of public use, access, and enjoyment."

The public trust doctrine is a constitutional mandate. Efforts to undermine the public trust doctrine should not be made part of state law.

HB 1946 seeks to grant special favors to plantation diverters and diminish protections of the rights of the public and Native Hawaiians. The public trust requires those who divert public resources for their own private profit to justify those diversions. The existing water code already recognizes the public interest in offstream uses, including agricultural uses, and provides them ample protection. In every single case, including Waiahole, the Commission has given agricultural uses all the water they actually needed and more.

Water is a public trust resource to be protected for all the people of Hawai`i, including future generations. The Hawai`i Constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources.

HB 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust.

Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Mahalo

Henry Curtis



Hawaii Cattlemen's Council, Inc.

P.O. Box 437199 Kamuela HI 96743
Phone (808) 885-5599 • Fax (808) 887-1607
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HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
Monday January 30, 2012 9:15 am Room 325

HB 1946 RELATING TO WATER

Chairman Chang, Vice Chair Har and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** HB 1946, with the change suggested by the Hawaii Farm Bureau Federation (HFBF).

Without the assurance of availability of water, there cannot be farming and ranching. Assurance of access to water is important not just for farm and ranch viability but to justify investments to provide water as needed. While the Water Code clearly states that agriculture is in the public interest, past court cases and other arguments are used to reduce its place in access to water. We find it critical that further guidance be provided to ensure that agriculture will have access to water. Agriculture is not asking for a priority. We are asking that it be recognized as a public trust interest and on a case by case basis decide which priority should take precedence.

We support HFBF's position on the matter covering all agriculture across the State. The bill drafted currently focuses on Important Agricultural Lands. We **request that the reference be just to "agricultural activity"** instead of "protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205".

Thank you for giving me the opportunity to testify in favor of this very important issue.



HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
ATTN: CHAIR JERRY L. CHANG, VICE-CHAIR SHARON E. HAR

Testimony in Strong Opposition to HB 1946: Relating to Water

January 30, 2012, 9:15 a.m.
Conference Room 325

Aloha Chair Chang and Committee Members:

Earthjustice strongly opposes House Bill 1946. This bill proposes to amend the State Water Code, Haw. Rev. Stat. ch. 174C ("Code"), in an attempt to overturn principles of the public trust doctrine governing water resources in Hawai'i. The public trust doctrine has been established in the Hawai'i Constitution and the Code and reaffirmed in numerous cases of the Hawai'i Supreme Court. As the Court has made clear, the constitutional public trust mandates the protection water resources for present and future generations. As further explained below, HB 1946 fundamentally contradicts the public trust in at least two ways: (1) it attempts to reverse the established balance of the public trust by shifting the "primary duties" of the Water Commission away from protecting the public trust; (2) it attempts to make a private commercial water use for agriculture on important agricultural lands ("IAL") a protected public trust purpose. This violates the fundamental, constitutional principles of the public trust doctrine.

HB 1946 is similar to, and even worse than, the many failed bills proposed over almost a decade trying to tilt the scales of the public trust in favor of the private special interests of plantation diverters and against the environment, Native Hawaiians and the rights of all the people of Hawai'i, including future generations. It is unnecessary, ill-conceived, and ultimately unlawful. We thus urge you to kill this bill.


The Hawai'i Constitution establishes that the state has a "duty to ensure the continued availability and existence of its water resources for present and future generations." In re Waiāhole Ditch Combined Contested Case Hr'g, 94 Haw. 97, 139 (2000). The public trust also mandates maximum reasonable-beneficial use, "with full recognition that resource protection also constitutes 'use.'" Id. at 140. As the Hawai'i Supreme Court has explained, this means that the state has the duty to protect public trust uses like the environment and Native Hawaiian rights to the extent feasible. Id. at 141. Further, those who would use this public resource for their own private profit are obligated to show that their use is reasonable-beneficial in relation to the public trust. Id. at 142.

HB 1946 invalidly attempts to overturn these constitutional principles. First, while recognizing the constitutional duty to protect public trust purposes, HB 1946 attempts to subordinate these purposes to other interests by specifying that the Water Commission's "primary duties" lie elsewhere. Setting aside the inartful drafting of the bill's language -- which places the primary emphasis on "reasonable beneficial use," even though resource protection is also a legally recognized reasonable-beneficial use -- the apparent attempt is to skew the balance against public trust purposes such as resource protection and Native Hawaiian rights and in favor of resource extraction such as plantation diversions. This violates the constitutional public trust.

Second, HB 1946 seeks to insert "agricultural activity on [IAL]" as a protected public trust purpose. The Hawai'i Supreme Court has made clear that while the constitutional public trust acknowledges the public benefits of such private commercial use, it "has never been understood to safeguard rights of exclusive use for private commercial gain." Waiāhole, 94 Haw. at 138 (emphasis added). HB 1946 unlawfully seeks to overturn this fundamental constitutional principle as well. It resurrects the same misguided proposal that has been widely opposed and rejected in this Committee year after year for the better part of a decade.

In conclusion, we note this session marks the 25th anniversary of the establishment of the Code's comprehensive regulatory framework for the benefit of all the people of Hawai'i. HB 1946 seeks to destroy the balance under the public doctrine in favor of the special interests of private plantation diverters. This measure is unnecessary. It is confused and ill-conceived and will needlessly distort the Water Commission's regulatory function and create and exacerbate litigation. Most fundamentally, it is contrary to established, constitutional principles of the public trust. We strongly urge you to kill this bill.

Very truly yours,



Isaac H. Moriwake
Attorney
Earthjustice

**HB 1946
RELATING TO WATER**

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

JANUARY 30, 2012

Chair Chang and Members of the House Committee on Water, Land & Ocean

Resources:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural company Hawaiian Commercial & Sugar Company on HB 1946, "A BILL FOR AN ACT RELATING TO WATER." We support this bill.

Hawaiian Commercial & Sugar Company (HC&S) has been in operation for over 125 years and is Hawaii's last remaining sugar plantation. HC&S has approximately 34,000 acres in active cultivation and employs about 800 Maui residents. While Hawaii's many other sugar companies have shut down over the years, HC&S has been fortunate, through significant investments in our agricultural infrastructure and operations and the implementation of our diversified bio-production program, to have sustained our operations and continue as a major employer in the State of Hawaii. Despite a current up tick in sugar prices, history has proven that commodity sugar prices will remain relatively flat, as they have over the last few decades, despite increasing production costs. Thus, HC&S has for a number of years been pursuing, and investing in, a transition from a primary producer of commodity sugar to the production of specialty sugar and bio-based products. In addition to being the main

supplier of Sugar In The Raw, the little brown packets of sugar seen at restaurants and coffee shops across the nation, HC&S is also expanding production and sales of our specialty Maui Brand Sugar.

HC&S also generates biomass produced electricity for its sugar milling, irrigation pumping, and other internal operations and provides electricity to Maui Electric Company (MECO) for general community use. The source of fuel for this biomass electricity is bagasse, the residual fiber of the sugar cane plant. Not only does HC&S provide approximately 6% of MECO's total electricity, HC&S is a firm power source to MECO (i.e. committed power delivery, not on an 'as available' basis), and has played a significant role in the restoration of MECO's electrical service during power outages.

In addition, HC&S is currently participating in significant new Hawaii-based research initiatives on biofuels, closely working with the University of Hawaii and various Federal agencies on energy crop development, energy conversion technologies, and long term resource requirements for biomass production. HC&S also provides water (through the County) to approximately 35,000 Upcountry Maui residents and to the Kula Agricultural Park.

This bill greatly assists in promoting the long term viability and sustainability of agriculture by supporting the use of water for farming and other agricultural activities here in Hawaii. Water is the basic natural resource that may directly determine the success or failure of an agricultural operation. We believe that the establishment of a water policy that provides crops and livestock with a dependable source of affordable water will provide an opportunity for sustaining agricultural operations in Hawaii.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.



Hawaii's Thousand Friends

25 Maluniu Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

January 30, 2012

COMMITTEE ON WATER, LAND & OCEAN RESOURCES

Rep. Jerry L. Chang, Chair
Rep. Sharon E. Har, Vice Chair

HB 1946
RELATING TO WATER

Committee Chair Chang and Members:

Hawaii's Thousand Friends, a statewide non-profit land and water use organization with years of involvement and expertise in water resources and the public trust doctrine, strongly opposes HB 1946. The bill seeks to tilt the balance under the public trust doctrine in favor of private special interests in diverting water, contrary to the fundamental constitutional principle that water is a public resource to be protected for all the people of Hawaii, present and future agrees that the public trust doctrine embedded in Hawaii's Water Code HRS 174C should guide the actions of not only the Water Commission but all water users and purveyors.

In compliance with the mandates of our state Constitution, HRS 174C-2 establishes "...that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are the beneficiaries and have a right to have the waters protected for their use." So in planning and allocating water resources it is not an option for the Water Commission to diminish its duties to protect public trust purposes like resource protection and Native Hawaiian rights and instead pursue "primary duties" toward other, non-public trust uses.

Under the Waiahole Ditch Supreme Court 2000 decision it is also not an option for stream water to be used for private, for-profit irrigation of agricultural lands whether identified and designated as important agricultural lands or not to be declared a public trust resource. The court ruled, "Although its purpose has evolved over time, the public trust has never been understood to safeguard rights of exclusive use for private commercial gain. Such an interpretation, indeed, eviscerates the trust's basic purpose of reserving the resource for use and access by the general public without preference or restriction."

With HB 1946 once again landowners seek to control Hawaii's public water for their own personal gain. Under Hawaii's Water Code and law of the land this water grab cannot happen. Please kill this bill.

Donna Wong
Executive Director



CONSERVATION COUNCIL FOR HAWAII'I

Testimony Submitted to the House Committee on Water, Land, and Ocean Resources
Hearing: Monday, January 30, 2012 9:15 a.m.
Conference Room 325

In Opposition to HB 1946 Relating to Water

Aloha. The Conservation Council for Hawai'i opposes HB 1946 for several reasons. I have been involved in stream protection and water resource issues in Hawai'i for many years. After serving on the Stream Protection and Management Task Force in the 1990s, I would hope that we, as a society and a state, would have made more progress on the equitable use of water and distribution of prosperity throughout Hawai'i nei. Instead, small farmer, cultural practitioners, and native ecosystems are still getting the short end of the stick.

HB 1946 is unnecessary. The State Ward Code already recognizes the public interest in offstream uses, including agricultural uses, and provides these uses ample protection. In every single case, including Waiahole, the Commission on Water Resource Management has given agricultural uses all the water actually needed and more. Even with all this water, landowners are still developing agricultural lands. Water is not the issue or the limiting factor here.

We also oppose HB 1946 because it is inappropriate special-interest legislation. HB 1946 seeks to grant special favors to offstream diverters and diminish protections of the rights of the public and Native Hawaiians. The public trust doctrine requires those who divert public resources for their own private profit to justify those diversions. HB 1946 would undermine these basic principles. The public trust doctrine is a constitutional mandate. The bill's attempt to alter the constitutional protections of the public trust is legally invalid.

We urge the legislature to let the existing law work and support community efforts – such as those in Maui – to restore water to streams for public trust uses, instead of making things more difficult for those communities. Even after the decline of plantation agriculture, streams flows continue to be hoarded by the rich and powerful few. Instead of trying to cater to these private special interests, the legislature should provide the Commission on Water Resource Management with the staff and funding necessary to do its job for all the people of Hawai'i, including future generations.

Please oppose HB 1946. Mahalo for the opportunity to testify.

Sincerely,

Marjorie Ziegler



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

Telephone/Fax 808.593.0255 • email: info@conservehi.org • web: www@conservehi.org
P.O. Box 2923 • Honolulu, HI 96802 • Office: 250 Ward Ave., Suite 220 • Honolulu, HI 96814

President: Hannah Springer * Vice-President: Julie Leialoha * Treasurer: Rick Barboza * Secretary: Maka'ala Ka'aumoana
Directors: Lida Pigott Burney * Koalani Kaulukukui * Robin Kaye
Executive Director: Marjorie Ziegler

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 7:48 AM
To: WLOtestimony
Cc: alohaxtc@hawaii.rr.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Harvey Arkin
Organization: Individual
E-mail: alohaxtc@hawaii.rr.com
Submitted on: 1/29/2012

Comments:

Aloha Chair Chang and Members of the Committees:

My name is Harvey Arkin and i am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,
Harvey Arkin

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 10:50 AM
To: WLOtestimony
Cc: Rick.ck.barboza@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Rick Barboza
Organization: Individual
E-mail: Rick.ck.barboza@gmail.com
Submitted on: 1/28/2012

Comments:

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 4:01 PM
To: WLOtestimony
Cc: vsc@hawaiiantel.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Victoria Cannon
Organization: Individual
E-mail: vsc@hawaiiantel.net
Submitted on: 1/28/2012

Comments:

I am opposed to this bill.

har2-Samantha

From: randy ching [oahurandy@yahoo.com]
Sent: Saturday, January 28, 2012 4:38 PM
To: WLOtestimony
Subject: in strong opposition to HB1946 - relating to water

HB1946
House Water, Land and Ocean Committee
Hearing on Monday, January 30 at 9:15 a.m. in conference room 325

Chair Chang, Vice Chair Har, and members of the committee,

I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Randy Ching
Honolulu
oahurandy@yahoo.com

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2012 5:48 PM
To: WLOtestimony
Cc: Ken_conklin@yahoo.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Comments Only
Testifier will be present: No
Submitted by: Kenneth R. Conklin, Ph.D.
Organization: Individual
E-mail: Ken_conklin@yahoo.com
Submitted on: 1/27/2012

Comments:

Please try to think out of the box and consider a whole new approach to water management and the public trust doctrine.

Please consider removing the state government from matters affecting water use allocation. Instead, let's devolve authority to the counties.

Here's an obvious concept. In Hawaii, because our state is comprised entirely of islands, there are no rivers or streams which flow across county boundaries, and no underground aquifers or water tables where events on one island could affect what happens on any other island. Therefore there can never be any conflict between two or more counties on water management. Therefore, all issues regarding water usage or management should be entirely under the authority of the county where the water exists. Let the local residents of each county decide for themselves what their priorities are. Perhaps a Constitutional amendment would be appropriate in order to eliminate state government authority and devolve it to the counties.

Aloha Chair Chang and Members of the Committees:

My name is Nancy Davlantes and I oppose HB 1946, which I believe will undermine the public trust doctrine for the benefit of private special interests.

In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. Our state Constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources—a public trust that this bill will upset by diminishing protections of public trust purposes, such as environmental protection and Native Hawaiian rights, in favor of private, for-profit diversions for important ag lands.

I believe that HB1946 violates the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court.

Our state water code does not need fixing. I ask you to kill this bill.

Thank you for this opportunity to testify.

Nancy Davlantes
45-571 Awanene Place, Apt. A
Kaneohe, HI 96744

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2012 11:14 PM
To: WLOtestimony
Cc: erwayd001@hawaii.rr.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Marjorie &/or Duane Erway
Organization: Individual
E-mail: erwayd001@hawaii.rr.com
Submitted on: 1/27/2012

Comments:

This bill tilts the balance under the public trust doctrine in favor of private special interests by diverting water. This is contrary to the fundamental constitutional principle that water is a public resource to be protected for ALL the people of Hawaii, present and future.

Please vote NO on this bill!

With HB 1946 once again landworkers seek to control of Hawaii 's public water for their own personal gain under Hawaii's Water Code The law of the lands grabs water grab cannot happen

Aloha Chair Chang and Members of the Committees!

I urge you to oppose HB 1946, as our State Water Code is NOT broken and does NOT need fixing. It seeks to undermine the public trust doctrine for the benefit of private special interests, and it improper.

In our State, water is a public trust resource to be protected for ALL people of Hawai'i. Please respect the public trust doctrine as established in our Constitution and kill HB 1946.

This is a terrible bill and needs to be killed. I urge you to consider completely opposing this bill.

Mahalo for your consideration.

Marjorie Erway

PO Box 2807

Kailua Kona, HI 96745

808-324-4624

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 3:23 PM
To: WLOtestimony
Cc: espiritu.justine@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Justine M Espiritu
Organization: Individual
E-mail: espiritu.justine@gmail.com
Submitted on: 1/28/2012

Comments:

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
ATTN: CHAIR JERRY CHANG
Testimony Opposing HB 1946, Relating To Water January 30, 2012, 9:15 a.m.
Conference Room 325

Aloha Chair Chang and Members of the Committees:

My name is Justine and I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Justine Espiritu

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 6:18 AM
To: WLOtestimony
Cc: rkaye@mdi.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Robin Kaye
Organization: Individual
E-mail: rkaye@mdi.net
Submitted on: 1/28/2012

Comments:

I am writing to strongly oppose HB 1946. The bill, if passed, would shift the balance under the public trust doctrine in favor of private special interests in diverting water, contrary to the fundamental constitutional principle that water is a public resource to be protected for all the people of Hawaii, present and future.

In compliance with the mandates of our state Constitution, HRS 174C-2 establishes "that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are the beneficiaries and have a right to have the waters protected for their use." The Water Commission should NOT lose site of its clearly-stated duties to protect public trust purposes like resource protection and Native Hawaiian rights. We must be diligent and guard against shifting our water usage to favor other, non-public trust uses.

With HB 1946 once again landowners seek to control Hawaii's public water for their own personal gain. Under Hawaii's Water Code and law of the land this water grab cannot happen. Please do NOT move this bill forward.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 8:23 AM
To: WLOtestimony
Cc: skaye@runbox.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM
Attachments: HB1946 testimony.docx

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: sally kaye
Organization: Individual
E-mail: skaye@runbox.com
Submitted on: 1/29/2012

Comments:

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES

Attention: Jerry Chang, Chair

Testimony Opposing HB 1946, Relating To Water

Hearing January 30, 2012, 9:15 a.m.

Aloha kakou:

I am writing to strongly **OPPOSE** HB 1946 as it unnecessarily tampers with Chapter 174, the State's Water Code. The law as currently written recognizes a public interest in out-of-stream uses, including agriculture, and provides ample protection.

Adding "the conservation and protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205[,]" to the Commission's mandate to "protect the public trust purposes of resource protection" appears a blatant attempt to elevate private commercial interests to a level not currently recognized or permitted by law, contrary to the public trust doctrine. Making the use of water for private, commercial use a protected "public trust use" is therefore contrary to well established statute and case law. It is oxymoronic.

If such seemingly benign wording is really directed at "conserving and protecting" agricultural activity on IA lands, then such lands 1) should be required to remain agriculturally zoned (and actively used for this purpose) in perpetuity; and 2) any private interest or entity owning, leasing or controlling these agricultural lands that would benefit from this addition to the "public trust purposes of resource protection" should also be required to insure that 75% of the production of such IA land be made available for local markets/consumption.

Please kill this bill.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 2:23 PM
To: WLOtestimony
Cc: clk@quixnet.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Carolyn L Knoll
Organization: Individual
E-mail: clk@quixnet.net
Submitted on: 1/28/2012

Comments:

Aloha Chair Chang and Members of the Committees:

I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust.

Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to submit testimony.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 4:19 PM
To: WLOtestimony
Cc: redahi@hawaii.rr.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Bobby McClintock
Organization: Individual
E-mail: redahi@hawaii.rr.com
Submitted on: 1/28/2012

Comments:

HOUSE COMMITTEE ON WATER, LAND & OCEAN RESOURCES
ATTN: CHAIR JERRY CHANG
Testimony Opposing HB 1946, Relating To Water January 30, 2012, 9:15 a.m.
Conference Room 325

Aloha Chair Chang and Members of the Committees:

I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai'i, water is a public trust resource to be protected for all the people of Hawai'i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,
Bobby McClintock, Honolulu, HI

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 9:43 AM
To: WLOtestimony
Cc: palmtree7@earthlink.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: janice palma-glennie
Organization: Individual
E-mail: palmtree7@earthlink.net
Submitted on: 1/28/2012

Comments:

HB 1946 IS UNNECESSARY, SHOWS SPECIAL INTEREST FAVORITISM AND IS POTENTIALLY ILLEGAL.
;The public trust doctrine is a constitutional mandate. ;HB 1946's attempt to alter
the constitutional protections of the public trust is legally invalid.

Mahalo for your consideration of my views.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 11:50 AM
To: WLOtestimony
Cc: pauahi.hookano@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Lisa Ann Pauahi Hookano
Organization: Individual
E-mail: pauahi.hookano@gmail.com
Submitted on: 1/29/2012

Comments:

Aloha,

Please consider the following statements when making your decision about this bill. Please know that I am a constituent who votes, and I am particularly interested in how you folks choose to protect the public trust, particularly with water. Are you more interested in protecting corporations who are only concerned for profits, or are you actually nterested in preserving Hawai'i's resources, its beauty, which is why people come here from all over the world?

HB 1946 IS UNECESSARY. The law already recognizes the public interest in offstream uses, including agricultural uses, and provides them ample protection. In every single case, including Waiahole, the Commission has given ag uses all the water they actually needed and more. Even with all that water, landowners are still developing ag lands. Water is not the issue.

HB 1946 IS INAPPROPRIATE SPECIAL INTEREST FAVORITISM. HB 1946 seeks to grant special favors to plantation diverters and diminish protections of the rights of the public and Native Hawaiians. The public trust requires those who divert public resources for their own private profit to justify those diversions. HB 1946 would undermine these basic principles.

The legislature should let the existing law work and support community efforts - such as those in Maui - to restore water to streams for public trust uses, instead of making things more difficult for those communities. Even after the decline of plantation agriculture, streams flows continue to be hoarded by the rich and powerful few. Instead of trying to cater to these private special interests, the legislature should provide the Water Commission with the staff and funding necessary to do its job for ALL the people of Hawai'i, including future generations.

mahalo

Lisa Ann Pauahi Hookano

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2012 9:53 PM
To: WLOtestimony
Cc: jamie.oshiro@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Jamie Oshiro
Organization: Individual
E-mail: jamie.oshiro@gmail.com
Submitted on: 1/27/2012

Comments:

Dear Chair Chang and Members of the Committees:

My name is Jamie Oshiro and i am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai`i, water is a public trust resource to be protected for all the people of Hawai`i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,
Jamie Oshiro

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 11:29 AM
To: WLOtestimony
Cc: mark@marksheehan.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mark Sheehan
Organization: Individual
E-mail: mark@marksheehan.com
Submitted on: 1/29/2012

Comments:

HOUSE COMM. ON WATER, LAND AND OCEAN RESOURCES
ATTN: CHAIR JERRY CHANG

Testimony Opposing HB 1946, Relating to Water Jan. 30, 2012 9:15 a.m. Conference room 325

Aloha Chair Chang and Member of the Committee,

My name is Mark Sheehan and I am testifying in strong opposition to HB 1946 which seeks to undermine the public trust doctrine for the benefit of special interests. These measure are not need, not wanted, not necessary, do not benefit the public interest and should be killed.

Our state constitution and Water Code were crafted to strike a balance between the protection and beneficial use of our water resources. HB 1946 seeks to upset this delicate balance by diminishing protections of public purposes such as environmental protection and Native Hawaiian rights and promoting private, for-profit diversions for important AG lands. Such amendments are ill-conceived and contrary to the principles of the public trust doctrine.

Our state Water Code is not broken and doesn't need fixing. I urge you to kill this bill.

Thank you for the opportunity to testify.

Sincerely,

Mark Sheehan

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 12:27 PM
To: WLOtestimony
Cc: wctanaka@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Wayne Tanaka
Organization: Individual
E-mail: wctanaka@gmail.com
Submitted on: 1/29/2012

Comments:

To the Honorable Chair Chang, Vice-Chair Har, and Members of the House Water, Land, and Ocean Resources Committee:

My name is Wayne Tanaka, and I am testifying in opposition to HB 1946, which amends the state water code in a manner that appears unnecessary, improper, and in violation of the constitutional mandates of the state.

Under our state constitution, fresh water is a valuable and scarce public trust resource to be protected for all the people of Hawai'i, including future generations. While appearing to pay lip service to the principles of the public trust doctrine, HB 1946 explicitly undermines the long-term societal benefits of the public trust, such as environmental protection and Native Hawaiian cultural protections, in favor of "economic" development that may be construed as promoting private for-profit endeavors focused primarily on maximizing short-term corporate gain. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. By refusing to pass this bill, your committee will show its respect for the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. On behalf of all the people of Hawai'i and the generations to follow, please consider carefully the long-term ramifications of this bill.

Thank you very much for this opportunity to testify.

Sincerely,

Wayne Tanaka, Esq.

Aloha Chair Chang and Members of the Committees:

My name is Schantell Taylor and I am testifying in strong opposition to HB 1946, which seeks to undermine the public trust doctrine for the benefit of private special interests. These measures are unnecessary and improper and must be killed.

In Hawai`i, water is a public trust resource to be protected for all the people of Hawai`i, including future generations. 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 1946 seeks to upset this delicate balance by diminishing protections of public trust purposes such as environmental protection and Native Hawaiian rights and prioritizing private, for-profit diversions for important ag lands. Such amendments are unnecessary, ill-conceived, and contrary to the constitutional principles of the public trust. Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB 1946.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as proposed by HB 1946, will only create confusion, distortion, and more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Schantell Taylor

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 4:21 PM
To: WLOtestimony
Cc: laulani@gmail.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Laulani Teale
Organization: Individual
E-mail: laulani@gmail.com
Submitted on: 1/28/2012

Comments:
Aloha Kākou,

I must oppose this bill strongly.

Although I believe that the intention, and some of the manaʻo expressed in the measure, is good, there are several serious, dangerous aspects to the wording that I stand against very strongly.

For one thing, the words "self-sufficiency", "economic benefit", and "development" do not belong in the measure. There is already tremendous abuse of the existing code in the name of these interests without them being named as priorities.

For another thing, the wording is confusing and could be easily misinterpreted in a court of law. If the effort here is truly to protect the public interest, then I suggest that there be legislation supporting enforcement of the code against known abusers, such as East Maui Irrigation Company, who have been stealing water in violation of the Public Trust Doctrine for generations. As it is, this measure could unfortunately work in favor of further theft.

Mahalo nui loa,

Laulani Teale

LATE TESTIMONY

House Committee on Water, Land, and Ocean Resources
Attn. Rep. Jerry Chang
Testimony in opposition to HB 1946 Relating to Water

This issue has been examined and debated a number of times in the past. As a person who helped draft the Water Code, I know this issue well. The core function of the code is to protect the integrity of our water resources, which we need to survive. Giving commercial uses of water special status, makes that job much more difficult. This bill might be in response to the fact that the Water Commission has, incorrectly I believe, reserved groundwater on Oahu for future domestic use, i.e. for urban development, and is a de facto judgment that urban development is more important than agriculture. This decision, and HB 1946, put the focus on continued diversion of streams for agriculture. But streams, and the near shore waters that they flow into, are a vital part of our public trust. If sustainability is important, then we need to focus a lot more attention on the ecological link between fresh and salt water. Please vote no on this bill.

Charlie Reppun

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 7:17 PM
To: WLOtestimony
Cc: michael@permaculturemaui.com
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Oppose
Testifier will be present: No
Submitted by: Michael Howden
Organization:
E-mail: michael@permaculturemaui.com
Submitted on: 1/29/2012

Comments:

I strongly oppose HB 1946, in its blatant attempt to revise and alter the Public Trust Doctrine relative to the use of waters throughout the State of Hawaii. I don't understand why you waste your time attempting to change what is established law, as described in our State Constitution. As two-term Chair of the Maui County Board of Water Supply, I have seen the deleterious effects of private, corporate control of what are by law public waters. This measure is ill-advised and I recommend that it be withdrawn.

**HB1946****RELATING TO WATER**

House Committee on Water, Land, and Ocean Resources

January 30, 2012

9:15 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on HB1946, which would, in defiance of principles of the public trust doctrine, amend the Hawai'i Water Code, Haw. Rev. Stat. § 174C (Code), in an attempt to recognize all agricultural activity on important agricultural lands as a public trust purpose.

The OHA administration will recommend that the OHA Board of Trustees strongly oppose HB1946.

HB1946, while expressly acknowledging the public trust doctrine, ignores its fundamental principles. As the Hawai'i Supreme Court explained in its landmark *Waiāhole* decision, with respect to water resources in particular, "history and precedent have established the public trust as an inherent attribute of sovereign authority that the government . . . **'cannot surrender.'**" *In re Waiāhole*, 94 Hawai'i 97, 130 (2000) (emphasis added). Indeed, the "basic premise" of the public trust doctrine is that "the state has certain powers and duties **which it cannot legislatively abdicate.**" *Id.* at 130-131 (emphasis added). Moreover, the people of Hawai'i "elevated the public trust doctrine to the level of a constitutional mandate" when it adopted Article XI § 1 of Hawai'i's Constitution. Therefore, "[e]ven with the enactment and future development of the Code, the doctrine continues to inform the Code's interpretation, define its permissible 'outer limits,' and justify its existence." *Id.* at 133. The duties imposed by the public trust doctrine cannot be legislatively extinguished or diminished; to the contrary, as articulated by the Hawai'i Supreme Court: "the doctrine would invalidate [] measures, sanctioned by statute but violative of the public trust[.]" *Id.* at 131.

Because the public trust doctrine is a state constitutional doctrine and based on precedence that pre-exists the existence of the State, "the ultimate authority to interpret and defend the public trust in Hawai'i rests with the courts of this state." *Id.* at 143. The state's highest court has unequivocally rejected the argument that commercial agriculture is a protected public trust use. In *Waiāhole*, the Hawai'i Supreme Court explained that "the public trust has never been understood to safeguard rights of exclusive use for private commercial gain," and that "such an interpretation, indeed, eviscerates the trust's basic purpose of reserving the resource for use and access by the general public without preference or restriction." *Id.* at 138. The proposal to amend the

Code to make private commercial agriculture on important agricultural lands a public trust purpose is beyond the “permissible outer limits” of the Code, as defined by the public trust doctrine.

Hawai‘i’s legal regime for the management of its precious water resources was established in direct response to decades of repression by plantation agribusinesses of Native Hawaiian communities, their land, their culture, and their access to fresh water. A large majority of Hawai‘i’s resources still remain in the hands of plantations and their successors in interest, at the expense of Native Hawaiian practitioners attempting to continue and revitalize cultural practices that connect them to their ancestors. Pursuant to its constitutional and statutory mandates, OHA advocates on behalf of its beneficiaries and their rights to fresh water to support lo‘i kalo, loko i‘a, subsistence farming, gathering of native stream resources, and the exercise of spiritual practices.

Mahalo for the opportunity to testify on this important measure.



Sierra Club Hawai'i Chapter

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

LATE TESTIMONY

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

January 30, 2012, 9:15 A.M.
(*Testimony is 2 pages long*)

TESTIMONY IN OPPOSITION TO HB 1946

Aloha Chair Chang and Committee Members -

The Sierra Club, Hawai'i Chapter, with 9,000 dues-paying members and supporters, opposes HB 1946. This bill proposes to amend the water code by elevating commercial water interests as public trust protected uses.

This measure is a perennial issue, where commercial interests attempt to amend our state water code under the innocuous guise of "water for farming." What appears to be a simple change in the interest of "important agricultural lands" fundamentally changes the meaning of the State Water Code and jeopardizes constitutionally protected public trust rights.

Two decades ago, when the legislature established the Water Code to fulfill the constitutional mandate, it was carefully worded to balance the various competing needs and uses for Hawaii's water. That balance has been successful. While riparian and other instream uses are being identified and protected, we know of no agricultural water user that has been denied water under the code.

HB 1946, however, seeks to change that careful balance for the benefit of private water users. It does so by elevating commercial agricultural water uses above all other uses by placing it on both sides of the balance equation and attempting to identify it as a "public trust use." The Hawai'i Supreme Court has made it clear that the public trust does not include "exclusive use for private commercial gain." The rhetoric in support of HB 1946 has prominently featured the refrain that "agriculture needs water." Simply stating the obvious does not justify overhauling the Water Code. The Code already adequately protects agricultural interests and places all forms of agriculture (large plantation, taro, diversified ag) on a level playing field.

LATE TESTIMONY

The Sierra Club fully supports true agricultural enterprises and balancing adequate water for farming activities as the Water Code currently provides. But HB 1946 throws the baby out with the ag water. The Water Code Review Commission, made up of a balanced group of stakeholder interests, made comprehensive recommendations to the Water Code several years ago. The Legislature has yet to address them. Before considering any revisions to the Code, the Legislature should first take a comprehensive look at the recommendations of the Review Commission.

We urge this committee to hold this measure. Mahalo for the opportunity to submit testimony.

MONSANTO COMPANY
94-520 KUNIA ROAD
KUNIA, HAWAII 96759

LIVE TESTIMONY

Testimony before the
House Committee on Water, Land, & Ocean
Monday, January 30, 2012; 9:15 a.m.

**TESTIMONY IN SUPPORT OF
HOUSE BILL 1946
RELATING TO WATER.**

Chair Chang, Vice Chair Har and Members of the Committee:

My name is Alan Takemoto, Community Affairs Manager for Monsanto Hawaii. Monsanto Hawaii has farm sites located on the islands of Maui, Molokai, and Oahu and employs about 1,000 employees. We are a seed nursery research farm that primarily grows seed corn and soy beans for U.S. farmers across the nation.

We **support** HB 1946 with amendments as recommended by the Hawaii Farm Bureau Federation. Water is a critical and most important resource that is needed for the continued growth of Hawaii's agricultural industry. Water policies that support agriculture will provide confidence in the private sector and encourage further investment and development of agricultural businesses. Once these basic agricultural policies are in place, the viability and sustainability of Hawaii's farmers and ranchers will follow.

Thank you for the opportunity to submit testimony in support of HB 1946 with amendments. If you have any questions, please feel free to contact me at 685-8371.

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 10:16 PM
To: WLOtestimony
Cc: bifb@hawaiiantel.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Lorie Farrell
Organization: Big Island Farm Bureau
E-mail: bifb@hawaiiantel.net
Submitted on: 1/29/2012

Comments:

LATE TESTIMONY



Big Island Farm Bureau

P.O. Box 1630
Kamuela, HI. 96743
(808) 885-8015

Email: info@bigislandfarmbureau.com

JANUARY 31, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER AND LAND

TESTIMONY ON HB 1946
RELATING TO WATER

Room 325
9:15 AM

Chair Chang, Vice Chair Har, and Members of the Committee:

My name is Lorie Farrell; I am the executive Director of the Big Island Farm Bureau. We are directly related to the Hawaii Farm Bureau Federation. Organized in 1988 we represent approximately 600 members on Hawaii Island and serve as Hawaii Island's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

The Big Island Farm Bureau is in support of this measure with suggested amendments.

Changing weather conditions make water one of the most important risks facing farmers and ranchers. As Hawaii moves towards increased self-sufficiency and sustainability, efforts must be taken to reduce risks borne by farms and ranches. When borne alone, farm and ranch viability is reduced to points in which farmers and ranchers must make the hard decision of whether their enterprise can support their families or survive as a business.

This year, the Hawaii Farm Bureau Federation has introduced a number of measures – all of which address various issues associated with increasing farm and ranch viability. Water is among the most important. During the past years, various decisions have been rendered regarding agriculture's access to water. Over time, we have seen an evolution in understanding the status of agriculture in the minds of the Water Commission. We know the commission evolves with changes in Commission members

LATE TESTIMONY

and staff. While the Water Code clearly states that agriculture is in the public interest, past court cases and other arguments are used to reduce it's place in access to water. We find it critical that further guidance be provided to ensure that agriculture will have access to water. Farmers and ranchers spending time in hearings and courtrooms means less time spent on farms growing crops and raising livestock. Agriculture is not asking for a priority. We are asking that it be recognized as a public trust interest and on a case by case basis decide which priority should take precedence.

The bill drafted currently focuses on Important Agricultural Lands. As this bill was crafted many months ago, there was an expectation that more designations would be in place. Unfortunately that is not the case and there are many lands across the state that are in active agricultural production that deserve assurance of water. For this reason, **we request that the reference be just to "agricultural activity"** instead of "protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205".

The second change requests recognition of the importance of water storage in assuring the adequacy of our water supply.

A report from the University of Hawaii predicts reduced trade winds and increased storm events. This means Hawaii must reassess its water resources and prepare to face extended droughts interspersed with severe storm events. Water storage will play a critical role in assuring an adequate supply of water.

In addition to the importance of dams and reservoirs for water storage, there needs to be a recognition, and a more systematic assessment, of the role that our natural aquifers can play in meeting our water storage needs. There is already evidence of the significance of our natural aquifers to water storage. For example, the Waimea Irrigation system has a 50 million & a 125 million gallon reservoir; yet in times of drought they still have a well and pump system in place to supplement the natural water source.

Some people, including Water Commissioners in the past, have disregarded aquifer storage and not recognized aquifer recharge as a reasonable-beneficial use of water.

Especially in light of predicted climate changes for our State, we should take advantage of the natural capacity of our aquifers for storage.

We appreciate this opportunity to discuss this important matter and we respectfully requests your consideration of this measure as a means to reduce farm and ranch risks and place into policy recognition that agriculture goes beyond a commercial interest as referred to in court cases. It is the entity that is needed to provide for Hawaii's self sufficiency and sustainability and therefore is a public trust interest. We request that the measure be clarified to reference agricultural activity without narrowing the scope to just those on Important Agricultural Lands.

Mahalo

LATE TESTIMONY

House Committee on Water, Land & Ocean Resources

Attn: Chair JERRY CHANG

Testimony Opposing HB 1946, Relating To Water

January 30, 2012, 9:15 a.m.

Conference Room 325

Aloha Chair Chang and Members of the Committees:

My name is Pamela M. Williams and I am testifying in strong opposition to HB 1946. There is already a law that recognizes the public interest in offstream uses, including agricultural uses, and provides them ample protection. There is absolutely no reason for this bill to pass, other than to benefit the private interest of a few.

Our State Constitution was written and affirmed by the Supreme Court; changes to this law will cause confusion and mistrust and future litigation, therefore, HB 1946 must not pass this committee.

I urge you to kill this bill.

Thank you for this opportunity to testify.

Sincerely,
Pamela M. Williams, BSW
Electronic Signature

LATE TESTIMONY



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

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

JANUARY 31, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON WATER LAND AND OCEAN RESOURCES

TESTIMONY ON HB 1946
RELATING TO WATER

Room 325
9:15 AM

Chair Chang, Vice Chair Har, and Members of the Committee:

I am Dean Okimoto, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,800 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

Hawaii Farm Bureau Federation is in strong support of this measure with suggested amendments.

Changing weather conditions make water one of the most important risks facing farmers and ranchers. As Hawaii moves towards increased self sufficiency and sustainability, efforts must be taken to reduce risks borne by farms and ranches. When borne alone, farm and ranch viability is reduced to points in which farmers and ranchers must make the hard decision of whether their enterprise can support their families or survive as a business.

This year, the Hawaii Farm Bureau Federation has introduced a number of measures – all of which address various issues associated with increasing farm and ranch viability. Water is among the most important. Opinions rendered during Water Commission deliberations have made it clear that many do not see agriculture as a public interest and on the same plane as other public trust interests. Our past efforts to clarify this matter have resulted in statements that we are asking for “double protection” since

agriculture is already recognized in the Water Code. However, in deliberations before the Water Commission, these same parties that have made these statements about double protection also make statements that agriculture is a lower priority use of water. This leaves agriculture hanging. The importance of water to agriculture and the importance of agriculture to our state is recognized by the legislature, but we have had to fight for recognition when access to water is in discussion in other forums. This measure attempts to provide clarity in the statute and consistency between the sentences contained in this chapter.

Farmers and ranchers spending time in hearings and courtrooms means less time spent on farms growing crops and raising livestock. Agriculture is not asking TO BE a HIGHER priority. We are asking that it be recognized as a public trust interest and on a case by case basis decide which priority should take precedence.

The current measure, as drafted, focuses only on agricultural uses on Important Agricultural Lands. Over 90,000 acres have been designated as Important Agricultural Lands. Yet, there are many other lands in active agricultural production that should also be recognized as a public trust interest. For this reason, **we request that the reference be just to "agricultural activity"** instead of "protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205".

The second part of this measure requests recognition of the importance of water storage in assuring the adequacy of our water supply.

A report from the University of Hawaii predicts reduced trade winds and increased storm events. This means Hawaii must reassess its water resources and prepare to face extended droughts interspersed with severe storm events. Water storage will play a critical role in assuring an adequate supply of water.

In addition to the importance of dams and reservoirs for water storage, there needs to be a recognition, and a more systematic assessment, of the role that our natural aquifers can play in meeting our water storage needs. There is already evidence of the significance of our natural aquifers to water storage. For example, the Ewa caprock on Oahu captured and stored sugar cane irrigation recharge, which the plantation pumped out of the caprock and used for irrigation, literally enabling the plantation to use the same water over and over again. After the plantation shut down and the amount of irrigation over the caprock greatly diminished, the amount of water available for use from the caprock likewise diminished.

Another example is the Kahului aquifer on Maui. Based on rainfall data, the sustainable yield of the Kahului aquifer should be one million gallons per day. But because of irrigation recharge, it is estimated that the aquifer can sustain pumpage of more than 30 million gallons per day.

LATE TESTIMONY

Notwithstanding these examples, some people, including Water Commissioners in the past, have disregarded aquifer storage and not recognized aquifer recharge as a reasonable-beneficial use of water.

Especially in light of predicted climate changes for our State, we should take advantage of the natural capacity of our aquifers for storage.

We appreciate this opportunity to discuss this important matter. HFBF respectfully requests your consideration of this measure as a means to reduce farm and ranch risks and place into policy recognition that agriculture goes beyond a commercial interest as referred to in court cases. It is the entity that is needed to provide for Hawaii's self sufficiency and sustainability and therefore is a public trust interest. We request that the measure be clarified to reference agricultural activity without narrowing the scope to just those on Important Agricultural Lands.

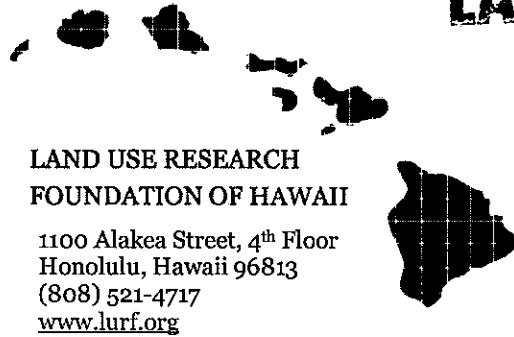
Thank you.

LATE TESTIMONY

House Committee on Water, Land, and Ocean Resources
Attn. Rep. Jerry Chang
Testimony in opposition to HB 1946 Relating to Water

This issue has been examined and debated a number of times in the past. As a person who helped draft the Water Code, I know this issue well. The core function of the code is to protect the integrity of our water resources, which we need to survive. Giving commercial uses of water special status, makes that job much more difficult. This bill might be in response to the fact that the Water Commission has, incorrectly I believe, reserved groundwater on Oahu for future domestic use, i.e. for urban development, and is a de facto judgment that urban development is more important than agriculture. This decision, and HB 1946, put the focus on continued diversion of streams for agriculture. But streams, and the near shore waters that they flow into, are a vital part of our public trust. If sustainability is important, then we need to focus a lot more attention on the ecological link between fresh and salt water. Please vote no on this bill.

Charlie Reppun



LAND USE RESEARCH
FOUNDATION OF HAWAII

1100 Alakea Street, 4th Floor
Honolulu, Hawaii 96813
(808) 521-4717
www.lurf.org

January 27, 2012

Representative Jerry L. Chang, Chair
Representative Sharon E. Har, Vice Chair
House Committee on Water, Land & Ocean Resources

Support of HB 1946 Relating to the State Water Code (Makes the public trust doctrine the guide for the actions of the commission.)

Monday, January 30, 2012, 9:15 a.m., in CR 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to express its **support of HB 1946**, and to offer encouragement to the various agricultural stakeholder groups who defend the goals of viable agricultural operations, and the conservation and protection of important agricultural lands (IAL) in Hawaii.

In strong support of the use of agricultural lands for purposes allowed under state and county laws and ordinances, LURF has worked with agricultural stakeholders to pass the IAL legislation, which provides for the voluntary and government designation of IAL, as well as incentives to support productive and sustainable farming operations on agricultural lands. LURF has also continued to support legislation specifically to provide irrigation water to agricultural lands and farmers.

HB 1946. This bill makes the public trust doctrine the guide for the actions of the commission on water resource management (the "commission"), and specifically identifies public trust purposes for the planning and allocation of water resources, including the conservation and protection of agricultural activity on lands identified and designated as IAL.

LURF's Position. The amendments to Section 174C-2 of the Hawaii Revised Statutes (HRS) which are proposed by this bill are necessary for **agriculture** to be expressly recognized as one of the enumerated public trust purposes warranting the reservation, allocation, and use of water. This measure could also be amended to include water for all agricultural activities, including water storage.

As with the other public trust uses identified in HB 1946 and supported by the Hawaii Constitution, the designation of **agriculture** as a public trust use is reinforced by the IAL laws

(HRS, Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, “to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”

The failure to identify water for agriculture as a public trust use will, in effect, authorize the commission to make dangerous decisions and take unwarranted actions such as inadvisably setting instream flow standards to the detriment of farmers which will increasingly jeopardize the viability of agriculture and the agricultural community.

Opponents may argue that HB 1946 will have the effect of giving corporate interests on agricultural lands a priority on water. It is, however, senseless to view agriculture solely as a commercial interest undeserving of designation as a public trust use, when it is indisputably a concern vital for the self-sufficiency and the well-being of our state.

Passage of the long-awaited IAL legislation would be meaningless without acknowledgement that the protection and preservation of viable agricultural activity is critical to Hawaii. Water policies must therefore expressly recognize and state that water for agricultural activities is essential and one of the identified public trust purposes for which water resources must be allocated.

Thank you for the opportunity to present testimony in support of this bill.

LATE TESTIMONY

har2-Samantha

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 6:38 AM
To: WLOtestimony
Cc: kcfb@hawaiiantel.net
Subject: Testimony for HB1946 on 1/30/2012 9:15:00 AM
Attachments: HB1946.docx

Testimony for WLO 1/30/2012 9:15:00 AM HB1946

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Roy Oyama
Organization: Kauai County Farm Bureau
E-mail: kcfb@hawaiiantel.net
Submitted on: 1/30/2012

Comments:

Please support this bill with two ammendments as referenced in the testimony.

Kauai County Farm Bureau

Affiliated with Hawaii Farm Bureau Federation

P.O. Box 3895 • Lihue HI 96766

808-337-9944 (phone/fax) 808-652-3217 (cell)

kcfb@hawaiiintel.net

The Voice of Kauai's Agriculture

LATE TESTIMONY



January 29, 2012

ATTN: Chair Chang, Vice Chair Har and Members of the Committee

RE: Testimony on HB 1946 Relating to Water – In SUPPORT, with amendments
Room 325, 9:15am

Kauai County Farm Bureau on behalf of our member farm and ranch families, and affiliated with Hawaii Farm Bureau Federation, **requests your support of this measure with requested amendments.**

It is a stated goal of our government to work together to provide for a sustainable and prosperous future for our state and its diverse communities, with greater food security. A critical component is to ensure the viability of agriculture in Hawaii today and to be working on long term solutions to ensure agriculture remains an important sector in our economy and create conditions for it to flourish.

Preservation of agricultural access to water and maintenance of water infrastructure has been identified as among the most important issues to secure agriculture and sustainability for our community. Water and water infrastructure has been identified as a top shared priority across agricultural commodity groups on Kauai, as well as by Farm Bureaus across the State.

We would respectfully request two amendments:

1) The bill drafted currently focuses on Important Agricultural Lands. As this bill was crafted many months ago, there was an expectation that more designations would be in place. Unfortunately that is not the case and there are many lands across the state that are in active agricultural production that deserve assurance of water. For this reason, **we request that the reference be just to “agricultural activity”** instead of “protection of agricultural activity on lands identified and designated as important agricultural lands pursuant to part III of chapter 205”.

2) The second change requests a recognition of the importance of water storage in assuring the adequacy of our water supply, including dams, reservoirs and also natural aquifers.

It is important that with the emphasis on ongoing presence, vitality and sustainability of agriculture in our state, that agriculture be considered part of the public trust that we value for our entire community. Mahalo for your consideration on this important matter.

Sincerely,

Roy Oyama
President – Kauai County Farm Bureau

cc: Melissa McFerrin, Executive Administrator, Scott McFarland, Chair – Govt. Affairs KCFB