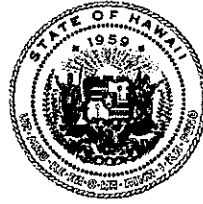
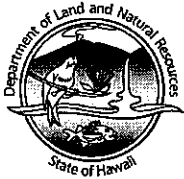


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
HIGHER EDUCATION**

**Tuesday, February 14, 2012
2:00 p.m.
State Capitol, Conference Room 309**

**In consideration of
HOUSE BILL 2671, HOUSE DRAFT 1
RELATING TO SUSTAINABILITY**

House Bill 2671, House Draft 1, proposes to implement recommendations of the University of Hawaii's Public Policy Center in response to Act 181, Session Laws of Hawaii 2011. The Department of Land and Natural Resources (Department) and the Commission on Water Resources Management (Commission) **STRONGLY OPPOSE SECTIONS 3 and 4** and offers comments for consideration on **SECTIONS 1 and 2**, of this measure.

1. PART 1, SECTIONS 1 and 2.

The list of members on the "sustainability partnership" does not include any public representatives from the Department, the Commission, State Department of Agriculture, the State Department of Transportation, any of the county departments of planning, public works, or wastewater management. The list does include three representatives from large land owners, organized agriculture, and the building trades. Any serious effort to build a sustainable future must include the departments with the jurisdiction and authority over the natural resources and the built environment to accomplish that goal. None of those departments are included.

2. PART II, SECTIONS 3 and 4.

SECTIONS 3 and 4 propose to amend Section 226-108 (State Planning Act), Hawaii Revised Statutes (HRS), by adding a new subsection (b) that seeks to undermine the Hawaii Supreme Court's decision in *In the Matter of Water Use Permit Applications*, 9 P.3d 409 (2000) (*Waiahole I*) by declaring agricultural water uses to be a "public trust" use.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

First, the title of the bill “RELATING TO SUSTAINABILITY” does not include changes to State water law. This bill seeks to undo controlling Hawaii Supreme Court precedent interpreting the Hawaii State Constitution, Article XI, Section 7 and the State Water Code. A bill whose title addresses sustainability does not reasonably include fundamental changes to Hawaii water law. No amendment to water law may be included in this bill. Any attempt to do so violates the prohibition in Haw. Const., Article III, Section 14 which states in relevant part, “. . . [e]ach law shall embrace but one subject, which shall be expressed in its title. . . .”

Second, this bill, by fiat, seeks to alter controlling Hawaii Supreme Court water law interpreting the Hawaii State Constitution, Article XI, §7, the State Water Code (Chapter 174C, HRS), and Hawaii's common law and traditions. D and the Commission *strongly oppose* SECTIONs 3 and 4. As explained more fully below, the State Water Code is an intricate balance of values, interests, and processes that provides a careful means to resolve complex natural resource protection and allocation issues. The State Water Code should not be amended piecemeal to satisfy special private interests.

Third, while the Department and the Commission appreciate the desire to support agriculture through sustainability guidelines, the State already has the legal and practical means to move toward agricultural self sustainability. Creating an agricultural system that feeds Hawaii first means redirecting current and future production wholeheartedly toward import substitution. That does not require changes in water law. That requires a real world commitment and action.

To this end, the statements in SECTIONs 3 and 4 are incorrect. There is no need to change existing or adopt new water laws. The current water law is already designed to support agriculture. The State Water Code's permit system modifies the common law by allowing out-of-watershed transfers. To protect agriculture, the term of the permit has no time limit so long as the purpose, quantity, and place remain the same. SECTIONs 3 and 4 misstate the history and the real achievements in the State Water Code to protect agriculture.

Fourth, the proposed new subsection (b) (to Section 226-108, HRS) redefines 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 itself and the protection of public trust resources. This provision could 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'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 interests.

Finally, and most important, the Department and the Commission *oppose* any bill that seeks to interject individual interests through fragmentary amendments to the State Water Code or “water resources” or that provides the vehicle to do so. The 1987 State Water Code was adopted after decades of litigation and years of difficult discussions. It is a delicate balance to meet the constitutional mandates, fully protect the natural resources, and allocate water under the law. The State Water Code has the tools and the processes to sort out complex problems. The State Water Code should not be amended to tip the scales against the public interest in favor of purely private parties by misusing the language of sustainability.

The Department and the Commission strongly oppose this bill.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR
RICHARD C. LIM
DIRECTOR
MARY ALICE EVANS
DEPUTY DIRECTOR
JESSE K. SOUKI
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON HIGHER EDUCATION
Tuesday, February 14, 2012
2:00 PM
State Capitol, Conference Room 309

in consideration of
HB 2671 HD1
RELATING TO SUSTAINABILITY.

Chair Nishimoto, Vice Chair Nakashima and Members of the House Committee on
Higher Education.

The Office of Planning has the following comments on this measure. HB 2671 HD 1
Relating to Sustainability contains several changes to the original bill. HD 1 requires the Hawaii
State Sustainability Partnership to prepare a report containing findings and recommendations
including a finding as to whether water allocations for agriculture are sufficient to support
agriculture in the State. Section 2 of HD 1 reiterates the importance of water to agriculture.
Section 3 of HD 1 establishes a new priority guideline stating that water for agricultural activities
shall be deemed a public trust use.

Given the focus on water and agricultural issues, the Department of Agriculture and
Department of Land and Natural Resources/Commission on Water Resources Management staff

may be appropriate agencies to be added to the Sustainability Partnership. In addition, with this new focus and the charge to examine water allocations for agriculture, the Sustainability

Partnership would be better placed in an agency with expertise and program focus in these areas.

Thank you for the opportunity to testify.



HB 2671 HD1
RELATING TO SUSTAINABILITY
House Committee on Higher Education

February 14, 2012

2:00 p.m.

Room 309

The Office of Hawaiian Affairs (OHA) offers the following comments on HB 2671 HD1, which attempts to use a generic bill related to "sustainability" as a vehicle to overhaul Hawai'i water law to the detriment of Native Hawaiians and other small farmers, as well as the general public and future generations. The amendments to Part II of this bill are based on a misinformed legal premise, defy the public trust doctrine, and are antithetical to the goal of "sustainability." Indeed, the makeup of the "sustainability partnership," which excludes any representation of Native Hawaiian or environmental interests, demonstrates that this bill is no longer a bill "relating to sustainability," but instead has become yet another attempt to unlawfully amend the public trust doctrine to serve special interests.

The OHA administration will recommend that the OHA Board of Trustees strongly oppose HB 2671 HD1.

The new provisions in Part II of HB 2671 HD1 are based on the unsubstantiated assertion that the Hawai'i Supreme Court has rendered decisions that "have the effect of undermining the State's self-sufficiency and sustainability goals by not affording adequate water resources for agricultural activities." Tellingly, no such decisions can be cited, because there are none. In its landmark *Waiāhole* decision, *In re Waiāhole*, 94 Hawai'i 97 (2000), the Court, recognizing the public benefits of private agricultural uses, affirmed the allocation to Leeward Oahu farmers of far more diverted Waiāhole water than they could put to reasonable-beneficial use. More than a decade and a half later, the leeward farmers are still unable to use all of the Waiāhole water that was allocated to them in the *Waiāhole* decision, leading the Commission to investigate partial termination of the permits for non-use.

While the *Waiāhole* decision expressly acknowledged the provisions of Article XI, section 1 of the Hawai'i constitution, it also explained that "[a]lthough its purpose has evolved over time, 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." *In re Waiāhole*, 94 Hawai'i at 138. Since then, plantation landowners and other private interests, who have diverted, and

in many cases squandered, the flow of Hawai'i rivers and streams for more than a century, have relentlessly sought to upset the careful balance established by the Water Code and the public trust doctrine by having agriculture legislatively declared to be a public trust purpose. (Indeed, the overhaul of this bill appears to be an attempt to resuscitate the most recent failed attempt – HB 1946.) However, because the public trust doctrine is a state constitutional doctrine, "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.

Hawai'i's legal regime for the management of its precious water resources was established in direct response to decades of plantation agribusinesses' repression of Native Hawaiian communities, their land, their culture, and their access to fresh water. A large majority of Hawai'i's water 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 and sustain their families. 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.

Bernard P. Carvalho, Jr.
Mayor



George K. Costa
Director

Gary K. Heu
Managing Director

OFFICE OF ECONOMIC DEVELOPMENT

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite 200, Lihu'e, Hawai'i 96766
TEL (808) 241-4946 FAX (808) 241-6399

TESTIMONY OF GLENN SATO, SUSTAINABILITY MANAGER, COUNTY OF KAUAI

BEFORE A HEARING OF THE HOUSE COMMITTEE ON HIGHER EDUCATION

Tuesday, February 14, 2012
Conference Room 309
2:00 p.m.

HOUSE BILL 2671, HD1 RELATING TO SUSTAINABILITY

Chair Nishimoto, Vice Chair Nakashima, Members of the Committee on Higher Education:

The County of Kauai supports HB 2671, HD 1 which seeks to implement the recommendations made by the University of Hawai'i public policy center in response to Act 181, Session Laws of Hawai'i 2011.

HB 2671, HD1 seeks funds to convene the Hawai'i Statewide Sustainability Partnership which will be tasked to design and organize a collaborative public-private entity that will be responsible for coordinating implementation of sustainability guidelines and priorities; determining key indicators and establishing benchmarks to measure progress; and coordinating sustainability progress among the state and the counties.

HB 2671 HD 1 has also been amended to include a specific finding "as to whether water allocations are sufficient to support agriculture in the State of Hawaii to achieve sustainability. Due to the expanded scope specifically related to agriculture and waster, the County of Kaua'i recommends that the Hawai'i Statewide Sustainability Partnership include representation from the State Dept. of Agriculture and the State Department of Land and Natural Resources, Commission on Water Resources Management. The required water allocation study will also require sufficient funding for proper data collection and analysis from subject matter experts.

The County of Kauai requests your favorable consideration and support of HB 2671, HD 1.

Mahalo,

Glenn Sato



Testimony Reference : HB 2671

Committee :

Date of Hearing: Jan 10

From: Hawaii Farmers Union United

OPPOSE

Testimony:

HFUU strongly OPPOSES this bill.

To give you some perspective on whether FB or the plantations really need more water - in the peak of sugar production (1920-30s) an estimated 200,000 acres were in production. Today, maybe 17,000 acres are being harvested; even if you add in the seed crop industry and any other ag producers, the total is less than half what it was in the 1930s. And yet, not only have they not returned any water to the streams (unless forced by case law), they are, under the guise of the FB and now with the help of Syngenta and Monsanto, asking for more water and to step to the front of the line - before the streams (and the nearshore fisheries that depend on this water), before Hawaiian rights and landowners immediately on the streams, and everyone else.

What this bill does is attempt to form a water decision making committee that would override the Water Commission (which would be illegal) and to make decisions in flagrant disregard for the Waiahole Water Case decision and the public trust doctrine. It is not a matter of getting a better balance on the committee proposed in the bill; this committee should not even be formed. Decisions on water law are the responsibility of the Water Commission by law, not by political opinion. What this bill does is try to subvert existing law to the advantage of private interest (again).

The truth of the matter is that Big Ag has gotten all the water it has asked for (or more) in the major water battles (Waiahole, Na Wai 'Eha), but they still don't like balancing. They are trying to secure a place in the very front of the line.

Forming a committee of select persons, for the purpose of undermining existing water law is simply wrong.

Thank you for the opportunity to speak for the family farmer in Hawaii.

Glenn Martinez
HFUU President
FYI:

Hawaii Farmer Union United is the largest agriculture organization in the State of Hawaii that represents the small family farmers at the exclusion of GMO and Mega Corporation mono- crop industrial farms. With small family farmers on every island Hawaii Farmers Union is the only Grassroots farm organization where the members have direct voice.

Any testimony given to the Legislature is vetted to the membership. Often the testimony is a blend of opinions voiced directly from membership. We also encourage all individual members to submit testimony directly, particularly where there voice is different then the majority, thus all farmer voices are heard, not just the loudest.



EARTHJUSTICE

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

**HOUSE COMMITTEE ON HIGHER EDUCATION
ATTN: CHAIR SCOTT Y. NISHIMOTO, VICE-CHAIR MARK M. NAKASHIMA**

Testimony in Strong Opposition to HB 2671 HD1: Relating to Sustainability

**Tuesday, February 14, 2012, 2:00 p.m.
Conference Room 309**

Aloha Chair Nishimoto and Committee Members:

Earthjustice strongly opposes House Bill 2671 HD1 and respectfully requests that it be held. The bill has been overhauled to include language attempting to overturn the public trust doctrine governing water resources in Hawai'i. The public trust doctrine is a legal mandate established in the Hawai'i Constitution, article XI, sections 1 & 7, and the State Water Code, Hawai'i Revised Statutes chapter 174C, and reaffirmed in numerous cases of the Hawai'i Supreme Court. HB 2671 HD1 contains several new sections: (1) engaging in a badly misinformed legal discussion of the Court's precedent based on an unsubstantiated and false "finding" that the Court's rulings "have the effect of undermining the State's self-sufficiency and sustainability goals by not affording adequate water resources for agricultural activities" (Section III); (2) and attempting to make agricultural water diversions for private profit a protected "public trust purpose," in opposition to the fundamental, constitutional principles of the public trust doctrine (Section IV).

Contrary to HB 2671 HD1's new provisions, the Court correctly held that while the constitutional public trust duly acknowledges the public benefits of private commercial agricultural uses, it "has never been understood to safeguard rights of exclusive use for private commercial gain." In re Waiāhole Ditch Combined Contested Case Hr'g, 94 Hawai'i 97, 138 (2000) (emphasis added). Far from depriving agricultural activities of water, the public trust simply upholds the modest principle that those who would divert public water resources for their own private profit, including agricultural users, must respect the rights of the public and Native Hawaiians. Id. at 142. In effect, HB 2671 HD1 aims to tilt the scales of the public trust in favor of the private special interests of plantation diverters (who are already monopolizing the flows of streams and rivers across the islands), and against the rights of Native Hawaiians and all the people of Hawai'i, including future generations.

HB 2671 HD1's new provisions seek to resurrect House Bill 1946, which was widely opposed and ultimately deferred by the Water, Land & Ocean Resources Committee. HB 1946, in turn, simply rehashed the same old pattern in past bills

spanning over almost a decade, all of which were killed in committee. The substance of HB 1946, however, was covertly inserted into HB 2671, a general bill relating to "sustainability," which was then passed through the prior committees without any proper review by the committees or the public. This attempt to overhaul in Hawai'i water law in favor of private corporate interests has nothing to do with "sustainability" and, in fact, is contrary to it. Having been corrupted by these amendments, HB 2671 HD1 should not continue for any further deliberation and should be killed.

On another note more pertinent to the former content of the bill, HB 2671 HD1 also contains amendments specifying the members of the "sustainability partnership" to include the Land Use Research Foundation, Hawai'i Farm Bureau, and Building Trades Council, but not include any environmental and Native Hawaiian interests. The lack of such representatives in a process purporting to promote "sustainability" is outrageous, and further highlights how irretrievably HB 2671 has been distorted from its original form and purpose.

In sum, HB 2671 HD1 has been reduced to a "Trojan horse" for unnecessary, ill-conceived and ultimately unlawful amendments to the public trust doctrine on behalf certain special interests. We strongly urge you to kill this bill.

Very truly yours,



Isaac H. Moriwake
Attorney
Earthjustice



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743
Phone (808) 885-5599 • Fax (808) 887-1607
e-mail: HCattlemens@hawaii.rr.com

HOUSE COMMITTEE ON HIGHER EDUCATION

Tuesday February 14, 2012 2:00 pm Room 309

HB 2671 HD 1 RELATING TO SUSTAINABILITY

- Authorizes the office of planning to convene a statewide sustainability partnership, develop sustainability guidelines, establish benchmarks for measuring sustainability progress, and coordinate sustainability progress made by the State and counties. Makes appropriation

Chairman Nishimoto, Vice Chair Nakashima 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 2671 HD 1.

Part II of this bill deals with the sustainability of agriculture and how water plays an integral part in the future of agriculture. 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 strongly support a representative of the Hawaii Farm Bureau Federation being on the sustainability partnership.

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

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 10:39 AM
To: HEDtestimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM
Attachments: HB 2671 HD 12012 Sustainability-water code.pdf

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Support
Testifier will be present: No
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
E-mail: gottlieb@hawaii.rr.com
Submitted on: 2/13/2012

Comments:



Hawaii's Thousand Friends

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

February 14, 2012

COMMITTEE ON HIGHER EDUCATION

Rep. Scott Nishimoto, Chair
Rep. Mark Nakashima, Vice Chair

HB 2671 HD1
RELATING TO SUSTAINABILITY

Committee Chair Nishimoto 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 2671 HD1. 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 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 2671 HD1 once again landowners seek to control Hawaii's public water for their own personal gain. Under Hawaii's Water Code, the public trust doctrine and law of the land this water grab cannot happen. Please kill this bill.

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 3:39 PM
To: HEDtestimony
Cc: htf@lava.net
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM
Attachments: HB 2671 HD1 .pdf

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Donna Wong
Organization: Hawaii's Thousand Friends
E-mail: htf@lava.net
Submitted on: 2/13/2012

Comments:

Testimony of The Nature Conservancy of Hawai'i
Commenting on H.B. 2671 HD1 Relating to Sustainability
House Committee on Higher Education
Tuesday, February 14, 2012, 2:00PM, Rm. 309

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i supports the original draft and intent of this measure to establish a process to develop indicators and benchmarks for measuring our progress on statewide sustainability goals. We are concerned that the HD 1 version of this bill:

- Too narrowly defines the membership of the Hawai'i statewide sustainability partnership by not including any natural resource expertise or some of the obvious state agencies appropriate to the discussion such as DLNR and HDOA; and
- Though very important, emphasizes agricultural water needs over all other essential aspects of sustainability.

The health of Hawaii's unique but threatened natural resources directly affects our economy and quality of life. Beyond breathtaking beauty, these resources provide essential natural benefits that make life possible in the middle of the vast Pacific Ocean. From native forests that give us fresh water, erosion control, and cultural treasures, to abundant coral reefs that provide food, recreation, and protection from storms, we all depend daily on nature to sustain us. Now more than ever in the past, we have come to appreciate the importance of balancing environmental protection with the obvious need to maintain a vibrant economy that supports and does not threaten the needs of future generations.

The Hawai'i 2050 sustainability plan provides a strong and defined foundation for sustainability to help lead us toward the Hawai'i we all want for ourselves and future generations. We were pleased last year to support the inclusion of the 2050 plan's guiding principles and goals into the Hawai'i State Planning Act.

The original draft of this bill proposed to take the logical next step of setting up a process to develop indicators and benchmarks for measuring our progress, and to coordinate activities, data collection and reporting on the goals we have set. We look forward to being a contributor to that kind of process in our area of expertise related to the natural environment of these islands.

BOARD OF TRUSTEES

S. Haunani Apoliona Christopher J. Benjamin Anne S. Carter Richard A. Cooke III Peter H. Ehrman Kenton T. Eldridge
Thomas M. Gottlieb James J.C. Haynes III J. Douglas Ing Mark L. Johnson Dr. Kenneth Y. Kaneshiro Bert A. Kobayashi, Jr.
Eiichiro Kuwana Duncan MacNaughton Bonnie P. McCloskey Bill D. Mills Wayne K. Minami Michael T. Pfeffer James C. Polk
H. Monty Richards Chet A. Richardson Jean E. Rolles Scott C. Rolles Crystal K. Rose Dustin M. Shindo Nathan E. Smith Eric K. Yeaman

Chair: Kenton T. Eldridge *Chair Emeriti:* Samuel A. Cooke (co-founder; chair 1980-1991), Herbert C. Cornuelle (co-founder), Bill D. Mills (1991-1995), Jeffrey N. Watanabe (1995-2004), David C. Cole (2004-2008), Duncan MacNaughton (2008-2011)

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 4:43 PM
To: HEDtestimony
Cc: mfox@tnc.org
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM
Attachments: HB 2671 TNC testimony 02 14 12.pdf

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Comments Only
Testifier will be present: Yes
Submitted by: Mark Fox
Organization: The Nature Conservancy
E-mail: mfox@tnc.org
Submitted on: 2/13/2012

Comments:

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 4:42 PM
To: HEDtestimony
Cc: trkahua@aol.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Support
Testifier will be present: No
Submitted by: Herbert M "Tim" Richards III
Organization: Kahua Ranch Ltd
E-mail: trkahua@aol.com
Submitted on: 2/13/2012

Comments:

Part II of this bill deals with the sustainability of agriculture and how water plays an integral part in the future of agriculture. 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.

HOUSE COMMITTEE ON HIGHER EDUCATION

RE: HB 2671, HD 1: Relating to Sustainability

February 14, 2012, 2:00 p.m.

Conference Room 309

Testimony of the Native Hawaiian Legal Corporation

The Native Hawaiian Legal Corporation strongly *opposes* House Bill 2671, HD 1. This bill proposes to amend the public trust doctrine by eviscerating it. It is legally incompatible with that doctrine and contrary to established Hawai'i Supreme Court (HSC) precedent on water law. In the alleged pursuit of assuring adequate water to sustain Hawai'i's agriculture, this bill attempts to justify a balancing of water needs by authorizing the private use of water for commercial gain as a public trust purpose. This bill plainly subverts the public trust in favor of the special interests of private plantation diverters of streams. We thus urge you to kill this bill.

As the HSC has made clear, the constitutional public trust mandates the protection water resources for present and future generations. This bill would fundamentally contradict the public trust in at least two ways: (1) it upsets the legislative design in the State Water Code, HRS chap. 174C, by arbitrarily elevating a consumptive use of water for a private commercial use above conservation and protection of natural water sources; (2) it reverses the public trust doctrine as interpreted by the HSC.

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 Hearing, 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.

Setting aside the inartful drafting of the bill -- which is vague and places the primary emphasis on promoting state goals of "self-sufficiency and sustainability," it would facially "make adequate provision of water resources for agricultural activities in furtherance of the State's self-sufficiency and sustainability," by specifying that such water use is "a public trust use." The clear intent is to skew the balance against resource protection and Native Hawaiian rights and in favor of resource diversion and extraction, in the name of ALL agricultural activity.

By and large, the effect of such a rebalancing is to benefit one large stream diverter -- Alexander and Baldwin (A&B). A&B is by far the largest private, profit-making exploiter of a water resource in the state. A&B regularly diverts 166 million gallons per day from lush East Maui streams on 33,000 acres of state ceded lands to irrigate 27,000 acres of its sugar plantation (HC&S) located on the dry desert plains in central Maui. It uses another 70 mgd from Nā Wai

`Ehā streams on another part of its plantation. That diversion exceeds the entire domestic water supply of O`ahu, where over 80% of the state lives.

Moreover, the evidence it presented to the State Water Commission reveals that A&B/HC&S wastes huge amounts of this diverted water. In its 50 miles of primarily unlined collection ditches alone, the CWRM estimates that A&B loses 16-25 mgd to seepage. *See*, attached pie chart. Its HC&S subsidiary loses another 23-41 mgd to leakage and evaporation from its 31 uncovered and unlined reservoirs. This estimated loss dwarfs the 4.5 mgd that feeds upcountry residents and Kula farmers who are the ones actually producing food crops. In contrast, HC&S uses about 128 mgd to feed its thirsty sugar crop, all of which is shipped to California, which does little to nothing to promote agricultural self-sufficiency or food security in Hawai`i. This pattern of use and waste violates the constitutional public trust doctrine over water resources. As with leeward farmers in the Waiāhole Ditch struggle, the conflict over water availability is between food farmers and large landowner water users, *not with those attempting to protect water resources in streams and aquifers*.

Second, HB 2671, HD 1 seeks “to make the adequate provision of water resources for agricultural activities” 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).

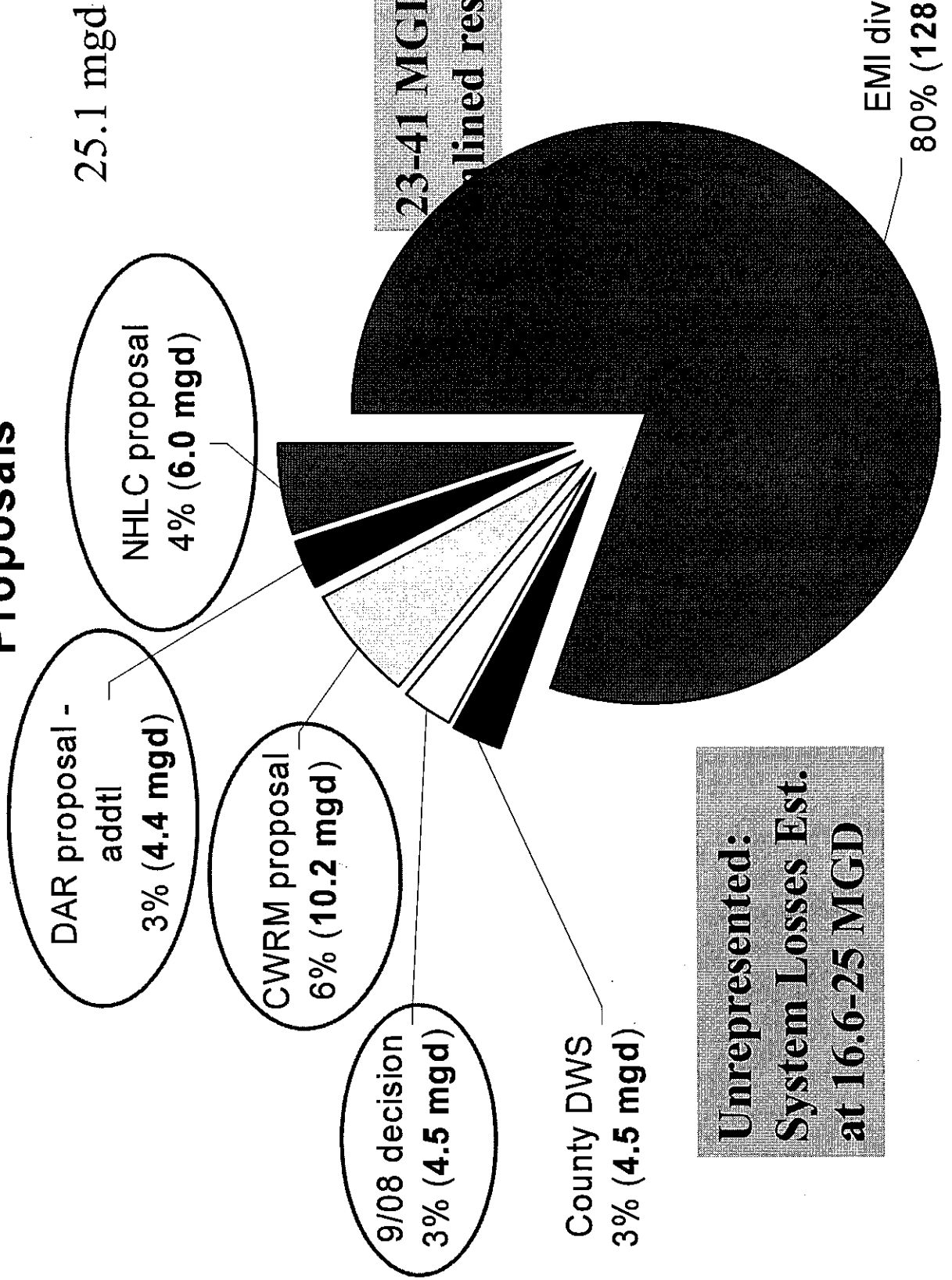
However, the Hawai`i Supreme Court has explained in detail that the Water Code cannot supplant the protections of the public trust. The Court specifically noted that, “[e]ven with the enactment and *any future development of the Code*, the doctrine continues to inform the Code’s interpretation, *define its permissible ‘outer limits,’* and justify its existence ... the Code *does not supplant the protections of the public trust doctrine.*” *Id.* (Emphases added). Hence, this bill is an exercise in futility.

HB 2761, HD 1 seeks to overturn this fundamental constitutional principle and distort the true conflict between the large commercial water users and those truly trying to advance food security and sustainability. *This latter set of water users are being exploited by the former to get them to think conservationists and native Hawaiians attempting to restore stream flow are competing with them.* Native Hawaiian cultural practitioners are not the culprits denying food farmers access to water. Wasteful exploiters of large stream diverters are.

In conclusion, after 25 years since the establishment of the Code’s comprehensive regulatory framework for the benefit of all the people of Hawai`i, HB 2761, HD 1 seeks to destroy the balance under the public doctrine in favor of the special interests of private plantation diverters who waste the massive amounts of water they divert. This measure is unnecessary. It is confused and ill-conceived and will needlessly distort the Water Commission’s regulatory function while creating and exacerbating litigation. The Legislature would provide the public a greater service by investigating the wasteful practices of large water diverters who are not being held accountable for the massive waste of water resources they perpetuate without government scrutiny. We strongly urge you to kill this bill.

Sincerely,
Alan T. Murakami
Camille K. Kalama
Staff Attorneys

What HC&S Would Keep with DAR and NHLC Proposals



25.1 mgd

NHLC proposal
4% (6.0 mgd)

DAR proposal -
addtl
3% (4.4 mgd)

CWRM proposal
6% (10.2 mgd)

9/08 decision
3% (4.5 mgd)

County DWS
3% (4.5 mgd)

23-41 MGD from
unlined reservoirs

EMI divers
80% (128 mgd)

**Unrepresented:
System Losses Est.
at 16.6-25 MGD**

Tropical Orchid Farm, Inc.
Huelo, Maui

Testimony of Jeffrey Parker
President, Tropical Orchid Farm, Inc.
Regarding House Bill 2671 as it relates to water

HOUSE COMMITTEE ON HIGHER EDUCATION
ATTN: CHAIR SCOTT Y. NISHIMOTO, VICE-CHAIR MARK M. NAKASHIMA

HB 2671 HD1: Relating to Sustainability
Position: Strongly Oppose
Tuesday, February 14, 2012, 2:00 p.m.
Conference Room 309

Aloha Chair Nishimoto and Committee Members:

I am a 20-year member of the Maui County Farm Bureau and the Hawaii Farm Bureau Federation.

I strongly oppose HB2671 as I feel that the bill has been overhauled to include language attempting to overturn the public trust doctrine governing water resources in Hawai'i. HB 2671 HD1's new language tries to resurrect House Bill 1946, which was widely opposed and then deferred by the Water, Land & Ocean Resources Committee. I am extremely upset that Farm Bureau officials did not consult with us the Members before advocating these provisions. Furthermore, MCFB Executive Director Warren Watanabe often forgets to consult with his Board of Directors when taking these extreme positions, positions which I feel are very harmful to diversified agriculture in Hawaii. I urge you to quiz Warren on whether his Membership was informed of his position, indeed whether his Board was informed.

HB2671 weakens the Public Trust Doctrine in regard to water resources. The bill seeks to redefine the public trust doctrine more 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.

I am a small diversified farmer in Windward Maui. There is no County or municipal water available in my area. I get 100% of my water from a small spring-fed stream flowing through my property. **The provisions proposed in HB2671 will make it much harder for me to defend my stream from future diversions and deep wells** (which according to USGS, can have the affect of drying up nearby streams and springs).

The proposed changes will harm small farmers and diversified agriculture, an important segment of Hawaii's economy.

Please hold this ill conceived Bill.

Mahalo

Jeffrey Parker

Pres, T.O.F., Inc



Sierra Club Hawai'i Chapter

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

HOUSE COMMITTEE ON HIGHER EDUCATION

February 14, 2012, 2:00 P.M.

(Testimony is 2 pages long)

TESTIMONY IN OPPOSITION TO HB 2671

Aloha Chair Nishimoto and Committee Members -

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, **opposes HB 2671**. This bill proposes to amend the water code by elevating commercial water interests as public trust protected uses. It also creates a farce of a sustainability task force that is tasked with vague objectives and highly development-focused list of members.

The water code part of 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 agriculture 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 2671, 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 2671 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.

Addressing the second part of this measure, this bill creates a highly imbalanced task force -- dominated by interests that tend to focus on land development -- that has no particular objective or outcome specified.

While the Sierra Club strongly supports concepts of sustainability, creating a more narrow focus would increase the task force's possibility of success. For example, the City of Berkeley has created a department of energy & sustainable development that is specifically tasked with reducing energy consumption and greenhouse gas emissions. Other programs administered by it include reducing water consumption, promoting bicycling, water efficient landscapes, building green roofs, etc. Focusing a task force on some of these specific concepts, rather than meaningless fluff, would be a better use of state resources.

And ensuring the membership of the task force has some degree of balance to prevent it being captured by the forces that have historically moved the state away from sustainability.

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

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 9:34 PM
To: HEDtestimony
Cc: mark@marksheehan.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Mark Sheehan
Organization: Maui Tomorrow
E-mail: mark@marksheehan.com
Submitted on: 2/13/2012

Comments:

Dear Committee Members,

This is another "sustainability" bill that throws the aina under the bus. It purports to protect but exists to subvert. It speaks for the small farmers but serves the large landholders. It is clothed in high mindedness but lives in low latitudes. Kill this bill and work for a truly sustainable Hawaii.

February 13, 2012

To the Honorable Chair Nishimoto, Vice Chair Nakashima, and Members of the House Committee on Higher Education,

The Environmental Caucus of the Democratic Party of Hawai'i stands in opposition to the amendments made in HB2671 HD1, 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, HB2671 HD1 explicitly undermines the long-term and delicately balanced societal benefits of the public trust, such as environmental protection and Native Hawaiian cultural recognitions, in favor of vaguely described economic development interests 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 HB2671 HD1, 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 as amended.

Thank you very much for this opportunity to testify.

Sincerely,

Wayne Tanaka, Congressional District 2 Delegate
Environmental Caucus of the Democratic Party of Hawai'i

Environmental Caucus of the Democratic Party of Hawai'i

State Democratic Headquarters ♦ 1050 Ala Moana Boulevard, D26 ♦ Honolulu, Hawai'i, 96814
(808) 596-2980 ♦ <http://EnvironmentalCaucusoftheDemocraticPartyofHawaii.com>

February 14, 2012

Testimony in Strong Opposition of HB 2671 HD 1

Aloha Chairman Scott Nishimoto, Vice Chair Mark Nakashima and Higher Education committee members. My name is Mrs. Juanita C. Kawamoto Brown, Subcommittee Chair of Food and Farm Sustainability of the Environmental Caucus of the Democratic Party of Hawaii, Executive Board member at Large and a Native Hawaiian citizen advocate.

I am here to testify in strong opposition of House Bill 2671 HD 1– Relating to Sustainability.

The ECDPH Executive Committee has unanimously opposed this bill with good reason; it is not a “Good Sustainability” bill for Hawaii. The most important statement regarding protection of the public trust regarding the use of Water has been manipulated and misrepresented by groups focused on private sector, big business, profit driven entities that are “not” dedicated to all the needs of the people of Hawaii and the public trust use. I don't believe there was any oversight by our past lawmakers and the Hawaii court systems when they chose not to include agriculture into water use as defined by Hawaii's Public Trust Use because of agriculture's diverse agribusiness climate and stewardship. Agricultural uses for water can be better served by the needs of each community, county, district or island, individually. The attempt to centralize water usage through a “Statewide partnership” will not allow each community its own special use which currently exists just the way it is, therefore supports the needs of all the people in that area or moku.

As a native Hawaiian, I am disturbed at the use of such important terms as “Ahupua`a” or “Public Trust” being used in the same context as big business land owners, commercial developers and others like them motivated to destroy watershed and drain our valuable natural resources without any oversight except for a “Hawaii Statewide Sustainability Partnership” that is mostly comprised or specifically for big business agenda. Where are the environmental, native Hawaiian or Community conscious organizations who should lend their name and time to this partnership?

Small family food farms help define “Ahupua`a”, in HB 2671 HD 1 no mention is made to follow the lead of small family food farms, which have been for centuries, always in balance with the needs of the village it supports. The authors of this bill have desecrated the meaning and intentions of the term “Ahupua`a” and have insulted the Native Hawaiian community by using this term without any thought of the host culture.

The precedence this bill will set in motion will damage "Public Trust" as it is "not" for all the people of Hawaii.

Please protect the public trust of all the people and strongly oppose this bill. Mahalo for the opportunity to provide testimony.

Juanita C. Kawamoto Brown
Subcommittee Chair
Environmental Caucus of the Democratic Party of Hawaii
Democratic State Headquarters
1050 Ala Moana Blvd, D26
Honolulu, Hawaii 96814

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 10:35 PM
To: HEDtestimony
Cc: rangien2010@yahoo.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Puanani Rogers
Organization: Ho`okipa Network - Kaua`i
E-mail: rangien2010@yahoo.com
Submitted on: 2/13/2012

Comments:

I would like to testify in strong OPPOSITION TO HB 2671. Please reject this bill that does not protect our water or our rights to our water.

Mahalo a nui,

Puanani Rogers - Kauai

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION

Testimony to House Committee on Higher Education

Tuesday, February 14, 2012

2:00 p.m.

Capitol Room 309

RE: H.B. 2671 HD1, Relating to Sustainability

Good morning Chairs Nishimoto, Vice Chair Nakashima, and members of the Committee:

My name is Gladys Quinto Marrone, Government Relations Director for the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, BIA-Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii offers the following **comments** on H.B. 2671 HD1 (Companion bill S.B. 3059), which requires the office of planning to convene a workgroup for sustainability guidelines, establish benchmarks for measuring sustainability progress, and coordinate sustainability progress made by the State and counties. It also authorizes the office of planning to contract for a coordinator or facilitator.

Our understanding is that pursuant to Act 181, SLH 2011, the University of Hawaii public policy center, in consultation with the office of planning, submitted a report to the legislature identifying the progress made in implementing the sustainability guidelines and principles, as set forth in Act 181, and making recommendations for legislation or other action to facilitate their full implementation.

H.B. 2671 HD1 provides for the office of planning to convene a working group of government, non-profit, education, business and other interested organizations to establish guidelines for the Hawaii Statewide sustainability partnership in implementing implement the recommendations made by the University of Hawaii public policy center in response to Act 181, Session Laws of Hawaii 2011.

We respectfully recommend that the bill be **amended** to ensure that there is a **balanced** representation on the working group representative of the economic, social, community and environmental priorities being discussed.

Thank you for the opportunity to share with you our views.



LIFE OF THE LAND

76 North King Street, Suite 203

Honolulu, Hawai'i 96817

Phone: 533-3454; E: henry.lifeoftheland@gmail.com

COMMITTEE ON HIGHER EDUCATION

Rep. Scott Y. Nishimoto, Chair

Rep. Mark M. Nakashima, Vice Chair

DATE: Tuesday, February 14, 2012
TIME: 2:00pm
PLACE: Conference Room 309
BILL: HB 2671

Aloha Chair Nishimoto, Vice Chair Nakashima 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 2671 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 2671 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 2671.

Mahalo

Henry Curtis



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

February 14, 2012

HEARING BEFORE THE
HOUSE COMMITTEE ON HIGHER EDUCATION

TESTIMONY ON HB 2671, HD1
RELATING TO SUSTAINABILITY

Room 309
2:00 PM

Chair Nishimoto, Vice Chair Nakashima, and Members of the Committee:

I am Brian Miyamoto, Chief Operating Officer and Government Affairs Liaison for 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.

HFBF strongly supports HB 2671, HD1 requiring the Office of State Planning to establish sustainability guidelines while providing pragmatic guidelines..

During the AFBF Convention held recently in Honolulu, the President of American Farm Bureau Federation told nearly 7,000 farmers and ranchers from across the country, we are the 1% providing for the 99%. This clearly articulates the reality of agriculture today. Highly productive farmers and ranchers are able to provide for many, providing opportunities for people to pursue career choices without having to worry where their food comes from. These farmers and ranchers also support not only their families but provide employment and support other businesses in the community.

The measure as amended provides further detail while recognizing that agriculture is a key element to sustainability.

I can be reached at (808) 848-2074 if you have any questions. Thank you for the opportunity to testify.

Aloha Chair Nishimoto and Committee Members:

I strongly oppose House Bill 2671 HD1 and respectfully request that it be killed.

What began as a bill of good intentions to move this state into a more successful and self-sustaining practices in land and natural resources use, agriculture, energy and other forms has been hijacked once more by the very industry that will fight sustainability with its every breath and dollar – agricultural industry. This same struggle - to change before it is too late - has played out in the steel and mining industry, the auto industry and many other realms that would rather continue to draw down every natural resource buffer we have until there is nothing left, than to change their own practices. When do we stop?

HB2671 HD1 now includes language to overturn the public trust doctrine governing water resources in Hawai'i. The public trust doctrine is a legal mandate established in the Hawai'i Constitution (Article XI, sections 1 & 7), and the State Water Code (HRS Chpt 174C), and reaffirmed in numerous cases of the Hawai'i Supreme Court. What HB2671 HD1 proposes to do is to subvert the law for the benefit of private, special interests in the allocation of water, to the detriment of all other purposes.

Agriculture has been well taken care of even with the existing priorities in place. But the real question is whether the corporate agricultural interests behind this bill actually need the water and for what purpose?

To give you some perspective - in the peak of sugar production (1920-30s) an estimated 200,000 acres were in production. Today, perhaps 17,000 acres are being harvested. Even if you add in the seed crop industry, ranching and other ag producers, the total land in production is half what it was in the 1930s. And yet, not only has water not been returned to the streams (unless forced by legal action), there is now a renewed push to grab more water through such tactics as those found in HB2671 HD1. Water banking by private entities is illegal under the public trust doctrine. Here in Maui, we can see clearly the set aside of lands with development plans waiting in the wings. On Oahu, it is outrageous to know that an industrial agriculture company is seeking an additional allocation of Waihole water despite already generous allocations. What better means then to use the legislature to do its dirty work.

HB 2671 HD1's new provisions seek to resurrect House Bill 1946, which in turn, simply rehashed the same old pattern in past bills spanning over almost a decade, all of which were killed in committee. Having corrupted and subverted the intentions of a bill Relating to Sustainability, what is proposed under HD1 is actually a threat to that very goal.

It is offensive that the members listed in this "sustainability partnership" include the likes of LURF, HFB and BTC whose record in support of the plantations and development we are all aware of, but fails to include the very people who are already practicing sustainability on many fronts, including the Hawaii Farmers Union, the Taro Security and Purity Task Force, the UH Maui College Sustainable Living Institute of Maui (SLIM)

which is highly regarded on a national level, or any environmental or Native Hawaiian representatives.

HB 2671 HD1 is an unnecessary, ill-conceived, and ultimately unlawful amendment to the public trust doctrine for the benefit of a handful of corporate agricultural special interests. I strongly urge you to kill this bill.

Penny Levin
Wailuku, Maui

Testimony on H.B. 2671, Relating to Sustainability

House Committee on Higher Education
Attn. Scott Nishimoto

It is interesting that this bill is being held in a higher education committee, since the portion of the bill relating to water, is evidence of a lack of education about principles of water resource protection and management. As a person who participated in drafting the water code, I know that special interests, including agriculture (especially big agriculture), tried hard to make agriculture a top priority. As a farmer I understand the reasons behind this, but I also understand that there is nothing without protection of the resource. This is obvious for groundwater, which must not be contaminated or over pumped. Unfortunately the Water Commission has made **future** domestic use the top priority for groundwater. In other words, future housing developments are more important than agriculture.

So the focus is now on stream diversions as sources of water for agriculture, and Hawaii has a long history of stream diversions. Taro diversions kept the water within the watershed, within the ahupua'a. Sugar diversions did not. The Waiahole water case was the first time that the notion of water going to the ocean as a waste of water was seriously questioned, and the first time that the ecology of streams and their interaction with the ocean was looked at. While this is still an understudied subject, it is known that freshwater is critical to ocean ecosystems, and if we are serious about sustainability then we need to protect our streams. That is what the concept of the public trust is all about-protecting ecosystems, because we are part of them.

If agriculture is important to a sustainable future, and it obviously is, then we need to rethink the role of urban development, and the extraordinary power that it has to appropriate prime land and water resources.

Change this bill or vote no.

Thank you,
Charles Reppun, farmer

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 13, 2012 11:31 PM
To: HEDtestimony
Cc: Kealii8@hotmail.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Kealii Makekau
Organization: Individual
E-mail: Kealii8@hotmail.com
Submitted on: 2/13/2012

Comments:
People Please Leave the water alone!

nakashima2 - Susie

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 14, 2012 7:46 AM
To: HEDtestimony
Cc: lanipetrie@aol.com
Subject: Testimony for HB2671 on 2/14/2012 2:00:00 PM

Testimony for HED 2/14/2012 2:00:00 PM HB2671

Conference room: 309
Testifier position: Support
Testifier will be present: No
Submitted by: Lani C. Petrie
Organization: Individual
E-mail: lanipetrie@aol.com
Submitted on: 2/14/2012

Comments:

nakashima2 - Susie

From: randy ching [oahurandy@yahoo.com]
Sent: Tuesday, February 14, 2012 7:48 AM
To: HEDtestimony
Subject: in strong opposition to HB2671, HD1 -- relating to sustainability

HB2671, HD1 (strongly opposed)
House Higher Education Committee
Hearing on Tuesday, February 14 at 2:00 p.m. in conference room 309

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

I am testifying in strong opposition to HB2671, HD1 which seeks to undermine the public trust doctrine for the benefit of private special interests. The State Water Code is clear that water belongs to the public, not to private interests.

Please respect the public trust doctrine as established in our state Constitution and affirmed by our Supreme Court and kill HB2671, HD1.

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

Thank you for this opportunity to testify.

Sincerely,

Randy Ching
Honolulu
oahurandy@yahoo.com

nakashima2 - Susie

From: Lucienne de Naie [laluz@maui.net]
Sent: Tuesday, February 14, 2012 9:02 AM
To: HEDtestimony
Subject: OPPOSITION TO HB 2671, HD1

HOUSE COMMITTEE ON HIGHER EDUCATION
ATTN: CHAIR SCOTT NISHIMOTO

Testimony Opposing HB 2671, HD1, Relating To Sustainability

February 14, 2012, 2 p.m.
Conference Room 309

Aloha Chair Nishimoto and committee members

As a resident of Maui I strongly oppose House Bill 2671 HD1. Please respect our existing laws and hold this bill.

I am very disappointed that this bill has been manipulated to include language attempting to overturn the public trust doctrine governing water resources in Hawai'i.

For years these resources have suffered neglect and exploitation. Large-scale Agricultural use wastes tremendous amounts of water needed to recharge aquifers and maintain healthy watersheds. This bill will not change that. It will only perpetuate a very UN-sustainable status quo. Our diversified agriculture deserves adequate water supplies, but this bill is not the way to achieve that goal.

There is nothing "sustainable" about how our natural water resources have been allocated over the last 150 years. Please restore the people's trust in their elected leaders and hold this misinformed version of HB2671.

Lucienne de Naie
PO BOX 610
Haiku, HI 96708