



UNIVERSITY
of HAWAII
MĀNOA

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SB 3003 SD1
RELATING TO GEOTHERMAL RESOURCES

Senate Committee on Commerce & Consumer Protection
Senate Committee on Ways & Means
Public Hearing – Wednesday, February 29, 2012
10:00 a.m., State Capitol, Conference Room 211

By
David Penn, Environmental Center
COMMENTS ONLY

Dear Chair Baker, Chair Ige, Vice Chair Taniguchi, Vice Chair Kidani, and committee members,

The Environmental Center is currently responding to a request from the Environmental Council to submit comments and provide support on the proposed amendments to the exemption list submitted by DLNR relating to geothermal exploration. The exemption list, upon Council approval, establishes specific types of actions that may be declared exempt from the preparation of an environmental assessment “because they will probably have minimal or no significant effects on the environment.” Hawaii Revised Statutes § 343-6(2). The proposed amendments that DLNR presented to the Council’s Exemption Committee on February 16, 2012, include “[i]ssuance of mining or surface leases on State or reserved lands pursuant to HRS Chapter 182-4, 182-5, or 171-13, for purposes of conducting geothermal exploration activities.”

In order to complete our response to the Environmental Council, the Environmental Center seeks clarification of the legislature’s intent for SB 3003. In Section 2 of SD1, proposed amendments to HRS § 182-1 define “Mining lease” as “a lease of the right to conduct mining operations, including geothermal resource exploration or development, on state lands . . . ,” and “Mining operations” as “the exploration or development of any and all geothermal resources” Due to the use of “or” in these proposed definitions, it is not clear to us whether or not this amendment intends to authorize DLNR to issue (1) a single lease that covers both geothermal exploration and geothermal development activities, (2) separate leases for geothermal exploration and geothermal development, or (3) both (1) and (2). We note that a proposed

amendment to HRS § 182-6 would provide separate authority for DLNR to issue “an exploration permit for geothermal resources.” Why would both permitting and leasing for geothermal exploration be necessary or desirable?

DLNR has acknowledged that an environmental assessment would be required for post-exploration geothermal development activity. However, if a mining lease that covered both the exploration and development activities was the basis for the initial exploration, and operated to confer a sort of development right on the lessee, then some might argue that it would be prudent to require an environmental assessment at the outset of the leasing process.

Thank you for considering our testimony on this proposed legislation. Please note that our testimony is advisory only and should not be construed to represent an official institutional position of the University of Hawaii.



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The Office of Hawaiian Affairs (OHA) **OPPOSES** SB3003 SD1, which would amend several chapters of current statute to allow greater geothermal resource exploration and development.

OHA appreciates the effort to streamline alternative energy exploration and believes that SB3003 SD1 addresses many former concerns about ensuring proper assessment of environmental impacts. However, the bill still undoes an entire area of law created to respond to the unique hazards created by geothermal exploration and development, and to ensure opportunity for public comment in the affected communities.

Notably, this draft has removed the section exempting geothermal exploration from the Environmental Assessment and Environmental Impact Statement requirements of HRS § 343. Creating this exemption would have drilled a hole through layers of cultural and environmental protections established by this legislature over many years. DLNR is currently seeking an exemption from the environmental review process through the Environmental Council exemption process as indicated by the Environmental Council Exemption Committee Meeting Agenda of February 16, 2012. This agency is the proper authority to determine whether such a sweeping exemption is appropriate, as it has the expertise to carefully consider the cultural and environmental hazards inherent in exploration and development of varying degrees.

However, SB3003 SD1 also proposes repealing the subzone provisions in HRS § 205, which would completely controvert the intent of this legislature to assure that geothermal development would only occur "in areas of the lowest potential environmental impact." Act 296, § 1, 1983 Haw. Sess. Laws 636. Moreover, it is unclear what protections will remain for the most fragile areas of the conservation district if geothermal resource exploration and development are labeled as permitted uses in all zones of the conservation district.

The full range of geothermal exploration and development environmental impacts remain yet unknown. It is unwise to experiment with risky technology in the

most sensitive of protected regions, including fragile watershed areas and the habitats of threatened or endangered animal and plant species. Further, since geothermal exploration and development may result in emission of noxious gases and noise and ground surface disturbance, the geothermal resource subzone provisions currently in place provide a necessary additional layer of protection and procedural safeguards. These include a public hearing in the proposed affected community and an opportunity for contested case hearing.

Therefore, OHA urges the committee to HOLD SB3003 SD1. Mahalo for the opportunity to testify on this important measure.

