

SB 2667

**LATE
TESTIMONY**



LAND USE RESEARCH
FOUNDATION OF HAWAII

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February 7, 2014

Senator Malama Solomon, Chair
Senator Brickwood Galuteria, Vice Chair
Senate Committee on Water and Land

Senator Will Espero, Chair
Senator Rosalyn Baker, Vice Chair
Senate Committee on Public Safety, Intergovernmental and Military Affairs

Testimony in Strong Opposition to SB 2667, Relating to State Water Code (Requires a private person or entity to obtain a permit to withdraw ground water in certain counties. Establishes certain counties as a designated water management areas.)

Friday, February 7, 2014, 9:39 a.m., in Conference Room 312

The Land Use Research Foundation of Hawaii (LURF) is 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 provide testimony **in strong opposition to SB 2667**, and to offer comments.

SB 2667. The intent and purpose of this bill seems to be related to addressing drought conditions on the Island of Hawaii and a vague reference about the taking of a public resource by private parties. The changes to the Water Code proposed by this bill are as follows:

“SECTION 2. ...any county with a population of less than two hundred twenty-five thousand shall be designated as a water management area for the purpose of establishing administrative control over ground water withdrawals by private persons or entities.”

“SECTION 3. ...A permit shall be required for ground water withdrawals by private persons or entities in any county with a population of less than two hundred twenty-five thousand. A ground water withdrawal permit shall not

exceed a two year period, subject to renewal at the discretion of the commission. A fee of \$ _____ shall be assessed and collected for the issuance and renewal of a permit.

...provided that the commission shall not delegate authority over ground water supply for any county with a population of less than two hundred twenty-five 20 thousand.“

LURF’s Position. LURF members include a diverse group of private property owners, farmers and ranchers, resort and residential developers, commercial and industrial land owners and other diverse enterprises that work with the State Commission on Water Resource Management (CWRM) and the various county boards of water supply on programs for the development, conservation, protection, control and regulation of water resources, pursuant to the State Water Code, Hawaii Revised Statutes Chapter 174C (“State Water Code”).

LURF strongly opposes SB 2667, based on the following grounds:

- **Bill 2667 violates the spirit, intent and purpose of the State Water Code, which was to provide for comprehensive water resource planning to address the problems of supply and conservation of water.** LURF understands that for over a decade, the Legislature engaged in deliberate process, much discussion on different approaches, and passed the State Water Code. The Legislature created the State Water Code and the CWRM, based on the premise that there should be one central agency, with the technical knowledge to make decisions about Hawaii’s water resources (including the designation of water management areas), in accordance with the State Water Code and law. It was never the spirit, intent or purpose of the State Water Code to allow the Legislature to designate water management areas across the State.
- **Bill 2667 violates the specific provisions of the State Water Code, by ignoring and violating the specific statutory requirements and process for designation of water management areas.** This bill unilaterally designates entire counties with a population of less than two hundred twenty-five thousand (every Neighbor Island county) as water management areas, and thus violates the provisions of HRS Section 174C-41 of the State Water Code, which sets forth the following specific criteria for designating water management areas:

§174C-41 Designation of water management area. (a) When it can be reasonably determined, after conducting scientific investigations and research, that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water, the commission shall designate the area for the purpose of establishing administrative control over the withdrawals and diversions of ground and surface waters in the area to ensure reasonable-beneficial use of the water resources in the public interest.

(b) The designation of a water management area by the commission may be initiated upon recommendation by the chairperson or by written petition. It shall be the duty of the chairperson to make recommendations when it is desirable or necessary to designate an area and there is factual data for a decision by the commission. The chairperson, after consultation with the appropriate county council, county mayor, and county water board, shall act upon the petition by making a recommendation for or against the proposed designation to the commission within sixty days after receipt of the petition or such additional time as may be reasonably necessary to determine that there is factual data to warrant the proposed designation.

The Legislative designation of a water management area as provided in SB 2667, violates the specific provision of HRS Section 174C-41, because,

- the designation of a water management area was not initiated upon recommendation by the chairperson or by written petition
- there is no scientific investigations and research to justify the water management area designation;
- there is no factual data presented based on such scientific investigation and research;
- there has been no consultation with the appropriate county council, county mayor, and county water board;
- there is no reasonable determination (after conducting scientific investigations and research), that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water; and
- there is no recommendation from the CRWM chairperson for or against the proposed designation.

This bill skips the designation process that was carefully crafted in the State Water Code and sweeps in every island except Oahu, based solely on population count, not based on scientific data and determinations regarding the condition of the island's water resources or usage.

- **SB 2667 is unnecessary, as the State Water Code provides an existing process to resolve the concerns identified in the bill.** One of the main concepts of the State Water Code is that the State should regulate specific uses of water only when water resources are in crisis. Thus, the State Water Code provides a process for resolving water problems on Hawaii Island relating to drought and issues relating to the private withdrawal of water. If there are water problems on Hawaii Island, then a petition to designate a water management

area should be put forth to the CWRM pursuant to the State Water Code. Another possible alternative could be to make a request to CWRM to establish a working group to specifically address those issues in affected areas on Hawaii Island.

- **SB 2667 will create harsh unintended consequences - uncertainty and unfairness for those who work with the CWRM and counties with groundwater development.** The bill also limits ground water permits to a two-year term of certainty—this will discourage ground water development as the cost of drilling a well and the necessary pipelines/tanks to service the area of need is significant, and everyone-- even boards of water supply—will have difficulty justifying that kind of investment with only two years of certainty of use.
- **Implementation of SB 2667 will require a major State appropriation.** If this bill passes, CWRM will need a significant amount of additional funding to implement this bill—significant administration is needed in water management areas as permits must be issued and managed for every user and use of water.

The bottom line is that the State Water Code was established to handle statewide water concerns. While well-intended, this measure is over-reaching, serves to by-pass the State Water Code and impose water regulations on areas simply by virtue of their population base—with no regard to the specific facts and scientific data regarding water resources and water use.

For the reasons stated above, LURF **must strongly oppose SB 2667**, and respectfully requests that this bill be held in your Committees.

Thank you for the opportunity to present testimony regarding this matter.



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February 7, 2014

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY
AFFAIRS
TESTIMONY ON **SB2667**
RELATING TO STATE WATER CODE
Room 225
1:00 PM

Aloha Chair Solomon, Chair Espero, and Members of the Committees:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,832 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 recognizes the intent of this measure to ensure that our precious water resources are used wisely. However, the processes proposed exist under the current Water Code.

Hawaii Farm Bureau respectfully **opposes SB2677** requiring certain entities to obtain a permit to withdraw water and to establish certain counties as designated water management areas on the following grounds:

There is already a requirement for permits prior to construction and installation of wells and well pumps with enforcement provisions available.

To wit:

§174C-84 Permits for well construction and pump installation. (a) No well construction and no installation of pumps and pumping equipment shall commence without appropriate permit from the commission. An application for a permit for well construction shall be required for all areas of the State

Regarding the designation of all counties except Oahu as water management areas, one wonders if CWRM has the resources to manage an area so large. Additionally, it appears that this change would circumvent the process outlined in **§174C-4** by which water management areas are currently designated with county input and a public CWRM process. Hawaii Farm Bureau believes that an open and collaborative process is a necessary, albeit often cumbersome, step to ensure that all legitimate concerns are adequately addressed when managing this critically important resource, excepting times of emergency.

Bolstering CWRM resources and facilitating enforcement of existing laws may be a better solution.

Thank you for the opportunity to offer our comments on this measure.