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**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON FINANCE**

March 4, 2015  
1:30 P.M.  
CONFERENCE ROOM 308

**HOUSE BILL NO. 1372, HOUSE DRAFT 1  
RELATING TO PUBLIC UTILITIES**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1372, HD 1. The purpose of this bill is to exclude from the definition of public utility, any person who provides water solely to agricultural activities. Agricultural activities are to be defined as those activities for which:

1. A majority of the area of the lot of record is currently in crop, livestock, or aquaculture activities as defined in Chapter 205,
2. A Schedule F was filed on a federal income tax return by a taxpayer who is engaged in the aforementioned agricultural activities and uses, and
3. The lot of record is encumbered by a valid county agriculture tax dedication status or a valid agricultural conservation easement.

Traditional native Hawaiian agricultural practices also qualify as an agricultural activity.

The Department of Agriculture supports this measure that clarifies and strengthens the definition of acceptable agricultural activities.

Thank you for the opportunity to comment on this measure.





**HB1372 HD1**  
**RELATING TO PUBLIC UTILITIES**  
Senate Committee on Finance

March 4, 2015

1:30 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** for HB1372 HD1, which exempts certain purveyors of agricultural water from regulation by the Public Utilities Commission.

Since time immemorial, our islands' fresh water resources have been considered part of the public trust, to be managed and administered for the public benefit rather than for private gain. The Hawai'i Supreme Court has accordingly held time and time again that the state, through its agencies, has an affirmative duty to uphold this trust, and to ensure that private entities are not allowed to unduly benefit from one of our most precious natural resources.<sup>1</sup> While the state Commission on Water Resources Management (CWRM) has primary jurisdiction and responsibility over ensuring the appropriate use of our islands' water supply, CWRM's water use permitting jurisdiction is restricted to those regions designated as ground- or surface- water management areas, which currently cover only a fraction of our islands. Thus, all agencies have an independent responsibility to uphold the public trust in water, when relevant to their functions.<sup>2</sup>

OHA notes that it is unclear whether a categorical exemption to Public Utilities Commission (PUC) oversight for agricultural water purveyors is necessary or useful at this time. However, any such categorical exemption, if issued, must be carefully tailored to ensure that private water purveyors are not allowed to profiteer from their control of public trust water resources. In some cases, the price controls and public processes within the purview of the PUC may be the few, if not the only, means for the state to prevent such profiteering and uphold the public trust in water. Particularly given the growing demand for water throughout the state, as well as the anticipated reduction of our surface- and ground- water supplies due to sea level rise and reduced rainfall patterns, such regulatory oversight may be critical to ensuring that our water resources are appropriately and wisely distributed in the years ahead.

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<sup>1</sup>*Kauai Springs Inc. v. Planning Comm'n*, 133 Haw. 141 (2014); *In re 'Īao Ground Water Management Area High Level Source Water Use Applications, et al*, 128 Hawai'i 228 (2012); *In re Kukui Moloka'i*, 116 Hawai'i 481 (2007); *Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205 (2006); *In re Wai'ola o Moloka'i*, 103 Hawai'i 40 (2004); *In re Waiāhole Combined Contested Case Hr'g*, 94 Hawai'i 97 (2000); *McBryde Sugar Co. v. Robinson*, 54 Haw. 174 (1973).

<sup>2</sup> *Kaua'i Springs*, *supra* note 1; *1250 Oceanside Partners*, *supra* note 1.

Accordingly, in order to ensure that the exemption proposed in this measure is sufficiently narrow to mitigate any undue exploitation of our water resources, OHA strongly urges the Committee to amend page 10, lines 7-15, to read as follows:

- (ii) For each lot of record, a schedule F was filed on a federal income tax return by a taxpayer who is engaged in the agricultural activities and uses on that lot as described in clause (i) for each lot of record; and
- (iii) Agricultural activities are the primary purpose for the holding of each lot of record as evidenced by possession of a valid county agricultural tax dedication status or a valid agricultural conservation easement.

Mahalo for the opportunity to testify on this measure.

## HOUSE COMMITTEE ON FINANCE

### TESTIMONY ON HOUSE BILL NO. 1372 RELATING TO PUBLIC UTILITIES

Submitted by Robbie Alm  
President, Collaborative Leaders Network

Chair Luke and Members of the House Finance Committee:

This bill is intended to exempt from regulation by the Public Utilities Commission (PUC) a small and important situation, the provision of water in a solely agricultural situation. If, for example, a landowner uses its water systems solely to provide water for farmers on its lands, they should not be regulated as a public utility. The PUC has to date taken that view but there is concern that a future PUC might take a different view and choose to regulate this activity. And because of that concern, water is simply part of the rent or some form of maintenance charge. It is not, as it could be, the subject of incentives to encourage the efficient use of water.

If this activity is exempted, it is expected that many landowners will find ways to increase the efficient use of water by, for example, charging less for those who use water at night rather than in the middle of the day which is when most is used today even though use at that point is the most wasteful.

In discussing this with the former chair of the PUC, there was a strong desire to ensure that the exemption applied only to farming interests. The definition of "qualified agricultural activities" was intended to separate out true farming from the so-called "gentlemen farmers." That could be made even more clear if the language that began this provision is restated on page 9, lines 19 to 20 of H.B. 1372, H.D.1 to the following: "Any person whose sole purpose is to provide irrigation water for agricultural purposes" followed by the "For purposes of this subparagraph....." provision.

Finding as many ways as possible to support the activities of farmers is critical as we all work to significantly increase the amount of food grown locally. This bill is a part of that work and I urge your favorable adoption of it with the suggestion set forth above.

Thank you for the opportunity to testify on this bill.