

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
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

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the House Committees on  
WATER AND LAND  
and  
ENERGY & ENVIRONMENTAL PROTECTION

Monday, February 8, 2016  
11:00 AM  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 2031  
RELATING TO WATER

House Bill 2031 proposes to amend Chapter 174C, Hawaii Revised Statutes (HRS), to include a new section that would require, no later than January 1, 2025, only non-potable recycled wastewater to be used for agricultural cultivation, certain specified irrigation uses, and the operation of decorative fountains. **The Department of Land and Natural Resources (Department) opposes this measure for the following reasons.**

Under Chapter 174C, HRS, the Department's Commission on Water Resource Management (Commission) only has the authority to restrict the use of state waters in designated water management areas. In non-designated areas, where water use permits are not required, a shared use doctrine and common law rights prevail. Under the common law, owners of land overlying a ground water source have the right to use that water on the overlying land, as long as the use is reasonable and does not injure the rights of other overlying landholders. Riparian rights are rights of land adjoining natural watercourses and are the surface water equivalent of correlative rights to ground waters; i.e., the use has to be on the riparian lands, the use has to be reasonable, and the exercise of those rights cannot actually harm the reasonable use of those waters by other riparian landowners. The amendment proposed under this bill would be in direct conflict with the regulatory scheme and authorities under the State Water Code, as well as common law.

In designated water management areas, an analysis of alternatives is required to obtain a water use permit. Section 174C-49(a), HRS, requires permit applicants to demonstrate the absence of practicable mitigating measures, including the use of alternative water sources (such as recycled

wastewater). In its determination of instream flow standards, Section 174C-71(1)(E), HRS, requires the Commission to consider use of alternatives and other various physical solutions, whether or not an area has been designated a water management area. Therefore, there are existing provisions for an alternatives analysis in the current law.

The Commission has no authority or jurisdiction over the development and use of reclaimed water and defers to the Department of Health (DOH) regarding their rules, regulations, standards and guidelines on recycled water use.

In addition, DOH has just released its updated Reuse Guidelines (January 2016). The Reuse Guidelines identify areas within the State where recycled water application is conditional and restricted. Conditional Areas are areas where recycled water application is currently allowed, but may, in the future, be subject to monitoring requirements or restrictions. Restricted Areas are areas where recycled water application is prohibited. It is very likely that the some of the specified purposes that are subject to this mandate are located in Conditional and Restricted Areas.

There are insufficient quantities of recycled wastewater available to meet all the specified purposes. For example, the 27,000 acres on Maui alone that have been designated Important Agricultural Lands are supported by about 140 million gallons of water per day on average. This far exceeds the amount of wastewater that could be available for potential reuse. Even with a transition to less thirsty crops, there would still be insufficient recycled wastewater available to meet the agricultural needs of the Central isthmus, along with other agricultural and urban irrigated lands on Maui. The same situation would apply to other islands as well.

“Agricultural cultivation” should be clarified. Agricultural cultivation does not necessarily include the irrigation component of agriculture, which is the largest component of agricultural water use. In addition, agriculture could include small backyard subsistence farms and lo‘i kalo to very large-scale corporate operations.

The specified purposes mandated for recycled wastewater use occur throughout the State. Many of these purposes are not proximal to a wastewater reclamation facility or within or near the service areas of existing recycled water distribution systems. In order to satisfy this mandate, either reclaimed water would have to be trucked in to each site on a regular basis or separate dual water systems or many new wastewater reclamation facilities would have to be constructed throughout the State, which would be extremely costly. There are also costs associated with operation and maintenance of these systems. Unless the State appropriates funds to provide the recycled wastewater source and retrofit existing developments to install dual water systems, the proposed amendment would amount to an unfunded county mandate. An appraisal of opportunities and a feasibility study with cost-benefit analysis should be conducted to provide a better understanding of the human, financial and technological resources that would be needed to meet this requirement and the likelihood of success.

Agricultural operations in particular operate on very thin profit margins. Recycled wastewater is relatively costly compared to conventional supplies. As our State strives to achieve greater food

and fuel security (including biofuels), it would not be prudent to increase agricultural water costs to the point where agricultural production becomes unprofitable and unviable. Similarly, in the case of schools, which are already underfunded and struggling, consideration needs to be given to the opportunity costs associated with a recycled water mandate. Policies or programs to subsidize the cost of recycled wastewater should be considered.

We note that Act 229, Session Laws of Hawaii 2015, appropriated funds for the Airports Division of the Department of Transportation to conduct a feasibility study on the use of water scalping technology in State airport facilities and to develop a process design for the processing portion of the implementation of water scalping technology. A similar bill, Senate Bill 2097, has been introduced this session for the Department of Public Safety, Corrections Divisions' Halawa Correctional Facility. We respectfully recommend that these studies be allowed to be completed and better information obtained regarding the feasibility of scalping projects before establishing such a broad mandate regarding recycled wastewater use.



P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail info@hfbf.org; www.hfbf.org

February 8, 2016

HEARING BEFORE THE  
HOUSE COMMITTEES ON WATER AND LAND  
and  
ENERGY AND ENVIRONMENTAL PROTECTION

TESTIMONY ON HB 2031

Room 325  
11:00 AM

Aloha Chairs Yamane and Lee, Vice Chairs Cullen and Lowen, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

**Hawaii Farm Bureau has concerns about this measure that will, in less than 9 years, prohibit farmers and ranchers from using groundwater, surface water, or even treated rainwater to produce food and energy.**

Farmers need stability and some assurances that water, their most necessary requirement, will be available in case of unavailability of rain or during our now frequent drought conditions.

We understand the intent of the bill and wish that technology, adequate wastewater treatment facilities and proximity of farms and ranches to those facilities, food safety, geography, gravity, and cost concerns could be all be addressed with mandates such as this; however, we are concerned that it may not be that easy. This well-intentioned bill may be premature.

Thank you for your consideration of our concerns.

**LARRY JEFTS FARMS, LLC  
PO BOX 27  
KUNIA, HAWAII 96759  
(808) 688-2892**

HB 2031, Relating to Water  
House WLA/EEP Committee - Monday, February 8, 2016  
11:00 am - Conference Room 325

**Written Testimony by: Larry Jeffs  
Position: Support**

Chair Yamane and Chair Lee, and Members of the House WAL/EEP Committee:

I am Larry Jeffs, owner and operator of Larry Jeffs Farms, LLC, which is part of our family-run business of farms on Oahu and Molokai, under the administrative umbrella of Sugarland Growers, Inc. We have more than 35 years of Hawaii farm experience on Molokai and Oahu.

Support is given for this bill that proposes a mandate for the use of nonpotable recycled wastewater for certain purposes by 1/1/2025, including the use for agriculture cultivation, but does not prohibit the use of untreated rainwater for irrigation purposes.

Accessible and affordable land and water are needed for agriculture in Hawaii. The use of well water is expensive because in addition to digging the well, the water must be pumped to the crops using electricity. Recycled or reclaimed water, surface water, is a less expensive way to water crops. It is safely used on many mainland crops imported to Hawaii markets.

Reclaimed water alleviates the unnecessary cost and use of potable water for agriculture. In times of drought, the appropriate use of treated water for agriculture and other uses is critical in managing scarce water resources.

Thank you for the opportunity to submit testimony.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 06, 2016 3:29 PM  
**To:** waltestimony  
**Cc:** dylanarm@hawaii.edu  
**Subject:** \*Submitted testimony for HB2031 on Feb 8, 2016 11:00AM\*

**HB2031**

Submitted on: 2/6/2016

Testimony for WAL/EEP on Feb 8, 2016 11:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan Armstrong	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov



**Testimony COMMENTING on HB2031  
RELATING TO WATER**

REPRESENTATIVE RYAN I. YAMANE, CHAIR  
HOUSE COMMITTEE ON WATER & LAND

Hearing Date: February 8, 2016  
Time: 11:00 am

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The Department supports the intent of this bill and has the following  
3 comments to offer. The Department has long been an advocate for the use of recycled water  
4 which has increased in significance due to the state's growing population, limited drinking water  
5 resources, and wastewater disposal issues.

6 Restricting certain activities to using only non-potable recycled wastewater may prove  
7 infeasible and cost prohibitive for areas that are relatively small in size, use a relatively small  
8 volume of water, or located far from a source of recycled wastewater. In an effort to address  
9 these concerns, the County of Maui requires commercial properties to use recycled wastewater if  
10 it is available. Their ordinance also provides for exemptions where the use of recycled  
11 wastewater presents an unreasonable economic burden. Finally, requiring only recycled  
12 wastewater may unintentionally preclude the use of other important sources of non-potable water  
13 such as stormwater runoff.

14 Thank you for the opportunity to testify on this measure.