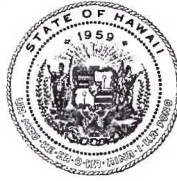


DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE COMMITTEE ON WATER, LAND, AND AGRICULTURE**

Providing comments on

**SB 3001 RELATING TO THE WATER RIGHTS**

**LATE**

February 10, 2016

Aloha Chair Gabbard and members of the Committee,

The Department of Hawaiian Home Lands (DHHL) provides the following comments at this time:

DHHL has beneficiaries in up country Maui that are dependent on this source of water. In addition we have a responsibility to beneficiaries who have a right to water from these originating watersheds.

DHHL is concerned that under the previous license/lease that the fees for the license/lease was set artificially low and that DHHL has not received a fair share of the revenue generated. This concern continues as a holdover revocable permit perpetuates this situation.

Should the Land Board approve a holdover revocable permit, it should not be allowed to exceed one year and should be reviewed until the matter is resolved in court.

In addition SB 3001 should be amended to remove the word "further" from the sentence on line 14, page one, as it removes the Land Board's authority to cancel or allow to expire, the license/lease/revocable permit. The inclusion of this word, leaves it up to a two-thirds vote of either the senate or the house of representative or by majority vote of either to disapprove of the disposition.

Thank you for your consideration of our testimony



# SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE COMMITTEE ON WATER AND LAND

Wednesday February 10, 2016 3:30PM Room 224

In **Opposition** **SB3001** Relating to Water Rights

**LATE**

Aloha Chairman Gabbard and members of the Senate WLA Committee,

The Sierra Club of Hawai'i strongly opposes SB3001/HB2501. If passed, this bill would allow one corporation to divert millions of gallons of public water from the streams of East Maui, desiccating the native ecosystem and undermining traditional farming.

The Sierra Club of Hawai'i has worked on behalf of our 12,000 members and supporters for decades to halt the diversion of public water from East Maui streams by Alexander and Baldwin Corporation. Their historic and ongoing theft of public water is destroying stream ecosystems, cheating taxpayers, and undermining public health. Continuing this theft of public water is not necessary and will not ensure future diversified agriculture on Maui.

#### **HB2501/SB3001 WOULD FURTHER DESTROY STREAMS**

This bill would create a new kind of permit to allow A&B to divert water from public streams with no limitations on the amount or duration of the diversion. A&B's current water diversions take all of the water from several East Maui streams. This means lush river ecosystems once abundant with native plants and fish have been turned into dry rock beds with murky puddles of stagnant water. While the harm of this de-watering of our streams is plain to see, the practice has never undergone any kind of environmental review.

#### **HB2501/SB3001 WOULD FURTHER CHEAT TAXPAYERS**

HB2501/SB3001 is silent on the issue of payment for the "hold-over" permit. As it is now, the people of Hawai'i receive almost no financial compensation for the taking of their water. Since the 1980's, A&B has paid only \$160,000 to the State to use 33,000 acres of public land and to take 164 million gallons of water everyday. That amounts to less than \$5 per acre per year and less than ¼ of one penny per 1,000 gallons of water.

For context, A&B sells some of its privately owned water to the County of Maui for residential use. A&B charges Maui County \$2 million every year for 9 million gallons of water per day. This water is not affected by the court decision on the hold-over status of A&B's permits, as the Court granted their request for a stay of the decision as it pertains to Upcountry residents.

Passing HB2501/SB3001 would continue this practice of publicly subsidizing the profit-making of a multi-billion dollar company.

**HB2501/SB3001 WOULD INCREASE THE RISK OF MOSQUITO-BORN ILLNESSES**

A&B's practice of dewatering streams in East Maui creates breeding grounds for mosquitoes, posing a significant risk to public health. A 2008 report by the Commission on Water Resource Management on the condition of the East Maui streams found that:

"Stagnant water in the streams results in increased mosquitoes, which may lead to increased risk in dengue fever or other mosquito-borne illnesses. Stagnant water may also increase the risk of skin disease from the water."

It is irresponsible to continue to allow A&B to divert the public's water at the risk of spreading dangerous diseases like dengue and zika.

**HB2501/SB3001 IS NOT NEEDED, A&B HAS A LOT OF PRIVATE WATER**

A&B does not need to take the public's water. First, A&B has at least 20 million gallons per day of water from Na Wai Eha, and over 80 million gallons of water a day from private sources they control. Second, A&B admits to wasting at least 35 million gallons a day of water because their diversion pipes are old and leaky.

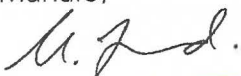
**HB2501/SB3001 WOULD NOT ENSURE THE FUTURE OF AGRICULTURE ON MAUI**

Some claim that HB2501/SB3001 is necessary to ensure the future of agriculture on Maui. This is not true. Restoring the streams of East Maui will not prevent farmers of the future from requesting access to public water through the established formal process. It is the responsibility of Hawai'i's Water Commission to issue permits for the use of public water. In the process of making these decisions, the Water Commission is required to balance the needs of the stream ecosystem and traditional taro farmers with new requests to use public water. This is the best way to ensure our native ecosystem and unique culture are protected.

Right now is the perfect time for Maui to encourage diversified agriculture that complements current environmental conditions and serves the needs of their community. Advancing HB2501/SB3001 now would squander this once-in-a-generation opportunity to design engineer a successful agricultural community.

For these reasons, we strongly urge you to defer this measure. Thank you for the opportunity to testify.

Mahalo,



Martha Townsend

Director

**KAPAPALA RANCH**

**P. O. Box 537  
Pahala, Hawaii 96777  
808-936-2922**

RR

February 16, 2016

Honorable Senator Mike Gabbard  
Honorable Senator Clarence Nishihara  
Honorable Senator Russell Ruderman

**Subject: Objection to SB 3001**

SB 3001 is farther reaching than HC&S on Maui. Please consider the other Revocable Permits for water.

In our case it is RP S-7054, Makakupu Tunnel which was built in 1920 by the plantation. Ka'u Agribusiness operated the sugar company and the ranch for over 100 years. When my father took over Kapapala Ranch in 1977, the distribution of water from Makakupu was almost nothing due to age of the pipelines and landslides in the Tunnel. We have invested greatly in 80 miles of pipelines, 10 million gallons of water storage for GL 5374, RP 7637, and RP 7758.

The Star Bulletin reporters on February 14, 2016 are most uninformed. Senator Ruderman can attest to the difficulty of distributing water on this State property as he has been willing to see the ranch from the air and from 4-wheel drive vehicles.

On top of our efforts to maintain a source of water for the ranch (and endangered birds, game birds, wildlife, wildfires), we and the agricultural community in Ka'u have worked relentlessly for the past 10 years to form the Ka'u Agricultural Water Cooperative District. The purpose of the cooperative was to secure tenure on water sources that could serve the agricultural community in Ka'u.

We believed in Act 90, passed in 2003. It provided a framework whereby agricultural leasees could have stability in their tenure and equity in their lease. Nothing has come of Act 90 except the investment that we have made believing our leases would transfer to the HDOA.

Sincerely,

KAPAPALA RANCH

*Lani C. Petrie*

**Lani C. Petrie**

February 10, 2016

Water, Land and Agriculture Committee  
Chair Senator Mike Gabbard  
Vice Chair Senator Clarence Nishihara

**RE: BRIEF EXTENDED REMARKS TO WRITTEN TESTIMONY ON SB300  
FROM TOM BLACKBURN-RODRIGUEZ, EXECUTIVE CONSULTANT GO  
MAUI, INC.**

Chair Gabbard and Vice Chair Nishihara,

My name is Tom Blackburn-Rodriguez and I am testifying as the executive consultant for Go Maui, Inc.

Go Maui is a nonpartisan, nonprofit organization focusing on housing, jobs, water, agriculture, economic opportunity and the infrastructure needed to sustain a strong economy, better paying jobs and a vibrant housing market. More information is available on our website [GoMauiInc.org](http://GoMauiInc.org).

Thank you for the opportunity to add brief remarks to my written testimony. I will not repeat what you have already heard on the negative impacts on small farm agriculture, HC&S and central Maui's water supply if **SB3001** is not passed.

Instead, I briefly quote Mark Twain when he described how visitors reacted to what we may see once again if we are not careful.

"They damn the wind, and they damn the dust, and they give all their attention to damning them well, and to all eternity. The blasted winds and the infernal dust - these alone form the eternal topics of conversation..."

Unless we act to preserve the flow of water on Maui this may be the future we may face and our hopes for sustainable agriculture and other uses may only turn out to be idle dreams.

Thank you.

Tom Blackburn-Rodriguez  
Executive Consultant, Go Maui, Inc.  
85 Manino Circle #202  
Kihei, Hi 96753

808-283-4570  
[tominmaui@icloud.com](mailto:tominmaui@icloud.com)

**gabbard2 - Donna**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 12:01 PM  
**To:** WLA Testimony  
**Cc:** alan.takemoto@monsanto.com  
**Subject:** Submitted testimony for SB3001 on Feb 10, 2016 15:30PM

**LATE**

**SB3001**

Submitted on: 2/10/2016

Testimony for WLA on Feb 10, 2016 15:30PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Takemoto	Monsanto	Support	No

Comments: We support the Hawaii Association of Conservation Districts efforts and the important service they provide for the agricultural community.

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**gabbard2 - Donna**

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**From:** Stephanie Strong <Stefstrong@yahoo.com>  
**Sent:** Wednesday, February 10, 2016 9:36 AM  
**To:** WLA Testimony  
**Subject:** Restore Maui's Streams, **Oppose SB3001**

**LATE**

Dear Chairman Gabbard and members of the Senate Committee on Water, Land, and Ag

I strongly oppose SB3001 because it would allow one corporation to circumvent the laws meant to protect our public streams, native stream ecosystems, and traditional farming practices.

This bill would create "hold-over permits" for millions of gallons of water diverted from public streams everyday with no environmental impact statement, no mitigation for the harm caused to native stream ecosystems, and no regard for the farmers that have used that stream water for generations to irrigate their taro crops.

It is not fair for Alexander & Baldwin to bypass the established legal process for requesting use of public water, while the native species and traditional farmers of Hawaii suffer.

We urge you to defer this bill and direct Alexander & Baldwin to follow the regular process for requesting use of our public water.

Thank you.

--  
Stephanie Strong  
Stefstrong@yahoo.com

*Kauike Liinani*



**gabbard2 - Donna**

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**From:** KAULU LU'UWAI <kluuwai2@hawaii.edu>  
**Sent:** Wednesday, February 10, 2016 11:02 AM  
**To:** WLA Testimony  
**Subject:** Restore Maui's Streams, Oppose SB3001

LATE

Dear Chairman Gabbard and members of the Senate Committee on Water, Land, and Ag

I strongly oppose SB3001 because it would allow one corporation to circumvent the laws meant to protect our public streams, native stream ecosystems, and traditional farming practices.

This bill would create "hold-over permits" for millions of gallons of water diverted from public streams everyday with no environmental impact statement, no mitigation for the harm caused to native stream ecosystems, and no regard for the farmers that have used that stream water for generations to irrigate their taro crops.

It is not fair for Alexander & Baldwin to bypass the established legal process for requesting use of public water, while the native species and traditional farmers of Hawaii suffer.

We urge you to defer this bill and direct Alexander & Baldwin to follow the regular process for requesting use of our public water.

Thank you.

--

KAULU LU'UWAI  
kluuwai2@hawaii.edu

**gabbard2 - Donna**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 12:34 PM  
**To:** WLA Testimony  
**Cc:** sea.fire.enchantment@gmail.com  
**Subject:** Submitted testimony for SB3001 on Feb 10, 2016 15:30PM

**LATE**

**SB3001**

Submitted on: 2/10/2016  
Testimony for WLA on Feb 10, 2016 15:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
susan walczak-pol	Individual	Oppose	No

Comments: Please do not pass a law that would legally sanction A&B's attempts to skirt Environmental laws and continue to deprive taro farmers of their Constitutional rights!

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COMMITTEE ON WATER, LAND, AND AGRICULTURE  
Public Hearing on Senate Bill 3001  
February 10, 2016

Veronica Lu'ukia Nakanelua  
2795 Kauhikoalani Place  
Ha'iku, Hawai'i 96708  
luukia.nakanelua@gmail.com

LATE

Good Afternoon, my name is Lu'ukia Nakanelua and I am a lineal descendant of the original proprietors and current tenant of the ahupua'a of Wailuanui, Maui. My 'ohana have farmed kalo and various sustainable crops since ancient times, mauka to makai, along the auwai and lo'i kalo of East Maui, and into the muliwai where waters from the lo'i system discharge and meet the ocean.

I want to thank Chairman Mike Gabbard, Vice Chairman Clarence K. Nishihara, members, and staff of the Committee on Water, Land, and Agriculture for the opportunity to speak to you today about Senate Bill 3001.

I **oppose Senate Bill 3001** because it will directly impact my 'ohana, the East Maui community's Native Hawaiian ("Maoli") rights to our traditional and customary farming and subsistence practices—all of which are characterized as "instream values" that are protected under the Public Trust Principle/Purposes. Chapter 174C State Water Code and HRS 343.

In December 2015, Alexander and Baldwin, Inc. ("A&B") and the East Maui Irrigation Co., Ltd., ("EMI") were unable to renew revocable permits allowing these companies to continue diverting up to 450 million gallons of water a day ("mgd") from East Maui streams, across thousands of acres of state and private lands, to central Maui. Now the state Board of Land and Natural Resources is relying on a notion, not described in any statute, that is can maintain the status quo by simply declaring a "holdover status". The maintenance of the status quo for so long has allowed A&B and EMI to control the permit areas for "a mere \$5-10 an acre per year". For years these stream diversions have come on the backs of Maoli who require water for food security. These diversions also come at the expense of the native stream life.

Despite concerns raised by A&B/EMI/County of Maui/Land Board over potential impacts that ending the holdover status would have on Upcountry Maui and development projects in Central/South Maui, our community has made it very clear that we are not seeking to stop Maui County's use of water from the ditches provided by the East Maui streams via A&B and EMI. The Land Board has a 1938 agreement that gives it the right and ability to use EMI's ditch to transport water. 450 mgd is the ditch's capacity and Maui County utilizes only 8 mgd. That's a tiny fraction. According to the State of Hawai'i Water Code, the rest of the 442 mgd should be put back into the streams for instream values and public trust purposes. Should these companies so desire to access this water for future use, they must seek approval, like everyone else, from the Land Board to renew their revocable permits—instead of merely being designated under a false "holdover status".

In a First Circuit Court ruling in January 2016, Judge Nishimura frowned on the Land Board's authorization of A&B/EMI use of state lands and waters on a "holdover" basis, by stating, "A&B's continuous uninterrupted use of these public lands on a holdover basis for the last 13 years is not the 'temporary' use that HRS Chapter 171 [the state's public land use law] envisions. Otherwise, holdover tenants could arguably be allowed to occupy public lands almost in perpetuity for continuous, multiple one-year periods. Such a prospect is inconsistent with the public interest and legislative intent."

Senate Bill 3001 will allow corporations like A&B/EMI to monopolize water on Maui. Without consistent mauka to makai flow, kalo production, native stream life, and the Maoli way of life will cease to exist. We are not asking for 100% of the water for our community alone. We are asking for justified shares of our water resources so that we may feed our families and ensure that our subsistence way of living will continue for generations to come.

I believe that Senate Bill 3001 does not take steps forward to ensure a future where quality land and natural resources will continue to be available to all Hawai'i citizens. My people and I are trying to restore justice for the injustices of the past using the State Water Code and HRS Chapter 343. I urge you to think of the well-being of our Maoli people, abide by Hawai'i's State laws, and thoroughly analyze the rulings in the East Maui contested case hearings in considering this bill. Please do not allow Senate Bill 3001 to deny our access and connection to our precious water resources. Mahalo.

**gabbard2 - Donna**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 2:59 PM  
**To:** WLA Testimony  
**Cc:** daprice80@gmail.com  
**Subject:** \*Submitted testimony for SB3001 on Feb 10, 2016 15:30PM\*

**LATE**

**SB3001**

Submitted on: 2/10/2016  
Testimony for WLA on Feb 10, 2016 15:30PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Davis Price	Individual	Oppose	Yes

Comments:

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**gabbard2 - Donna**

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**From:** Terry Travis <ttravis@hawaiiintel.net>  
**Sent:** Wednesday, February 10, 2016 3:16 PM  
**To:** WLA Testimony  
**Subject:** Please defer SB3001 & help restore the public's water

**LATE**

Dear Chairman Gabbard and members of the Senate Committee on Water, Land, and Agriculture,

I strongly oppose SB3001 because it would allow one corporation to circumvent the laws meant to protect our public streams, native stream ecosystems, and traditional farming practices.

This bill would create "hold-over permits" for millions of gallons of water diverted from public streams everyday with no environmental impact statement, no mitigation for the harm caused to native stream ecosystems, and no regard for the farmers that have used that stream water for generations to irrigate their taro crops.

It is not fair for Alexander & Baldwin to bypass the established legal process for requesting use of public water, while the native species and traditional farmers of Hawaii suffer.

We urge you to defer this bill and direct Alexander & Baldwin to follow the regular process for requesting use of our public water.

Thank you.

**gabbard2 - Donna**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 10, 2016 4:21 PM  
**To:** WLA Testimony  
**Cc:** dkapua@gmail.com  
**Subject:** Submitted testimony for SB3001 on Feb 10, 2016 15:30PM

**SB3001**

Submitted on: 2/10/2016

Testimony for WLA on Feb 10, 2016 15:30PM in Conference Room 224

**LATE**

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Keliikoa-Kamai	Individual	Oppose	No

Comments: Aloha kakou, I adamantly OPPOSE PASSAGE of SB3001. This Bill should NOT allow for the continued daily waste of thousands of gallons of water when kalo & other farmers also need it. As a minimum, A&B should show how they will be GOOD stewards and plan to use EVERY GALLON. Hawaiian tradition dictates that the water be shared from Mauka to Makai. Hawaiians ensured that the people were fed by allowing the wai to flow through the lo'i to the loko i'a to the kai (over the farmlands to the fish pond to the ocean). Mahalo and please defer (kill) SB 3001.

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**gabbard2 - Donna**

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**From:** Adam Dochin <adochin@hawaii.edu>  
**Sent:** Wednesday, February 10, 2016 4:48 PM  
**To:** WLA Testimony  
**Subject:** Restore Maui's Streams, Oppose SB3001

**LATE**

Dear Chairman Gabbard and members of the Senate Committee on Water, Land, and Ag

I strongly oppose SB3001 because it would allow one corporation to circumvent the laws meant to protect our public streams, native stream ecosystems, and traditional farming practices.

This bill would create "hold-over permits" for millions of gallons of water diverted from public streams everyday with no environmental impact statement, no mitigation for the harm caused to native stream ecosystems, and no regard for the farmers that have used that stream water for generations to irrigate their taro crops.

It is not fair for Alexander & Baldwin to bypass the established legal process for requesting use of public water, while the native species and traditional farmers of Hawaii suffer.

We urge you to defer this bill and direct Alexander & Baldwin to follow the regular process for requesting use of our public water.

Thank you.

--  
Adam Dochin  
adochin@hawaii.edu