



**East Kauai
Water Users' Cooperative**

4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
Phone: 808-246-6962
Fax: 808-245-3277

LATE TESTIMONY

March 30, 2017

TO: COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

COMMITTEE ON WAYS AND MEANS
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

RE:
**Testimony on HB1536 HD2 Relating to Water Rights
March 30, 2017, Conference Room 211**

Chairpersons Keith-Agaran and Tokuda and Members of the Committees:

My name is Jerry Ornellas and **I strongly support HB1536 HD2**. I am the president of the East Kauai Water Users' Cooperative which has managed the State-owned reservoir and ditch system in the Kapaa/Kalepa area for the past 14 years under a revocable permit from DLNR. Now with recent court decisions, the Coop will be required to seek a long-term water license to operate the system. A better, long-term solution is for the Department of Agriculture to add the system to its inventory of water systems. It is an agency far more responsive to the needs of farmers. Other agricultural irrigation systems in the state are in the same situation.

In its original form, HB1536, was intended to clear several possible regulatory obstacles to DOA doing so, specifically clarifying its authority to acquire and run irrigation systems—something it has done already for years. In particular, it eliminates the possibility that PUC regulations intended for privately owned utilities such as water and electricity—which essentially operate as monopolies in a specific area—be applied to state-owned agricultural irrigation systems already overseen by the state's Commission on Water Resource Management. To the best of our knowledge, the PUC has not attempted to regulate any exclusively agricultural irrigation system, state-owned or private.

Previous testimony on the bill has raised concerns about unintended consequences I'd like to address, specifically that private entities delivering non-potable water for agriculture and recreational areas such as golf courses, would be free of or somehow circumvent PUC oversight and be able to charge farmers a high rate for water.

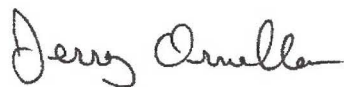
February 28th testimony from the Office of Hawaiian affairs stated that lack of PUC protection is needed to “ensure competitive rates and services.”

On the face of it, that seems a reasonable concern, but as the testimony from the Hawaii Farm Bureau president, Randy Cabral, and Warren Watanabe, of the Maui Bureau of February 28th notes, “Across the country, irrigation systems are heavily subsidized.” But, they point out, the “PUC has consistently insisted that waters delivered within a private system, regardless of quality, ... be charged at a compensatory rate,” that is, at a rate reflecting the actual cost of delivering the water. PUC regulation—itsself a complex, time-consuming and expense process—does not guarantee that farmers be charged a reasonable rate. On the contrary, PUC regulation almost certainly guarantees that users of non-potable water for agriculture will be charged at a high rate.

It would appear to us that the simplest solution is to be sure any revision to the bill fulfill it's original intent: to clarify that State-owned systems do not fall under PUC regulation.

I respectfully ask that you pass this bill.

East Kauai Water Users' Cooperative

A handwritten signature in cursive script that reads "Jerry Ornellas".

Jerry Ornellas, President



Kalepa Koalition
5868 Kini Place
Kapaa, Hawaii 96746
Phone/Fax: 808-639-0152

LATE TESTIMONY

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March 30, 2017, Conference Room 211**

Chairpersons Keith-Agaran and Tokuda and Members of the Committees:

My name is Les Milnes and I support HB1536 HD2. I am the president of the Kalepa Koalition, an Hawaii agricultural cooperative of the farmers and ranchers who hold long-term licenses on 6,500 acres of State land behind Kalepa Ridge on Kauai and under the administration of ADC.

The East Kauai Water Cooperative System services a large portion of the Kalepa lands; most of the farmers, ranches and the huge Green Energy Team biomass project on a 1,000 acres utilize the system through Hanamaulu Ditch or off the Upper and Lower Aahoaka Reservoirs.

We believe this bill will facilitate the Department of Agriculture's potential management of our system without unnecessary regulatory complications.

I respectfully request that this bill be passed.

A handwritten signature in black ink, appearing to read "Les Milnes".

Leslie P. Milnes, President
Kalepa Koalition

From: mailinglist@capitol.hawaii.gov
To: [JDL Testimony](#)
Cc:
Subject: *Submitted testimony for HB1536 on Mar 30, 2017 09:50AM*
Date: Wednesday, March 29, 2017 9:17:27 PM

LATE TESTIMONY

HB1536

Submitted on: 3/29/2017

Testimony for JDL/WAM on Mar 30, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Maui County Farm Bureau	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.

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Saiva Siddhanta Church

Kauai's Hindu Monastery
107 Kaholalele Road
Kapaa, Hawaii 96746-9304•USA
Phone: (808) 822-3012

LATE TESTIMONY

March 30, 2017

COMMITTEE ON JUDICIARY AND LABOR
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Testimony on HB1536 HD2 Relating to Water Rights March 30, 2017, Conference Room 211

Chairpersons Keith-Agaran and Tokuda and Members of the Committees:

We **strongly support** HB1536 HD2. We are a founder member of the East Kauai Water Users' Cooperative Board of Directors which maintains 22 miles of ditch and several reservoirs in and around Kapaa.

HB1536 HD2 provides necessary authority and powers to the Department of Agriculture to take over and operate a number of irrigation systems across the state originally built by the sugar industry. Now these systems serve a growing number of farmers and ranchers.

HB 1536 HD2 also eliminates any possible regulatory confusion with the Public Utilities Commission by clarifying their kuleana is potable water systems, and not agricultural irrigation systems which are already overseen by the Commission on Water Resource Management.

We recommend a close look at the issues raised in the testimony of the East Kauai Water Users Cooperative so that the original intent of this bill—to exempt water system run by the Board of Agriculture from PUC oversight—not be lost.

Saiva Siddhanta Church

Acharya Arumuganathaswami

Acharya Arumuganathaswami
Farm Manager



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE JOINT COMMITTEE ON JUDICIARY AND LABOR, AND WAYS AND MEANS

March 30, 2017 9:50AM Room 211

LATE TESTIMONY

In **OPPOSITION** **HB1536** Relating to Irrigation

Aloha Chairman Keith-Agaran and Chairwoman Tokuda, and members of the Joint Committee,

The Sierra Club of Hawai'i **strongly opposes HB 1536**, as written, because it seeks to broadly exempt private water distribution monopolies from PUC oversight.

The language on page 4, line 8 of the current draft of the bill creates two classes of irrigation systems exempt from PUC oversight: 1) those projects established by the Board of Agriculture (pursuant to Chapter 167), and 2) all other privately irrigation systems.

Exempting All Irrigation Systems is Not the Purpose of the Bill

The original purpose of the bill was to clarify that the Board of Agriculture has the power to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute, and transmit water for agricultural uses, but not for domestic use. The House Committee on Consumer Protection under Chairman McKelvey amended the bill so as to expand the exemption to all private water purveyors.

Ripe for Abuse

The State is mandated by the Hawai'i Constitution to ensure the conservation of all water resources and to safeguard the public's interest in water resources.¹ Public trust obligations requires that the State must "recognize enduring public rights in trust resources separate from, and superior to, the prevailing private interests in the resources at any given time."² The Public Utilities Commission provides oversight on monopoly enterprises to ensure reliable service and fair rates to consumers where usually market forces are absent. In the context of water, the PUC has an obligation to ensure that water is fairly and reliably distributed.

If this bill should pass as written, there would be zero oversight of the rates charged to farmers by the private corporations that operate the ditch systems once used to water sugarcane and pineapple fields. This bill would allow these private corporations choose agricultural winners and losers based on how and at what price they distribute water to farmers.

¹ Haw. Con. Art XI. All water resources are held in trust by the State for the benefit of present and future generations

² *Waiāhole*, 944 Haw. at 138

Recommendation

In the Senate companion to this bill, SB1275, the Senate addressed this apparent drafting error by keeping the phrase "pursuant to Chapter 167" in its current location in the existing statute. We urge this committee to make the same amendment. If this committee cannot amend the exemption language to prevent removing all privately owned irrigation systems from PUC oversight, then at least defect the date of the bill to allow for more conversation.

Thank you very much for this opportunity to provide testimony on this important issue.

Mahalo,
Marti Townsend
Director