



DAVID Y. IGE  
GOVERNOR  
  
SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON WATER & LAND

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

WEDNESDAY, FEBRUARY 8, 2017  
9:00 A.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE RYAN I. YAMANE, CHAIR,  
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 1536 - RELATING TO IRRIGATION

**DESCRIPTION:**

This measure proposes 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 agriculture uses, but not for domestic use and amend the definition of “public utility” in Chapter 269, Hawaii Revised Statutes (“HRS”), to include the production, conveyance, etc. of water for human consumption.

**POSITION:**

The Division of Consumer Advocacy (“Consumer Advocate”) has concerns with this bill and offers these comments.

**COMMENTS:**

If this measure is passed, it could result in unintended consequences. The Public Utilities Commission (“Commission”) regulates a number of water and wastewater companies that also offer non-potable or irrigation water services. If passed, the proposed modifications to HRS § 269-1 would exempt such services from Commission oversight.

The Consumer Advocate contends that exempting all non-potable and/or irrigation services from Commission review, especially when such services are also offered in conjunction with regulated water and/or wastewater services could adversely expose customers to various rate issues, quality and access issues, as well as possible subsidization issues for the customers of the regulated operations.

However, if the legislature's intent was primarily housekeeping in nature and sought to better distinguish that irrigation and/or non-potable water projects established pursuant to HRS Chapter 167 should be exempt from Commission oversight, the Consumer Advocate respectfully suggests that alternative modifications may avoid unnecessary confusion and unintended consequences. By itself, the inclusion of the phrase, "for human consumption" in HRS § 269-1(1), causes potential confusion as many of the water companies regulated by the Commission provide potable water for both human consumption as well as irrigation purposes. Thus, the Consumer Advocate suggests that the proposed insertion of "for human consumption" should be deleted. Further, if the legislature's intent is to exempt only projects related to HRS Chapter 167, that result might be more efficiently accomplished if the exemption listed under HRS § 269-1(2)(l) read, "Any person who controls, operates, or manages plants, facilities, or projects developed, pursuant to HRS Chapter 167, for conveying, distributing and/or transmitting nonpotable or irrigation water;"

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE  
CHAIR, PUBLIC UTILITIES COMMISSION  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON  
WATER AND LAND

February 8, 2017  
9:00 am

**MEASURE:** H.B. No. 1536  
**TITLE:** RELATING TO IRRIGATION

Chair Yamane and Members of the Committee:

**DESCRIPTION:**

This measure proposes to reduce the scope of the Public Utilities Commission's ("Commission's") jurisdiction over public utilities providing water service by amending the definition of "public utility" in Chapter 269, HRS, to include entities who provide for the production, conveyance, transmission, delivery, or furnishing of water "for human consumption[" This measure also amends the list of exemptions from the definition of "public utility" in Chapter 269, HRS, to exempt entities providing non-potable water service as well as any irrigation project established pursuant to Chapter 67, HRS.

This measure also amends the Board of Agriculture ("BOA") powers to specify that the BOA 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.

**POSITION:**

The Commission offers the following comments for the Committee's consideration.

**COMMENTS:**

The Commission currently regulates 24 privately-owned utilities that provide water service throughout the State. The Commission notes that a portion of these regulated utilities provide non-potable water service that is used for non-agricultural purposes, like

H.B. No. 1536

Page 2

landscaping and irrigation of golf courses. This measure would exempt from Commission regulation all non-potable uses of water, whether used for agricultural or non-agricultural purposes.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

**LATE**

TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON WATER & LAND

FEBRUARY 8, 2017  
9:00 A.M.  
CONFERENCE ROOM 325

HOUSE BILL NO. 1536  
RELATING TO IRRIGATION

Chairperson Yamane and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1536. The purpose of this bill is 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. It also amends the definition of "public utility" in chapter 269, HRS to include the production, conveyance, etc. of water for human consumption. The department supports the intent of this bill.

Irrigation water is a vital component to the growth of diversified agriculture. The clarifications provided in this bill ensure that the classification of agricultural water remains safe from challenges that try to combine it with potable water. This will provide the department with additional tools in our efforts to increase agriculture's role in Hawaii's food security and economy.

Thank you for the opportunity to testify on this measure.



## BOARD OF WATER SUPPLY

CITY AND COUNTY OF HONOLULU  
630 SOUTH BERETANIA STREET  
HONOLULU, HI 96843  
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February 8, 2017

KIRK CALDWELL, MAYOR

BRYAN P. ANDAYA, Chair  
ADAM C. WONG, Vice Chair  
DAVID C. HULIHEE  
KAPUA SPROAT  
KAY C. MATSUI

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FORD N. FUCHIGAMI, Ex-Officio

ERNEST Y. W. LAU, P.E.  
Manager and Chief Engineer

ELLEN E. KITAMURA, P.E.  
Deputy Manager and Chief Engineer *EW*

The Honorable Ryan I. Yamane, Chair  
and Members  
Committee on Water and Land  
House of Representatives  
Hawaii State Capitol, Room 420  
415 Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill 1536 Relating to Irrigation

The Board of Water Supply takes no position on the substantive provisions of this bill as it relates to the Board of Agriculture. However, we express concern regarding the proposed amendment to the definition of "public utility" in Chapter 269, Hawaii Revised Statutes (HRS), to include the production, conveyance, etc., of water "for human consumption." (see page 6, lines 7- 9).

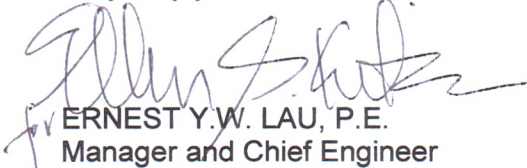
We interpret this to mean that the various boards of water supply statewide would subsequently fall within the jurisdiction and oversight of the Hawaii Public Utilities Commission. Whereas, statewide, our management, control, and operation of the water systems are embodied in Chapter 54, HRS, and on the island of Oahu, Article VII of the Revised Charter of the City and County of Honolulu, we believe the amendment to the definition of public utility inadvertently leads to this unintended result.

We respectfully request that House Bill 1536 be amended to read, at page 14, lines 10-11:  
"....(vii) Nothing in this section shall be construed to permit wheeling[-] or apply to any board of water supply managing, controlling, and operating the water works of the county for the purpose of supplying water to the public in the county."

We believe this proposed amendment will remedy any ambiguity regarding the definition of public utility.

Thank you for your consideration of our testimony on House Bill 1536.

Very truly yours,

  
ERNEST Y.W. LAU, P.E.  
Manager and Chief Engineer

LATE

**waltestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 10:46 AM  
**To:** waltestimony  
**Cc:** alan@prloffice.com  
**Subject:** \*Submitted testimony for HB1536 on Feb 8, 2017 09:00AM\*

**HB1536**

Submitted on: 2/6/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alan Gottlieb	Ponoholo Ranch Limited	Support	No

Comments:

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**East Kauai  
Water Users' Cooperative**

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

February 7, 2017

TO: House Committee on Water and Land  
Rep. Ryan I Yamane, Chair  
Rep. Sam Satoru Kong, Vice Chair

RE: **Testimony on HB1536 Relating to Irrigation  
February 8, 2017, Conference Room 325**

Chairperson Yamane and Members of the Committee:

My name is Jerry Ornellas and I support HB1536. 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.

HB1536 clears 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. We'd also point out that the PUC has not previously attempted to regulate any irrigation system, state-owned or private. This bill therefore only makes formal what has been followed all along.

I respectfully ask that you pass this bill.

**East Kauai Water Users' Cooperative**

Jerry Ornellas, President

**waltestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 11:30 AM  
**To:** waltestimony  
**Cc:** jkimof@msn.com  
**Subject:** Submitted testimony for HB1536 on Feb 8, 2017 09:00AM

**HB1536**

Submitted on: 2/6/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james Kimo Falconer	MauiGrown Coffee, Inc	Support	No

Comments: Chair Yamane and members of the WAL committee Please support this bill removing the PUC oversight for non-potable water. Mahalo Kimo Falconer President, MauiGrown Coffee, Inc.

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February 6, 2017

Representative Ryan I. Yamane, Chair  
Representative Sam Satoru Kong, Vice Chair  
House Committee on Water & Land

**Comments in Support of HB 1536 Relating to Irrigation. (Clarifies that the Board of Agriculture [BOA] has the power to acquire property for the construction and maintenance of water facilities for agricultural uses; amends definition of “public utility” to clarify application to water “for human consumption.”)**

**Wednesday, February 8, 2016, at 9:00 a.m., in Conference Room 325**

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. LURF’s mission 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 express its **support of HB 1536**, and of the various agricultural stakeholder groups who defend the goals of viable agricultural operations and the conservation and protection of agriculture, including important agricultural lands (IAL) in Hawaii.

**HB 1536.** This bill clarifies that BOA has the authority to acquire property by eminent domain for the construction and maintenance of water facilities that convey, distribute and transmit water for agricultural purposes, but not for domestic use. HB 1536 also amends the definition of “public utility” in Hawaii Revised Statutes (HRS) Chapter 269 to clearly limit the application of said definition to the production, conveyance, etc. of water for “human consumption.”

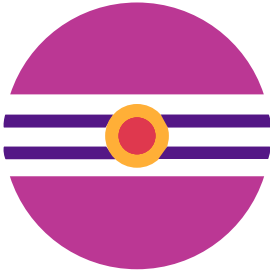
**LURF’s Position.** The purpose of this measure is to assist agricultural stakeholders by clarifying that the BOA possesses the power to acquire property for agricultural water facilities; and amending the defined term “public utility” over which the Public Utilities Commission (PUC) exercises control pursuant to HRS Chapter 269, to exclude nonpotable water and any irrigation project established under HRS Chapter 167.

Since large amounts of prime agricultural lands and irrigation systems became available for conversion to diversified agriculture due to the plantation closures in the 1990s, the State has had the opportunity to strengthen and expand Hawaii's diversified agriculture industry, but agricultural lands require significant quantities of water to support and maintain productivity. It is therefore imperative that local agricultural producers may continue to receive, at affordable rates, a dependable supply of water for crops, as well as for research and development operations. LURF understands, however, that the PUC has maintained its position that waters delivered within a private system, regardless of quality (i.e., even if not for human consumption), must be charged at a compensatory rate, thus unreasonably increasing costs for agricultural stakeholders.

Local farmers and ranchers who rely on water and irrigation systems to service their agricultural lands consider such resources critical to conduct their agricultural operations and to sustain their businesses. These agricultural stakeholders believe measures such as HB 1536 will greatly assist by allowing nonpotable and irrigation water suppliers to provide much-needed water at affordable rates, thereby enabling work toward the expansion of diversified agriculture and promotion of agricultural self-sufficiency of the State.

For the above reasons, LURF **supports HB 1536**, and respectfully urges your favorable consideration.

Thank you for the opportunity to provide comments in support of this important measure.



## **Saiva Siddhanta Church**

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

February 7, 2017

House Committee on Water and Land  
Rep. Ryan I Yamane, Chair  
Rep. Sam Satoru Kong, Vice Chair

### **Testimony on HB1536 Relating to Irrigation February 8, 2017, Conference Room 325**

Chairperson Yamane and Members of the Committee:

We are writing today in favor of HB1536. 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 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 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.

Saiva Siddhanta Church

*Acharya Arumuganathaswami*

Acharya Arumuganathaswami  
Farm Manager



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

February 8, 2017

HEARING BEFORE THE  
HOUSE COMMITTEE ON WATER AND LAND

**TESTIMONY ON HB 1536  
RELATING TO IRRIGATION**

Room 325  
9:00 AM

Aloha Chair Yamane, Vice -Chair Kong, and Members of the Committee:

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.

**The Hawaii Farm Bureau strongly supports HB 1536**, which clarifies water infrastructure eminent domain provisions and PUC authority of non-potable water.

Affordable and reliable waters for irrigation is a basic requirement for sustainable agriculture. Across the country, irrigation systems are heavily subsidized. Currently, new infrastructure investments are occurring in the West to ensure water will be available for agriculture. Hawaii's farmers face costs far beyond that of their continental or foreign counterparts due to input costs, utility costs and water. Non potable systems will require farmers to take additional measures that will increase costs. PUC has consistently insisted that waters delivered within a private system, regardless of quality, requires to be charged at a compensatory rate. If we are serious about moving the needle on agriculture, State policy should support measures to enable water purveyors to provide water at affordable rates.

**HFB respectfully requests your strong support of HB 1536, removing PUC control of non-potable water systems.**

Thank you for this opportunity to provide comment on this important subject.



## Maui County

February 8, 2017

HEARING BEFORE THE  
HOUSE COMMITTEE ON WATER AND LAND  
TESTIMONY ON  
HB1536: RELATING TO IRRIGATION

Room 224  
1:20 PM

Aloha Chair Yamane, Vice -Chair Kong, and Members of the Committee:

I am Warren Watanabe, Executive Director of Maui County Farm Bureau. We are a County Chapter of the Hawaii Farm Bureau, representing 200 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches while ensuring the social and environmental wellbeing of the island.

**MCFB strongly supports HB1536** clarifying BOA eminent domain provisions and exempting non potable water from PUC requirements..

Irrigation water is critical for many areas across the State. While State and County ag park systems exist outside of the PUC regulatory system, private water systems need to comply with PUC requirements.

Several years ago, after Pioneer Mill exited sugar operations, developers entered into the picture, creating agricultural subdivisions. Real farmers bought lands and started farming with the understanding that they would receive an agricultural water rate. When the land owner finally submitted the request before the PUC, his proposal of an ag water rate for the farming sections of his development was refused. PUC declared that rates had to be compensatory. One of the farmers had already spent hundreds of thousands of dollars preparing the land, installing a greenhouse and beginning operations. He could not turn back. His efforts towards viability was challenged. The farmer called me for help but we could not do anything as the authority lay with the PUC. The farm is gone today, and we often wonder what could have happened if he did not have to pay the compensatory rates. It frustrates me that we could not have done more to help him.

There are many non-potable systems across the State. All of them only involve agriculture. It seems that negotiations between farmer and water purveyor is the most prudent method to establish rates. Conditions vary and trying to create a one size fits all model that would be inevitable in a PUC system will be difficult.

We respectfully request your support of this measure. Our farmers already face many regulatory challenges. Streamlining their access to water would be of great assistance.

Thank you.

Maui County Farm Bureau • Box 148 • Kula, Hawaii 96790 • (808)2819718  
[info@mauicountyfarmbureau.org](mailto:info@mauicountyfarmbureau.org)



**Kalepa Koalition**

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

February 7, 2017

TO: House Committee on Water and Land  
Rep. Ryan I Yamane, Chair  
Rep. Sam Satoru Kong, Vice Chair

**RE: Testimony on HB1536 Relating to Irrigation  
February 8, 2017, Conference Room 325**

Chairperson Yamane and Members of the Committee:

My name is Les Milnes and I support HB1536. 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



**waltestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 10:03 AM  
**To:** waltestimony  
**Cc:** jerryo@hawaii.edu  
**Subject:** \*Submitted testimony for HB1536 on Feb 8, 2017 09:00AM\*

**HB1536**

Submitted on: 2/6/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jerry Ornellas	Individual	Support	No

Comments:

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**To:** waltestimony  
**Cc:** kona3gurl@yahoo.com  
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**HB1536**

Submitted on: 2/6/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Reyes	Individual	Oppose	No

Comments:

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**To:** waltestimony  
**Cc:** begoniabarry@gmail.com  
**Subject:** \*Submitted testimony for HB1536 on Feb 8, 2017 09:00AM\*

**HB1536**

Submitted on: 2/5/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Barry	Individual	Support	No

Comments:

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**Sent:** Sunday, February 5, 2017 8:18 PM  
**To:** waltestimony  
**Cc:** clareloprinzi@gmail.com  
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**HB1536**

Submitted on: 2/5/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
clare loprinzi	Individual	Oppose	No

Comments: This control of water needs to be stopped and not approved. Water is life...we need to take care of it, a bill like this allows a huge problem for all that need this life. Shameful to see a bill like this. With respect clare

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**To:** waltestimony  
**Cc:** biokepamoses@gmail.com  
**Subject:** \*Submitted testimony for HB1536 on Feb 8, 2017 09:00AM\*

**HB1536**

Submitted on: 2/7/2017

Testimony for WAL on Feb 8, 2017 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brenda Iokepa-Moses	Individual	Support	No

Comments:

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