



STATE OF HAWAII
DEPARTMENT OF HEALTH
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WRITTEN
TESTIMONY ONLY

**Testimony COMMENTING on HB 1708
RELATING TO PUBLIC SAFETY OF HAWAII'S WATER**

REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
REPRESENTATIVE RYAN I. YAMANE, CHAIR
HOUSE COMMITTEE ON WATER & LAND

Hearing Date: February 14, 2018
Time: 11:00 am

Room Number: 325

1 **Fiscal Implications:** The proposed study is unnecessary. The Department of Health
2 (Department) is concerned that a study will divert limited existing staff resources.

3 **Department Testimony:** The Department respectfully submits comments with
4 reservation/suggestion on this measure. The purpose of this measure is to require the Department
5 to conduct a study that: a) identifies state statutes that rely on the federal Clean Water Act
6 (CWA); b) proposes amendments to state statutes to protect State waters if the federal 2015
7 Clean Water Rule is amended to be less stringent than the current rule or is rescinded; c)
8 identifies waters in the State that are at risk of pollution or contamination due to natural disaster,
9 human-caused disaster, or lack of sufficient regulation; and d) makes recommendations on how
10 the State can prepare for and address the risks of water pollution or contamination for these State
11 waters that are at risk of pollution.

12 Any amendments and/or repeal of the 2015 Clean Water Rule will not impact the existing
13 statutes and rules established in Hawaii to protect State waters. A study to assess the impact of
14 the 2015 Clean Water Rule on Hawaii's State water protection is unnecessary, and will consume
15 DOH's limited resources.

1 The Clean Water Rule is a 2015 regulation published by the United States,
2 Environmental Protection Agency (USEPA) and the United States Army Corps of Engineers
3 (USACE) to clarify Waters of the United States (WOTUS), which would define all bodies of
4 water that fall under the U.S. federal jurisdiction. The rule was published in response to
5 concerns about the lack of clarity over its scope. The rule has been contested in litigation, and its
6 implementation has been stayed by court rulings since 2015. In 2017, a Presidential Executive
7 Order was issued to review and rescind or revise the rule. The USEPA is currently proposing to
8 rescind the definition of WOTUS from the 2015 Clean Water Rule, apply the definition of
9 WOTUS that existed before the 2015 Clean Water Rule, and conduct a substantive reevaluation
10 of the definition of WOTUS.

11 Hawaii Revised Statutes (HRS), Chapters 342D and 342E requires the Department to
12 prevent, control and abate water pollution in the State and to adopt and enforce rules. Pursuant
13 to HRS 342D and E, the Department adopted Hawaii Administrative Rules (HAR), Chapter 11-
14 54, which was required to be at least as stringent as CWA requirements. In addition to the CWA
15 requirements, HAR 11-54 also includes toxic criteria for over 90 toxic pollutant parameters
16 applicable to all State waters, specific criteria (including nutrient and solid parameters) for inland
17 and coastal State waters, and bacteria criteria for all State waters. HRS 342D and 342E requires
18 everyone to comply with the water pollution control rules in HAR 11-54. All State waters are at
19 risk of pollution or contamination due to natural disaster or human-caused disaster. However,
20 HAR 11-54 and HRS 342D and 342E provide the Department with the authority to address these
21 situations as they occur through special studies, investigation, water quality monitoring, and
22 enforcement.

23 The Department's authority and jurisdiction on water pollution control is based on
24 Hawaii's State waters definition, not on the federal WOTUS definition. HAR 11-54-1 and
25 HRS 342D-1 define State waters as all fresh, brackish, or salt waters, around and within the
26 State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds,
27 reservoirs, canals, wetlands, lakes, and dry gulches. Hawaii's definition of State waters is much
28 broader than the WOTUS definition and includes more waterbodies. For example: Kaloi Gulch
29 is a State water, but the USACE has indicated that Kaloi Gulch is not a WOTUS. Since Kaloi

1 Gulch is not a WOTUS, it is not subject to federal jurisdiction by the USACE. However, Kaloi
2 Gulch is protected by all State requirements in HAR 11-54, HRS 342D and HRS 342E.

3 If the 2015 Clean Water Rule is amended or rescinded, HAR 11-54 will not be impacted
4 and will remain effective. Amendments to HAR 11-54 can only be promulgated by the
5 Department through rule making, which would require public participation and final approval by
6 Hawaii's Governor and the USEPA.

7 The amendments to the 2015 Clean Water Rule are likely to affect federal regulation over
8 waters, decreasing the number of water bodies considered WOTUS, and resulting in less dredge
9 and fill activities being subject to federal permitting requirements of the USACE. A dredge or
10 fill activity that does not require a federal permit will not require a Section 401 Water Quality
11 Certification (WQC) from the Department. The waterbodies would still be considered State
12 waters, and water quality could still be regulated under the Department's National Pollutant
13 Discharge Elimination System permits.

14 For these reasons, a study to assess the impact of revisions to the 2015 Clean Water Rule
15 is unnecessary. Also, any study will divert limited existing staff resources, which will severely
16 impact the Department's federal work grant commitments and possibly result in monetary
17 federal grant penalties.

18 **Offered Amendments:** No amendments offered.

19 Thank you for the opportunity to testify.

HB-1708

Submitted on: 2/13/2018 10:43:58 AM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities Committee of the Democratic Party of Hawaii	Support	No

Comments:

HB-1708

Submitted on: 2/10/2018 10:20:18 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Erica Scott	Cuddle Party	Support	No

Comments:

HB-1708

Submitted on: 2/12/2018 11:47:28 AM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Milholen	Kokua Hawaii Foundation	Support	No

Comments:



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Rep. Chris Lee, Chair | Rep. Nicole E. Lowen, Vice Chair

COMMITTEE ON WATER & LAND
Rep. Ryan I. Yamane, Chair | Rep. Chris Todd, Vice Chair

DATE: Wednesday, February 14, 2018
TIME: 11:00 AM
PLACE: Conference Room 325

HB 1708 – RELATING TO PUBLIC SAFETY OF HAWAII'S WATER.

Requires DOH to study the protection of waters in the State. The study shall: (1) identify state statutes that rely on, or are applied in conjunction with, the federal Clean Water Act; (2) propose amendments to protect waters if the federal Clean Water Rule is amended; (3) identify waters that are at risk of pollution or contamination; and (4) recommend how the State can prepare for and address water pollution or contamination risks, including disasters. Appropriates moneys for the study.

Chairs, Vice Chairs, and Members of the Respective Committees:

My name is Dale Sandlin, and I am Managing Director of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the four county level Cattlemen's Associations. Our 150+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly opposes** HB 1708 as this bill seeks to implement rules that have been rescinded by the EPA through a study of the existing regulations we already have.

Ranchers pride themselves on being environmentalists and responsible stewards of our land and water resources. We provide many ecosystem services every day including maintaining view planes, controlling invasive species, managing critical habitat for endangered species and reducing fuel loads for wildfire reduction, and protecting our watersheds. But to provide all these important functions, we must be able to operate without excessive environmental burdens, like this bill seeks to employ.

We all want clean water. Water is critical for our operations and for all agricultural production. Without water, we cannot produce food, we cannot provide for our animals and we can't provide for our families. However, we are extremely concerned about the negative impact this bill could have on our operations and agriculture in general across the state.

For example, the Waters of the United States (WOTUS) rule sought to provide clarity to the rules regarding the execution of the Clean Water Act, but instead presented ambiguities and left more questions than answers. The implementation of the rescinded WOTUS rules has the potential to impact all of the farmers and ranchers in the state by regulating every pool or puddle of water and any bed, bank or ordinary highwater mark, as well as everything within a flood plain.



The flood plain component in Hawaii would encompass the entire state, as everything flows to the ocean, and under the rescinded WOTUS rule, these areas would be considered “adjacent waters.” This rule provided EPA with nearly unlimited power in regulating the way in which properties were managed and how agricultural operators functioned.

While well-meaning, the ambiguous nature of the language in the original rule placed more questions than resolutions. This rule did not clarify how flood frequency might determine jurisdictional boundaries. It also gave no clarification to agricultural operations impact and instead required extensive and expensive permitting for normal agricultural activities. The language of the original rule also included a civil suit provision that would allow for anyone to file civil suit under the suspicion that any activity in violation of the rule had taken place. Even the Army Corps of Engineers would not agree to the final rules as they were presented to the public.

In addition, more than 30 different lawsuits were filed across the country regarding this rule. By trying to implement the rescinded WOTUS rule, the state will import all of the ambiguities and complexities of the rule language which led to these suits on the mainland. Instead, we should not use the limited resources we have as a state to regulate what should be the oversight of the federal government. This would allow our state to avoid the pitfalls of the rescinded WOTUS rule.

While the bill’s language implies that the need for this measure is due to the EPA, under the Trump administration, has rescinded these rules, the fact is that the concern over WOTUS long predates the Trump administration. Farmers and ranchers across the country have been working for many years on this issue.

We respectfully ask that this measure be deferred, and we appreciate the opportunity to testify on this important matter.

HB-1708

Submitted on: 2/13/2018 1:02:07 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch Limited	Oppose	No

Comments:

HB-1708

Submitted on: 2/13/2018 2:22:54 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Warren Watanabe	Maui County Farm Bureau	Oppose	No

Comments:



LATE

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February 14, 2018

HEARING BEFORE THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON HB 1708
RELATING TO THE PUBLIC SAFETY OF HAWAII'S WATERS

Room 325
11:00 AM

Aloha Chairs Lee & Yamane, Vice Chair Lowen & Todd, 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.

HFB **STRONGLY OPPOSES** HB1708, proposing a study to review statutes relating to the federal Clean Water Act and propose amendments to further protection to Hawaii's community.

Farmers and ranchers need to protect natural resources to remain viable. A healthy environment is critical not only for their livelihoods but for themselves personally as they live in the communities they serve. This measure assumes that the rescinding of WOTUS by the Trump Administration has put our communities at risk. This is not true. WOTUS is an ambiguous legislation that has created unreasonable harm to farms and ranches across the nation.

Hawaii is an island state. At some time, all of our lands were underwater. WOTUS has serious implications for the State. The Clean Water Act prior to WOTUS contained measures to protect our waters. The Hawaii Department of Health has programs to protect our waters.

In summary, WOTUS which this measure seeks to replace puts a stranglehold on ordinary farming and ranching by treating dry ditches, swales and low spots on farm fields just like flowing waters. Without the actions that have put a stay on the rule, countless farmers and ranchers, as well as other landowners and businesses, would risk lawsuits and huge penalties for activities as common and harmless as plowing a field.

The issues surrounding WOTUS are complex and technical in nature. They belong at the Federal level. The State, much less the Counties do not have the resources to address the technical aspects of this issue. Farmers and Ranchers across the nation have expressed serious concern about the implications of WOTUS and their worst fears have come true. If HB 1708 is passed, farmers and ranchers will be put at unnecessary risk. The future of their farms and ranches will be put into doubt, putting Hawaii agriculture on a downward trend.

For these reasons, we respectfully request your **opposition** for this measure. Thank you for this opportunity to provide our comments on this important matter.



HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

HOUSE COMMITTEE ON WATER AND LAND

Wednesday, February 14, 2018 11AM Conference Room 325

In SUPPORT of HB1708 Relating to Environmental Protection

Aloha Chairmen Lee and Yamane, Vice Chairs Lowen and Todd, and members of the EEP and WAL Committees,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i, a member of the Common Good Coalition, **strongly supports HB1708** to assess the state's reliance on the federal Clean Water Act and make recommendations for improvements to state law to ensure our water resources are well-protected.

Currently, Hawai'i relies heavily on the federal Environmental Protection Agency and federal statutes to protect our environment. More than 100 positions and \$202.4 million at the Hawai'i Department of Health's Environmental Services Division are federal. In addition, the environmental protections that HDOH is empowered to enforce are fundamentally federal statutes. This includes controls on solid and hazardous waste, underground storage tanks, air pollution, and fresh and ocean water pollution.

Unfortunately, the Trump Administration is targeting many of these environmental protections for mass repeal. Controls on greenhouse gas emissions, policies to mitigate and plan for sea level rise, and protections for streams are just some of environmental protections that have already been repealed by executive order.¹ The Administration has also indicated their plans to weaken or repeal bedrock environmental statutes like the Clean Water Act.² Currently, HDOH is

¹<https://www.usatoday.com/story/news/politics/2017/03/28/the-obama-environmental-regulations-trump-wants-scrap/99729650/>

² <http://www.refinery29.com/2017/06/161177/trump-rolls-back-clean-water-act>

preparing for a \$6.2 million cut in federal funds, including all funding for groundwater protections.

To adequately protect the natural and cultural resources of the Hawaiian Islands, it is crucial to understand which of our state laws are depend on this fundamental federal statute and make plans for strengthen our state laws as needed. With this independent authority to protect the natural resources crucial to our survival, the state can then set staff and state funding priorities for those areas in greatest need of our attention.

For these reasons, we strongly urge this committee to pass HB1708.

Thank you for the opportunity to submit testimony on this important issue.

HB-1708

Submitted on: 2/10/2018 11:33:58 AM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Phil Potter		Support	No

Comments:

I am concerned about the erosion of the federal Clean Water Act and its potential impacts on Hawaii's waters. I support efforts to buttress our State clean water rules and regulations to protect against changes at the Federal level.

I am a resident of the McCully-Moilili neighborhood board.

Thank you for your time and consideration.

Phil Potter

HB-1708

Submitted on: 2/12/2018 11:39:15 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Circe Carr	Individual	Support	No

Comments:

HB-1708

Submitted on: 2/13/2018 1:11:39 PM

Testimony for EEP on 2/14/2018 11:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gregory Friel	Individual	Oppose	No

Comments: