

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
WAYS AND MEANS**

**Tuesday, April 2, 2019  
10:45 AM  
State Capitol, Conference Room 211**

**In consideration of  
HOUSE BILL 1326, HOUSE DRAFT 2, PROPOSED SENATE DRAFT 1  
RELATING TO WATER RIGHTS**



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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
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

House Bill 1326, House Draft 2, Proposed Senate Draft 1 proposes to allow for six consecutive one year holdovers of water permits under Section 171-58(c), Hawaii Revised Statutes (HRS). The measure also proposes to: 1) place conditions on holdovers that authorize the use of over two million gallons of water per day; 2) require holdovers to continue without Board of Land and Natural Resources (Board) action while a contested case hearing is pending; 3) make conforming amendments to the reporting requirement in Act 126, Session Laws of Hawaii (SLH) 2016; 4) require the Board, prior to authorizing holdovers after 1/1/2020, to hold a public hearing on the adoption of administrative rules on the disposition of water rights by lease at public auction and water valuation process and retain a certified appraiser who has sufficient understanding of real property and water law in the State; 5) exempt authorized instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner; 6) require the Board, the Chairperson of the Board, and the Department of Land and Natural Resources' Commission on Water Resource Management to report to the Legislature on the effectiveness of Section 171-58, HRS; and 7) extend the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019 to June 30, 2022. **The Department of Land and Natural Resources (Department) offers the following comments.**

**Contextual Comments**

Many questions have been raised about the water leasing process. It will be helpful to provide the overall context and facts.

Core questions must be answered for water use approvals:

- 1) First, *instream flow standards*: how much water must remain in the stream to protect instream and downstream public trust uses while weighing the importance of the present or potential uses of water from the stream for non-instream purposes, including the economic impact of restriction of such uses. The **Commission on Water Resource Management** (CWRM) must decide this.
- 2) Second, *permitted diversions*: who can divert water from the stream which is in excess of the mandated instream flows, for what purpose, and how much. The **Board of Land and Natural Resources** (Board) must decide this.

### **Instream Flow Standards**

In 1988, the new State Water Code (Chapter 174C, HRS) required CWRM to set interim instream flow standards for all streams in Hawaii. Because this is such a time consuming, data intensive process for each stream, CWRM at the time set the interim instream flows for each stream at the amount of water flowing in each stream on the effective date, i.e. status quo – as that flow may vary throughout the year without further amounts of water being diverted offstream through new or expanded diversions. The Department’s goal now is to establish meaningful, measureable, stream-specific instream flow standards, given public trust values and reasonable and beneficial offstream uses, not just status quo use.

Instream flow standards have now been set:

- for Waiahole/Windward O‘ahu streams by court and the CWRM decision in 2001 and 2006.
- for Na Wai ‘Ehā by stipulation in litigation in 2007.
- for West Kaua‘i by mediated settlement in litigation in 2017.
- for East Maui by the CWRM decision in June 2018, finalizing a contested case filed in 2001. No party appealed this decision.
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In recent years CWRM’s Stream Protection and Management Branch has initiated and established interim instream flow standards for Ukumehame, Olowalu, Launiupoko, Kauaula streams in West Maui, then for Kahoma and Kanahā streams in West Maui.

CWRM also initiated proceedings for interim instream flow standards on the Wailua River on Kaua‘i; this is now in contested case with an inclination of the parties to engage in mediation. CWRM is also awaiting the results expected later in 2019 of a survey of water resources in East Kaua‘i by the United States Geological Survey (USGS) which will better inform establishment of instream flow standards for East Kaua‘i streams, including the Wailua River.

The Department is very excited to be moving these interim instream flow standards proceedings forward on a pro-active basis, finally, after so many decades. This requires a huge amount of data and work for each stream, including stream flow measurements over time, stream monitoring, assessment of instream values and off-stream uses, public meetings to gather input on water uses both instream and off-stream, and scrambling through forest and stream, mapping, data analysis, and talking to hundreds of people about instream and downstream values and offstream uses. The Department awarded the CWRM



Stream Protection and Management Branch staff Team of the Year last year for their phenomenal efforts.

The East Maui decision establishing interim instream flow standards was truly groundbreaking. As it was done in a contested case proceeding, a hearing officer took testimony and heard arguments over many years until 2016, when he issued a draft decision. The CWRM Commissioners then spent many hours and days reviewing the record and issued a decision that addresses the values of each stream and sets meaningful interim instream flow standards for each. The Commissioners took great care to summarize the decision's reasoning in the Executive Summary for the decision, which I urge everyone to read. In summary:

- Ten streams which have historically supported significant kalo cultivation were returned to free flowing water, with no upstream diversions (Honopu, Huelo, Hanehoi, Pi'ina'au, Palauhulu, Ohia (Waiianui), Waiokamilo, Kualani, Wailuanui, Makapipi). The majority of these streams had been diverted for over 100 years.
- Seven additional streams identified as important habitat for native fish, shrimp, mollusks and insects (Honomanū, Waikamoi, East Wailuaiki, Kopiliula, Punalau/Kōlea, Waiohue, West Wailuaiki) now have limited or no water diversions.
- Public use streams were specifically identified for public trust offstream uses (Waikamoi, Puohokamoa, Ha'ipua'ena, and Honomanū streams).
- Other streams are available to support diversified agriculture offstream as long as instream flow standards are met (Waikamoi, East Wailuaiki, Hanawī, Wahinepe'e, Puohokamoa, Haīpua'ena, Nua'ailua, Pua'aka'a, Pa'akea, Waiaka, Kapaula). The Commission estimated this provided for about 90% of the irrigation needs for 23,000 acres of Important Agricultural Lands.

In short, the 2018 CWRM East Maui decision has resolved the question of what water should stay in each stream and what water may be available for use offstream. **All historically important East Maui taro streams have water fully restored.** Streams important for ecology, gathering, and recreation have been fully or partially restored. Water is available for offstream public trust uses including domestic use and Department of Hawaiian Home Lands (DHHL) reservations. Water in excess of established minimum flows is available for reasonable and beneficial use such as agriculture.

CWRM ordered the removal of some, but not all, diversions to ensure connectivity and flow. Some of these have been removed; some are going through United States Army Corps of Engineers permitting to ensure water quality standards are met for instream modifications.

CWRM and the Department's Division of Aquatic Resources staff are working together to build capacity to measure stream flows via gages in locations designated by CWRM and to monitor stream habitat.

For over a hundred years about 160 million gallons a day were diverted from East Maui to irrigate sugar in central Maui. Now it's about 20-25 million gallons per day (mgd), of which 8-12 mgd is for Maui County for domestic uses and upcountry agricultural and DHHL use.

The status of updated interim instream flow standards relevant to water users under revocable permits is as follows:

East Maui: set in 2018

Wailua: commenced 2018; in contested case & mediation

East Kaua'i: not commenced; pending USGS survey

Wailuku: not commenced, but water use is non-consumptive

Ka'ū: not applicable – water use is groundwater

The CWRM East Maui Interim Instream Flow Standards decision can be found here:

<http://files.hawaii.gov/dlnr/cwrn/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf>

### **Permitted Diversions**

In order for the Board to effectively meet its public trust obligations, a water lease for surface water diversions should not be issued until CWRM determines the interim instream flow standards. In the case of *Na Moku 'Aupuni O Ko'Olau v. East Maui Irrigation, Limited and Board of Land and Natural Resources*, the First Circuit Court noted the following:

“In the process of determining whether there is any surplus water which would be in the best interest of the state to lease for 30 years, the BLNR is entitled to rely on and use any determination of the CWRM to establish instream flow standards...If the BLNR believes it does not have the requisite expertise to investigate, then it should wait until the CWRM has acted or make its own application to establish instream flows reflecting the diversion it proposes to make, before authorizing the diversion.”

Revocable permits for the use of water in East Maui were approved by the Board at its meeting on May 25, 2001, as requested by Alexander and Baldwin (A&B) and East Maui Irrigation (EMI) as part of their application for a long term water lease. Since that time, the long term lease application, the revocable permits and the interim instream flow standards have been the subject to numerous and ongoing contested cases and agency appeals. During this period, the Board has approved the continued holdover of the revocable permits. It was not until 2015 that the First Circuit Court determined that the Board exceeded its authority under Sections 171-10 and 171-55 HRS, in placing the revocable permits into holdover status for 13 years, and declared the revocable permits invalid. The decision is currently on appeal in the Intermediate Court of Appeals by the County of Maui, A&B, EMI and the State.

In light of this decision, Act 126, SLH 2016 was enacted in order to provide for an additional three year holdover period for all revocable permits for water use statewide in effect at that time. Upon inception of Act 126, the Department has informed the current permittees of the legislation and the statutory requirements for obtaining a water lease pursuant to Section 171-58, HRS.

The water leasing process is extensive and complex, requiring each lessee to:

- 1) comply with Chapter 343, HRS;
- 2) work with DHHL to develop a water rights reservation sufficient to support current and future homesteads needs;
- 3) work with the Department's Division of Forestry and Wildlife to develop and implement a watershed management plan; and
- 4) consult with the Department's Office of Conservation and Coastal Lands on whether a conservation district use application is required for the water lease.

Additionally, Section 171-58, HRS, requires water leases be disposed of by public auction, which is a time consuming process due to extensive public notice and bidder qualification requirements. Another issue is determining the fair market value of water rights. In order to satisfy its fiduciary obligations, the Board must charge fair market value for lease rent. Unlike a ground lease, the unique nature of water rights in Hawaii makes assigning a monetary value a significant challenge.

Since then the Department has had ongoing discussions with the applicants. Many of the smaller water users have expressed concerns about the costs of complying with the statutory requirements, such as preparing an environmental assessment or environmental impact statement. Adding to the insecurity is the possibility that the applicant would incur these significant costs and fail to obtain a lease if they are not the successful bidder at public auction.

The Department is currently developing potential options for complying with the watershed plan requirement, and potentially exempting certain small scale water leases from the preparation of an environmental assessment. However, no exemption can be approved by the Board until more information is received regarding the proposed use of water for each specific lease.

### ***Comments on House Bill 1326 House Draft 2 Proposed Senate Draft 1***

The Department acknowledges the need for additional time to convert existing water revocable permits to long term leases. As the State's public trust obligations are integral in the management of its water resources, the water leasing process is appropriately complex and time consuming, requiring oversight and approvals from several state agencies. Within the Department, staff from the Land Division, the Division of Forestry and Wildlife, and tCWRM are working in collaboration with the Department of the Attorney General and DHHL to establish and implement a water leasing process that is fair, transparent, compliant with statutory requirements and consistent with the public trust. Additionally, the permittees are working with the agencies to obtain long term leases.

The Department agrees with the proposed subsection (c), paragraph (2) added to Section 171-58, HRS by this measure. Allowing a holdover to continue without Board action pending the completion of a contested case hearing would resolve the potential dilemma where the Board approves a holdover and an additional contested case is requested. It would alleviate concerns about the availability of water for instances where the diversion includes public trust uses, such as domestic purposes. Further, this would serve to ensure due process to all parties to the contested case.

The Department objects to the proposed subsection (c), paragraph (5) added to Section 171-58, HRS, by this measure, to the extent it would require the Board to adopt administrative rules. Rulemaking would consume a significant amount of time and resources, and given the complexity of the subject matter, it is very likely that such a requirement would prevent the completion of the water leasing process before the expiration of the additional three year holdover period granted by this measure. At the direction of the Board, the Department will consult with the Attorney General to determine what legal obligation, if any, the Board may have to conduct rulemaking with respect to the water leasing process. Because any decision by the Board to approve holdovers or a water lease will be in an open, sun-shined meeting, there will be transparency and ample public engagement on these matters.

Additionally, the Department has concerns about a statutory requirement to retain the services of a certified appraiser.<sup>1</sup> The Department will work diligently to obtain the services of a qualified appraiser to determine the fair market value of the water rights subject to lease, in fulfillment of public trust obligations. However, as the Department cannot mandate that an appraiser enter into a contract, codifying such a requirement in statute is not appropriate.

Furthermore, requiring rulemaking is inconsistent with SECTION 4 that requires the Board to submit findings and recommendations regarding the effectiveness of the long-term disposition laws and whether this section is appropriate to guide the Board on the issuance of long-term water leases. The purpose of rulemaking is to implement, interpret, or prescribe law or policy. Requiring the Board to examine and analyze the effectiveness of the water leasing law while simultaneously requiring the Board to develop rules to interpret and implement that same law is both inconsistent and inefficient.

With respect to the proposed subsection (h) added to Section 171-58, HRS, by this measure, the Department does not object to exempting the use of water for traditional wetland kalo cultivation from a water lease, provided that is the intent of this provision. However, the Department suggests that the provision specify that the water must be used solely for traditional wetland kalo cultivation. This would avoid a potential loophole where a party that uses water for other uses in addition to kalo cultivation could be exempt from a water lease.

Finally, the Department respectfully requests that the committees consider amending Section 171-58, HRS to allow water leases for both consumptive and non-consumptive uses to be awarded by direct negotiation, provided the lease rent is set at fair market value by independent appraisal. The Department believes that this would address the concerns of smaller agricultural water users about having to incur significant costs to meet statutory water lease requirements (such as conducting an environmental study) without having any assurance that they would obtain the lease. The Department believes that this would also assist in expediting the water leasing process without compromising the State's public trust obligations. Allowing a direct lease would not absolve the applicant from complying with all applicable regulatory requirements, such as Chapter 343, HRS, nor the Board from its fiduciary duty to obtain compensation at fair market value regardless of who is the lessee.

Thank you for the opportunity to comment on this measure.

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<sup>1</sup> HRS § 466K-4 provides that no person may practice as a real estate appraiser unless that person has been *licensed or certified*. There does not appear to be any reason to prefer a certified appraiser over a licensed appraiser. The Department suggests, at a minimum, changing the reference to "qualified appraiser."



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 1326, H.D. 2, PROPOSED S.D. 1, RELATING TO WATER RIGHTS.

**BEFORE THE:**

SENATE COMMITTEES ON WATER AND LAND AND ON WAYS AND MEANS

**DATE:** Tuesday, April 2, 2019

**TIME:** 10:45 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Linda L.W. Chow, Deputy Attorney General

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Chairs Kahele and Dela Cruz and Members of the Committees:

The Department of the Attorney General (the Department) appreciates the intent of the proposed draft of the bill and provides the following comments.

The bill would extend the authorization for holdover of previously authorized dispositions by three additional years for a total of six consecutive one-year holdovers; require that any holdover authorization that allows water use in excess of two million gallons a day (mgd) be issued pursuant to a final written decision that explicitly considers and includes conditions to minimize impacts to the public trust purposes and limits use to demonstrated reasonable and beneficial needs; require a holdover permit to be continued without any action pending completion of any contested case proceedings; require the Board of Land and Natural Resources (BLNR) to hold a public hearing on proposed administrative rules; require the BLNR to retain a certified appraiser; exempt instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner; and require the Chairperson of the BLNR, the BLNR, and the Commission on Water Resource Management (CWRM) to submit a report of findings and recommendation on the effectiveness of section 171-58, Hawaii Revised Statutes (HRS), including any proposed legislation.

The proposed amendments to section 171-58(c)(1), HRS, on page 4, lines 17-20 and page 5, lines 1-12, requires that any BLNR holdover authorization allowing the use



of over two million gallons of water per day shall (A) be issued pursuant to a final written decision that explicitly considers and includes conditions to minimize potential impacts to the public trust purposes of any affected water source, and (B) limit the total aggregate quantity of water received by the holdover to the applicant's demonstrated actual, reasonable and beneficial needs for the period of the holdover.

The Department notes that both of these provisions already are required under the law. Regarding the State's duty to protect the public trust with regards to water, the courts have recognized four protected uses that are synonymous with public trust purposes. *Kauai Springs Inc. v. Planning Commn of County of Kauai*, 133 Hawai'i 141, 172, 324 P.3d 951, 983 (2014). These four protected uses are 1) the maintenance of waters in their natural state; 2) domestic water use, in particular, protecting an adequate supply of drinking water; 3) the use of water in the exercise of Native Hawaiian and traditional and customary rights; and 4) the reservation of water for Hawaiian home lands as recognized under the State Water Code. *Id.* Inherent in the public trust are the concurrent duties to protect water for future generations and to ensure that water is put to reasonable *and* beneficial uses. *Waiahole I*, 94 Hawai'i at 133, 9 P.3d at 445.

Moreover, regarding the State's duty to protect the public trust as to water, the proposed amendment identifies elements that are not specifically public trust purposes under case law. Rather, the wording "ecological, natural, recreational, and aesthetic values of affected surface waters in their natural state," appears to be a partial listing of instream uses contained in the State Water Code, chapter 174C, HRS, and the accompanying administrative rules. For example, section 13-169-2, Hawaii Administrative Rules (HAR), defines "instream use" to include, amongst others elements: maintenance of aquatic life and wildlife habitats; outdoor recreational activities; maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; and aesthetic values such as waterfalls and scenic waterways. As the CWRM is required to examine all of these uses when setting instream flow standards for any stream, these enumerated elements are provided for in existing rules.

Because these requirements are already provided for in the existing law, the Department recommends removing the duplicative provisions.

The proposed amendment to section 171-58(c)(5)(B), HRS, on page 8, lines 1-3, requires the BLNR to hire a certified appraiser. However, section 171-17, HRS, already requires that the appraisal of public lands for lease at public auction be performed either by a qualified employee of the BLNR or by a disinterested appraiser contracted by the BLNR. Section 171-17(a), HRS, also provides that the upset rental for an auctioned lease shall be determined by disinterested appraisal whenever prudent management so dictates. Water leases under section 171-58, HRS, are required to be disposed of by public auction.

Moreover, under chapter 466K, HRS, no person may practice as a real estate appraiser unless that person has been licensed or certified by the state. Any appraiser hired by the BLNR to perform the appraisal for the water leases is therefore required to hold a license or certification as an appraiser. The bill does not identify why the appraiser hired must be a “certified” appraiser as opposed to one that is “qualified,” which already requires a licensed or certified appraiser. The Department suggests removing this requirement as a similar requirement is already provided for in law.

The proposed amendment to section 171-58(h), HRS, on page 11, lines 1-3, exempts instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner. As noted above, the use of water in the exercise of Native Hawaiian and traditional and customary rights is a recognized public trust purpose. The State Water Code also recognizes the special status of these types of rights. In addition, section 174C-101, HRS, provides that “appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.” The definition of instream use also includes “the protection of traditional and customary Hawaiian rights.” HAR § 13-169-2.

Because these requirements are already provided for in the existing law, the exemption is unnecessary and the Department therefore recommends removing the duplicative provisions.

For the above reasons, we respectfully ask that this bill be amended.





DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

GLENN K. MURANAKA  
Deputy to the Chairperson

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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON WATER & LAND AND WAYS & MEANS

APRIL 2, 2019  
10:45 A.M.  
CONFERENCE ROOM 211

HOUSE BILL NO. 1326 HD2 Proposed SD1  
RELATING TO WATER RIGHTS

Chairpersons Kahele and Dela Cruz and Members of the Committees:

Thank you for the opportunity to testify on House Bill 1326 HD2 Proposed SD1 that allows for six consecutive one-year holdovers of water permits, places conditions on holdovers that authorize the use of over two million gallons of water per day, requires holdovers to continue without BLNR action while a contested case hearing is pending, makes conforming amendments to the reporting requirement in Act 126, SLH 2016, requires the BLNR, prior to authorizing holdovers after 1/1/2020, to hold a public hearing on the adoption of proposed administrative rules on the disposition of water rights by lease at public auction and water valuation process and retain a certified appraiser who has a sufficient understanding of real property and water law in the State, exempts authorized instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner, and requires BLNR, the chairperson of BLNR, and commission on water resource management to report to the legislature on the effectiveness of section 171-58, HRS, and extend the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019, to June 30, 2022. The Department supports the intent of this bill and offers comments, however respectfully prefers the language of HB 1171 HD1 SD1 Proposed SD2. We defer to the Department of Land and Natural Resources regarding the adoption of administrative rules.



The Department has concerns regarding the limiting of "...the total aggregate quantity of any surface water allowed to be received under all holdovers issued pursuant to an application to the applicant's demonstrated actual, reasonable beneficial needs for the holdover period." It is our understanding that some of these systems do not have on farm usage figures and may therefore have a difficult time demonstrating actual need.

The rest of this bill seeks to establish additional holdover criteria for those applications pending before the Board of Land and Natural Resources that have previously been authorized a disposition of water rights. The Department recognizes the intent of Act 126 and agrees that the long-term practice of essentially automatic water RP renewal was undesirable. However, we also believe that the passage of Act 126 did not anticipate the extremely complex nature of obtaining a long-term water lease, thereby making the three-year window exceedingly difficult to meet. The amendment of this requirement, along with clarification on use following the filing of a contested case, brings stability to irrigation systems affected by the issue.

Thank you for the opportunity to testify on this measure.



**HB1326 HD2**  
**HB1326 HD2 Proposed SD1**  
**RELATING TO WATER RIGHTS**  
Senate Committee on Water and Land  
Senate Committee on Ways and Means

**HB1171 Proposed SD2**  
**RELATING TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES**  
Senate Committee on Ways and Means

April 2, 2019

10:45 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB1326 HD2, which would extend the sunset date of Act 126 (Reg. Sess. 2016) by seven years, and the Administration of OHA will recommend that the Board of Trustees (BOT) **OPPOSE** the proposed SD2 draft of HB1171 HD1 SD1, which would also extend the sunset date of Act 126 by seven years, subject to conditions. While the OHA BOT has not met since the introduction of HB1326 HD2 proposed SD1, which would extend the sunset date of Act 126 by three years with conditions, the BOT has been objectionable to any extension of holdover revocable permits for Alexander & Baldwin and its subsidiary East Maui Irrigation Company (A&B).

OHA understands that there have been concerns raised that an extension of Act 126 as proposed by these measures is necessary for other revocable permit holders to continue receiving water from public lands; however, **it appears that these concerns are based on a purely speculative extension of a circuit court order specific only to A&B, and there is no clear legal barrier to preventing the issuance of annual revocable permits to any other entity, should Act 126 sunset.**

**Accordingly, only A&B would meaningfully benefit from these measures, which would shield A&B from legal and financial liabilities under its Central Maui sales agreement, and further accommodate A&B's ongoing failure to satisfy a now 15-year-old court order to conduct an environmental assessment for its diversion of approximately 100 East Maui streams and tributaries. Extending Act 126's sunset, especially by an extensive period of time (e.g. seven more years), would encourage the Board of Land and Natural Resources (BLNR) to continue abdicating its public trust responsibilities in the issuance of "holdovers" that have and may continue to impair public trust purposes and reasonable beneficial uses of our limited and invaluable water resources.**

OHA acknowledges and appreciates the additional conditions for accountability, progress, and transparency included in the proposed Senate drafts, as well as the

shortened extension of Act 126 in HB1326 HD2 proposed SD2; however, OHA notes that these proposed drafts do not go far enough to address ongoing issues and concerns regarding “holdovers” issued under Act 126.

**1. These measures would reward A&B and the BLNR for flaunting their legal responsibilities prior to and after being granted a three-year reprieve by Act 126.**

As outlined in prior testimonies, Act 126 effectively forgave the BLNR and A&B for their failure to conduct an environmental review of A&B’s continuous and ongoing diversion of over 100 streams and tributaries on 17,000 acres of public watershed lands in East Maui – **12 years** after one had been first ordered by the circuit court. Act 126 responded to a 2016 circuit court ruling that finally found BLNR’s decade-long practice of granting A&B continuous revocable permit “holdovers” without an environmental assessment or impact statement as improper; the highly controversial Act authorized the BLNR to continue issuing “holdovers” for three additional years, allowing A&B to continue diverting water while it fulfilled the environmental review and other requirements of a water lease application for East Maui. Notably, Act 126 also ostensibly sought to avoid disruption to other revocable permit holders’ ability to obtain water from public lands, despite the fact that **no other permittees were directly affected by the aforementioned 2016 circuit court ruling**, and that **the vast majority of these other permittees had not even expressed any prior interest in applying for a water lease.**

To provide some assurance that progress would actually be made on A&B’s environmental review requirement, as well as on the other requirements of the long-term water lease ostensibly sought by A&B,<sup>1</sup> the legislature set Act 126 to sunset in three years; to acknowledge the clear public trust violations in the BLNR’s practice of blindly authorizing the wholesale dewatering of East Maui’s streams, the legislature further required that any “holdover” granted under the Act be “consistent with the public trust.”

Unfortunately, the Legislature’s attempt to ensure progress on the long-term water lease failed to result in any meaningful action. In the three years since Act 126 was passed, A&B has only issued an environmental impact statement “preparation notice” its East Maui diversions – over two years ago, in February 2017. **This preliminary action is the only formal step that A&B has taken in the past three years, to satisfy the environmental review requirement originally ordered by the circuit court 15 years ago.**

**Now, despite A&B’s lack of any meaningful progress in the completion of an environmental assessment or environmental impact statement<sup>2</sup> for the diversion of**

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<sup>1</sup> Environmental review compliance was one of the prerequisites for a long-term water lease that A&B had sought in 2001; the “holdover” of A&B’s revocable permits has allowed it to continue diverting water from East Maui continuously since that time, without complying with the requirements and protections of a longer-term lease.

<sup>2</sup> An environmental assessment is the first step in the environmental review process; if significant environmental impacts are found to be likely, an environmental impact statement must then be conducted. If

**East Maui's streams, HB1326 HD2 and the proposed Senate drafts contemplate extending Act 126 for an additional three or seven years, without any (in the case of a seven year extension), or insufficient, assurance that such environmental review and other long-term water lease requirements will actually be completed.**

OHA does acknowledge and appreciate the intent of the provisions found in the proposed Senate drafts, that would require some progress in the rulemaking process for water lease auction and valuation procedures, prior to the issuance of holdovers after January 1, 2020 (which would allow holdovers to be issued notwithstanding any progress as late as December 2020, for water uses to extend through 2021). In particular, OHA notes these provisions may lead to 1) a more transparent and consistent water lease process; 2) increased rent paid to the State for the use of this invaluable public trust resource; and 3) a possibly expedited timeline for the conversion of other water revocable permits to long-term leases. However, given past practice, OHA does not believe that these provisions will ensure that A&B and BLNR will actually uphold any of their water lease responsibilities, much less fulfill the now 15-year-old environmental impact statement court order; there will be little incentive to do so, particularly if they are granted an additional seven years.

**2. HB1326 HD2 and the proposed Senate drafts may allow BLNR to continue abdicating its public trust responsibilities in the issuance of holdovers.**

As mentioned above, Act 126 included the express requirement that any holdovers be consistent with the public trust doctrine. Unfortunately, this requirement has been continually ignored by the BLNR, and OHA has little faith that BLNR will not continue to do so under HB1326 HD2 and the proposed Senate drafts.

**Notably, in each of its three most recent annual holdovers of A&B's revocable permits, the BLNR failed to explicitly consider any of the public trust purposes and reasonable beneficial instream uses of East Maui's streams, including their role in supporting riparian and coastal ecosystems and associated Native Hawaiian traditional and customary practices; failed to require any information as to the actual anticipated water needs of A&B, including specific agricultural plans and anticipated water duties; failed to require any explanation as to why A&B's own water sources – including its privately owned East Maui watershed lands as well as its Central Maui wells – could not satisfy its anticipated water needs; and failed to consider how A&B's need for East Maui public watershed water should be balanced with the public trust purposes and reasonable beneficial uses of those waters in their undiverted state.** The BLNR similarly failed to make any such findings or impose requirements for the other "holdovers" it subsequently issued for other water revocable permit holders throughout this time.

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an action would clearly result in significant impacts, the environmental assessment step can be skipped, and an environmental impact statement can be commenced without an assessment.

Despite the BLNR's clear failures to make even the most basic public trust considerations and findings in its issuance of holdovers under Act 126, HB1326 HD2 would simply extend the Act's holdover authority for an additional seven years, with no other conditions or safeguards to actually ensure that holdovers are "consistent with the public trust." **Such an unconditioned extension of authority would only encourage the BLNR to continue abdicating its public trust responsibilities, putting at unnecessary risk our native stream and coastal ecosystems and cultural practices otherwise protected under the public trust doctrine, as well as threatening the subsistence, recreational, scientific, economic, and other interests of the public in these protected public trust purposes.**

OHA does recognize and appreciate that the proposed Senate drafts of HB1326 and HB1171 would include express conditions in an amended HRS § 171-58(c)(1), to reflect the BLNR's **already existing** albeit **repeatedly ignored** responsibilities under the constitutional and Act 126's own statutory mandate that holdovers be "consistent with the public trust." Given the BLNR's continual failure to conduct even the most rudimentary public trust inquiries regarding the actual water needs of revocable permit holders such as A&B, much less determine how such needs should be balanced in a consideration of public trust purposes and competing reasonable-beneficial uses, OHA appreciates these conditions' intent to better ensure that future holdovers are in fact "consistent with the public trust." However, OHA notes that such conditions would **apply only to holdovers authorizing the use of 2 million gallons of water per day, equivalent to the consumption of three Olympic-sized swimming pools' worth of water, daily**, and thereby not apply to nearly all water revocable permit holders other than A&B; moreover, **the conditions do not require the installation of water meters or other mechanisms to actually monitor how much public trust water is consumed for private use and, for surface waters, diverted with respect to total stream flow.** Such conditions also do not include baseline protections limiting the total amount of water that may be diverted under holdovers pursuant to a water lease application, or ensuring that diverted streams maintain the mauka-to-makai connectivity necessary for native stream species. Accordingly, while OHA does acknowledge that the express conditions contained in the proposed Senate drafts of these measures would potentially guide the BLNR in actually fulfilling some of its most basic and already-existing responsibilities under the public trust doctrine, OHA remains concerned that their extremely narrow scope and lack of more concrete baseline protections will continue to compromise the public trust in the BLNR's revocable permit holdovers; if the committees choose to move these measures forward, OHA encourages the inclusion of additional relevant requirements to minimally address the outstanding concerns raised above.

### **3. Concerns regarding the potential disruption of water use for other revocable permit holders and Upcountry Maui are unfounded.**

OHA appreciates that there have been concerns raised regarding the potential for impacts to revocable permit holders other than A&B who, upon the passage of Act 126 and at the suggestion of the Department of Land Natural Resources, expressed interest in applying for a water lease in order to receive "holdovers" of their permits. However, again,

no permittees other than A&B were directly affected by the aforementioned 2016 circuit court ruling, and **no reason other than pure legal speculation has been proffered as to why these permittees would not be able to continue receiving water under revocable permits, rather than revocable permit “holdovers,” as they had been prior to 2016.** Notably, even after the 2016 court ruling, year-long, month-to-month revocable permits for land uses have been continually issued for hundreds of other permittees throughout the islands, under nearly identical statutory language limiting such permits for “temporary” use. This continued practice belies any claim that the sunset of Act 126 would somehow force the BLNR to stop re-issuing revocable permits for water to those permittees not subject to the 2016 court ruling or any other legal challenge.

In addition, OHA appreciates that there have been concerns raised by certain Maui county officials regarding potential impacts to Upcountry Maui water service provided under a contract between the county and A&B. However, these concerns fail to recognize that the court ruling invalidating A&B’s “holdovers” was specifically stayed with respect to the diversion of East Maui water to meet the needs of Upcountry residents. **Accordingly, should Act 126 be allowed to sunset, there is no legal reason why water service to Upcountry Maui water would need to be disrupted, even for the relatively small percentage of water that Upcountry residents receive from East Maui’s public watershed lands.**

Accordingly, contrary to the **unfounded assertions and speculation** offered in support of this measure, the sunset of Act 126 would not in itself result in any legal barrier to continued water use by revocable permit holders other than A&B, or to the delivery of water to Upcountry Maui by A&B.

Therefore, OHA urges the Committees to **HOLD** HB1326 HD2 and the proposed Senate drafts. Alternatively, if the Committee chose to move a bill, OHA urges you to move HB1326 proposed SD2 with additional conditions. Mahalo nui loa for the opportunity to testify on these measures.

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

JOSH GREEN  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

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 COMMITTEES ON WATER & LAND & WAYS & MEANS  
HEARING ON APRIL 2, 2019 AT 10:45AM IN CR 211**

**HB 1326, PROPOSED SD1 RELATING TO WATER RIGHTS**

April 1, 2019

Aloha Chairs Kahele and Dela Cruz and members of the Committees:

The Department of Hawaiian Home Lands (DHHL) offers the following comments on HB 1326, Proposed SD1, which allows for a total of six consecutive one-year holdovers of water permits under section 171-58(c), HRS and places conditions on holdovers that authorize the use of over two million gallons of water per day.

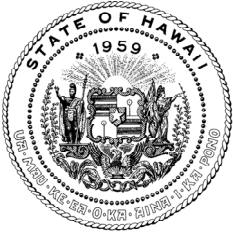
DHHL has serious concerns and notes that as the Legislature considers the challenges associated with the issuance of long term leases in water, that long term extensions of the process to convert Revocable Permits (RPs) into long term leases may harm DHHL and its beneficiaries. This is because DHHL has two distinct interests related to the renewal of revocable permits and their conversion into long term leases, and it needs the conversion process to be implemented for its rights to be fully realized.

DHHL's first interest is as a water user, and some of the waters related to a number of these RPs could satisfy DHHL needs. This issue is addressed in HRS 171-58(g), which requires the Department of Land and Natural Resources and DHHL to "...jointly develop a reservation of water rights sufficient to support current and future homestead needs." DHHL has been working with DLNR staff and applicants to effectuate this provision which can only be fully realized when a lease is issued. Long term extensions to the process can thus be harmful to our interests.

DHHL is also entitled by Constitutional and statutory provisions to 30% of the revenue generated by water leases. Because the provisions for setting lease rent are only implemented during the conversion process, extremely low payment levels are maintained under extended RPs. The mechanism for setting water lease rents itself needs revision, as it currently requires the determination of a market value for water when no market for water exists in Hawaii. In addition, without a clear and reasonable deadline for converting RPs no pricing provision will be implemented, and every year an RP is renewed represents a specific, tangible loss to the State and the Department.

Thank you for your consideration of our testimony.





# OFFICE OF ENVIRONMENTAL QUALITY CONTROL

DEPARTMENT OF HEALTH | 235 South Beretania Street, Suite 702, Honolulu, HI 96813 | oeqchawaii@doh.hawaii.gov

DAVID Y. IGE  
GOVERNOR

SCOTT GLENN  
DIRECTOR

(808) 586-4185

Testimony of  
**SCOTT GLENN, Director**

before the  
**SENATE COMMITTEE ON WATER AND LAND and  
SENATE COMMITTEE ON WAYS AND MEANS**  
Tuesday, April 2, 2019  
10:45 APM, Conference Room 211

**LATE**

With COMMENTS on  
**HOUSE BILL 1326 PROPOSED SENATE DRAFT 1  
RELATING TO WATER RIGHTS**

Chair Kahele, Vice Chair Keith-Agaran, and Members of the Senate Committee on Water and Land,  
Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Senate Committee on Ways and Means,

The Office of Environmental Quality Control (OEQC) administers Chapter 343, Environmental Impact Statements (EIS), Hawai'i Revised Statutes (HRS). Additionally, the OEQC advises the Legislature and the Governor on environmental quality control as directed in Chapter 341, HRS.

House Bill 1326 Proposed Senate Draft 1 proposes to allow for a total of six consecutive one-year holdovers of water permits under section 171-58(c), HRS, with conditions on holdovers that authorize the use of over two million gallons of water per day. It also requires holdovers to continue without Board of Land and Natural Resources (BLNR) action while a contested case hearing is pending; makes conforming amendments to the reporting requirement in Act 126, SLH 2016; requires the BLNR, prior to authorizing holdovers after 1/1/2020, to hold a public hearing on the adoption of proposed administrative rules on the disposition of water rights by lease at public auction and water valuation process and retain certified appraiser who has a sufficient understanding of real property and water law in the State; exempts authorized instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner; requires BLNR, the chairperson of BLNR, and commission on water resource management to report to the legislature on the effectiveness of section 171-58, HRS; and extends the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019, to June 30, 2022.

Given the prominence of concern about the EIS process with respect to this measure, the OEQC offers the following informational comments concerning the environmental review process.

Chapter 343, HRS, creates a framework for certain actions ("projects" or "programs") initiated by government ("agencies") or private parties ("applicants") to go through environmental review, which is the more general phrase that refers to the process that includes exemptions, environmental assessments (EAs), and EISs.

The applicability of Chapter 343, HRS, to applicant actions depends on two required factors: a "trigger" and a discretionary consent. The triggers are described in section 343-5(a), HRS, and include the use of state or county lands or funds. In this case, the trigger may be the use of state lands or any of

the others listed in section 343-5(a), so long as there is at least one. A discretionary consent is defined in section 343-2 as “a consent, sanction, or recommendation from an agency for which judgment and free will may be exercised by the issuing agency, as distinguished from a ministerial consent.” In this case, a revocable permit or lease issued by the BLNR would be a discretionary consent.

Once the applicability of the EIS law is established, the next step is for the agency to determine the appropriate level of environmental review to undertake: exemption, EA, or EIS. Chapter 343, HRS, describes the criteria and main steps of conducting an EA or EIS in section 343-5. An EA is the default starting point and an agency must require an EIS if the agency finds that the action “may have a significant effect” (where the significance criteria are described in section 11-200-12, HAR).

Section 343-6(2), HRS, delegates responsibility to the Environmental Council (“Council”) to establish “procedures whereby specific types of actions, because they will probably have minimal or no significant effects on the environment, are declared exempt from the preparation of an [EA.]” The Council has set forth the procedures and criteria for exemptions in section 11-200-8, HAR.

The administrative rules require, with interpretation provided by the Hawai’i Supreme Court, that 1) the action will probably have minimal or no significant effect; 2) the exemption falls within one of the exempt classes in section 11-200-8(a), and ideally within the exemptions on the agency exemption list concurred by the Council; 3) the agency obtains “the advice of other outside agencies or individuals having jurisdiction or expertise as to the propriety of the exemption”; and 4) that the agency considers cumulative effects for significance and whether there are particularly sensitive environments present that might affect the significance determination (referred to as the “exception to the exemption”).

The statute directs an agency to use its judgment and experience to allow for the direct preparation of an EIS rather than an EA, and the statute and administrative rules allow an agency to declare an action exempt based on its judgment with input from outside experts. The statute and rules defer to the agency’s own operating procedures for how it does decision making. In the case of the BLNR, the BLNR issues its decisions regarding Chapter 343, HRS, in public meetings subject to the Sunshine Law. In some cases, the BLNR delegates certain stages of environmental review to the Chairperson or department administrator, but usually this delegation also occurs in a public meeting. By issuing its environmental review decisions in a public meeting, the BLNR affords the public additional opportunities for comment and participation in agency decision making regarding environmental review beyond that required in Chapter 343, HRS, but in furtherance of the spirit of the statute.

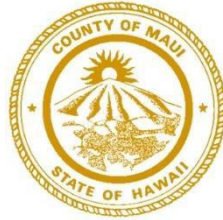
With respect to the BLNR issuing an exemption or requiring the preparation of an EA or EIS for temporary revocable permits or long-term leases, the above criteria apply. In general, agencies do not go through the applicability exercise unless there is a specific request before the agency that involves a discretionary consent and a trigger. In order for the agency to issue an exemption, it must consider the specific facts and circumstances of the individual action and, using its judgment and experience, along with the input of outside expertise, decide whether the action warrants an exemption, EA, or EIS.

Thank you for your consideration of this testimony.

**MICHAEL P. VICTORINO**  
Mayor

**JEFFREY T. PEARSON, P.E.**  
Director

**HELENE KAU**  
Deputy Director



**DEPARTMENT OF WATER SUPPLY**  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAI'I 96793  
[www.mauewater.org](http://www.mauewater.org)

**TESTIMONY OF JEFFREY T. PEARSON  
IN SUPPORT OF HB 1326  
RELATING TO WATER RIGHTS**

SENATE COMMITTEE ON WATER AND LAND  
SENATOR KAIALI'I KAHELE, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR

AND

SENATE COMMITTEE ON WAYS AND MEANS  
SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR

Hearing Date: April 2, 2019, 10:45 AM

Room Number: 211

The Maui Department of Water Supply **strongly supports** House Bill 1326 Relating to Water Rights. As written and amended, this bill will extend the time required for those parties that have a Revocable Permit (RP) to utilize a water source located on state lands for the past three years, to move towards a long-term lease as required by HRS 171-58. The proposed HB 1326 amends Act 126 that allowed moving to a long-term permit to be completed in a three-year timeframe from the bill's enactment. Revocable permits and long-term leases are reviewed at the Land Division under the Department of Land and Natural Resources, with action taken by the Land Board.

The revocable permits for East Maui on state lands allow diversion of waters for domestic uses and agricultural uses. The domestic uses are to provide potable water and fire protection for use in the Upcountry areas of Maui. Non-potable uses at Kula Agricultural Park are also supplied by these permits. The diverted water is conveyed through Wailoa Ditch, and sent to the Department of Water Supply's (DWS) Kamole Water Treatment Plant (WTP) and on to Kula Agricultural Park. The Kamole facility is both a primary source and a backup supply for the Department's Upcountry system. This water treated at Kamole WTP is crucial to provide drinking water and fire protection for our Upcountry residents.

*"By Water All Things Find Life"*

**TESTIMONY IN SUPPORT OF HB 1326**

**RELATING TO WATER RIGHTS**

**April 1, 2019**

**Page 2**

Under normal operating conditions, the Upcountry water system receives approximately 17.9 percent (1.23 mgd) of its supply from groundwater sources. Of the remaining nearly 82 percent, the breakdown is as follows: Kamole, 1.847 mgd, or 26.9 percent; Piiholo, 2.863 mgd, or 41.7 percent; and Olinda, 0.922 mgd, or 13.4 percent. Should the Kamole supply be removed, it would be devastating for Upcountry water users. Groundwater sources to supplement potable needs, and alternate sources to substitute non-potable agricultural needs, are feasible but will take time and will be much more costly than surface sources fed by gravity.

By approving the additional time extension to move any RP to a long-term lease in HB 1326, there will be no additional water diverted from the East Maui streams. The contested case for the 27 East Maui streams was resolved by the Commission on Water Resource Management, allowing for full restoration of 10 loi kalo streams, and returning of waters to the majority of the other streams. This contested case result will not be affected by HB 1326.

To ensure a reliable and sustained water source as part of our diverse Upcountry system, the Department of Water Supply supports HB 1326 to continue the source of water to our Kamole Water Treatment Plant. Losing this water source will provide for hardship to our residents Upcountry, with a great potential for water restrictions especially during drier periods.

Thank you for your consideration.

Michael P. Victorino  
Mayor

Sananda K. Baz  
Managing Director



**OFFICE OF THE MAYOR**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov](http://www.mauicounty.gov)

April 1, 2019

**LATE**

The Honorable Kaiali'i Kahele, Chair  
Senate Committee on Water and Land

The Honorable Donovan M. Dela Cruz, Chair  
Senate Committee on Ways and Means

Dear Senator Kahele, Senator Dela Cruz and Committee Members:

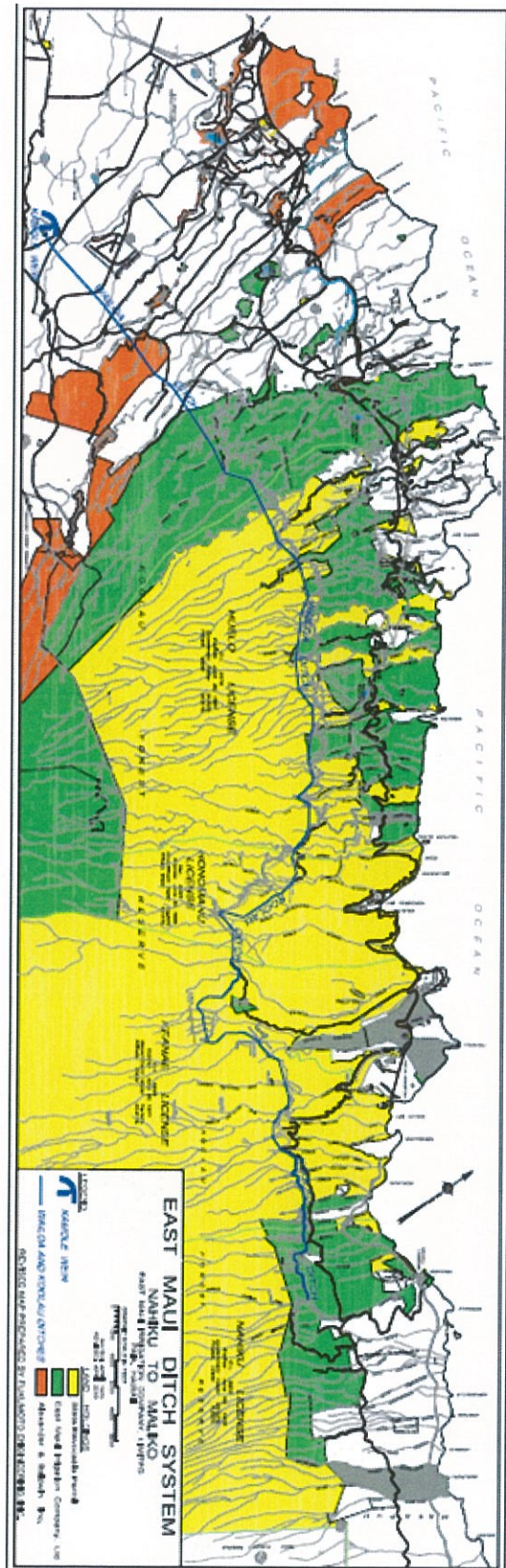
Re: Hearing of April 2, 2019; **STRONG SUPPORT** for **HB 1326 HD 2**, Relating to Water Rights

Thank you for the opportunity to testify today in **STRONG SUPPORT** for **HB 1326 HD 2**. This measure is vitally important to the people of Maui as it provides for the continued delivery of a reliable supply of water for Upcountry Maui.

Let me be clear: Maui needs this water.

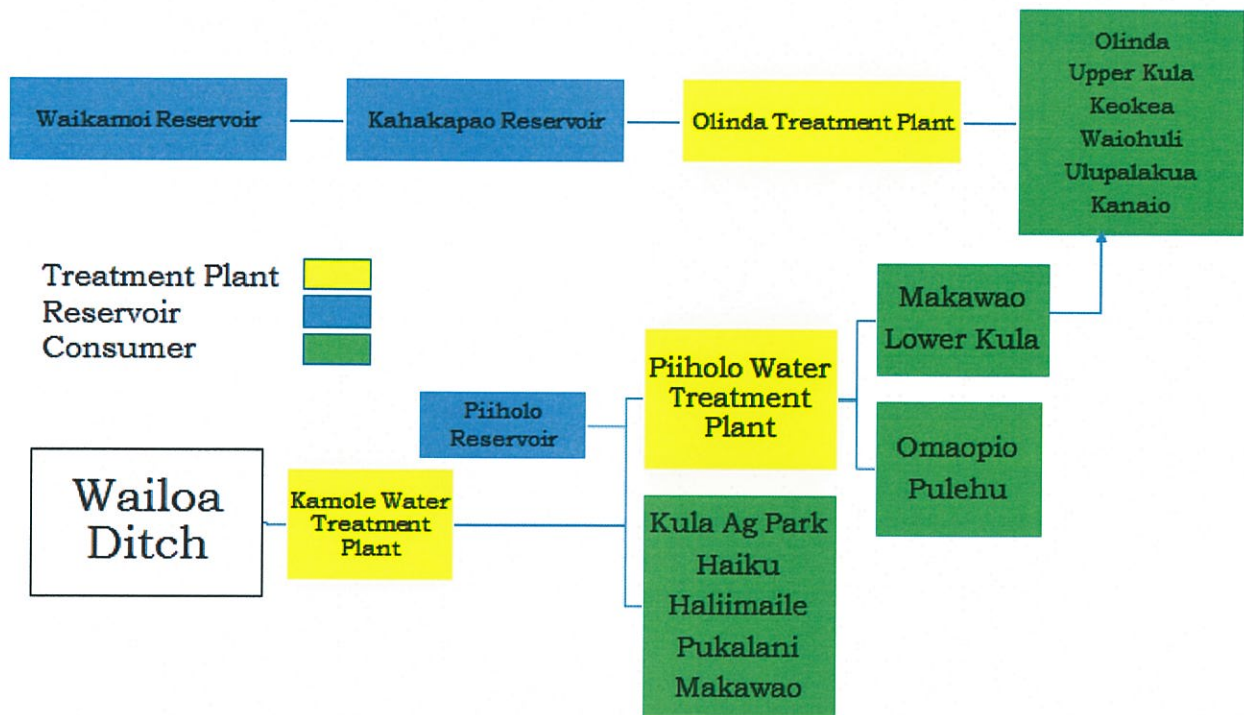
The Upcountry water system is an interconnected system. Each piece should not be evaluated in isolation. Water gathered from state lands in the East Maui watershed are collected in the Wailoa Ditch (the longest in East Maui.) The Wailoa Ditch is managed by East Maui Irrigation Co. and transports the water to the Kamole Water Treatment Facility, owned by Maui County and operated by the Department of Water Supply. In addition, the Upper Systems (Piipiholo and Olinda) are regularly supplemented by the Kamole Water Treatment Facility to maintain levels to maximally sustain the needs of Upcountry users.





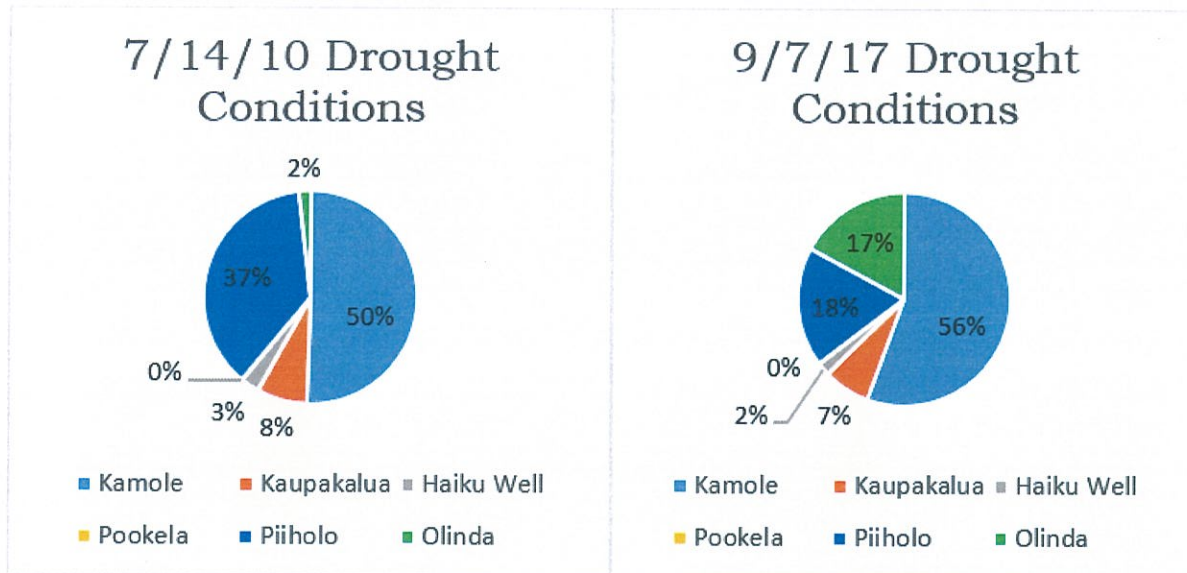
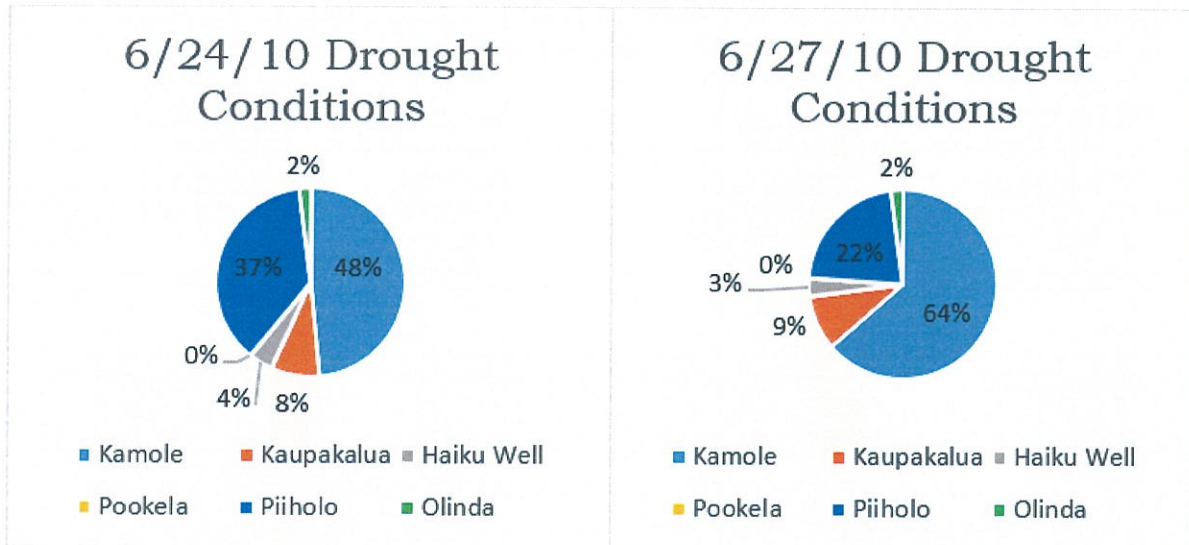
Because the Wailoa Ditch has the farthest reach in East Maui (it runs from Makapipi Stream and ends at Maliko Gulch), the ditch has the greatest opportunity to capture rainfall from the East Maui watershed. This is extremely important during times of drought when streams supplying water directly to the Olinda and Piiholo reservoirs tend to dry up first.

### Upcountry Maui Drinking Water Schematic

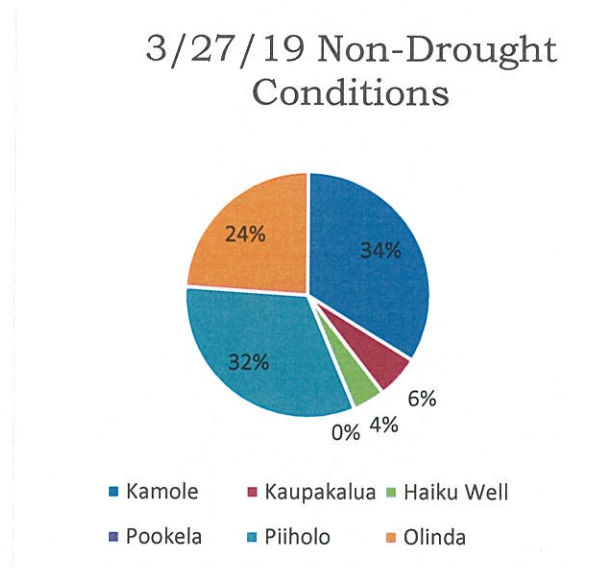


During times of drought, water is pumped uphill from Kamole to Piiholo and Olinda. Our Upcountry water records show that during drought conditions in June and July 2010 and in September 2017, actual water demand by the treatment plant ranged from 48 to 64 percent from Kamole. During non-drought conditions in March of this year, actual water demand from Kamole was at 34 percent.

**Maui County Data – Based on Department of Water Services  
Upcountry Water Reports (Actual Daily Water Demand by Treatment Plant)**







Overall, Upcountry relies heavily on surface water from ditches managed by East Maui Irrigation Co. and treated by the Maui County Department of Water Supply. More than 80 percent of the region’s water comes from streams that supply water to Upcountry treatment facilities at Kamole, Piiholo and Olinda.

EMI needs state permits to continue the work of capturing water flowing from state land into the Wailoa Ditch. If EMI did not have access to East Maui water to supply Mahi Pono’s efforts to develop diversified agriculture and generate hundreds of jobs in Central Maui, I’m not sure if EMI would stay in the business of operating and maintaining the East Maui watershed ditch system.

If water were not delivered to the Kamole plant, our Upcountry residents and farmers (9,865 households and businesses) would lose a vital source of water. Predictably, the region would experience water shortages and be left with an unreliable delivery of water.

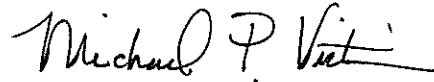
Yes, we’ve been fortunate to have rainy weather for quite some time, but the typically dry summer months are just around the corner. We can’t just assume that rainy weather will prevail, especially as our climate continues to change.

So, I humbly ask to allow applicants for holdover water permits to have continued access to water for the health, safety and economic viability of our residents and farmers.

April 1, 2019  
Page 6

Mahalo for your consideration of **HB 1326 HD 2!**

Respectfully yours,

A handwritten signature in black ink that reads "Michael P. Victorino". The signature is written in a cursive style with a prominent initial "M" and a long horizontal flourish at the end.

MICHAEL P. VICTORINO  
Maui County Mayor



OFFICE OF THE MAYOR  
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHILIG, MANAGING DIRECTOR

**LATE**

Testimony of Michael Dahilig  
Managing Director, County of Kaua'i

Before the  
Senate Committee on Water and Land  
And  
Senate Committee on Ways and Means

April 2, 2019; 10:45 pm  
Conference Room 211

In consideration of  
**HB 1326, HD2 S1 Proposed**  
**Relating to Water Rights**

Honorable Chairs Kahele and Dela Cruz, Vice Chairs Keith-Agaran and Members of the Committees:

The County of Kaua'i extends written comments on HB1326 HD2 S1 Proposed which offers six consecutive one-year holdovers of revocable permits under section 171-58(c). The proposed measure would make conforming amendments to the reporting requirement in Act 126 (2016) and extend the repeal and reenactment provision for Act 126 (2016) by seven years, until June 30, 2026.

Kaua'i Island Utility Cooperative (KIUC) provides electrical power for the island of Kaua'i while leading the state in reaching the goal of 100% clean energy by 2045. Hydroelectric power is one source KIUC utilizes to provide clean power. KIUC has worked with the Department of Land and Natural Resources, the Commission on Water Resources Management, Department of Hawaiian Homelands, Division of Forestry and Wildlife, and the Office of Conservation and Coastal Lands to full the requirements of their long-term lease for the use of the Blue Hole diversion which feeds two of their important hydroelectric plants.

In addition, the County of Kaua'i Department of Water provides clean water to 15,000 customers purchased from Grove Farm's Waiahi Surface Water Treatment Plant which is transferred through diversions. This provides domestic water necessary for implementation of our General Plan.

The County of Kaua'i believes HB1326 HD2 offers KIUC the time to complete the needed activities in fulfilling conditions that were placed on its revocable permit holdovers in 2017 and 2018 that the proposed Senate draft may not. With the additional time, the Board of Land and Natural Resources will have the information needed to make a sound decision.

Thank you for your consideration.



**COUNTY COUNCIL**

Arryl Kaneshiro, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Felicia Cowden  
Luke A. Evslin  
KipuKai Kualii



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Scott K. Sato, Deputy County Clerk

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E-mail: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

April 1, 2019

TESTIMONY OF MASON K. CHOCK  
COUNCILMEMBER, KAUAI COUNTY COUNCIL  
ON  
HB 1326, HD2, RELATING TO WATER RIGHTS  
Senate Committee on Water and Land  
Senate Committee on Ways and Means  
Tuesday, April 2, 2019  
10:45 a.m.  
Conference Room 211

Dear Chair Kahele, Chair Dela Cruz, and Members of the Committees:

Thank you for this opportunity to comment on HB 1326, HD2, Relating to Water Rights. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

HB 1326, HD2, Relating to Water Rights, extends by another six-year period, revocable permits which were only intended to last for one year. I humbly request the measure be amended to address the following:

1. Create a workaround for the small farmers and ranchers (Ka'u Ranchers, East Kaua'i Water Users Cooperative, etc.) by including an appropriation for the Department of Land and Natural Resources to assist these farmers (those diverting less than one million gallons daily) with their environmental impact statements (EIS). There is a need to find ways to separate large water users from small ones who are unfairly being placed in the middle of the larger debate over water diversion.

2. Shorten the holdover. The current draft is for an additional six years. Two years should be sufficient and would show good faith to the community that fairness and resolutions are being sought.

3. Give the Board of Land and Natural Resources (BLNR) a clear mandate over water dispositions and limit the length of long-term leases to fifteen (15) years. I also support appropriating funding from the long-term leases into a "forest stewardship fund."

Chair Kahale, Chair Dela Cruz, and Members of the Committee

Re: HB 1326 HD 2

April 1, 2019

Page 2

4. Provide an exemption from HRS 171-58 for wetland *kalo* farmers. This would benefit the Wai'oli Taro Farmers (Wai'oli) significantly in that Wai'oli would not need to apply for a water lease from BLNR and any other related applications such as environmental assessments and environmental impact statements.

Thank you again for this opportunity to provide comments on HB 1326, HD2. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in black ink, appearing to read "Mason K. Chock", with a stylized flourish at the end.

MASON K. CHOCK  
Councilmember, Kaua'i County Council

AMK:mn

**COUNTY COUNCIL**

Arryl Kaneshiro, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Felicia Cowden  
Luke A. Evslin  
KipuKai Kualii



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April 1, 2019

TESTIMONY OF FELICIA COWDEN  
COUNCILMEMBER, KAUAI COUNTY COUNCIL  
ON  
HB 1326, HD2, RELATING TO WATER RIGHTS  
Senate Committee on Water and Land  
Senate Committee on Ways and Means  
Tuesday, April 2, 2019  
10:45 a.m.  
Conference Room 211

Dear Chair Kahele, Chair Dela Cruz, and Members of the Committees:

Thank you for this opportunity to provide testimony in opposition to HB 1326, HD2, Relating to Water Rights. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

I oppose HB 1326, HD2, Relating to Water Rights, which extends by another six-year period, revocable permits which were only intended to last for one year. Amending the current Water Code, HRS Section 171-58, unreasonably protracts the time period for water users to convert their month-to-month revocable permits (RP) to leases. After a Hawai'i Supreme Court decision in response to *Na Wai Eha* on Maui criticizing the State for not meeting its public trust obligation to protect waters of the State, the Legislature passed Act 126 in 2016 that required all holders of water use Revocable Permits to convert to a lease not later than June 30, 2019, thus giving the users three (3) full years maximum to convert their Revocable Permits to leases.

The Kaua'i Springs case was also instructive in that it supported Kaua'i County's decision to not grant a permit to a small water-user of 2,000 gallons/day. For the same reason, the public now cares about the Legislature abrogating the Water Code requirement of converting revocable permits to leases of large water users of more than 30,000,000 gallons/day.

HB 1326, HD2, overrules significant community efforts on both the islands of Kaua'i and Maui to ensure that future development is not as deeply controlled by large landowners through water diversions preempting both natural stream health

Chair Kahale, Chair Dela Cruz, and Members of the Committee

Re: HB 1326 HD 2

April 1, 2019

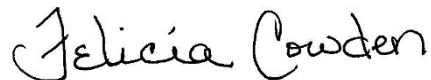
Page 2

and *mauka-to-makai* flow. There is significant future development potential planned for Kaua'i based on the water reservations recently filed with the County of Kaua'i Department of Water. The control of the water is central to balancing locations of future development. This issue is also deeply tied to perpetuation of cultural heritage, recharging of the aquifers, and general environmental health. We have significant community dissent among vulnerable populations on Kaua'i that are affected by these types of issues. Permitting the users to avoid environmental review is allowing a disregard for the public trust doctrine, as well as a healthy base-flow of the stream. Revocable Permits have allowed the users to avoid the requirement of environmental review.

HB 1326, HD2, is designed to thwart the public trust protection that diligent citizens have followed. It is critical that we do not use the Legislature to nullify the Constitution and further erode the public's faith in government.

Thank you again for this opportunity to provide testimony in opposition to HB 1326, HD2. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in black ink that reads "Felicia Cowden". The signature is written in a cursive, flowing style.

FELICIA COWDEN

Councilmember, Kaua'i County Council

AMK:mn

**TESTIMONY BEFORE THE SENATE COMMITTEES ON  
WATER AND LAND  
&  
WAYS AND MEANS**

H.B. 1326, HD2, Proposed SD1

**Relating to Water Rights**

Tuesday, April 2, 2019  
10:45 AM  
State Capitol, Conference Room 211

**LATE**

Dave Nagata  
Land Agent  
Hawaiian Electric Company, Inc.

Aloha Chair Kahele, Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committees,

My name is Dave Nagata and I am testifying on behalf of Hawaiian Electric Company Inc. and its subsidiary utilities Maui Electric Company, Limited and Hawaii Electric Light Company, Inc. (“the Hawaiian Electric Companies”) in support of the intent of the Proposed SD1 version of H.B. 1326 but would prefer the HD2 version. The proposed SD1 would extend one-year holdovers of water permits under HRS § 171-58. This bill will have a direct impact on water permits that Hawaii Electric Light Company (“HELCO”) holds.

HELCO has had year-to-year water permits for decades which has enabled us to operate our two hydroelectric plants on the Wailuku River in Hilo. These hydroelectric facilities play an important role in meeting the State’s 100% renewable energy goal. Having a long-term water lease is especially critical for obtaining financing for the rebuilding of the Waiau plant, which was nearly a century old, when it was demolished by the floods brought by Hurricane Lane.



In 2016, a circuit court judge ruled that the holdover of revocable permits (RPs) for multiple one-year permits is not consistent with the statute providing for temporary use of State lands. In response, and to avoid the abrupt stoppage of water being used by about a dozen permittees, including HELCO, Act 126 (2016) was giving permittees three years to convert year-to-year permits to long-term leases.

Upon passage of Act 126 (2016), HELCO immediately embarked on fulfilling the requirements for obtaining a long-term water lease. We had an environmental assessment prepared and obtained a Finding of No Significant Impact (“FONSI”). In cooperation with the Department of Hawaiian Home Lands (“DHHL”) and the Department of Land and Natural Resources (“DLNR”), a DHHL beneficiaries meeting was held in Hilo to enable DHHL to make a request for a reservation of water from the Wailuku River, and determine that HELCO’s **non-consumptive use of water** for its hydroelectric plants would not interfere with DHHL’s need for water.

Nevertheless, at this time HELCO is still without a long-term water lease. There remain some unresolved questions on some of the requirements for issuance of a long-term water lease, such as the minimum content for a watershed management plan and how to determine the fair value of a water lease. Until these questions are answered, HELCO’s application for a long-term water lease is on hold.

Although HELCO is fairly confident that it will be able to complete the public auction process and be successful in obtaining a long-term water lease before the end of this year, having the holdover periods extended would provide great comfort knowing that if for some unexpected reason the long-term lease is not obtained by the end of the year, HELCO would not be forced to shut down its two hydro plants.

HELCO is also cognizant that the other water permittees have had a variety of problems in fulfilling the requirements for obtaining long-term water leases. We understand that some of the small farmers and ranchers have not had the resources to meet the environmental disclosure requirements, and other permittees have been saddled with litigation that has made it impossible for them to complete the long-term water lease application process in the three years allowed under Act 126 (2016).

HELCO also supports the proposal to add the provision regarding holdovers when a contested case is requested. Having been through the holdover process, we understand that the water lease process can be protracted through no fault of the applicant.

Accordingly, the Hawaiian Electric Companies support the intent of the Proposed SD1 version of H.B. 1326, but would prefer H.B. 1326, HD2 version. Thank you for the opportunity to testify.



Testimony Before the Senate Committees on Water and Land and  
Ways and Means  
Tuesday, April 2, 2018; 10:45 am

By David Bissell  
President and Chief Executive Officer  
Kauai Island Utility Cooperative  
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

### **House Bill No. 1326 HD2 SD1 Proposed – Relating to Water Rights**

To the Honorable Kaialii Kahele, Chair, Gilbert S.C. Keith-Agaran, Vice-Chair, and Members of the Committee on Water and Land; and the Honorable Donovan M. Dela Cruz, Chair, Gilbert S.C. Keith-Agaran, Vice Chair and Members of the Committee on Ways and Means:

HB 1326 HD2 as passed allows for ten consecutive one-year holdovers of water permits under section 171-58(c), HRS. Makes conforming amendments to the reporting requirement in Act 126 (2016). It also extends the repeal and reenactment provision for Act 126 (2016) by seven years, from June 30, 2019 to June 30, 2026. HB 1326 HD2 SD1 Proposed amends the measure to, among other things, move up the repeal and reenactment provision.

KIUC supports the language of HB 1326 HD2, and would also like to provide comments on SD1 Proposed.

Comments on SD1 Proposed:

KIUC has concerns regarding the proposed Senate amendments, primarily with the compressed timeline in which leases must be obtained. KIUC and other applicants have supported the extension to 2026 to accommodate the work that must be done by the State and the applicants, who are in various stages of readiness, before these applications can be adjudicated. Less than two weeks ago, the Board of Land and Natural Resources (BLNR) deferred decision-making on a formula for watershed management cost-sharing. Their decision is deferred indefinitely pending legal guidance from the Attorney General as to whether Chapter 91 rulemaking must be utilized to develop a cost-sharing formula. The Deputy Attorney General present at the meeting could not commit to a timeframe within which its analysis could be completed, but indicated it could be six months or more. Should DLNR be required to go through the formal rulemaking process, lease applicants will be further delayed in their ability to move forward. Furthermore, BLNR directed staff to identify the criteria that must be met by a watershed management plan in order to satisfy requirements as imposed by HRS 171-58 (e). KIUC has been asked to wait until BLNR has taken action on a cost-sharing formula before determining how KIUC might best meet the watershed management plan requirements for a lease. Without further direction from BLNR and DLNR staff, it will be challenging for lease applicants to proceed.

In addition to the complexities of the lease process, an interim instream flow standard (IIFS) is currently in the process of being established for North Fork Wailua and Waikoko stream, the same streams at issue in the KIUC application. Specific to the KIUC application, BLNR has indicated that it will be considering the IIFS when setting the terms of a future water lease. On March 19, 2019, the Commission on Water Resources Management (CWRM) authorized its Chair to appoint a hearings officer to proceed with a contested case and/or mediation to establish an IIFS for North Fork Wailua and Waikoko stream. It is unknown how long it will take to conclude this process. Mediation was used to establish an IIFS for Waimea River; a process that took roughly two years to complete.

We also have concerns about provisions in SD1 which legislate differential treatment of applicants based on volume of water use and other factors. In its annual review of holdovers for revocable permits, BLNR has considered various factors and has imposed conditions as appropriate based on the specific circumstances of each permit. For example, in its approval of KIUC's holdover for 2019, BLNR restricted how much water KIUC can divert with the intention of supporting and implementing the IIFS as recommended by CWRM staff. Also for 2019, BLNR increased rent amounts for RP holders. In KIUC's case, rent was increased 38 percent. We believe BLNR is already being proactive in an effort to address community concerns during the RP holdover process.

We offer the following comments in support of HB 1326 HD2:

#### Background

Since 2003, KIUC has held a revocable permit (RP) for water use from North Fork Wailua and Waikoko stream (collectively known as the Blue Hole Diversion) for the purpose of providing hydropower for its 33,000 member accounts on Kauai. This power is historically the lowest cost source of electricity for KIUC. The operation of the Waiahi Hydro plants that use this diverted water allows KIUC to avoid burning 675,000 gallons of diesel every year which saves our members up to \$1.75 million per year versus the cost of diesel. In order to utilize this resource, KIUC has repaired and continues to maintain miles of former plantation ditch irrigation infrastructure, much of which is owned by the state. Without this support, the infrastructure would deteriorate, becoming unusable and creating a liability for the state.

In 2004, KIUC applied for a long-term lease for the use of water from the Blue Hole Diversion. Shortly thereafter, the Office of Hawaiian Affairs (OHA) filed for a contested case, which was granted. In order to resolve the contested case, a Memorandum of Agreement (MOA) between KIUC and OHA was executed in 2006.

That MOA required, among other things, that KIUC complete a stream study and cultural study in exchange for OHA withdrawing its contested case. OHA withdrew their contested case in 2012. KIUC has completed multiple stream studies and stream habitat assessments in 2008, 2013, and 2018.

We also completed a cultural study in 2010 and a draft Cultural Impact Assessment (CIA) in 2016. Since that time KIUC has been working to revise the CIA to incorporate additional information, including addressing some comments provided by OHA.

### Environmental Compliance

KIUC is committed to fulfilling requirements for environmental compliance. At the time of the original application, it was understood that water leases for ongoing operations met an exemption under Hawaii law such that the completion of an environmental assessment was not required. Since that time, we have been working with DLNR, the Commission on Water Resources Management (CWRM), Department of Hawaiian Home Lands (DHHL), Division of Forestry and Wildlife (DOFAW), Office of Conservation and Coastal Lands and others to fulfill the requirements of the lease application process, including environmental compliance.

In early 2018 KIUC was directed by DLNR to complete an Environmental Assessment (EA) in support of the water lease application. Since that time KIUC has conducted a full range of studies, as a complement to previous studies, and is actively working on completing an EA which meets HRS 343 requirements. We anticipate filing the EA with DLNR within two months. Once the EA is accepted by DLNR, the next steps toward lease adjudication can be taken.

### RP Compliance

From 2003 to 2016, the RP allowed KIUC to divert annually, on average, 14.2 million gallons per day (MGD) combined from the North Fork Wailua and Waikoko diversions. Water flow varies greatly on any given day throughout the year, due mostly to weather conditions. During the period of 2003-2016, KIUC's average annual diversion amount for the entire period of record is roughly 13 MGD; well below the maximum allowed.

In 2017 and 2018, KIUC has complied with additional conditions placed on its RP holdovers, which include returning water to the streams below the diversions, collaborating with DHHL, and initiating facilitated discussions with community stakeholders. Pursuant to the 2018 RP holdover approval, KIUC is maintaining minimum stream flow requirements that are equivalent to CWRM's proposed IIFS of 4 MGD for North Fork Wailua and 0.8 MGD for Waikoko Stream. In implementing the proposed IIFS, the current RP restricts KIUC from diverting more than 8 MGD at North Fork Wailua and 1.6 MGD at Waikoko at median flow in the stream. These amounts are highlighted on the attached copies of page 20 from the CWRM IIFS staff submittal dated August 21, 2018, and pages 6-7 of the DLNR Land Division staff submittal from December 14, 2018.

CWRM has installed a gauge in North Fork Wailua roughly 500 yards below the diversion, which provides real-time readings available on the internet. They have also recently installed a data logger downstream of the diversion at Waikoko, which should provide reliable flow information. These devices, along with ditch flow measurement devices being utilized by KIUC, will monitor compliance with the instream flow standards and diversion limits which are, again, intended to implement the staff-recommended IIFS for North Fork Wailua and Waikoko.

Conclusion

Although we have made progress over the past three years, we believe it would not be possible for the BLNR to act on our lease application during the calendar year 2019. Aside from acceptance of the EA, DLNR Land Division and DOFAW are still in the process of establishing lease rates and watershed management contributions that would be associated with the lease. We do not believe that there is legal clarity regarding the status of current revocable permits if a bill does not pass and the repeal and reenactment provision of Act 126 (2016) takes effect. The clarity that HB 1326 HD2 provides will assure that an appropriate timeframe is provided so all remaining activities can be completed with the proper due diligence and BLNR will have the necessary information to make the best decision regarding the lease.

Mahalo for your consideration.

Att: CWRM submittal, page 20  
DLNR submittal, pages 6-7

Therefore, staff recommends that one measurable interim IFS be established for **Wai'ale'ale Stream:**

- **Proposed Interim IFS:** Near an altitude of 1,050 feet, below the 'Ili'ili'ula-North Wailua Ditch, the interim IFS shall be established at an estimated flow of **6.2 cubic feet per second (4.0 million gallons per day)**. This value represents 5.4 cubic feet per second (3.5 million gallons per day) of restoration at the diversion and plus the approximately 0.8 cubic feet per second (0.5 million gallons per day) in seepage gain. Due to the uncertainty surrounding this value, the interim IFS may be revised by a future Commission action as more data are gathered.
- The Commission makes all findings of fact in the submittal in support of this recommendation.

In addition to the General Recommendations listed below, staff recommends approval of the following adaptive management strategies for Wai'ale'ale Stream:

- Follow-up surveys of instream biota by the Division of Aquatic Resources to determine the impact restored flows have on the population of native and non-native species above and below the diversion.
- Follow-up surveys of cultural practitioners to determine the impact restored flow have on traditional and cultural practices.

#### **WAIKOKO STREAM RECOMMENDATION:**

Staff recommends that one measurable interim IFS be established for **Waikoko Stream:**

- **Proposed Interim IFS:** Near an altitude of 1,075 feet on Waikoko Stream, below the 'Ili'ili'ula-North Wailua Ditch, the interim IFS shall be **1.3 cubic feet per second (0.8 million gallons per day)**. This value represents 33% of the currently estimated total median flow ( $Q_{50}$ ) of 2.5 mgd above the diversion. Due to the uncertainty surrounding this value, the interim IFS may be revised by a future Commission action as more data are gathered.
- This decision is based on the above submittal which shall constitute the Commission's findings of fact in support of this decision.

In addition to the General Recommendations listed below, staff recommends approval of the following adaptive management strategies for Waikoko Stream:

- Follow-up surveys of instream biota by the Division of Aquatic Resources to determine the impact restored flows have on the population of native and non-native species above and below the diversion.

#### **GENERAL RECOMMENDATIONS:**

Staff recommends approval of the following adaptive management strategies for the hydrologic unit being considered:

##### IMPLEMENTATION

- KIUC shall be responsible to improve the efficiencies of the transport of water in the 'Ili'ili'ula-North Wailua Ditch by limiting leakage at adits, from the siphon, and from



outstanding issues. It is our understanding that the bill will be introduced again for the 2019 legislative session. Depending on the outcome, the scope of the lease may be revised to exclude the physical irrigation infrastructure.

Revocable Permit No. S-7340 was issued in 2003 to Kauai Island Utility Cooperative (KIUC) for water from the Blue Hole Diversion to operate two hydroelectric plants. KIUC requested a water lease from the Board at its meeting of December 10, 2004, Item D-26, but the Board took no action on the request. OHA requested a contested case hearing. OHA and KIUC entered into a memorandum of agreement dated November 9, 2006 whereby OHA agreed to withdraw its request for a contested case if KIUC committed to performing specified studies in connection with the use of surface water. OHA and KIUC have agreed on the scope of the studies and OHA has withdrawn its request, although KIUC continues to work on a cultural impact assessment for the project. KIUC is still intending to obtain a water lease, but is relying on its lease application submitted on July 20, 2001.

Since the 2017 holdover approval, members of the public have written to the Department expressing their concerns with this permit. The comments appear to focus on an alleged failure by KIUC to comply with various regulatory requirements to obtain a lease of water rights, the initial approval of the permit being based on a non-consumptive use which was incorrect, such consumptive use of the water being inconsistent with the public trust, and the diversion of water by KIUC resulting in a negative impact on the downstream environment. The commenters requested that the Board reconsider its approval of the permit in light of their comments.

Staff seeks to clarify that in the prior approval of the holdover, it was noted in the submittal that the use of the water under the permit was consumptive, and the Board deemed the holdover appropriate under such circumstances. Additionally the purpose of the holdover is to allow the applicant to fulfill the regulatory requirements to obtain a water lease, such as compliance with Chapter 343, HRS. Any rights under the permit are short term and will terminate at the sunset of the holdover period unless the applicant fulfills its requirements and obtains a water lease. Also any request for a water lease will be considered by the Board in an open, sun-shined meeting. Additionally, KIUC has taken actions in fulfilling the additional requirements imposed by the Board pursuant to the holdover approval for 2018. A progress report submitted by KIUC is attached as Exhibit 6.

Regarding the downstream impacts of the water use, the Commission on Water Resource Management (CWRM) is currently in the process of developing Interim Instream Flow Standards (IIFS). Once the IIFS is approved, any water diversion pursuant to either the current revocable permit or potential long term lease will be subject to the IIFS. At its meeting on August 21, 2018, CWRM considered an amended IIFS. However, prior to approval, KIUC, along with other parties, requested a contested case. At its meeting on October 16, 2018, CWRM intended to take action on contested case petitions on the matter filed by KIUC, Earthjustice, James Torio, DHHL and Grove Farm Company, Inc. Ultimately, CWRM deferred the item in order to provide the parties the opportunity to



resolve the matter.

In order to balance KIUC's desire to continue its hydro power operation, along with addressing with the community's concerns, staff recommends that the Board impose a limit on the amount of water allowed to be diverted under the revocable permit. Based on the proposed amended IIFS developed by CWRM staff, the available amounts that could be diverted at median stream flow would be 8.0 million gallons a day (mgd) from the Wai'ale'ale stream and 1.6 mgd from the Waikoko stream<sup>1</sup>. At times of higher stream flow more water could be diverted provided that a sufficient amount of water, as determined by the proposed amended IIFS, remains in the streams. Although the amended IIFS has not been implemented, adopting it as a basis for limiting the amount of water diverted will assist in restoring stream flow, in furtherance of the Board's priority per its previous approval. This is intended as a temporary measure while the parties resolve the contested case petitions and an amended IIFS can be ultimately approved by CWRM.

As far as whether the use of water under the permit is consistent with the public trust, staff notes that the permit limits the use of the water for the purpose of generating hydroelectric power with KIUC's two hydroelectric plants, and that KIUC is a Hawaii non-profit cooperative electric company. This issue discussed further in the following section. Additionally, the proposed limit on the amount of water diverted would address the public trust purposes as noted below.

#### Public Trust Doctrine

Title to water resources is held in trust by the State for the benefit of its people. Pursuant to *In re Water Use Permits*, 94 Hawaii 97, 9 P.3d 409 (2000), and *In re Wai'ola O Moloka'i, Inc.*, 103 Hawaii'i 401, 83 P.3d 664 (2004) the Hawaii Supreme Court has identified four public trust purposes with respect to water:

- Maintenance of waters in their natural state;
- Domestic water use of the general public, particularly drinking water;
- The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights; and
- Reservations for Hawaiian home lands.

Of these four purposes, domestic water use is implicated in three of the current revocable permits: RP Nos. S-7088 to Mr. Lindner, and S-7234 and S-7267, both to Wood Valley Water and Farm Cooperative. The six remaining RPs are for agricultural use or hydroelectric power generation. With respect to the agricultural use of water, the Hawaii Constitution provides:

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<sup>1</sup> Staff notes that the permit does not impose a specific volume limit on the amount of water KIUC can divert, except that it cannot exceed the average annual amount diverted for the period from years 1992 to 2002.

Mountain House Agricultural Water Cooperative  
PO Box 294  
Naalehu HI 96772



March 15, 2019

State Capitol  
Senate  
WTL/WAM Committee

RE: HB1326

Aloha Chairs Dela Cruz and Kahele, Vice Chair Keith Agaran & Honorable Committee Members

The members of the Mountain House Agricultural Water Cooperative would like to express their **support** for HB1326. The Mountain House Agricultural Water is composed of the water users of the Mountain House overflow system in Ka'u, comprising Kuahiwi Ranch, MJ/Andrade Ranch, Naalehu Ranch, Alkane Coffee Plantation, the Hanoa ranch, and the Johannsen ranch. These ranchers and farmers depend on the Mountain House Overflow agricultural water systems for their livelihoods to support their families, to provide food for local markets and to continue to create employment in our rural community.

This is a complex issue with far-reaching consequences, not just for water permits but for DLNR Land permits as well. Coming up with a good solution may well take time. I would like to commend the DLNR for working with the ranchers and farmers and for making good progress recently in proposing reasonable policies to fulfill the regulatory requirements in a way that can help to restore the watershed and provide water for agriculture. I sincerely hope that we can all work together to develop an appropriate policies as quickly as possible.

Thank you for the opportunity to testify and for your public service,

Michelle Galimba  
President, Mountain House Agricultural Water Cooperative  
VP, Kuahiwi Contractors, Inc./Kuahiwi Ranch

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:51:54 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shawn Shimabukuro	Testifying for Grove Farm	Support	No

Comments:



March 30, 2019

**Testimony Before the Senate Committee on Water and Land**

**Tuesday, April 2, 2019; 10:45 a. m.  
Conference Room # 211**

**House Bill No. 1326 – Relating to Water Rights**

To the Honorable Kaiali'i Kahele, Chair; Gilbert S. C. Keith-Agaran, Vice-Chair, and Members of the Committee:

The purpose of this letter is to strongly support House Bill No. 1326 – Relating to Water Rights.

Grove Farm Company, Inc. is one of the larger landowners on Kaua'i, with 37,000 acres of land for development, conservation, sustainable energy, diversified agriculture, education, commercial, and industrial uses.

There are a large number of water diversions on Kaua'i and throughout the state that will be negatively impacted if the deadline for awarding of leases is not extended during this session. Ultimately, this will impact the many users and public uses of these historic plantation era water systems including farmers, ranchers, the Waiahi Surface Water Treatment Plant (primary source of drinking water for 15,000 Kaua'i residents), the State of Hawaii Department of Transportation (DOT), Department of Hawaiian Home Lands (DHHL), the Agribusiness Development Corporation (ADC), commercial, industrial and civic center users.

It is critical that these important decisions regarding proper use of our water resources to meet the cultural, social and economic needs of our community be given adequate time for proper due diligence, rather than rushing to a hasty conclusion. This bill provides for additional time provided that the applicants are actively working through the process.

We strongly urge you to strongly support this critical piece of legislation. Without it, the ramifications will be great and could be extremely costly, in financial terms, in reduced public uses of water, and environmental impacts from the potential water/stream flows.

Thank you for your consideration.

Sincerely,

Warren H. Haruki  
President & CEO



## KAPAPALA RANCH

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

April 1, 2019

Members of the Senate Water and Land Committee:  
Members of the Senate Ways and Means Committee:

Subject: HB 1326 HD2 – SD1

We strongly SUPPORT HB 1326 HD2 – SD1 and ask that you consider the nature of our business and the economic impact of paying for an Environmental Assessment of Makakupu Tunnel. We inquired last year on how we would be compensated for the cost if we were an unsuccessful bidder and at that time there were no provisions known by the DLNR. Since then I located an EA which was done in the early 1990's (authored by the DLNR) for Makakupu and find that it may not be suitable under current EA standards.

I would also like to ask for your consideration in supporting this Bill for the reason of this past volcanic event and the impact it has had on the District of Ka'u. For the past ten months our ranch has been struggling with the ash fallout and the negative impact it has had on the livestock, a multitude of earthquakes, and the most difficult task of receiving hundreds of cattle from the lava zone in Kapoho.

### Background:

Kapapala Ranch holds RP 7054 and uses the water from Makakupu Tunnel for livestock operations which are entirely on State-owned land. Aside from watering livestock, the water serves wildlife, endangered species (Nene), and is available for quick response to remote wildfires. Makakupu Tunnel was completed in 1926 and is an underground man-dug tributary system over 4000' long. The entrance to the horizontal shaft is perched on top of a 400' canyon, at the top of Wood Valley. The tunnel is remote requiring experienced hiking ability to access.

We have operated the Ranch since 1977. For the first 17 years we tried time after time to have the State put this water source back up for long-term issue as it was the only source of water servicing 34,000 acres of the Ranch and would prove to be expensive to maintain. In 1983 a 6.9 earthquake rendered the water source broken and useless. The Ranch with its own resources and cost-shared money excavated the tunnel over a 6 month period, not only bearing the cost of reconstruction but incurring the expense of hauling water to livestock at a rate of 20K to 30K gallons per day.

Still the State put no long-term value on this water resource and it was not until 1994, 10 years later, that under Act237 we were able to secure a 35 year lease on the land but not the water. We were issued GL 5374 (for the land) and RP 7054 (for the water).

In 2005 the water permit holders in Ka'u started a community based water cooperative, the Ka'u Agricultural Water Cooperative District (a legal entity that held a DCCA license with the State of Hawaii). We engaged the State to work with us to secure long-term use of these water resources. We met monthly for over 10 years trying to get the water transferred from the DLNR to the Agricultural Development Corporation, ADC. We worked closely with our legislators to get money allocated for the project which included very costly surveying of water sources in the Ka'u Forest Reserve. There was funding approved by the Legislature for this project. Coupled with a community based group of hard working farmers and ranchers we had faith that the water resources would finally be granted long-term use.

It all came to an end with Judge Nishimura's ruling and the subsequent Act 126 in 2016. Our water cooperative served no purpose at this point. It became every water permittee fending for themselves with each of us filing an application for the license to use the water.

Again, we ask that you support HB 1326 HD2 – SD1.

Respectfully submitted,

KAPAPALA RANCH



Lani C. Petrie



**East Kauai  
Water Users' Cooperative**

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

April 1, 2019

**TO: COMMITTEE ON WATER AND LAND**

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

**RE: COMMITTEE ON WAYS AND MEANS**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Chairpersons Kahele and Dela Cruz and Members of the Committees:

My name is Jerry Ornellas and **I support HB1326 SD1.**

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 17 years under a year-to-year revocable permit from the Department of Land and Natural Resources. On September 20, 2016, the Cooperative was informed by DLNR that as a consequence of the East Maui irrigation decision we would have to seek a long-term water lease. We were given three years to complete the process.

Once the three years expires at the beginning of 2020, DLNR will no longer renew the system's revocable permit, the Coop will cease operation, the irrigation system, including the recently renovated Wailua and Upper Kapahi Reservoirs, will revert to DLNR control (including dam safety oversight) and most likely be abandoned. In 2001, ITC Water Management, hired by the State to evaluate the East Kauai system, estimated the cost to build it in 2001 to be in excess of \$200 million. We are talking about the potential loss of a substantial and irreplaceable State asset.

We are therefore in favor of HB1326 SD1 allowing up to a six-year extension to existing water RPs that may allow us time to find a satisfactory long-term solution. As well, a dozen other water systems are in the process of obtaining licenses, but cannot do so by the 2020 cut off date because of complexities and uncertainties in the State's permitting process.

I respectfully ask that you pass this bill.

**East Kauai Water Users' Cooperative**

Jerry Ornellas, President





STATEMENT OF MAHI PONO, LLC  
TO THE SENATE COMMITTEES ON WATER AND LAND & WAYS AND MEANS

Tuesday, April 2, 2019  
10:45 am  
State Capitol, Conference Room 211

HB 1326, HD2, Proposed SD1  
RELATING TO WATER RIGHTS

Chair Kahele, Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committees on Water and Land and Ways and Means:

Mahi Pono respectfully submits testimony in support of the intent of HB 1326, HD2, Proposed SD1, to extend the holdover of revocable water permits to continue until the pending application for a water lease is completed and approved for an additional three-year period, subject to annual reviews by the Board of Land and Natural Resources for compliance with the public trust doctrine, among other requirements.

Recently, in late December 2018, Mahi Pono, a farming venture between Pomona Farming and Canada's Public Sector Pension Investment Board, acquired approximately 41,000 acres of agricultural farmland from Alexander & Baldwin on the Island of Maui. Our goal is to put the Central Maui farmland back into active cultivation in diversified agriculture, building back a strong agricultural sector with good jobs and economic activity for Maui residents for generations to come.

In 2016, the Legislature passed a three-year holdover of one-year revocable water permits. 2019 is the final year, which requires a further extension of the ability to secure one-year revocable permits to allow for the completion of the water lease process. Mahi Pono is one of 10 water permit holders— all permit holders require more time to complete the EIS and lease processes. Fellow permit holders include neighbor island utilities, ranchers and small farmers.

All of Mahi Pono's farm plans are contingent on a commitment of water—the ability to use waters in East Maui as the source of needed irrigation water for our planned crops. This legislation is needed to ensure a continuous source of water: (1) to pursue our farm plan; and (2) for the County of Maui for its Upcountry Maui community, via the state permits, until such time as the State can issue a long-term lease following a public auction.

The EIS process for the East Maui water lease is underway and currently expected to be completed in 2020. It should be noted that this process was previously paused to allow the State Water Commission to issue its Interim Instream Flow Standards (IIFS) decision, which it did in June of 2018. This decision represents the conclusion of a lengthy contested case, wherein the Commission restored significant streamflow, while at the same time recognizing the need for stream water for the development of diversified agriculture in Central Maui. The IIFS decision put water back into 22 streams—fully restored 10 East Maui Streams, significantly restored another 5 streams (requiring stream flows for habitat restoration) and required connectivity flows in another 7 streams for stream biota.

Mahi Pono is committed to adhering to the IIFS. We are committed to learning more about and more from our communities on Maui and will operate in good faith and remain open to exploring opportunities to address concerns going forward.

At Mahi Pono, we are stewards of the land and water and take that responsibility very seriously. We will prioritize conservation and natural resources management. With the water, we will use only what we need. We will share with others and improve the infrastructure to reduce leakage.

Mahi Pono is committed to using the lands for sustainable agriculture, exploring regenerative and traditional Native Hawaiian farming practices and preserving green, open space in Central Maui. We are planning a full range of agricultural operations and related uses to increase Hawaii's food production and food security, to include cattle, coffee, tropical fruits, citrus and leafy vegetable crops. We are doing our research and listening to the community before making any final crop decisions. That said, we are committed to high-quality, non-GMO foods for local consumption and with export potential, creating jobs for Maui residents, with job training and educational pathways for students and prospective employees. We are also committed to providing land and water in an agricultural park for use by small, local farmers, together with resources such as farming expertise, resources and equipment, and farming capital. In this regard, we have met with the leadership of UH Maui College and look forward to a robust long-term partnership.

We continue to support the HD2 version of this measure, which extends the holdover period for an additional seven years, thereby addressing concerns raised regarding the open-ended nature of that period in the bill, as introduced. We appreciate the time and attention that the Committees have expended in seeking to further amend this measure in the Proposed SD1. However, as previously stated, we are currently in the middle of the EIS process, which is anticipated to be completed in 2020 and are concerned that the additional changes in the Proposed SD1 will serve to impede our timely completion of the long-term lease process.

Furthermore, although the Proposed SD1 seeks to address concerns that, thus far, the Department of Land and Natural Resources has not provided clear guidelines regarding long-term water leases, which has frustrated the process, we believe the Department can address these concerns on its

own or perhaps more specifically under a resolution that will not necessary impinge or further delay or extend the current process.

Accordingly, we support the intent of this measure to extend the period for holdover permits, but maintain concerns regarding the additional amendments made in the Proposed SD1.



# SIERRA CLUB OF HAWAI'I

**MĀLAMA I KA HONUA. *Cherish the Earth.***

## SENATE COMMITTEE ON WATER AND LAND

## SENATE COMMITTEE ON WAYS & MEANS

April 2, 2019 10:45AM Room 211

In **OPPOSITION** to **HB1326 HD2, proposed SD1**: Relating to Water Rights

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Aloha Chair Kahele and Chair Dela Cruz, and members of the joint committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **opposes HB1326, proposed SD1**. In the best interests of the public and its natural resources, we are unequivocal in our position that Act 126, SLH 2016 (H.B. 2501) should expire at the end of 2019.

First, it is important to acknowledge the hard work of Senator Kahele and his staff on this issue. We appreciate their collective effort to hear from all sides and propose amendments to this bill with the goal of addressing everyone's needs. We know that the proposed SD1 was revised many times in the back-and-forth between the various sides of this issue before it was presented to the public. The version presented today demonstrates to us that the interests of corporations continue to dominate our legislative decision-making process, despite the best intentions of many elected officials.

### **I. HB1326 proposed SD1 does not protect public trust resources from exploitation**

The current proposed SD1 falls short from the Sierra Club's perspective because it fails to ensure Hawai'i's streams are actually protected from excessive diversions for private profit.

**Proposed Amendment 1** allows holdover revocable permits for the private use of public water to be extended for another three years.

Our Concerns:

- **One corporation benefits.** As explained more fully below, Alexander & Baldwin is the sole entity barred from receiving a revocable permit for the use of water because they abused those permits for more than 15 years.
- **No end to the extensions.** There is nothing in this bill to ensure we do not repeat this situation again in three years. A&B already received a three year extension in 2016. Since then, A&B managed to close its sugar plantation,

convert to a Real Estate Investment Trust, and sell its sugar plantation land for \$262 million. But for some reason A&B could not find time to make any significant progress on its long term lease for water. For comparison, Hawaiian Electric and Light Company has already completed its environmental assessment<sup>1</sup> for two run-of-the-river hydropower plants on the Wailuku River in Hilo, and appears on course to receive its long term lease by the end of the year.

**Proposed Amendment 2** applies to diversions over 2 million gallons of water a day, DLNR shall issue a written decision that demonstrates how the agency balanced and minimized the harm to public trust resources caused by diversions, and ensure the diversions are for actual beneficial uses during the holdover period.

Our Concerns:

- **2 million gallons of water a day is an arbitrary** and potentially significant amount of water depending on the source from which it is drawn. The small farmers and ranchers use water on the order thousands of gallons of water a day, so 2 MGD is excessive for their needs. The standard should be based on a percentage of the water source being used.
- **No standards or benchmarks established.** DLNR already documents the rationale for its decisions in written staff submittals, and minutes of Board meetings. To be meaningful, this amendment should provide guidance to the department on what constitutes an unacceptable consequence of diversions. For example, no stream shall be diverted to the point that its flow is interrupted. Because clearly, a dry stream bed cannot support native stream ecosystem.
- **Reasonable beneficial use is already the law.** This language adds no value to our existing water laws, as “actual, reasonable beneficial use” is already the standard by which diversions are supposed to be judged. We need that standard enforced. So far only the Water Commission has been willing and able to enforce this standard through interim in-stream flow standards established stream-by-stream. However, the BLNR has the same responsibility and capacity to protect public trust resources from exploitation.

**Proposed Amendment 3** applies to situations where a holdover of a revocable permit is challenged by someone harmed by the diversion. This amendment allows the holdover to remain in effect for the duration of a contested case.

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<sup>1</sup>[http://oeqc2.doh.hawaii.gov/EA\\_EIS\\_Library/2018-03-08-HA-DEA-HELCO-Wailuku-River-Long-term-Water-Lease.pdf](http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2018-03-08-HA-DEA-HELCO-Wailuku-River-Long-term-Water-Lease.pdf)

Our Concern:

- This is an **unjust limitation on the right of people injured to protect themselves**. This amendment means that someone suffering the lack of water due to a diversion must endure that harm while they work to reduce or stop the diversion that harms them.

**Proposed Amendment 4** requires DLNR to hold a public hearing on new administrative rules regarding the valuation and auction of water.

Our Concerns:

- **A hearing on rules is not actual rules**. DLNR is already required to adopt rules when they seek to establish a process for collecting funds. Chapter 91 already requires public hearings as part of the rulemaking process. This amendment creates a deadline for the public hearing on regulations, but does not ensure rules are actually adopted in a timely fashion.
- **State law already requires DLNR to engage experts to value public trust resources** used for private profit. DLNR has a long history of ignoring the requirement of HRS § 171-17 to collect fair market rent for the use of the public's resources. This might be one reason the department is underfunded.

**Proposed Amendment 5** exempts the cultivation of kalo along streams from the requirements of this bill. We take no position on this proposed amendment. It is not likely that kalo cultivation would trigger the requirements of this statute.

If lawmakers are interested in making substantive improvements to this bill that would actually protect Hawai'i's streams, we recommend S.B. 915.

**II. Alexander & Baldwin retains \$62 million in untaxed profit if HB1326 passes**  
A&B is the sole beneficiary of HB1326. As outlined in section 1 of the bill, a court order in January 2016 barred A&B from relying on the "holdover" of revocable permits for the diversion of hundreds of millions of gallons of water a day from East Maui based on the unique circumstances that situation. This ruling did not immediately change the world of revocable permits in Hawai'i because the decision was issued by a circuit court (not the Supreme Court). Circuit court decisions do not set precedence for those not party to the lawsuit.

Instead of following this court order and immediately completing the long term leasing process, A&B sought an amendment to HRS 171-58 to allow unlimited use of revocable holdovers. After considerable controversy, lawmakers pared A&B's request down to three years.

Today, we are reliving the exact same scenario three years later. Lawmakers are considering whether to grant another three year extension on holdover permits to A&B. The difference this time is that A&B has since made a small fortune off the sale of our resources.

After HB2501 was passed in 2016, A&B closed its sugar plantation on the central Maui plains, laid off hundreds of workers, converted to a Real Estate Investment Trust (a company that does not pay state taxes), and then sold its central Maui lands to a foreign company for \$262 million. According to the agreement of sale<sup>2</sup>, A&B made an eight-year promise to the buyer, such that if over the next eight years A&B is “legally prohibited” from delivering 30 million gallons of water a day from East Maui to central Maui, then it would rebate the buyer \$62 million.

Passing HB1326 today ensures A&B retains the \$62 million in water money for at least the next three years.

### **III. Maui County water use not harmed if bill not passed**

Maui County will continue to receive water from East Maui, even after Act 126, SLH 2016 expires, for two reasons.

First, in its 2016 ruling against A&B’s use of “holdover” permits, the circuit court specifically protected the county’s continued diversion of water for Upcountry by issuing a “stay of enforcement”.

Second, the ditch through which water is delivered to the County from state lands in East Maui cannot be easily closed off. The Wailoa ditch is a permanent tunnel through a mountain that cannot be easily closed.

According to the testimony of Maui County Water Department Director Jeff Pearson at a recent county board of water supply meeting, Maui County water usage will not be significantly harmed if HB1326 is not passed. At most, 25% or 6 million gallons a day is used by the County from state lands which are subject to revocable permits.<sup>3</sup>

### **IV. Ka‘u Ranchers will not be harmed if HB1326 does not pass**

After Act 126 expires, the ranchers of Ka‘u and other small farmers that access water from state land via revocable permits should return to the permitting process they following in

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<sup>2</sup> <http://investors.alexanderbaldwin.com/static-files/af1aea4e-3c42-436d-81bc-79f40e4d9a4a> (pages 6 and 47).

<sup>3</sup>[http://www.mauinews.com/news/local-news/2019/03/controversy-flows-at-water-meeting/?utm\\_source=HAPA+subscribers&utm\\_campaign=fa10d4ad76-&utm\\_medium=email&utm\\_term=0\\_7c2f6683b5-fa10d4ad76-408215289&mc\\_cid=fa10d4ad76&mc\\_eid=0ab7b07317](http://www.mauinews.com/news/local-news/2019/03/controversy-flows-at-water-meeting/?utm_source=HAPA+subscribers&utm_campaign=fa10d4ad76-&utm_medium=email&utm_term=0_7c2f6683b5-fa10d4ad76-408215289&mc_cid=fa10d4ad76&mc_eid=0ab7b07317)



2015. This means applying every year to month-to-month permits, receiving a categorical exemption from state environmental reviews, and paying a small fee.

Because these water users have not been sued for abusing water permits like A&B was, they have no court-imposed prohibition on their water use.

It is important to note that these small farmers use very little water compared to A&B's diversions that gave rise to the 2016 court case. These water users have been relying on revocable permits since the late 1990's and early 2000's to use public trust water resources without controversy or challenge by other water users. So long as these revocable permit holders do not abuse their access to water, then they should be allowed to continue to put that water to reasonable beneficial use.

We recognize that the Attorney General's office may challenge our analysis on this point. They are wrong. Unfortunately, this is not the first time.

#### **V. Kaua'i Island Utility Cooperative should complete lease process**

For more than 15 years, KIUC has been diverting nearly all of Wai'ale'ale and Waikoko Streams to supply its Waiahi hydropower plants. These two plants account for only 1% of KIUC's overall energy production. This is not a fair trade-off by any stretch—especially because renewable energy is not a recognized public trust use of resources.

KIUC appears to be seeking a windfall from A&B's effort to pass HB1326. If HB1326 passes, then KIUC will be authorized to continue this practice of diverting the culturally significant waters of Wai'ale'ale and Waikoko without minimum protections for these streams.

Not passing this bill will help to motivate KIUC to conduct the necessary review of its environmental impacts, complete the leasing process, and possibly invest in the state-of-the-art technology that returns water for hydropower to the stream of origin.

#### **VI. Sierra Club is committed to working towards improving HRS §171**

The Sierra Club agrees that HRS §171 could be improved. The original version of this statute was drafted prior to the passage of our current constitution, and many important cases have been decided since its original enactment. It makes sense that such a fundamental statute be updated. We are committed to working with lawmakers and stakeholders towards those improvements. Such a process, however, cannot be successful in the context of special treatment for one corporation that has caused significant harm to Hawai'i's public trust resources and traditional ways of living.

Hawai'i has an abundance of freshwater resources. Scarcity is not our problem. There is more than enough water to ensure our streams run free, taro farms are vibrant, diversified agriculture thrives on the plains, and renewable energy is abundant. Our problem is greed. A few wealthy and powerful entities have benefited immensely from the failure of state agencies to enforce the laws designed to protect public trust resources against abuse. Deferring HB1326 is one step towards improving this problem.

Thank you very much for this opportunity to provide testimony in strong opposition to HB1326, proposed SD1.

Mahalo,

A handwritten signature in black ink, appearing to read "M. Townsend", is positioned above the typed name.

Marti Townsend  
Chapter Director

**LATE**

**SENATE COMMITTEES ON WATER AND LAND & SENATE COMMITTEE  
ON WAYS AND MEANS**

**Testimony Opposing House Bills 1326 and 1171: Relating to Water Rights**

**April 2, 2019, 10:45 a.m.  
Conference Room 329  
45 Copies**

**Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and Members of the  
Committees:**

**My name is Moses Haia. I am the current executive director of the Native Hawaiian Legal Corporation. The Native Hawaiian Legal Corporation is a non-profit, public interest law firm committed to the protection and preservation of Native Hawaiian rights and culture, including Native Hawaiian traditions and customs that rely on sufficient stream flow. As a staff attorney in 2006, I testified on two house bills which attempted to circumvent applicable court decisions which found the proposed actions of the Board of Land and Natural Resources to virtually give away public trust water resources for private gain while wreaking havoc on the environment and our client's rights, culture and lives. The first bill, House Bill 2800 sought to amend HRS 171-58(c) to allow the approval of long term leases of water developed on state lands after negotiation rather than, as presently required in areas within the State that are not designated water management areas, by public auction under conditions which best serve the interests of the State. The second bill, House Bill 2142 sought to provide agricultural users who filed declarations of water use back in 1989; i.e., Alexander & Baldwin, with an absolute priority to water. Thankfully, in both instances, reasonable minds prevailed and both bills were held.**

**Well, here we are again in 2019 faced with two bills which ultimately seek to ensure A&B gets its way with the people's water via passage of one of these bills. Many have been purposefully misled to believe that unless HB 1326 or some form thereof is passed by the legislature, the small farmers/ranchers will suffer dire consequences and be forced to give up their farming and ranching as a result of a more recent decision involving the BLNR's practice of issuing holdover permits to A&B for the authority to use 33,000 acres of state ceded land and up to 450 million gallons of stream water daily without first requiring it to complete an environmental assessment (EA) . While this fear has served to call many concerned citizens into action, it is, as explained below, wholly unwarranted.**

**The people of East Maui have been one of the few communities statewide forced to live through the reality of the indiscriminate and wholesale devastation of their watershed via A&B's century-old diversion of 100 East Maui streams and tributaries. The main difference which separates the current fear-filled farmers and ranchers from the traditional and customary kalo farmers of East Maui resident is the significantly different treatment the smaller farmers/ranchers have received from the state, and the manner in which A&B has exploited both by attempting to pit their interest in preserving their way of life against each other. East Maui kalo farmers, most if not all of whom enjoy constitutionally-protected water rights, were for decades disrespected, ignored and forgotten. It has taken eighteen years of legal wrangling to force derelict state agencies and A&B to begin to conform their behavior to the requirements of the relevant, applicable law passed by this legislative body and its predecessors for decades. The farmers/ranchers who have been made to feel victimized by system designed to protect our state resources from the kind of destructive, exploitative practices committed by the big, commercial diverters with whom they are now aligned, have already begun to receive special treatment because of that powerful, moneyed-interest partnership. Their yearly revocable permits, most of which have been continuously renewed year after year, have also come with HRS Chapter 343 exemptions. The state is now slow walking and, I would argue, needlessly forcing these small farmers/ranchers through the state's long-term lease process, as if there was no difference between their negligible uses (<2mgd) and the massive uses of large, commercial diverters (100-450mgd). The comparison is incredulous. In any event and based upon the state's prior treatment of their uses, they will in all likelihood receive HRS Chapter 343 exemptions along with their leases so long as their farming/ranching activities remain unchanged and only minimally impact the environment. For the state to now reverse its course and require these small farmers/ranchers to complete environmental studies they have exempted the likes of A&B for three decades or more, would be an actionable injustice.**

**The above facts reveal the following ultimate reality. The impassioned demand for passage of this bill as the only way to guarantee the ability of such farmers/ranchers to continue their farming/ranching businesses is being used as cover to justify, indeed legalize, A&B's sale of our not-for-sale state water resources for \$62 million and to gift them a 7 year insurance policy to close the deal.**

**The Native Hawaiian Legal Corporation requests that our lawmakers do better, be better than A&B banked \$62 million on and hold or kill these bills.**

**Mahalo for this opportunity to testify. Should you desire additional information of assistance, please contact us.**



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

**COMMITTEE ON WATER AND LANDS**

Senator Kaiali`i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

**COMMITTEE ON WAYS AND MEANS**

Senator Donovan Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

HB1326 HD2 - RELATING TO WATER RIGHTS  
Tuesday, April 2, 2019, 10:45 a.m., Conference Room 211

**TESTIMONY**

Nancy Davlantes, Legislative Committee Member, League of Women Voters of Hawaii

Chairs Kahele and Dela Cruz, Vice-Chair Keith-Agaran, committee members:

**The League of Women Voters**, which views the equitable disposition of water rights essential to the balancing act required by the Hawaii Supreme Court between the constitutional requirements of protection and conservation of public trust resources, on the one hand, and the development and utilization of those resources, **offers these comments on the current version of HB1326 HD2.**

Act 26, signed into law into 2016, mandated that a holdover of water rights may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of *three consecutive one-year holdovers*, whichever occurs sooner.

Those three years have now passed without resolution, and the bill before this committee has gone through five iterations, demonstrating the complex nature of this issue, and remains unsatisfactory to all sides. For whatever reasons, there has been no establishment of procedures for obtaining a long-term lease, so it is back to successive extensions of revocable permits.

And so, we are left with the current conundrum. The public trust doctrine is clear; what is not clear is how the legislature will implement the Court's requirements.

Meanwhile, those who depend on the waters on these islands for their livelihoods must continue to live in an unacceptable limbo, and whatever pressures are being exerted on either side only serve to delay a permanent resolution.

Thank you for the opportunity to offer testimony.



# Environmental Caucus

## The Democratic Party of Hawai'i

April 1, 2019

Position: **Oppose HB1326 HD2**

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and members of the committees,

We strongly urge you to OPPOSE HB1326 HD2.

As members of the Environmental Caucus of the Democratic Party of Hawai'i, we speak for the resources that cannot speak for themselves. As you know, water and the rights of access are protected under the public trust doctrine. HB1326 HD2 undermines the principles held forth in Hawai'i's Public Trust Doctrine, the Constitution, and the Water Code. The revocable permits issued were intended to temporarily provide time for diverters to prepare their long-term lease applications. The hold over of these revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

This bill gives corporations like Alexander and Baldwin, Mahi Pono, and Kaua'i Island Utility Cooperative unrestricted use of our water at the detriment of downstream users, including those who have fought for generations to have their water restored. The bill is beyond saving by amendment. The case is being made that it will impact small farmers and ranchers but they will not be adversely impacted if the bills do not pass because no one is challenging their water use. They will continue to apply for permits under existing laws.

Hawai'i rivers and streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture but only when there is proper stewardship with all stakeholders considered.

Please put an end to the generational theft of Hawai'i's precious waters and oppose HB1326 HD2.

Mahalo for doing your best to ensure environmental justice prevails over corporate profits!

Sincerely,

Lana Olson

Chair, Environmental Caucus of the Democratic Party of Hawai'i



# Environmental Caucus The Democratic Party of Hawai'i



**HB-1326-HD-2**

Submitted on: 4/1/2019 8:26:43 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Henry Curtis	Testifying for Life of the Land	Oppose	Yes

Comments:

Aloha Senators

Please protect water, please require an EIS

**HRS 344-1 Purpose.** The purpose of this chapter is to establish a state policy which will encourage productive and enjoyable harmony between people and their environment, promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humanity, and enrich the understanding of the ecological systems and natural resources important to the people of Hawaii.



March 31, 2019

Members of the Water and Land Committee (WTLtestimony@capitol.hawaii.gov)  
Members of the Ways and Means Committee (WAMtestimony@capitol.hawaii.gov)  
Hawaii State Capitol  
415 S Beretania Street  
Honolulu, Hawai'i 96813

RE: Strongly Opposed to HB1326 SD1 Relating to a Holdover of Water Rights

Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees:

Kaua'i Group of Hawai'i Chapter of Sierra Club strongly opposes passage of HB 1326 SD1. It should be patently obvious by now that corporate water users are not making compliance with the water code laws a priority. The revocable permit (RP) privilege has been used and abused to profit from use of the public's water, often without payment, to the detriment of constitutionally protected users of water; the practitioners of Hawaiian culture and the natural environment.

HB 1326 affects no water users other than Alexander & Baldwin. Small farmers and ranchers will be unaffected if this bill is voted down. Only A&B, unable to apply for a RP (solely the result of its own actions) will be unable to continue diverting water without compliance to HRS 171-50.

This bill's passage would extend the practice of giving free license to corporate diverters to take unknown quantities of water for unknown purposes, all the while depriving the natural environment and downstream water users their constitutional right to the water. Such practice is prohibited under HRS 174-C-71 F (4). "Surplus" water available for sale cannot be determined until Instream Flow Standards (IFS) are established. That is the responsibility of Commission on Water Resource Management (CWRM), not the legislature.

The Kaua'i Group urges you to reject this bill and instead support CWRM's mandate to establish IFS. Chart a course out of plantation era water use practices and toward equitable sharing of the waters of Hawai'i for all present and future generations.

Sincerely,

Kip Goodwin

On behalf of the Sierra Club Kaua'i Group Executive Committee

cc: [marti.townsend@sierraclub.org](mailto:marti.townsend@sierraclub.org)

**HB-1326-HD-2**

Submitted on: 3/30/2019 9:25:28 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Regina Gregory	Testifying for EcoTipping Points Project	Oppose	No

Comments:



SENATOR KEALI'I KAHELE, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR  
SENATE COMMITTEE ON WATER AND LAND  
&  
SENATOR DONOVAN M. DELA CRUZ, CHAIR  
SENATOR GILBERT S.C. KEITH-AGARAN, VICE CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY IN **STRONG OPPOSITION** TO HOUSE BILL NO. 1326 HD 2, PROPOSED SD1

April 2, 2019, 10:45 a.m.  
Conference Room 211  
State Capitol  
415 South Beretania Street

Dear Chairs Kahele and Dela Cruz, Vice-Chair Keith-Agaran, and members of the Senate Committees on Water and Land & Ways and Means:

Earthjustice **strongly opposes** House Bill 1326 HD 2, Proposed SD 1.

Earthjustice appreciates the general intent behind the newly inserted provisions of HB 1326 HD 2, Proposed SD 1, which attempt to hold the Board of Land and Natural Resources ("Board") to its legal duties to protect the public trust in water resources.<sup>1</sup> These provisions include requirements such as: (1) written decisions by the Board, including findings of fact on diverters' actual, reasonable-beneficial water use needs, for any diversion of more than two million gallons of water per day ("mgd"); (2) rulemaking to determine a fair valuation system for lease of public waters under Hawai'i Revised Statutes ("HRS") § 171-58; and (3) an exemption from the law for small-scale kalo farmers who return water to its stream of origin, (which is a protected public trust use). Earthjustice thanks the Senators responsible for drafting these amendments that seek to address existing problems with HRS § 171-58, the state's water lease statute.

Nonetheless, Earthjustice **strongly opposes** HB 1326 because the premise of this legislation is fundamentally misguided. The origin of the currently existing amendments to HRS § 171-58, which HB 1326 seeks to extend, is the legislature's over-reaction to the state circuit court's 2016 decision holding that the Board's practice of giving Alexander & Baldwin

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<sup>1</sup> The public trust imposes on all political subdivisions and executive agencies "the duty and authority to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial uses." Kauai Springs, Inc. v. Planning Comm'n, 133 Hawai'i 141, 172 (2014).

("A&B") successive one-year holdovers of month-to-month temporary permits violates the constitutional public trust doctrine, as well as the statute. See Carmichael v. Board of Land and Natural Resources, Civ. No. 15-1-0650-04, slip op. at 4 (Haw. 1st Cir. Ct. Jan. 8, 2016). The legislature amended HRS § 171-58 to allow the Board to issue holdover permits of previously authorized water uses for up to three consecutive one-year periods (Act 126, 2016). This allowed A&B to circumvent the court process in the Carmichael case.

**Like Act 126, HB 1326 HD 2, Proposed SD 1 accomplishes nothing except to offer A&B further reprieve from the court's decision in the Carmichael case for another three years. It must be rejected as the very definition of special interest legislation. It also runs afoul of the constitutional public trust doctrine, by prolonging the state's unlawful abdication of its fiduciary obligations over water resources.**

With respect to A&B and its successor-in-interest, the legislature should allow the judicial process in the Carmichael case to properly run its course, so that the court and parties can work out a just solution regarding remedies going forward. With respect to other diverters, the Board can continue to evaluate any pending revocable permits or long-term water leases under the water leasing provisions in existence when Act 126 was passed in 2016, which will go back into effect at the end of this year. Although the current water leasing system is broken, band-aid fixes like Act 126 and HB 1326, do nothing to solve the problem, but rather simply perpetuate and magnify historic water injustices.

To bring the overall water leasing process under HRS § 171-58 in line with modern resource protection and management principles, Earthjustice suggests that the legislature require a comprehensive study, stakeholder task force or working group, and/or other systematic public review process to evaluate and recommend reforms to HRS § 171-58 for the next legislative session. This type of comprehensive and forward-looking legislative initiative, however, cannot be reconciled with HB 1326, which must be rejected as fundamentally inconsistent with the constitutional public trust in state water resources.

Mahalo nui,



Leinā'ala L. Ley  
Attorney  
Earthjustice

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:26:44 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Foster	Testifying for Hawaii Advocates For Consumer Rights	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:49:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hope Kallai	Testifying for Kia`i Wai o Wai`ale`ale & Malama Moloa`a	Oppose	Yes

Comments:



**HB-1326-HD-2**

Submitted on: 3/31/2019 11:56:44 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bridget Hammerquist	Testifying for Friends of Maha'ulepu & Kia'i Wai o Wai'ale'ale	Oppose	Yes

Comments:

Aloha Senators,

Please accept this testimony in opposition to HB 1326 HD2 SD1. We urge a "No" vote on this bill.

As pertains to Kauai, I think KIUC's interest in these proposed bills is to run the clock out while they develop more renewable energy until the use of the Waiahi hydros is obsolete and unnecessary. It has been 15 years since they received their first annual Revocable Permit. They have never given notice for an EA or EIS, and have never applied for a Conservation District Use Permit, as the law requires.

While shirking their legal obligation, our Coop has been complicit in delivery of state water to Grove Farm (GF) for sale to the County and GF Ag lessees. Significant money is saved if KIUC successfully avoids required environmental studies and application for a Conservation District Use Permit. The diversions at issue (under KIUC's RP 7340) and the 2 Waiahi hydro-power plants are on State Conservation Land which mandates the studies they have so fastidiously avoided.

In the meantime, many on Kauai are being asked to drink questionable "red water."

As we discussed, while not doing what the law requires, KIUC delivers water to Grove Farm after passing through KIUC's Waiahi hydro plants. Grove Farm takes the water without a permit or payment to the State, stores it in the Kapaia Reservoir and pumps it to its Waiahi Surface Water Treatment Plant, operational in 2004. Neither KIUC nor Grove Farm has ever done environmental studies for this area. State law requires environmental studies for any commercial use of State water. How is this allowed? Why is the Senate even considering another extended period, whether 3 (HB 1326 HD2 SD1) or 7 (HB 1171 SD2) years? Should A&B and their interest to save \$62 Million or KIUC and their interest to keep from spending a million to protect the public and the environment, a reason to give any business operation a pass from compliance with the law?

If HRS 171-58, the law governing State water leases, and the Water Code are not good laws, they can and should be amended. Carving out a period of time where businesses are told the law won't apply to them is a really bad precedent and the domino effect of related complicit illegality is unstoppable.

Without the required environmental studies which include a public hearing process, many on Kauai (15,000 residences and businesses) are now drinking water from GF's SWTP that lost its NPDES wastewater permit in May, 2016. That loss was due to excessive aluminum content and other contaminants from the bauxite laden soil in the Kapaia area that makes "red water." Grove Farm does not have a valid permit (RP) or lease to divert waters of the State. They also don't have a legal right to operate their Surface Water Treatment Plant (SWTP) using KIUC's diverted State water because GF doesn't have the valid permits. See attached State documents timeline.

People on Kauai have asked about the "red water" coming out of their pipes. People were told that the water was ok to drink because it had been purified. Purification does not remove aluminum. Aluminum is particularly toxic for chemo patients, dialysis patents, the old and the very young and it is believed to contribute to the development of Alzheimer's.

How despicable to ignore the law, fight doing environmental studies to save a buck, unreasonably risking the health of the community and its environment. KIUC and Grove Farm have no right to make money and disregard the Public's health, while making over \$30 million since 2004 from Kauai water customers... no law should be passed that relieves anyone from complying with the law.

Grove Farm knew there was bauxite in the soil and aluminum in the water. See GF CWRM 2017 request for funding attached. Despite their knowledge, Grove Farm choose to produce drinking water (which is supposed to be of the highest quality) from the lowest quality water source, stored ditch water run through a hydro-power plant.

We need your help. Stop this bad bill now and let DLNR do their job.

Mahalo nui,

Bridget Hammerquist, President

Friends of Mahaulepu, a 501(c)(3) Corporation

Kia`i Wai o Wai`ale`ale, Co-Founder Concerned Community Organizations on Kauai

**Timeline of Grove Farm Water Treatment Plant NPDES**

On September 24, 2004, GF was issued a NPDES permit no. HI 00021824, expiring September 28, 2009. The permit authorized wastewater discharge associated with the production of potable water to the receiving waters (the Kapaia Reservoir).

August 2008: GF reports approximately 50% exceedance of discharge limitations for turbidity and a 10x exceedance for recoverable aluminum for July. GF regularly reports exceedances through June 2018. See “Exceedances reported for Grove Farm’s Waiahi Water Treatment Facility 2009-2018.”

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20080808%20DOH-CWB%20NPDES%20July%202008%20letter.pdf>

June 5, 2009: DOH’s Clean Water Branch (CWB) files an investigation report noting GF’s repeated exceedances and indicating it would act against GF’s apparent violations.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/PA0801.PDF>

July 6, 2009: DOH issues a Notice of Apparent Violation (NAV) due to exceedances for Feb, Mar, Apr, and May 2009.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20090706.Grove%20Farm%20NAV.PDF>

On December 9, 2009, DOH issued a second NAV. GF responded with a plan to hire a water quality specialist, Steve Duranceau, to develop a plan that GF would implement.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20091208.Grove%20Farm%20NAV%20and%20response.PDF>

March 24, 2010: DOH proposed to renew GF’s NPDES under a new permit.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20100324.E-mail%20Confirmation%20->

[%20Draft%20Permit%20and%20Public%20Notice%20Date%20for%20the%20NPDES%20for%20HI%200021824%20-%20Grove%20Farm%20Water%20Treatment%20Facility.pdf](#)

May 24, 2010: DOH acknowledges a compliance schedule update for GF.

[http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20100524.Compliance%20Schedule%20Update-05062PKP.10.pdf](#)

July 12, 2010: EPA comments on the proposed GF permit, noting that the compliance schedule did not comply with state rules and the Clean Water Act, the proposed permit may violate antibacksliding requirements, GF's proposed reduction in toxicity monitoring was not adequately supported, and a lack of information concerning effluent monitoring.

[http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/FW\\_%2020100712.EPA%20comments%20on%20Grove%20Farm%20draft%20permit.pdf](#)

May 23, 2011: DOH renewed the GF permit.

[http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20110524.E-mail%20Confirmation%20-%20NPDES%20Permit%20Issuance%20for%20Permit%20No.%20HI%200021824%20-%20Grove%20Farm%20Water%20Treatment%20Facility.pdf](#)

On November 12, 2015, DOH filed its Compliance Evaluation Inspection. Over three months later on February 26, 2016, GF responded to DOH's inspection report acknowledging, amongst other things, that the aluminum in the discharged water is a "concern." GF further wrote:

It is Grove Farm's ultimate goal to be a non-charge facility and we are working with engineering consultants and irrigation specialists in an effort to re-use the discharge water. A highly probable option we are contemplating is pumping the discharge water into basins and flowing the water into agricultural fields. Grove Farm wishes to renew its permit as the planning and implementation of a solution will more than likely extend beyond the existing April 30, 2016 permit expiration date.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20160226.Response%20to%20CEI%20Transmittal-HI0021824.PDF>

Also on February 26, 2016, GF submitted a NPDES permit renewal application.

By letter dated March 15, 2016, GF notified DOH of its intent to eliminate its practice of discharging into Kapaia Reservoir by either: (1) working with KIUC to accept the discharge for its plant operations “as they are currently drawing water from the Kapaia Reservoir”; (2) reusing the WTF’s discharge water for irrigation purposes in adjacent fields.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021894/20160315.Update%20of%20Renewal%20Letter-HI%200021894.PDF>

On April 27, 2016, GF notified DOH that it planned to pursue the second option - “reuse for irrigation purposes into active agricultural fields.” GF identified the Kaua’i Department of Water as a “partner” in this “alternative reuse plan.”

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021894/20160502.Update%20on%20Grove%20Farm%20SWTP-HI0021824-HI0021894.PDF>

On April 29, 2016, GF sought an administrative extension for its new plan “to gravity flow the discharge stream to a newly built 2.0 million gallon irrigation storage pond . . . [an] transmit the water to active agricultural fields[.] GF consultants anticipated a one-year timeline for installation.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20160429%20email%20Grove%20Farm%20SWTP%20Letter%20for%20NPDES%20Extension%20Request.pdf>

On April 30, 2016, the NPDES permit for the Waiahi WTF expired and DOH terminated it on May 2, 2016 without granting the administrative extension.

By letter dated June 27, 2017, DOH reported on its review of preliminary engineering plans for proposed changes to the Waiahi WTF. DOH's comments included: (1) the plans failed to indicate how accumulated sediment in the detention basin would be disposed of; (2) GF had failed to "report key data on daily max flux and pressure decay tests"; (3) KDOW would need a Class 2 Water Treatment Plant Operator to assume ownership of the Waiahi WTF in 2019; (4) the plans did not indicate whether GF obtained approval to dispose of residual solids in nearby fields; (5) Wastewater Branch would not approve pumping effluent into nearby fields for disposal; (6) GF's plans for "off-site disposal" were unclear and pumping effluent into nearby fields is prohibited; (7) Waiahi WTF had been operating without a permit since April 30, 2016; (8) further permits would be necessary if their construction involves an acre or more; (9) the sludge from Waiahi WTF would require a permit unless it is disposed at a permitted solid waste management facility.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021894/20170628.msg-FW-%20PWS%20No.%20400,%20Lihue-Kapaa%20Waiahi%20WTP%20Upgrades-HI0021824-HI0021894.pdf>

By email dated October 2, 2017, GF wrote to DOH acknowledging that they would seek a NPDES permit that would integrate GF's planned "upgrades."

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20171002%20email%20Grove%20Farm%20Water%20Treatment%20Plant%20-%202017%20September%20Mtq%20-%20NPDES%20Permit%20.pdf>

On November 17, 2017, DOH inspected the Waiahi WTF and noted at least thirteen areas of potential noncompliance.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/HI0021824%20inspection%20report%2011-17-2017.pdf>

On May 14, 2018, GF responded to the inspection report. GF included a timeline indicating that it expected an Administrative Order of Consent would be drafted to allow GF to operate without a permit.

<http://eha-web.doh.hawaii.gov/wpc-viewer-static/permits/HI0021824/20180514.Comments%20to%20the%20Facility%20Inspection%20Report-EMD-CWB%200319ESM.18-HI%200021824.pdf>

At present, GF is operating without a NPDES permit.





**HB-1326-HD-2**

Submitted on: 4/1/2019 5:54:22 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Evans	Testifying for Friends of Mahalepu	Oppose	No

Comments:

Oppose the Bill.

Hui 'O Mālama 'Āina



Hui 'O Mālama 'Āina LLC

POB 92

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96768

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### **Testimony to the Hawaii Senate Water and Land Committee and Ways and Means Committee in opposition to HB 1326 HD2 SD1 and with comments**

Aloha Kākou WAL Chair Kahele, WAM Chair Dela Cruz, WAM/WAL Vice Chair Keith-Agaran, and honorable members of the joint committee hearing.

As my friend Senator Mike Gabbard says, this is a Kākou thing, and so we must all hui up to serve and promote the benefit of our present and future generations, its our duty.

Mahalo for all of your efforts with this piece of legislation (and its relative HB 1171), and a big mahalo to those of you who decided to come to East Maui where I reside, raise my children, run my business and farm. You came to hear our communities concerns regarding HB 1326. Please recall that no one we heard from publicly at that meeting supported the concept of extending the language of Act 126.

I encourage anyone considering voting for this legislation who has not been to travel to East Maui and Kauai where great harm has been and is being done by stream diversions and poorly maintained watersheds. Take all of the time you need to truly understand the consequences of giving our sacred water to profit driven corporations, before you give them an exemption from our constitutionally mandated laws protecting us from exactly what is happening and has been happening for decades.

**I support water for farming, fishing, people, animals, and finally for the growth of our society. That water must flow in the form of secure, safe water leases that are in compliance with the public trust doctrine.** We are a ways away from that we all will admit, but passing this type of legislation and excusing certain water users from doing their kuleana of cleaning up the mess out there in the watersheds is not a good way to get them to do it. Crimes have been committed, who is going to pay for the damage that is continuing to occur right now? Passing the buck and pointing fingers is not going to work, we have had enough of that, we need real solutions.

These bills are a good try, but I respectfully request you and your colleagues go back to the drawing board with this language. Hawaii needs a post plantation era water summit, where Hydrologists, cultural practitioners, developers, agriculturalists, conservationists, fishermen, legislators, regulators, experts and legal scholars put their heads together to

find the pono path forward. Hawaii deserves nothing less than that type of effort, and a lot more than we are seeing out of our governing bodies and industry today.

No harm will befall anyone in my opinion if this decision on how to handle the holdovers of revocable permits waits another year, and during the interim between this session and the next, solutions to the myriad of issues surrounding the use of public trust resources are sought out.

It is my strong belief that haste makes waste, especially in this case, and Hawaii needs your very careful attention and disciplined focus to find the pono path forward.

I was told on 3/22/2019 at the Board of Land and Natural Resources meeting by one of their directors at that meeting that their ability to issue and put conditions on revocable permits to use public trust waters is not affected when Act 126 sunsets. The RP's can and will continue. Therefore, it is my conclusion from hearing that information from BLNR in a public meeting and many other legal opinions, and speaking with many of you fine public servants, that farmers will be fine, and will not lose access to their previously permitted allotments of water resources, using the very same process they have previously used.

Like you all I have taken an oath to uphold and defend our state constitution and its motto Ua Mau Ke Ea O Ka Aina I Ka Pono.

Before you decide how to vote on this bill (and the next one HB 1171), please consider your oath and search your heart to understand whether or not this legislation meets the spirit of our State's wonderful constitutional amendments adopted in 1978:

#### ARTICLE XI CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES CONSERVATION AND DEVELOPMENT OF RESOURCES

Section 1. **For the benefit of present and future generations**, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

**All public natural resources are held in trust by the State for the benefit of the people.** [Add Const Con 1978 and election Nov 7, 1978]"

Please ask yourself before you make your decision in this matter if you are putting corporate profit in front of the public trust, and also ask yourselves please, **“Why is it so important that a few former plantation owners be exempted from creating watershed management plans and doing environmental impact studies for so many years?”** For decades holdovers of revocable permits have diverted untold billions of gallons of our sacred water in a manner inconsistent with the water statute

HRS 171-58, as passed in 1962 and amended thereafter. Water leases have not been issued for over 20 years (so why rush now?), and the permit holders using the holdovers of revocable permits have not been compliant with the law, and on Maui have been challenged in court, and found to be out of compliance with the law.

Please also ask yourselves if you think exempting people from our laws (as Act 126 does) is a good policy for our state and its citizens.

Please ask yourselves if depriving the Department of Forestry and Wildlife, the Office of Hawaiian Affairs and the Department of Hawaiian Homelands their rightful, statutory, and constitutionally mandated revenues from public trust resources for more years, decades or longer is a good idea and in alignment with our constitution.

Please ask yourselves before you give away more billions of gallons of our water if you think it is ok if foreign pensions funds owning our watersheds, or massive portions thereof is a good idea, like what is happening on Maui right now. Consider perhaps that if this bill passes, it will invite more controversy like is happening today, as more multinational corporations will get the idea that it is easier to get 76 legislators to change the law than to comply with it.

You are our protectors, we need your help in this matter. We do not need you to rush this through, take your time, take all the time necessary to bring the respect our public trust doctrine deserves to it,

**Ola I Ka Wai, Ua Mau Ke Ea O Ka Aina I Ka Pono  
Water is life and the life of the land is perpetuated in righteousness**

**They who control the water, control the future. Right now, as Act 126 sunsets, you have control of our sacred public trust waters, please do not give your control away to entities who do not have the interests of our present and future generations in their business plans, which consist of returning a profit to their shareholders, and little else.**

Remember your oath to our constitution and its public trust doctrine, do the right thing, and defer this bill until next session, after it has been thought through better. There is no hurry. Please help us Senators, Help the 'Āina you took an oath to protect.

You can depend on me and many people like me to give you all of my support if you strive to serve and promote the benefit of our present and future generations, as you have sworn to do in your oath of office. You have a difficult decision to make, but you must make the pono choice in alignment with your oath of office.

Mahalo nui loa ,  
Me ka ha'aha'a  
Simon Russell,  
Managing Member  
Hui 'O Mālama 'Āina LLC

April 1, 2019

Hearing of the Senate Committees of Water and Land and Ways and Means  
Re: HB 1326 HD2 Relating to Water Rights  
Date: April 2, 2019  
Time: 10:45 am  
Location: Conference Room 211



To the Honorable Chair, Vice Chair, and Committee Members of the Senate Committees of Water and Land and Ways and Means:

The Council for Native Hawaiian Advancement (CNHA), a Native Hawaiian serving organization, testifies in strong opposition to HB 1326 HD 2 on the grounds that this bill would extend a temporary water permit to Alexander and Baldwin (A and B), allowing them to take unlimited amounts of water from East Maui streams, in direct contravention of the Hawaii first circuit court's holding that the continued diversion of water from certain east Maui streams by A and B through the use of temporary holdover water permits for over 13 years is inconsistent with the public interest and Chapter 171 of the HRS, as well as being in direct violation of Act 126 of the 2016 Hawaii State Legislature, which gave Alexander and Baldwin a grace period of three years to complete their water lease applications.

Unfortunately, A and B has continued to drag its feet in completing the work mandated by Chapter 171 of the Hawaii Revised Statutes as enforced by the First Circuit Court's opinion, and is now back before the legislature requesting even more time than they were originally granted by the 2016 Hawaii State Legislature through its enactment of Act 126.

On its face, HB 1326 makes a mockery of the 2016 Legislature's belief that A and B would employ its 'best efforts' to complete its water lease applications in three years as a quid pro quo for the 2016 legislature's passage of Act 126. Given A and B's present lack of compliance, and its seeming expectation that the Legislature will come to its rescue and bail it out when it intentionally sits on its hands and does little or nothing to comply with these statutory timelines with which it appeared to have agreed in 2016, how can there be but any other conclusion than that this is a deliberately conceived strategy by A and B to avoid having to comply with the Constitution, laws, and court rulings characterizing the fresh water flowing in these fresh water streams as Public Trust Resources for which a water lease application must attend?

The bill as now written proposes an extension of temporary permits for additional years to divert stream water, in unlimited amounts, for undefined purposes, from public streams, while providing no clearly articulable criteria in the interim for ensuring that stream ecosystems will be protected from excessive water diversions.

Furthermore, this bill as written appears overbroad, and could also affect more than just the east Maui streams ( the only issue dealt with by the First Circuit Court's ruling which precipitated the passage of Act 126 by the 2016 Legislature) and could apply as well to water permits for the Kaua'i Island Utility Cooperative and diversions of water from the watersheds of Wai'ale'ale and Waikoko..

As presently written, this bill also guarantees a huge financial bailout for A and B (a corporation that pays zero state taxes), while failing to protect the flow of fresh water into our native streams and into the communities that rely on them for their survival.

These unregulated diversions of fresh water must stop and our State constitution and laws protecting these precious public trust resources must be given effect. CNHA seeks reasonable limitations on the diversion of public water for private profit and more effective ways to ensure that our life-giving stream ecosystems are and will be fully restored.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J. Kuhio Lewis', is positioned above the typed name.

J. Kuhio Lewis  
Chief Executive Officer



**LATE**

## THE ASSOCIATION OF HAWAIIAN CIVIC CLUBS

Senate Committee on Water and Land  
Senate Committee on Ways and Means

*Pō‘alua, ‘Apelila 2, 2019*  
*Ke Kapikala Moku‘āina*  
415 South Beretānia Street

Re: HB1326 HD2 – Relating to Water Rights

*Aloha Luna Ho‘omalu Kahele and Luna Ho‘omalu Dela Cruz and Hope Luna Ho‘omalu Keith-Agaran:*

The Association of Hawaiian Civic Clubs **OPPOSES** HB1326 HD2. This bill makes conforming amendments to the reporting requirement in Act 126 (2016), which amended the disposition of water rights under section 171-58(c), Hawaii Revised Statutes. It extends the repeal and reenactment provision for Act 126 (2016) by seven years, from June 30, 2019 to June 30, 2026. In short, this bill will continue to allow Alexander & Baldwin, and now Mahi Pono, to not comply with an old court order to conduct an environmental assessment for their diversion of over a hundred East Maui streams and allow the Board of Land and Natural Resources to continue to shirk its duty to the public trust. At its 59th annual convention, the Association adopted resolution 2018-38, strongly calling for the restoration of all East Maui streams. At its 58th annual convention, the Association adopted resolution 2017-32 expressing support for efforts to restore waterflow in the historic, natural waterways of Hawai‘i for traditional and customary practices of Native Hawaiians.

Thus, the Association respectfully urges the Committee to **HOLD** HB1326 HD2.

The civic club movement was founded in 1918 by Congressional Delegate Prince Jonah Kūhiō Kalaniana‘ole with the creation of the Hawaiian Civic Club; the Association was formally organized in 1959 and has grown to a confederation of over sixty (60) Hawaiian Civic Clubs located throughout the State of Hawai‘i and the United States. The Association is the oldest Hawaiian community-based grassroots organization. The Association is governed by a 16-member Board of Directors; advocates for improved welfare of Native Hawaiians in culture, health, economic development, education, social welfare, and nationhood; and perpetuates and preserves language, history, music, dance and other Native Hawaiian cultural traditions.



*Mahalo* for allowing us to share our *mana* 'o.

*Me ka* 'oia 'i 'o,

Hailama Farden  
*Pelekikena*

# ***ASSOCIATION OF HAWAIIAN CIVIC CLUBS***

## ***A RESOLUTION***

No. 2018 – 38

### **STRONGLY CALLING FOR ALL HAWAI‘I STATE GOVERNMENT LEADERS TO ENSURE THE RESTORATION OF ALL EAST MAUI STREAMS AS NOTED IN THE WORKS OF NĀ MOKU AUPUNI O KO‘OLAU HUI TO BENEFIT THE LONG TERM STEWARDSHIP OF EAST MAUI FORESTS IN PROVIDING ENOUGH WATER TO MEET ITS PRIMARY TRUST RESPONSIBILITIES**

WHEREAS, the East Maui watershed encompasses over 60,000 acres of predominately native forests, extending to 8,000 feet elevation on the slopes of Haleakalā; and

WHEREAS, annual rainfall exceeds over 300 inches a year in the eastern portion of the watershed; and

WHEREAS, for over 120 years, the State of Hawai‘i allowed Alexander & Baldwin (A&B) and East Maui Irrigation (EMI), a subsidiary of A&B, to divert water for agricultural, domestic and other purposes from East Maui reserves and communities, to Central and Upcountry Maui; and

WHEREAS, EMI constructed its diversion systems in phases, beginning in the 1870s and extended to the completion of the current system in 1923; and

WHEREAS, Nā Moku O Ko‘olau Hui, a group of taro farmers, fishermen, hunters, and traditional practitioners, filed a petition in 2001 to amend the flow standards of more than two dozen streams that A&B diverted for its sugar cane fields which negatively impacted stream life, taro farming, and other Native Hawaiian practices; and

WHEREAS, in 2003, the Board of Land and Natural Resources (BLNR) approved the A&B application for a 30-year lease; and

WHEREAS, Nā Moku O Aupuni Hui appealed the BLNR 2003 decision to the Circuit Court arguing that BLNR must complete an environmental assessment of the impacts of A&B stream diversions including impacts on traditional and customary Native Hawaiian rights, and this appeal was granted by Judge Eden Hifo; and

WHEREAS, the Constitution of the State of Hawai‘i, Article XI, Section 7, states: “The State has an obligation to protect, control and regulate the use of Hawai‘i’s water resources for the benefit of its people...”; and

WHEREAS, the Constitution of the State Hawai‘i, Article XII, Section 7, states: “The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian islands prior to 1778...”; and

WHEREAS, on June 20, 2018, the Commission on Water Resources Management (CWRM) issued its East Maui interim instream flow standards stating the benefits of the long-term stewardship of East Maui forests provide enough water to meet the primary trust responsibilities: 1) maintenance of waters in their natural state; 2) domestic water uses of the general public particularly for drinking; 3) Native Hawaiian traditional and cultural gathering, including appurtenant rights; and 4) reservations of water for the Department of Hawaiian Home Lands; and

WHEREAS, CWRM recognizes taro and other traditional agriculture as an instream use and ultimately will return free-flowing water with no upstream diversion to all streams which have historically supported significant taro cultivation such streams that were diverted over a 100 years ago namely Honopū, Huelo, Hanehoi, Pi‘ina‘au, Palauhulu, ‘Ōhi‘a, Waiokamilo, Kualani, Wailuanui, and Makapipi; and

WHEREAS, CWRM’s decision identifies the following habitat streams (Honomanu, Waikamoi, East Wailuaiki, Kopili‘ula, Punalau/Kōlea, Waiohue, West Wailuaiki) that will have limited or no water diversions in order to foster improved habitat for native fish and other stream animals; and

WHEREAS, CWRM also notes that Waiohue and West Wailuaiki are to remain undiverted (total flow included) as habitat reference streams and important estuaries; and

WHEREAS, after decades of legal battles and advocacy work of Nā Moku Aupuni O Ko‘olau and supporting community members, change is on the horizon for the maintenance of instream flows critical to the protection of traditional and customary Hawaiian rights for gathering, recreation, and the cultivation of taro through the recognition of appurtenant rights (East Maui Decision, 21).

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 59<sup>th</sup> Annual Convention in Kalapaki, Kaua‘i, in the Malama of Welehu and the rising of ‘Olepau, this 17<sup>th</sup> day of November 2018, strongly calling for all Hawai‘i State government leaders to ensure the restoration of all East Maui streams as noted in the works of Nā Moku O Aupuni O Ko‘olau Hui to benefit the long-term stewardship of East Maui forests in providing enough water to meet its primary trust responsibilities; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Board of Land and Natural Resources, Pelekikena of ‘Ahahui Sīwila ‘o Ke Aloha ‘Āina, Nā Moku Aupuni O Ko‘olau, Summer Sylva of the Native Hawaiian Legal Corporation, as well as the Governor of the State of Hawai‘i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State

House Committee on Ocean, Marine Resources & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted in the malama of Welehu and the rising of 'Olepau on the 17<sup>th</sup> day of November 2018, at the 59th Annual Convention of the Association of Hawaiian Civic Clubs in Kalanaki, Kaua'i.



Anelle C. Amaral, President

# ***ASSOCIATION OF HAWAIIAN CIVIC CLUBS***

## ***A RESOLUTION***

No. 2017 – 32

### **EXPRESSING SUPPORT OF EFFORTS TO RESTORE WATERFLOW IN THE HISTORIC, NATURAL WATERWAYS OF HAWAI‘I FOR TRADITIONAL AND CUSTOMARY NATIVE HAWAIIAN PRACTICES**

WHEREAS the ‘ōlelo Hawai‘i word for fresh water is “wai” and the word for wealth is “waiwai” connoting the importance Hawaiians place on having access to fresh water; and

WHEREAS, Hawaiians have traditionally depended on stream water for cooking, eating, farming, and cultural and religious practices; and

WHEREAS, restoring continuous, mauka-to-makai streamflow recharges the aquifers, catalyzes the spawning of native stream and near-shore aquatic species, including endemic species of ‘o‘opu, ‘ōpae and other fish like ‘anae, and promotes limu growth; and

WHEREAS, the Hawai‘i State Constitution Article XI, Section 7 establishes that “[t]he State has an obligation to protect, control and regulate the use of Hawai‘i’s water resources for the benefit of its people”; and

WHEREAS, in 1987, the Hawai‘i State Legislature established the Water Code, codified in Chapter 174C of the Hawai‘i Revised Statutes, which manages the permitted usage of water in the State of Hawai‘i, including any alterations to its streams, rivers, and other waterways; and

WHEREAS, §174C-101(c), HRS, the section of the Water Code provides that “Traditional and customary rights of ahupua‘a tenants who are descendants of Native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter”; and

WHEREAS, after decades of legal battles and advocacy from the Hawaiian community and others, the Hawai‘i Supreme Court helped to restore natural streamflow to historically flowing waterways on O‘ahu and Maui, citing a lack of consideration for Native Hawaiian practices as among the reasons for its decision in *In re Waiāhole Combined Contested Case Hearing*, 94 Hawai‘i 97, 9 P.3d 409, (2000) and *In re ‘Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications*, 128 Hawai‘i 228, 287 P.3d 129 (2012); and

NOW, THEREFORE, BE IT RESOLVED, by the Association of Hawaiian Civic Clubs at its 58<sup>th</sup> Annual Convention in Seattle, Washington, in the malama of ‘Ikuwā and the rising of Māhealani, this 4<sup>th</sup> day of November 2017, expressing support of efforts to restore waterflow in the historic, natural waterways of Hawai‘i for traditional and customary Native Hawaiian

practices; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the Chair of the State of Hawai‘i Commission on Water Resource Management, Director of the ‘A‘ali‘i Program at Nānākuli High and Intermediate School, as well as the Governor of the State of Hawai‘i, President of the State Senate, Speaker of the State House of Representatives, Chair of the State Senate Committee on Hawaiian Affairs, Chair of the State House Committee on Ocean, Marine Resources & Hawaiian Affairs, Chair of the Board of Trustees of the Office of Hawaiian Affairs, and all County Mayors.



The undersigned hereby certifies that the foregoing Resolution was duly adopted in the malama of ‘Ikuwā and the rising of Māhealani on the 4<sup>th</sup> day of November 2017, at the 58th Annual Convention of the Association of Hawaiian Civic Clubs in Seattle, Washington.

*Annelle C. Amaral*

Annelle C. Amaral, President



**LATE**

Luna O Na Papa Alakai

Committee on Water and Land  
Committee on Ways and Means

Tuesday, April 2, 2019  
10:45 am Conference Room 211  
State Capitol  
415 South Beretania Street

Re: HB1326 HD2/HB1171 Proposed SD2 - RELATING TO WATER RIGHTS

*Aloha* Chair Kahele, Chair Dela Cruz, and Vice-Chair Keith-Agaran, and members of the Senate committees on Water and Land and Ways and Means:

The Prince Kūhiō Hawaiian Civic Club **OPPOSES** HB1326 HD2/HB1171 Proposed SD2. These measures makes conforming amendments to the reporting requirement in Act 126 (2016), which amended the disposition of water rights under section 171-58(c), Hawaii Revised Statutes and it extends the repeal and reenactment provision for Act 126 (2016) by seven years, from June 30, 2019 to June 30, 2026. Put concisely, these bills will continue to allow Alexander & Baldwin (and Mahi Pono) to not comply with an old court order to conduct an environmental assessment for their diversion of over a hundred East Maui streams and allow the Board of Land and Natural Resources to continue to shirk its duty to the public trust. At its 59th annual convention, the Association adopted resolution 2018-38, strongly calling for the restoration of all East Maui streams. At its 58th annual convention, the Association adopted resolution 2017-32 expressing support for efforts to restore waterflow in the historic, natural waterways of Hawai'i for traditional and customary practices of Native Hawaiians.

**Please return the water to the 'āina.**

Founded in 1964, PKHCC was organized to promote the education and social welfare of people of Hawaiian ancestry and objectives include supporting high ethical standards in business, industry and the professional fields of enterprise.

PKHCC urges the committee to **HOLD HB1326 HD2/HB1171 Proposed SD2**

*Me ke aloha,*

A. Makana Paris  
Pelekikena  
president@pkhcc.org

Pelekikena

A. Makana Paris

Hope Pekekikena

Ekahi

Randi Fernandez

Hope Pelekikena

Elua

Matthew Gumapac

Puuku

Denise Kekuna

Kakauolelo Hoopaa

Sai Furukawa

Kakauolelo Hooholo

Palapala

Kamuela Werner

Pelekikena Hala

Koke

Yvonne 'PeeWee'

Ryan

Luna Alakai

Kuni Agard

Puamana Crabbe

Kanani Pali

Marlene Sai

Jennifer Smythe

Bruce Wong

*Mailing Address:*

P.O. Box 4728

Honolulu ~ Hawaii

96812

www.pkhcc.org

Founded in 1964  
by Liliuokalani  
Kawananakoa Morris



**HB-1326-HD-2**

Submitted on: 3/31/2019 11:51:44 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charlotte K. Beall	Testifying for Friends of Maha'ulepu	Oppose	No

Comments:

**Kōmike Mālama Wai a me ka 'Āina**  
Kenekoa Kai Kahele, Po'o  
Kenekoa Gilbert S.C. Keith-Agaran, Hope

**LATE**

**Kōmike Kālā**  
Kenekoa Donovan M. Dela Cruz, Po'o  
Kenekoa Gilbert S.C. Keith-Agaran, Hope

Lā: 1, 'Apelila 2019      Hola: 10:45a      Lumi: Lumi Hālāwai 211

**HB 1326, HD2** – Pili i nā pono wai: **Kū'ē Ikaika**

Aloha mai kākou e Kenekoa Kahele, Kenekoa Keith-Aragan, Kenekoa Dela Cruz a me nā lālā o ke kōmike Mālama Wai a me ka 'Āina a me ke Kōmike Kālā;

'O 'Ekekela Aiona ko'u inoa. He leka kēia e hō'ike aku i ke kū'ē ikaika i ka pila HB 1326, HD2. Lō'ihī loa ke kali 'ana i ka ho'oponopono 'ia 'ana o ka pilikia me nā kahawai, ma 'ō aku 'o ka 120 makahiki. E ho'okū i ka hana i hiki ke ho'oponopono i nā hewa i hiki ke ho'oulu hou mai i lako mai no kēia mua aku a no nā hanauna e hiki mai ana.

He paipai ikaika kēia i nā alaka'i o ka moku'āina 'o Hawai'i e hō'oia i ka ho'ihō'i piha o nā kahawai o Maui Hikina e like me ka mea i palapala 'ia ma nā hana a Nā Moku Aupuni O Ko'olau Hui no ka mālama mau i nā ululā'au ma ka lawa o ka wai.

Calling strongly for all Hawai'i state government leaders to ensure the restoration of all East Maui streams as noted in works of Nā Moku Aupuni O Ko'olau Hui to benefit the long term stewardship of East Maui Forests in providing enough water to meet its primary trust responsibilities.

Mahalo nui;



'Ekekela Aiona

Pelekikena

'Aha Hui Sivila 'o Ke Aloha 'Āina



**Department of Land and Natural Resources  
Aha Moku Advisory Committee  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809**

**LATE**

Testimony of  
Aha Moku Advisory Committee

Senate Committee on Water and Land  
Senate Committee on Ways and Means

Tuesday, April 2, 2019  
10:45 a.m.  
Conference Room 211

**House Bill 1326, HD 2, Proposed SD1  
Relating to Water Rights**

House Bill 1326, HD 2, Proposed SD1 intends to allow a total of six consecutive one-year holdovers of water permits under section 171.58(c), HRS. It places conditions on holdovers that authorize the use of over two million gallons of water per day. It requires the holdovers to continue without BLNR action while a contested case hearing is pending. It makes conforming amendments to the reporting requirement in Act 126, SLH 2016. It requires the BLNR, prior to authorizing holdovers after January 1, 2020, to hold public hearings on the adoption of proposed administrative rules on the disposition of water rights by lease at public auction and water valuation process and retain certified appraiser who has a sufficient understanding of real property and water law in the State. It exempts authorized instream, in-watershed use of water of wetland kalo cultivation done in a traditional manner. It requires BLNR, the chairperson of BLNR, and commission on water resource management to report to the legislature on the effectiveness of section 171.58, HRS. And, it extends the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019 to June 30, 2022. **Aha Moku offers the following comments.**

Community participants in the Hawaii State Aha Moku process, including native Hawaiian communities, are aware of the complexities and frustrations that permeate the government procedure on dealing with water leases. On every island, many of our native Hawaiian traditional practitioners who use generational methodologies and practices have lost critical amounts of water over the decades to stream diversions, and thus lost much of their heritage. This loss does not only apply to *mahiai* kalo farming, but also to many other native Hawaiian traditional disciplines such as *la'au lapa'au* (medicinal practices that are dependent on endemic plants found only on the edges of streams), and *lawaiia* (coastal and near-shore gathering and fishing practices) to name only a few.

To address the complexities of water leases, which vary island-to-island, representatives of the moku and ahupuaa of different islands have been bringing their voices forward to the Land Board (BLNR), and Department of Land and Natural Resources (DLNR) divisions who have been working with the Department of the Attorney General (DAG), and the Department of Hawaiian Home Lands (DHHL) in striving to determine and apply a water leasing process that is honest, transparent and understandable.

On one hand, our people do not want to support a process and law that will prolong attempts of large corporations to divert water which is often more than what they need, whenever they want. However, on the other hand the people do understand the state's frustration with an outdated process that now acknowledges a need for additional time to convert existing water revocable permits to long term leases. We also bring attention to the fact that watersheds, stream usage and diversions impact the makai parts of the islands, the coastal areas and the different spawning areas of marine life.

Aha Moku is mandated to advise the chairperson of the BLNR on issues of concern relating to natural and cultural resource per Act 288, SLH 2012, (§171.4-5, HRS) by:

- (1) Integrating indigenous resource management practices with western management practices in each moku;
- (2) Identifying a comprehensive set of indigenous practices for natural resource management;
- (3) Fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise;
- (4) Sustaining the State's marine, land, cultural, agricultural, and natural resources;
- (5) Providing community education and fostering cultural awareness on the benefits of the aha moku system; and,
- (6) Fostering protection and conservation of the State's natural resources.

Adherence to these mandates allows Aha Moku to work closely with government by bringing forth the generational and traditional knowledge of cultural and natural resources of specific areas of individual islands. This information, combined with current contemporary policies and regulations of DLNR has helped their divisions considerably in understanding the different and unique traditional practices within each of the main Hawaiian Islands. This kind of collaboration must continue as it strengthens community understanding of how and why DLNR works the way it does; significantly highlights the fact that “one size does not fit all”; and, restores the faith of communities that they do have a voice in the protection and sustainability of the resources that are critical to their well-being and survival. In this situation, water.

There are times, after careful deliberation with the Pae’Aina (Islands), we agree to disagree on specific subjects. In this case, in our study of HB 1326 HD 2, Proposed SD 1, we continue to work with DLNR to streamline and facilitate a water lease process that will fulfill DLNR’s public trust obligations while addressing the *kuleana* (responsibility) of the people of an ahupua’a in caring for the health of the waters within their ecosystem.

Respectfully yours,

Leimana DaMate  
Aha Moku Advisory Committee  
Phone: 808-640-1214  
Email: Leimana.K.Damate@hawaii.gov

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 1:20:27 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Uilani Kapu	Testifying for Aha Moku O Maui, Lahaina	Oppose	No

Comments:

Aloha committee,

Aha Moku O Maui, Lahaina opposed HB 1326 HD2 for the sole purpose of what the Aha Moku system had been put forth. To protect the nature resources of our Moku. Through the moolelo of our wahi, our traditional and customary practice with our next generation so they may know where they come from and the names of there winds, there streams, there alanui.

You as leaders and law makers have the power to show our next generation the you will be helping to protect Hawaii and show them that when a law is set all people need to up hold and what we teach is the truth.

mahalo nui loa,

Uilani Kapu

Aha Moku O Maui, Lahaina

email: uilani.kapu@gmail.com



**LATE**

Testimony Before The  
Senate Committees on Ways and Means & Water and Land  
**IN OPPOSITION TO HB 1326 SD 1 and HB 1171**  
Tuesday April 2, 2019, 10:45am, Rm. 211

My name is Kevin Chang and I am the Executive Director of Kua'āina Ulu 'Auamo (or KUA). KUA works to empower grassroots rural and Native Hawaiian mālama 'āina groups to practice and engage in mālama 'āina and civic governance as a traditional and customary kuleana and to celebrate their places and pass on traditions to better Hawai'i and achieve 'āina momona— an abundant, productive ecological system that supports community well-being.

KUA employs a community-driven approach that currently supports a growing network of over 30 mālama 'āina community groups collectively referred to as E Alu Pū (moving forward together), 40 fishpond projects and practitioners called the Hui Mālama Loko I'a, and a new and growing hui of Limu practitioners all from across our state. Collectively they touch on almost 75 places. Many of these communities focus on improving natural resource management and restoration of native food and ecological systems, values and ethics more sensitive to the needs of their wahi (their places).

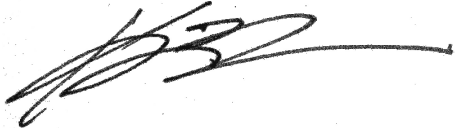
**KUA strongly opposes HB 1326 SD 1 and HB 1171** because it merely prolongs a continued public process end-route for private historical and inequitable water extraction. The Star Advertiser eloquently describes HB 1326 as law that “essentially rewards years of apparent foot-dragging and makes a mockery of the public expectation that state lawmakers will make good on follow-up needed to enforce enacted legislation.” It further stifles present and future administrations from fulfilling their public trust duty and kuleana to mālama 'āina and to work together with our community. Indeed it further would erode faith in and initiative of public servants themselves to do the right thing as our constitution envisions and our laws mandate.

Another perspective that is long ignored or glossed over in our discussions of agriculture, Native Hawaiian rights and local food self-sufficiency is the importance of a healthy flow of water from mauka to makai. As one of our founding kupuna Uncle Henry Chang Wo would say “Where the wai meets the kai is the muliwai. That's where the ocean hanau.” Beyond traditional and conventional notions of agriculture there are other reasons for healthy stream flow. Some of them are in our nearshore environment where the confluence of fresh and salt water give birth to limu and other brackish water dependent life and processes which serve as a foundation for reef and loko i'a (fishpond) biology.

To further the importance of healthy stream flow for social and ecological health you will find attached to my testimony the Kahe Mau I Ka Wai Ola statement of kia'i loko or fishpond caretakers who recognize that aquifer recharge and stream flow are an important part of an abundant place and a kuleana for our state and its people.

Lastly, I would like to emphasize public expectation and how this bill compounds an issue of mistrust with how government and governance works. By killing this bill you take small steps for our community to reset and make things right by the promises we made to our children back in 1978. That is, a promise to do what we say we will do for now and for future generations.

Aloha 'Āina Momona.

A handwritten signature in black ink, appearing to read 'Kevin K.J. Chang', with a long horizontal flourish extending to the right.

Kevin K.J. Chang

**KAHE MAU KA WAI OLA**

**RESOLUTION TO THE COMMISSION ON WATER RESOURCE MANAGEMENT TO  
REQUEST THAT IT FULFILL ITS CONSTITUTIONAL AND STATUTORY  
RESPONSIBILITIES TO PROTECT LOKO I'A (TRADITIONAL HAWAIIAN FISHPONDS)  
ACROSS HAWAI'I**

WHEREAS, loko i'a (traditional Hawaiian fishponds) as developed by the ancestral people of Hawai'i are ingenious and unique methods of fish farming and are undisputedly part of traditional and customary Hawaiian practices; and

WHEREAS, loko i'a are critical resources for the Hawaiian community and all in Hawai'i and provided primary sources of protein for an estimated prehistoric population upwards of one million people described by early explorers as healthy and robust despite living without large land mammals; and

WHEREAS, a study in 1989-90 found approximately 488 loko i'a in the islands of which ninety-nine were actively in production at the time of an inventory in the 1900s; and

WHEREAS, contemporary guardians and managers of loko i'a attest to the critical role that abundant, clean, freshwater has in perpetuating the ecosystems necessary for loko i'a function and they further note loko i'a were historically built where such freshwater was available; and

WHEREAS, the restoration and reuse of loko i'a are desirable uses of freshwater because they perpetuate Native Hawaiian cultural practices and create an opportunity to increase supplies of certain fish which will make Hawai'i more food-secure and increase sustainable economic development opportunities for rural communities; and

WHEREAS, abundant, clean freshwater is critical for kalo (taro) cultivation and loko i'a function and is also necessary to maintain the health and vitality of native stream ecosystems, including native and endemic organisms such as 'ōpae (shrimp), hīhīwai (limpet) and 'o'opu (goby) that depend on stream flow for portions of their life cycle transiting to and from the ocean; and

WHEREAS, clean freshwater flow whether in surface streams or below ground is vital to the health and abundance of many limu (seaweed) species found in the nearshore marine habitat and many fish species depend on it as their primary food source, additionally ensuring the perpetuation (including preservation, conservation, and reservation) of traditional practices of limu and fish gathering and;

WHEREAS, the significance of clean groundwater to the cultural practices, history, and interests of Native Hawaiians is still not widely recognized, as evidenced by the Hawai'i State Water Plan, which does not consider the effects of groundwater withdrawal on the traditional and customary practices of Hawaiians; and

WHEREAS, the State of Hawai'i and its agencies and subdivisions have a Constitutional responsibility to reaffirm and protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes by Hawaiians; and

WHEREAS, the State of Hawai'i Commission on Water Resource Management (CWRM) is specifically empowered and required to protect Native Hawaiian Water Rights, Haw. Rev. Stat. § 174C-101; and



WHEREAS, in 2006, the Supreme Court of the State of Hawai'i in *Kelly v. 1250 Oceanside Partners* held state and county agencies' duties to protect the public trust, which is inclusive of Native Hawaiian traditional and customary practices, went beyond passively enforcing laws as a "mere umpire", and such agencies were obligated at "every stage" of the planning process to "take the initiative" in protecting public trust resources; and

WHEREAS, CWRM is obligated to prepare a Water Resources Protection Plan, which identifies in part, "desirable uses [of freshwater] worthy of preservation by permit, and undesirable uses for which permits may be denied" pursuant to HRS § 174C-31(d)(2); and

WHEREAS, on April 10, 2012, the Hawai'i State Legislature adopted Senate Resolution No. 86 (SR86), which urged the Department of Land and Natural Resources, Department of Health, and Office of Planning to modify permitting processes to better effect the restoration of loko i'a; and

WHEREAS, the Hui Mālama Loko I'a is a network of kia'i loko (fishpond guardians) of nearly 40 ponds and pond complexes who have gathered opportunistically since 2004 in an effort to support and collaborate to advance the restoration and perpetuation of loko i'a culture throughout Hawai'i; and

WHEREAS, the essential nature of freshwater was a recurring theme during the gathering of Hui Mālama Loko I'a in Kīholo, North Kona on April 14 – 17, 2016, and a priority discussion topic on April 17, 2016 that inspired the drafting of this resolution; and

WHEREAS, the kia'i loko of Hui Mālama Loko I'a continued to invest time and effort over the following twelve months to discuss and refine this resolution for final consideration during this annual gathering of Hui Mālama Loko I'a in Kulapae, Waiākea, Hilo on April 6 – 9, 2017,

NOW, THEREFORE, BE IT RESOLVED that the below-listed kia'i loko seek that the CWRM take all necessary steps in its ministerial, planning, and other decision-making to protect the necessary quantity and quality of water, whether on the surface or below ground, necessary to perpetuate the ecosystems of loko i'a; and

BE IT FURTHER RESOLVED that we seek that immediately the CWRM affirmatively determine the potential effects on loko i'a caused by changes in water quantity and quality that may result from water use associated with the issuance of well construction permits, pump installation permits, stream channel alteration permits, and Water Use Permits; and

BE IT FURTHER RESOLVED that we seek that the CWRM, in the preparation and or adoption of the Water Resources Protection Plan, the State Water Projects Plan, the County Water Use and Development Plans, and all other elements of the Hawai'i Water Plan, they affirmatively determine the potential effects on loko i'a to changes in water quantity and quality that may result from water use and identify tasks and strategies to protect the ecosystems and the traditional and customary practices associated with loko i'a; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution be transmitted to the Commission on Water Resource Management, and the Office of Conservation and Coastal Lands of the Hawai'i State Department of Land and Natural Resources, Hawai'i State Land Use Commission, Hawai'i State Office of Planning, Department of Hawaiian Home Lands, County Departments and Boards of Water Supply, County Councils, Region 9 of the United State Environmental Protection Agency, Hawai'i Department of Transportation, the Office of Hawaiian Affairs, Kamehameha Schools and all such large landowners and organizations who affect the use and health of fresh water throughout the state.

**KIA'I LOKO (FISHPOND GUARDIANS)**  
**in attendance at 2016 Kīholo and 2017 Kulapae gatherings**  
**(in alphabetical order by last name, alongside loko i'a and chosen geographical marker)**

Hawai'i

Akau, James J. Ka'alā'iki, Ka'alā'iki.  
Aloua, Ruth. Kaloko, Kaloko.  
Anthony, Kamala. Honokea, Waiuli.  
Cachola, Fred Keakaokalani. Kaloko, 'Aimakapā, and 'Ai'ōpio; Kaloko and Honokōhau.  
Carbone, Jonathan. Loko i'a, Keaukaha.  
Carbone, Minoaka. Loko i'a, Keaukaha.  
Cooke, Tim. Ku'uali'i and Kahapapa, 'Anaeho'omalū.  
Gutteling, Marinus. Hale o Lono, Honohononui.  
Higa, Kenrock K.S. Lālākea, Hāmākua.  
Higa, Waiola. Lālākea, Hāmākua.  
Jardin, Erika. Honokea, Waiuli.  
Johansen, Manoa. Honokea, Waiuli.  
Kahana, Nāhōkū. Honokea, Waiuli.  
Kahiapo, Shola K. Waiāhole, Honohononui.  
Kamaka, Sandra Lehua. Ka Loko o Kīholo, Pu'uwa'awa'a.  
Kanahele, Lanihuli. Hale o Lono, Honohononui.  
Kanakanā'ole, Luka. Hale o Lono, Honohononui.  
La'eha, Pi'i. Kalāhuipua'a, Ka'aiōpio, Manokū, Hope'ala, Kahinawao, Waipuhi, and Waipuhi Iki;  
South Kohala.  
Martins-Keliihoomalu, Chloe. Waiāhole, Honohononui.  
McNaughton, Blake. Waiāhole, Honohononui.  
Morton II, Winston C. Kūki'o Loko Wai, Kūki'o.  
Mossman, Konrad Kalāho'ohie. Hale o Lono, Honohononui.  
Pagan, Paola M. Kūki'o Loko Wai, Kūki'o.  
Ruddle, Francis A. Kalāhuipua'a, Ka'aiōpio, Manokū, Hope'ala, Kahinawao, Waipuhi, and  
Waipuhi Iki; South Kohala.  
Soares, J.D. Kawai. Honokea, Waiuli.  
Soller, Kyle O. Waiāhole, Honohononui.  
Stewart, Roxane. Hale o Lono, Honohononui,  
Subica, Shanell Pua'alaokalani Nihau. Ka Loko o Kīholo, Pu'uwa'awa'a.  
Sullivan, Wil. Kūki'o Loko Wai, Kūki'o.

Maui

Henderson, Tiana Malina. Leho'ula, Aleamai.  
Paman, Joylynn. Kō'ie'ie, Ka'ono'ulu.  
Sinenci, Francis Palani. Leho'ula, Aleamai.  
Tukuafu, Kara Nalani. Leho'ula, Aleamai.

Lāna'i

Benanua, Kekoa. Waia'ōpae Loko I'a, Pālāwai.  
Kipi, Zeth. Waia'ōpae Loko I'a, Pālāwai.  
Ostrander, Benjamin. Waia'ōpae Loko I'a, Pālāwai.  
Ropa, Michael Kaleo. Waia'ōpae Loko I'a, Pālāwai.

Moloka'i

Mejia, Manuel. Ali'i and Kaloko'eli; Makakupaia and Kamiloloa.

Naki, Leimana Raymond. Kahinapōhaku, Moanui.  
Turkelson, Steven J. Kahinapōhaku, Moanui.

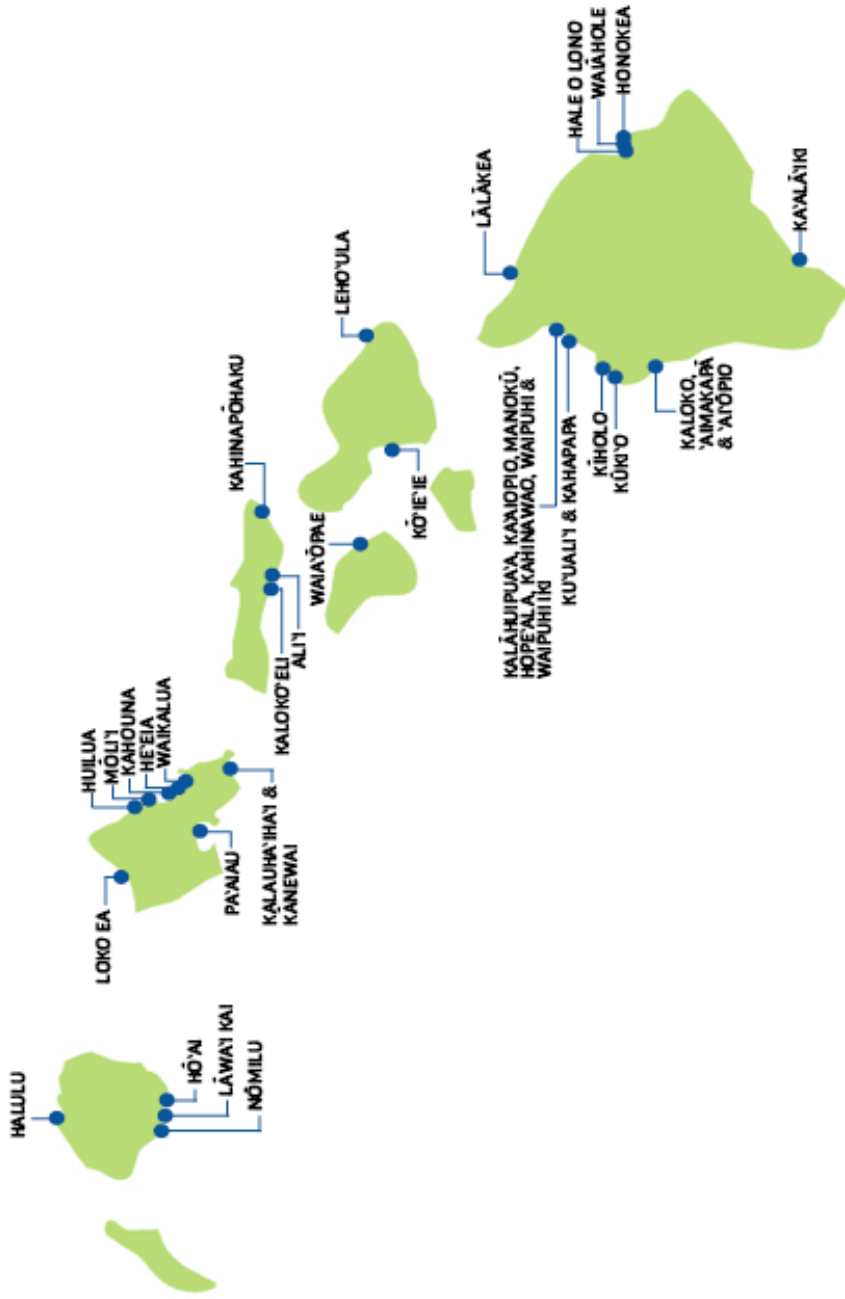
#### O'ahu

Bishop, Dane K. He'eia Fishpond, Ko'olaupoko.  
Botelho, Māhealani. Huilua, Kahawainui.  
Clark, Janet L. He'eia Fishpond, Ko'olaupoko.  
Concepcion, Alexander Rey. Waikalua Loko I'a, Keahiakahoe.  
Concepcion, Rosalyn Ku'uleimomi Rubio Dias. Waikalua Loko I'a, Keahiakahoe.  
Costantino, Sayo. Loko Ea, Kawaihoa.  
Cramer, Chris. Kānewai Loko Wai and Kalauha'iha'i; Kuli'ou'ou and Niu.  
DeCoito, Rae Lynn. Loko Ea, Kawaihoa.  
Flores, Peleke. He'eia Fishpond, Ko'olaupoko.  
Kawelo, Hi'ilei. He'eia Fishpond, Ko'olaupoko.  
Komae, Blake. Kahouna, Kahalu'u.  
Kotubetey, Keli'i. He'eia Fishpond, Ko'olaupoko.  
Leota, Kealaulaokamamo. He'eia Fishpond and Huilua; Ko'olaupoko and Kahawainui.  
Long, Pūlama. He'eia Fishpond, Ko'olaupoko.  
McCarty, Ku'uipo. Mōli'i, Hakipu'u.  
Medeiros, Duane "Kiaaina". Kānewai Loko Wai and Kalauha'iha'i; Kuli'ou'ou and Niu.  
Miller, Alyssa. Kānewai Loko Wai and Kalauha'iha'i; Kuli'ou'ou and Niu.  
Moa, Kimberly D. Kamalu 'o keakua. Pa'aiiau, Kalauao.  
Morgan, Loea. He'eia Fishpond, Ko'olaupoko.  
Piiohia, Royce. He'eia Fishpond, Ko'olaupoko.  
Pizarro, Kinohi. He'eia Fishpond, Ko'olaupoko.  
Stiritz, Nitasha Camille. Loko Ea, Kawaihoa.  
Velez, Israel. Mōli'i, Hakipu'u.  
Wallace, Kahiau. Huilua, Kahawainui.  
Wise, Ikaika. He'eia Fishpond, Ko'olaupoko.

#### Kaua'i

Blake, Ted Kawahinehelelani. Lāwa'i Kai, Spouting Horn.  
Daly, Kirstie. Halulu, Wai'oli.  
Hornstine-Lee, Joshua Ikaikamaikalani. Nōmilu, Kalāheo.  
Kea, Gilbert. Hō'ai, Kōloa.  
Lum Won, Kalalena A. Nōmilu, Kalāheo.  
Makua, Kaina. Nōmilu, Kalāheo.  
Reilly, James. Nōmilu, Kalāheo.  
Reilly, Makana. Nōmilu, Kalāheo.

LOKO I'A  
named in this resolution



**KĀKO‘O (additional supporters)  
in attendance at 2016 Kīholo and 2017 Kulapae gatherings  
(in alphabetical order by last name, alongside chosen affiliation and area of residence)**

Hawai‘i

Ching, Ulu. Community member, Hilo.  
Gohier, Ginger. Community member, Kohala.  
Goo, Nakoa. Community member, Hilo.  
Kalei, Heather Nahaku. Community member, Kawaihae.  
Mahoney, Scott Haililani. Community member, Waimea.  
Quinn, Makamae. Community member, Holualoa makai.  
Rodero, Celeste Emiko Kamaha‘ō. Community member, Mountain View.  
Stephenson, Micah. Community member, Hilo.  
Wong Jr., Walter K. Hālau Hale Kuhikuhi, Kamuela.

Maui

Mahoney, Robert Nohea. Community member, Wai‘ohuli.

O‘ahu

Aranaydo, Martin (Ka‘i‘ini). Kualoa-He‘eia Ecumenical Youth Project (KEY Project), Waihe‘e.  
Asuncion, Brenda Fumiko. Community member, Waipi‘o.  
Campbell, Noelle Campbell. Community member, Mō‘ili‘ili.  
Chang, Kevin. Community member, Kahalu‘u.  
Connelly, Alex Puanani. Community member, He‘eia.  
Dudock, Heather. Hawai‘i Sea Grant, Kuli‘ou‘ou.  
Frank, Kiana L. Community member, Kailua.  
Fujitani, Kirsten. Community member, Kapālama.  
Hargraves, Jonathan. Community member, Waimano.  
Ito, Wally. ‘Ewa Limu Project, Kapālama.  
Keala, Graydon “Buddy”. Loko I‘a Consulting, Honolulu.  
Knapman, Cindy. Hawai‘i Sea Grant, Kailua.  
Seipp, Kamaka‘āina. Community member, Kunia.  
Tamanaha, Miwa. Community member, Waipi‘o.  
Walton, Maya. Hawai‘i Sea Grant, Makiki.  
Weeks, Bert. Community member, Aiea.

Kaua‘i

Bowen, Sara. Mālama Hulē‘ia, Kōloa.  
Chock, Mason K. Mālama Hulē‘ia, Wailua.  
Kagimoto, Kyle M. Community member, Lāwa‘i.

Other

Lyles, Jillian. Community member, Seattle, WA.

**HB-1326-HD-2**

Submitted on: 3/31/2019 12:18:15 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hanalei Fergerstrom	Testifying for Na Kupuna Moku O Keawe	Oppose	No

Comments:

Na Kupuna moku O Keawe does NOT support HB1326.

Hanalei Fergerstrom, Spokesperson

Na upuna Moku O Keawe

PO Box 723  
Waimānalo, HI 96795  
godscountrywaimanalo@gmail.com



Ho'oulu a me ho'ōla lāhui.  
Propagate and perpetuate the race

Senate Committees on Ways and Means & Water and Land

April 1, 2019

RE: Strong Opposition to HB 1326 Relating to Water Rights

**LATE**

To Whom it May Concern:

The Board of Directors of God's Country Waimānalo (GCW) is obligated to provide this letter in **STRONG OPPOSITION** to HB1326 Relating to Water Rights.

GCW is a nonprofit organization from Waimānalo, O'ahu that strives to perpetuate 'Ike and 'Ōlelo Hawai'i through programming in our community for our community and with our community's keiki to kūpuna.

Before the advent of western contact, Native Hawaiians thrived in the most isolated place on Earth. Their ability to adapt to the environment was due to their keen use of arts, sciences, and kapu. While creating shelter and clothing were adaptive arts, science aided the ability to raise crops and livestock. Kapu was the method to preserve places, animals, and - pertinent to this letter - waterways.

Since western contact, Kānaka 'Ōiwi have experienced increases in disease and great losses in population. Centuries of oppression and suppression of 'Ike and 'Ōlelo Hawai'i have also decimated the identity and health of our Kānaka. Consequently, we, as Kānaka Maoli need to find ways to reconnect and reestablish our 'Ike Kūpuna in order for us to ola a ulu.

HB1326 is yet another legislation to oppress Kānaka 'Ōiwi. Does the committee realize that redirecting waters that, during ka wā kahiko, fed ahupua'a throughout our pae'āina is perpetuating colonization?!

GCW's mission statement is "Ho'oulu a me ho'ōla lāhui." The enactment of SB1326 perpetuates oppression and colonization and directly opposes our mission. Therefore, it is our position to **STRONGLY OPPOSE** the legislation and its enactment.

Na mākou nō.

Kenneth K. L. Ho, Jr.  
Secretary

**Board of Directors**

H. Ilima Ho-Lastimosa, Bob Lastimosa, Kenneth Ho, Jr.

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:41:41 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Vince Kana`i Dodge	Testifying for `Ai Pohaku	Oppose	Yes

Comments:

Aloha e Senators!

HB1326 is fundamentally a give away of public resources to corporate interests. No amount of amendment can fix or change it. A & B and all who profit from selling public resources must simply follow the rules. Kill HB 1326 and all its amended versions. If u pass this bill u will be complicit in the theft of one of our most precious public resources - water. Be remembered for protecting the public trust. VOTE NO for HB1326.

aloha nui!

vince Dodge



Jerome Kekiwi, Jr. - President  
Norman Martin, Vice-President  
Earl Inouye - Treasurer  
Amanda Martin - Secretary  
Healoha Carmichael - Asst. Secretary  
Radford Kaauamo  
Darryl Tau`a



Guy Mahilani Namahoe  
Jana Sinenci  
Avraham Elkayam  
Edward Wendt  
Carl Wendt  
Terrence Akuna  
Murphy Tau-a

P. O. Box 961, Ha`iku, Hawai`i 96708

TESTIMONY OF JEROME KEKIWI, JR., PRESIDENT  
NA MOKU AUPUNI O KO`OLAU HUI  
OPPOSING HOUSE BILL 1326, HOUSE DRAFT 2,  
PROPOSED SENATE DRAFT 1

Tuesday, April 2, 2019

Aloha Chairs Kahele and Dela Cruz, members of the Senate Water & Land and Ways & Means Committees. Thank you for doing a site visit and for convening a meeting on this important issue. Thank you for this opportunity to testify on House Bill 1326, House Draft 2, Proposed Senate Draft 1.

My name is Jerome Kekiwi, Jr. and I am the President of Na Moku Aupuni o Ko`olau Hui, or "Na Moku", a 501(c)(3) non-profit organization whose members are the lineal descendants of the original settlers of the adjacent ahupua`a of Ke`anae and Wailuanui, Ko`olau Moku, Maui Hikina (East Maui). I actively farm taro in Wailuanui, as do many of the families in our community. We live the traditional lifestyle of farming, fishing, hunting, and gathering as a daily way of life. I am raising and teaching my children to follow in the footsteps of myself and our kupuna. My father was Kalalani Kekiwi, the kilo i`a, or fish spotter of Wailuanui. Na Moku was the lead litigant in the East Maui case which sought restoration of streams. The waters are flowing and we are grateful to our kupuna, our family members and supporters who stood strong for many decades to fight for justice. We are grateful to OHA for its support, and to the Native Hawaiian Legal Corporation attorneys who championed our cause in many contested case hearings and court proceedings over the decades. We could never have accomplished what we did without their legal representation.

We have been asked why we oppose this bill even though we have our water. The fact is if it were left up to the corporation and DLNR, we wouldn't have our water today. Many years ago the Alexander and Baldwin attorney, Leighton Oshima, said as much. As some of our members were visiting diversion sites in the mountains high above Hana Highway, he laughingly poured a drop out of a water bottle and said, "That's all you get". A&B, working with DLNR, had no mercy all those many years.

The revocable permit system under which they have operated for the past 33 years allowed them to divert 100% of all the streams within our Moku with impunity, no enforcement accountability. Even after preliminary CWRM decisions ordering release of waters, reported violations were never corrected by CWRM and we went without. The

position of court-ordered monitor, to whom we were supposed to report violations, was filled for a few months and then arbitrarily abolished by DLNR.

So completely dried out were the streams, in the middle of the East Maui watershed, that the streambeds took on the white-grey appearance of roads paved with coral. The many families who made their living growing taro were forced to abandon their fields. We had families who supplied Aloha Poi in Honolulu, who were given military service deferments during world war II, so indispensable were our farmers to Hawai'i's food supply. These families were able to send their children to college growing taro. Another family had a thriving poi mill. As the corporate diverter increased the efficiency of its diversion system to 100%, the families were forced to abandon their lo`i. Some continued raising dryland taro, in order to preserve the unique species, but nowhere near the scale of production before the lo`i were completely dried up. Generations of young farmers were lost, were forced to move outside the community because there was very limited opportunity to farm. We lost our farmers and are struggling to recover.

The holdover revocable permit, with its minimal accountability, was the legal mechanism used to inflict all of this suffering upon our people. Fifteen years ago, Na Moku was successful in getting Judge Eden Hifo to require an environmental assessment as a condition precedent to obtaining a long-term lease. Of course, we are here today because that precondition has never been met -- not in 33 years since the last long-term lease expired, not in the 15 years since Judge Hifo rendered her decision, and not in the 3 years since Act 126 was enacted. To add to the injury, the members of our community, who are strong supporters of farming and food sovereignty, were maligned when they sought stream restoration. They were labeled selfish, threats to sugar workers' jobs, other Maui farmers and ranchers. A very successful and ongoing misinformation campaign has divided and continues to divide our Maui community.

Not only has our community suffered, but the watershed has undergone great environmental degradation. The East Maui Watershed Partnership, whose membership is greatly influenced by Alexander & Baldwin subsidiary East Maui Irrigation, purposefully blackballed any representation by members of our community.

So we oppose holdover permits, period. Because they opened the door to abuse and the conditions in this proposed draft will not allay our fears that this bill is just a ruse to continue abuses of the past.

We have suffered from lack of enforcement for many decades -- why should we now believe that these conditions and restrictions will be enforced?

The auto-renewal feature is also a disincentive to cease violations. In Na Moku's case, A&B's many attorneys dragged out the case for decades in the sure knowledge that as long as the cases were pending, they could continue their diversions. This default position favors the diverters against the public's interest.

Hearings on proposed administrative rules and reports to the legislature are not the same as protections.

The people need protection against corporate abuse. For the above reasons, Na Moku opposes House Bill 1326, House Draft 2, Senate Proposed Draft 1.

BEFORE THE SENATE COMMITTEES ON WATER AND LAND AND WAYS AND MEANS  
April 1, 2019

House Bill No. 1326 HD2  
Relating to Water Rights

Aloha Chair Kahele, Vice-Chair Keith-Agaran, Chair Dela Cruz, and Members of the Committees,

KPAC submits the following testimony in **STRONG OPPOSITION** of House Bill 1326 HD2 which will allows holdovers of revocable water permits to continue until the pending application for a lease is resolved.

The State can no longer afford to support multi-million dollar private corporations like Alexander and Baldwin at the expense of our environment and sustainable food production that includes subsistence and traditional approaches like growing kalo which is always in high demand.

Furthermore, the State undermines the public’s (including Kanaka Maoli) due process with this proposed legislation by allowing holdover permits to move forward in spite of any request for a contested case. In December 2015, the Hawai‘i State Supreme Court ruled (*Mauna Kea Anaina Hou v. Department of Natural Resources*) that if a contested case is required by law, due process requires a meaningful opportunity, both in reality and in appearance, to be heard **BEFORE** a decision is made.

Respectfully submitted,

M. Healani Sonoda-Pale  
Chair, KPAC

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:43:53 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Leilani Lindsey	Testifying for Ka ?Ahahui Hawai'i Aloha ?Aina	Oppose	Yes

Comments:

RE: Testimony in Opposition, HB 1326 SB 1, RELATING TO WATER RIGHTS

Aloha Chair Kahele, Chair Dela Cruz and members of Senate WTL/WAM Committees,

My name is Leilani Lindsey-Ka'apuni. I reside in Pi'ihonua, Hilo, Hawai'i. I submit this testimony in strong opposition to HB 1326 SB1, relating to water rights, as a Hawaiian and in my capacity as Pelekikena of Ka 'Ahahui Hawai'i Aloha 'Ä€ina with eight branches of Hui Aloha 'Ä€ina throughout Hawai'i nei.

HB 1326 violates the Public Trust Doctrine and the State of Hawaii's fiduciary obligation to manage water pursuant to the Hawaii State Constitution, Article 11, Sections 1 & 7, Article 12, Section 7 and Hawaii Revised Statutes 174C.

For over 150 years, the sugar elite held Hawai'i's water hostage to drain rivers dry for whatever purposes the saw fit. These corporations and private interests depleted freshwater streams and ground water almost completely dry to feed their development projects, industries and profits. With them, they brought their massive ditch systems, diseases and capitalism, which ultimately bolstered their control over the islands. Generations of stream diversion has led to the loss of whole ecosystems and severe, negative impacts on the traditional and customary practices of kanaka maoli.

With the end of this era, Hawai'i is now offered an opportunity to right the wrongs of the past with the restoration of our streams for those who have waited over a century for it. We also have the opportunity to be more effective in protecting our resources by mandating those who want to divert water to adhere to the requirements of the water code as they are written.

The only parties to truly benefit from this bill are Alexander & Baldwin and Kaua'i Island Utility Service. The measure gives Alexander & Baldwin a \$62 million bail out for water they were not authorized to promise to Mahi Pono. The public should not have to pay for their unconstitutional promise. On Kaua'i, Kaua'i Island Utility Service is diverting

100% of the baseflow of the Wai'ale'ale Stream for 1% of energy. This is unacceptable and in violation of State law.

While we appreciate Senator Kahele's proposed amendments to improve HB 1326, SB 1 does not go far enough in protecting for stream ecosystems from excessive water diversion. Please do not perpetuate the generational hoarding of Hawai'i's precious waters. Uphold your responsibilities to the Public Trust. Oppose HB 1326.

Me ke aloha 'Ä• ina,

Leilani Lindsey-Ka'apuni



**KAHEA**  
THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

**LATE**

April 2, 2019

Aloha committee members,

I'm writing on behalf of KAHEA: The Hawaiian-Environmental Alliance and our over 10,000 supporters in **strong opposition to HB1326.**

Water diversions of the streams in East Maui began in 1878—by some of the same people who 15 years later would orchestrate the overthrow of Queen Lili`uokalani. Since then A&B has diverted literally billions of gallons of water from East Maui, whittling down kalo farming from several hundred to just 20 acres by the 1980s. In 1987, the State of Hawaii adopted the Water Code (HRS 174C), in accord with the state constitution, which provides “the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use.” These protections are for citizens, not for corporate interests—which do not have constitutionally protected rights.

- The irrigation of lo`i kalo in East Maui is both protected as traditional customary practice and as a public trust use of water under the State Constitution. This practice long pre-existed A & B's diversions.

- Part VI of the water code says the state water commission shall “(3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses” which is defined earlier in the document as “beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by **leaving the water in the stream.** Instream uses include, but are not limited to:

- (1) Maintenance of fish and wildlife habitats;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways and (9) **The protection of traditional and customary Hawaiian rights.**

We have compassion for the ranchers and farmers who currently rely on access to water through revocable permits, but this bill does not address or affect their access to water. This bill deals specifically with revocable permits issued on a “holdover” basis—Alexander and Baldwin are the only permit holders with that special distinction. On November 24, 2015, Judge Nishimura asked Linda Chow (Attorney General for the BLNR) directly, “Are there a number of RPs that are on holdover status, or is this a unique situation?” to which she

PROTECTING

NATIVE HAWAIIAN

CUSTOMARY &

TRADITIONAL RIGHTS AND

OUR FRAGILE

ENVIRONMENT

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*KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."*

replied, “This is a unique situation...” This bill is special legislation that only affects one company. Proponents of this bill would like you to believe that a “holdover status” is something that could and should be extended to other RP holders who are pursuing long term leases or are tied up in contested case hearings. If that situation were to arise BLNR could continue to renew the permit holder’s RP through the lease negotiation or contested case—it would be a continuance of an already bad practice, but it wouldn’t make it worse by removing the requirement for at least an annual review and renewal. The holdover status is a beefed up version of the already problematic revocable permit. We all agree that revocable permits are a problem that need to be addressed, but this bill actually exacerbates the problem. It provides no incentive for A&B to comply with long term lease requirements, on which it has dragged its feet for more than a decade.

When the state adopted the water code in 1987, it was taking a step forward in codifying laws to protect one of our most precious resources. However, Alexander and Baldwin did not take that step forward, nor did the State compel them to do so—instead they continued the bad (and now, clearly illegal) practice of diverting water to the point of injury of downstream users.

The laws that protect kalo farmers in East Maui are completely clear. They have received many favorable rulings in many administrative and legal venues. And yet, at every turn they have been forced to sue to have the rulings enforced—including Judge Nishimura’s most recent ruling on holdover statuses. In the interim, years roll by and the streams stay dry.

Water is literal life—not a metaphor for life, but actual life. There is enough water for what people need, enough to feed, but not enough for greed. Please reject HB1326.

Mahalo for your time and attention to this important matter.

Yours,

2019 KAHEA Board and Staff

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 8:33:25 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rosalyn Concepcion	Testifying for Pacific American Foundation, waikalua fishpond pond	Oppose	No

Comments:

i oppose this bil. As a fishpond caretaker we rely on fresh water access into our pond . it is esstential to the overall health of the marine life and native limu that grows nearby. Without adquate supply and access we will not be able to re-stock our pond with health fish and limu.





LAND USE RESEARCH  
FOUNDATION OF HAWAII

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March 30, 2019

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Water and Land

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Ways and Means

**Testimony in Support of HB 1326, HD2, Relating to Water Rights (Allows for ten consecutive one-year holdovers of water permits under Hawaii Revised Statutes (HRS) Section 171-58(c); makes conforming amendments to the reporting requirement in Act 126 (2016); extends the repeal and reenactment provision for Act 126 (2016) by seven years, from June 30, 2019 to June 30, 2026.)**

**Hearing Tuesday, April 2, 2019, 10:45 a.m., in Conference Room 211**

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 **strongly supports HB 1326, HD2**, which proposes to amend HRS Section 171-58(c) to allow an extension of time for holdovers of revocable water permits (Revocable Permits) until the pending application for a lease is resolved or for a total of ten consecutive one-year holdovers; and to require that if any contested case is requested on a one-year holdover, any provision of law notwithstanding, the holdover shall be continued without any action of the State Board of Land & Natural Resources (Board) pending completion of the proceedings.

**HB 1326, HD2.** This purpose of this bill is to provide for holdovers of Revocable Permits so as to allow them to continue until the pending application for a lease is resolved or for a total of ten one-year holdovers, subject to an annual determination by the Board that the holdover is consistent with the public trust. The language proposed in the bill regarding contested cases would also ensure that when any contested case is brought on a one-year holdover, the holdover shall be continued without any action of the Board pending completion of the proceedings.

### **Factual Background.**

In early January 2016, the Hawaii State Circuit Court ruled that the Board does not have the authority to issue water permits with a term greater than one year, thereby invalidating the permits which allowed water collection to continue. According to the Circuit Court's ruling, pursuant to HRS Chapter 171, the Board was only able to grant either one-year revocable permits, or long-term water leases, and nothing else – which left a number of permittees which have had Revocable Permits in place for longer than one year, in limbo.

At the time of the Court's ruling, there existed hundreds of revocable permits that had been renewed multiple times over the past years. Most of those permits involved land dispositions, however, 13 of them were revocable water permits issued under HRS 171-58(c). In order to avoid the sudden stoppage of water under those Revocable Permits, Act 126 (2016) was enacted into law by the Legislature, aptly enabling the Board to authorize annual holdovers of Revocable Permits until a pending application for the disposition of water rights is finally resolved, or for a total of three consecutive one-year holdovers, whichever occurs sooner. The understanding at that time was that the processing of applications for the conversion from one-year Revocable Permits to long-term water leases would be completed within three years.

Pursuant to said authority afforded to it by Act 126 and the 2016 amendments to HRS Section 171-58(c)(1), the Board thereafter approved holdovers of Revocable Permits from 2016 to 2018, allowing permittees continued use of water while working through the long-term lease application process.

The Board approved the last of the three authorized years of holdovers for all but one of the 13 affected revocable water permittees<sup>1</sup> in November and December of 2018. LURF understands that to date, none of the 12 remaining revocable water permittees have been able to convert to long-term State water leases. The procedure for issuing a long-term water lease is extremely arduous and may entail a number of steps and processes<sup>2</sup>, all or each one of which, may likely take more than a year to complete. It is therefore imperative that the Board be authorized to allow permits to be continued until the pending application for a long-term lease is resolved, in order that State waters which are used and relied upon may continue to be collected while the long-term lease process is properly and thoroughly pursued and vetted.

Likewise, to avoid interruption of the critical flows of water, the proposed language in the bill regarding contested cases would also ensure that when any contested case proceeding is brought

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<sup>1</sup> It is LURF's understanding that one of the Revocable Permit applications for long-term lease and holdover was withdrawn.

<sup>2</sup> The process for issuing a long-term State water lease could include several important, potentially time-consuming ancillary requirements and regulatory processes, which were likely not contemplated by the drafters and revisors of the provisions of HRS Chapter 171. Prior to the issuance of a water lease, required steps may include the following:

- an environmental assessment or environmental impact statement; compliance with HRS Chapter 343
- the amendment of interim instream flow standards
- an appraisal
- contested case hearing proceedings and other litigation
- conduct of the sale of the lease at public auction

on a one-year holdover, any provision of law notwithstanding, the holdover shall be continued without any action of the Board pending completion of the contested case proceedings.

**LURF's Position.** LURF believes the drafters of Act 126 (2016) and the provisions of HRS Section 171-58, as amended, could not possibly have anticipated, let alone intended the inequity of the application of the provisions of the statute to extraordinary situations such as the current one involving a number of permittees, which have relied upon the waters for years past and have made substantial investments based on said waters.

LURF further believes it would be irresponsible for this Legislature to stand by and ignore the potential economic and social consequences, as well as the health and safety issues that could arise due to the courts being legally duty-bound to apply the provisions of Act 126 (2016) and HRS Section 171-58 to situations such as the present, when in fact, underlying extraordinary circumstances exist, which are completely outside the control of the permittees.

With respect to the island of Maui, LURF understands that with the loss of sugar, if there is to be any chance of an agricultural future for Central Maui, as well as new economic opportunity and activity for the island while preserving its rural quality of life, access to the State's East Maui waters must be sustained.

These Committees should also be aware that if this bill is not passed and water is not made available for use on lands designated as Important Agricultural Lands (IAL), there lies a definite risk that those lands which then can no longer sustain agriculture may be withdrawn from IAL and potentially designated for use for other purposes.

Having been made aware of the issues with the provisions of law as currently written, these Committees should take appropriate action to address the problem and pass this bill to allow the Board to continue to take narrow exception and authorize holdovers of Revocable Permits annually until the pending application for the disposition of water rights previously authorized is resolved or for a total of ten consecutive one-year holdovers, and to extend the repeal and reenactment provision of Act 126 (2016) by seven years, particularly when such holdovers are consistent with the public trust doctrine and therefore best serve the interests of the State.

For the reasons set forth above, LURF is **in support of HB 1326, HD2**, and respectfully urges your favorable consideration of this bill.

Thank you for the opportunity to present testimony regarding this measure.



## **Board of Directors 2018 - 2020**

## TESTIMONY FROM BENNETTE MISALUCHA, EXECUTIVE DIRECTOR

In Support of HB1326 HD2 SD1 (Proposed)

### President

Joshua Uyehara

Committee on Water and Land & Committee on Ways and Means  
04-02-19 10:45AM in conference room 211

### Vice-President

Warren Mayberry

Dear Chairs Kahele, Dela Cruz and Committee Members:

### Secretary

Dawn Bicoy

The Hawaii Crop Improvement Association supports the general intent of HB1326 HD2 SD1 (Proposed) Relating to Water Rights but prefers to more strongly support the current version of HB1326 HD2.

### Treasurer

Laurie Yoshida

HB1326 HD2 allows that when an application is made for a lease to continue a previously authorized disposition of water rights, a holdover may be authorized annually to continue its operations, until the pending application for the disposition of water rights has been resolved for a maximum of 10 years, provided that the holdover is consistent with the public trust doctrine.

### Directors-at-Large

Alan Takemoto

Adolf Helm

Leslie Campaniano

Dan Clegg

Joshua Uyehara

Warren Mayberry

HCIA supports this measure as it seeks to provide relief to keep lands productive while parties seek to resolve issues that often arise due to the many different land and water use laws that lessees must comply with.

### President Emeritus

Alan Takemoto

Complicated water and land use laws are often well intended, which sometimes leads to unintended consequences. We believe that this measure attempts to address the unintended consequences, which we support.

### Executive Director

Bennette Misalucha

We strongly urge you to consider the impacts of this measure upon all communities and ask that this committee pass HB1326 HD2 Relating to Water Rights. Thank you for this opportunity to testify.

*HCIA is a Hawaii-based non-profit organization that promotes modern agriculture to help farms and communities succeed. Through education, collaboration and advocacy, we work to ensure a safe and sustainable food supply, support responsible farming practices, and build a healthy economy.*



# Hawaii Agriculture Research Center

*Administration: P.O. Box 100, Kunia, HI 96759*

*Ph: 808-621-1350/Fax: 808-621-1399*

## TESTIMONY BEFORE THE SENATE COMMITTEE ON WATER AND LAND AND SENATE COMMITTEE ON WAYS AND MEANS

### HOUSE BILL 1326 HD2

### RELATING TO WATER RIGHTS

**April 2, 2019**

Chair Senator Kahele and Chair Del Cruz and Members of the Committees:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center and our research and support staff.

#### **HARC supports House Bill 1326 HD2, Relating to Water Rights,**

I am the president of the Kunia Water Cooperative which is the farmer run organization with respect to the Waiahole Ditch, the Executive Director of the Hawaii Agriculture Research Center which is dependent on the Waiahole Ditch water for irrigation of its operations, and President of the Kunia Water Association which manages a system of wells for 6 agricultural parcel owners.

HARC participated in the Waiahole Ditch controversy and experiences the many years it took to be resolved. That case really only dealt with water while the issues now involve leasing state land and permitting water use. The state has separate administrative processes for land and water. Unfortunately, for all those concerned these processes can be long, costly and involved. They also can be contested resulting in more time in litigation. Litigation has been a standard, especially for water throughout Hawaii's history.

While in 2016 the legislature felt comfortable with providing 3 one-year holdovers for revocable permits where long-term water permits were applied for. It has become obvious that that time period was not enough. Unfortunately, it has not been enough for the state agencies regulating these area and the permit requesters to get through both the water and land existing legal process. Again, unfortunately for some of the existing statutory requirements there are no precedents. Developing baseline standards are not taken lightly and certainly have not and should not be

rushed in this important area. Another factor that has extended the time for this process is the need for one state regulatory body to make a determination before the other can act.

It seems that of the 13 revocable permits that were outstanding when the 3-year period was established by the legislature, only 1 may be converting to a long-term lease before this 3-year period expires.

It has been my experience in the Kunia Agricultural Cluster that it has taken several decades for all the land in this area to be developed for non-plantation farming. That is just a matter of fact. It takes a long time for conversion, especially if the land scale is huge. The water allocated in the Waiahole decision provided the assurance that a farming operation knew up front how much water was available to the farm in making a decision of what to grow. Without the assurance of enough water it is hard for any farming operation to commit to spending the resources to develop a farm: access roads, conservation plans, irrigation layouts for particular crops, agricultural accessory buildings and just clearing of weeds on the land after long periods of non-use. If the permittees for long-term leases are not allowed continued use of water while these regulatory processes work their way to conclusions, it is much less likely that the land will remain in agriculture. Infrastructure will deteriorate and uncertainty over obtaining water in the future will increase making agricultural operations more risky than they already are. Some are not aware of how risky a farming operation is: no control over so many environmental elements; one very heavy rain at a critical time in a crop cycle can totally wipe out the crop either through rain damage/flooding or pest/fungal invasion.

**We realize the deep concern some have over the use of water but also understand the need for a process that will reduce future controversies and one that is clear regarding the applicant's requirements. It is time to get this right and unfortunately that takes time. It is pretty obvious that decisions by the agencies will continue to be litigated as in the past and current situations. Providing reasonable time constraints with oversight appears to be the only fair way to proceed.**

**We support the intent of all the proposed measures HB1326HD2, HB1326HD2SD1 and HB1171HD1SD1 and their recent proposed versions and look to you, the legislature, to decide on which proposal ensures:**

- 1) the extension of applicant's time to get through the process;**
- 2) and reasonable quantities of water for the long-term planning needed by farming operations both traditional and modern.**

**Thank you for the opportunity to testify in support of Hawaii's agricultural needs. We hope you see the need to allow the process to continue and recognize this is not an easy process whether for the state agencies with existing mandates or the permittees dealing with all the uncertainties over land and water.**

**We are in strong support of the intent of all the current legislation relating to water use.**

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:18:12 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Culbertson	Testifying for Hawaii Forest Stewards	Oppose	No

Comments:

Dear Senators,

On behalf of Hawaii Island Forest Stewards, we earnestly request that you KILL this bad bill! The corporate theft of our public trust resources has to stop now!

Please know that we also oppose, and are following closely, any 'gut and replace' (SB 1171, SD1) shenanigans meant to decieve the public and frustrate the opposition. These type of practices must also stop!

Thank you for your complete appreciation of the importance of this keynote legislation and its long term consequences.

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:38:25 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeri Di Pietro	Testifying for Hawai'i SEED	Oppose	No

Comments:



**Ka'u Soil & Water Conservation District  
Ka'u Agricultural Water Cooperative District  
P.O. Box 49  
Naalehu, Hawaii 96777**

**Testimony in support of HB 1326 HD 2**

**April 1, 2019**

**Testimony in support of HB 1171 SD 2**

**Ways and Means Committee, Chairman Senator Donovan Dela Cruz;**

**Water and Land Committee, Chairman Senator Kai Kahele;**

**Hawaii State Legislative Session, Tuesday April 2nd, 2019**

My name is John C. Cross. I am the Vice Chairman of the Ka'u Soil and Water Conservation District and past President of the Ka'u Agricultural Water Cooperative District, (KAWCD). On behalf of both organizations I would like to offer the following testimony in strong support of HB 1326 HD 2 and the related bill HB 1171 SD2

Since 2007 the Revocable Permit holders in the Ka'u District recognized the need to convert their R.P.'s to long term water leases with the DLNR. The KAWCD was formed as a federated cooperative consisting of other water cooperatives, LLC's, Trusts, and individual Permit holders. For many years we have worked with the Hawaii Department of Agriculture, Agribusiness Development Corporation, and the Department of Land and Natural Resources to develop a process to convert the R.P.'s to long term leases. Significant effort was made to identify the tunnel resources in the district including a modern metes and bounds survey of the sources and access routes. This action performed by HDOA. Our efforts got sidelined when the ruling out of Judge Nishimura's court invalidated the extension of the R.P.'s. We were in strong support of HB 2501 (2016) which resulted in Act 126 which allowed the permit holders three years to begin the process of conversion to long term leases.

The permit holders in the district of Ka'u have been ACTIVELY working through the required steps to get the leases before the BLNR for action. While the original intent of the former KAWCD was to gain a single long term lease for all the Ka'u R.P. holders, (the members), it has now become apparent that the process needs to revert to each individual R.P. holder to perform an action for an independent water lease. The Ka'u Soil & Water Conservation District supports all their actions and remains ready to assist each action as the source of the waters comes from the same parcel of land owned by the DLNR, that being the Ka'u Forest Reserve.

The Reserve contains many horizontal shaft tunnels bored by the Sugar Plantations in the 1920's. These tunnels started their use as water for transportation of cane to the mills. After the plantations closed the tunnels as flume systems fell into disrepair. The singular R.P. held by the Sugar Plantation upon the Forest Reserve since 1973, was bifurcated after sugar cultivation ceased into the five independent R.P.'s that exist today. These R.P. holders have invested vast amounts of money to improve the systems and tunnels. The water from these sources support Macadamia Nut orchards, Cattle Ranching, Coffee Cultivation, and a growing expansion of Vegetables and Produce...food for the community and State of Hawaii. The lands of the Ka'u District are bountiful, but only so with Water.

I ask that HB 1326 HD 2 and HB 1171 SD2 be passed through your committees and we look forward to its eventual enactment to help us preserve the process of converting the R.P.'s into long term leases.



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

**LATE**

April 2, 2019

HEARING BEFORE THE  
SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEE ON WAYS AND MEANS

**TESTIMONY ON HB 1326, HD2, Proposed SD1  
RELATING TO WATER RIGHTS**

Room 211  
10:45 AM

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees:

I am Brian Miyamoto, Executive Director 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 the *intent* of HB 1326, HD2, Proposed SD1 to ensure that our farmer and ranchers who rely on diverted water for irrigation through revocable permits will continue to have access to that water.**

**However, we respectfully request that you pass HB 1326, HD2 that would allow sufficient time for water permit holders to obtain long-term leases, consistent with public trust principles.**

**Without this additional time, over 100 farmers and ranchers (and tens of thousands of other water users) will lose access to water at the end of the year. Without water, some of those farms and ranches may not be able to continue.**

The passage of this bill is critical because the 2016 law allowing holdovers anticipated that conversion of one-year revocable permits to long-term leases would be completed within the allotted three-years. Unfortunately, this conversion has not taken place due to the extremely complex, costly, and time-consuming process required to obtain a long-term water lease.

**HB 1326, HD2 is preferable** to the proposed SD1 because of the additional time allowance and because it recognizes that agriculture is a protected and encouraged constitutional use of land. However, without adequate access to water, there can be no agriculture. The Constitution mandates both the conservation and protection AND the development and utilization of its natural resources to further Hawaii's self-sufficiency. Farming of all sizes and

types are necessary; the large farms support the economics of the smaller farms. And historical evidence shows that modern Hawaii had the highest level of self-sufficiency when we had the highest level of agricultural exports.

*The Hawaii Constitution Section XI states:*

**Section 1.** *For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.*

The public trust includes agricultural use of Hawaii's water resources – kalo farming and *all* types of farming and ranching. **Public trust considerations are already protected through mandatory conditions and IIFS in the current water permit and lease process.** Opponents to the water permit extension bills do not seem to understand that these bills do not allow DLNR or permit holders to avoid public trust protections.

While the larger water-using farmers are currently in the process of completing the Environmental Impact Statements and other requirements, smaller farmers and ranchers do not have the legal or financial resources to meet those daunting and in many cases, uncertain requirements necessary to obtain a long-term lease. Compliance with the myriad of requirements, such as an EIS is far beyond the means of the vast majority of smaller farmers and ranchers. The hurdles placed upon the smaller farmers who have legally relied upon these waters for years have so far been insurmountable, resulting in *no* conversions of the water revocable permits to long-term leases.

Additionally, HB 1326 HD2 Proposed SD1 would limit water use to an applicant's demonstrated actual, reasonable beneficial needs for the holdover period. This is problematic, especially for a new farmer. How can this be demonstrated? How can need be predicted when it is normally associated with the weather, especially rainfall; during a drought, a farmer would need access to more irrigation water. Although the amount of water requested in a permit may not be needed every day, it must be available as needed. The law already prescribes that diversions of water can only occur for legitimate use. Farmers and ranchers invest heavily in their operations and take many risks. The restrictive language in SD1 could unreasonably and unnecessarily prevent farmers from having the water they need *and* may even dictate what crops they will be able to grow.

HB 1326, HD2 is essential for hard-working local farmers and ranchers statewide to continue to access the water they need to provide food for our communities. Without water, agriculture will fail, our rural lands will become unproductive, and our beautiful green vistas will turn dry, brown, and more prone to devastating fires.

Please pass HB 1326, **HD2** now, a much-needed measure that will reasonably extend the temporary permits until farmers can get their long-term leases.

Thank you for your support of Hawaii's farmers and ranchers.



## Maui County

April 2, 2019

HEARING BEFORE THE  
SENATE WATER AND LAND COMMITTEE  
SENATE WAYS AND MEANS COMMITTEE

TESTIMONY ON  
HB 1326 HD2: RELATING TO WATER RIGHTS

Room 211  
April 2, 2019, 10:45 AM

Aloha Chair Kahele, Chair Dela Cruz, and Members of the Committees:

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 is in strong support extending the revocable permit process for long term leases associated with water permits.

Diversions are critical to Maui's people..residences as well as agriculture. Maui is the island that is most dependent on diversions. People speak of alternative sources of water but they all cost money and require additional permits. Identification of alternatives is a strategic goal that we all need to work on but in the near future, we need the diversions for the survival of agriculture. Policymakers and the public all speak of the importance of agriculture. But speaking is not enough. We

need actual support for the inputs that make agriculture successful and one of them is water.

SD2 sets the revocable permit time period as 3 years. We do not think it will suffice, given the progress we have made in the last 3 years. We prefer the additional 7 years allowed in HD2. The complexity of this issue and the desire to get it right will take time.

Farming is a risky business. Many challenges beyond the farmer and ranchers' control impact their viability. Water is a major concern those dependent on these revocable permits. The amount they use will depend on rain. If there is rain, they don't need a lot, if it doesn't they may be totally dependent on water from these revocable permits. Limiting amounts to just the holdover period if it requires annual approval will not encourage investments.

Maui is at a critical stage. The largest contiguous agricultural lands in the State is about to embark on an ambitious journey that has the potential to move the needle on agriculture in Hawaii. This operation can return the critical mass needed to help our smaller farmers..the ones that provide local strawberries or lettuce that you see in Costco. They are the ones that truly contribute to import replacement and help with increased self-sufficiency. The opportunity is there and it largely rests on the decision before you today.

We believe the language in HD2 meets our needs. We respectfully request your strong support of HB1326 HD2. Thank you for this opportunity to address this issue.

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:15:50 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nathaniel Oswald	Testifying for Hawaii Farm Bureau - Molokai Chapter	Support	No

Comments:

I support this bill. Please see attachment for testimony.

Thank you,

Nathaniel Oswald

Molokai Hawaii Farm Bureau President

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:28:10 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
susan campbell	Testifying for Hawaii Farmers Union United, Food Security Hawaii	Oppose	No

Comments:

Much has already been said and written about HB1326. Senators , please vote NO. If water rights are not held up for the public domain then our Senators are corrupt. This is actually outrageous.

NO NO NO NO NO

**HB-1326-HD-2**

Submitted on: 3/31/2019 6:16:40 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
bruce corker	Testifying for Rancho Aloha	Oppose	No

Comments:

Fellow Democrats in the Legislature, please listen to your party and oppose HB1236.



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:54:58 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Metzler	Testifying for Mahukona Ranch	Support	No

Comments:

Ranching and farming is difficult enough without adding yet more burdensome and costly regulations and restrictions. Please support passage of this bill.

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

**LATE**

HB1326hd2, proposed SD1  
Relating to Water Rights  
Sen WTL/WAM Hearing  
Tuesday, April 2, 2019  
10:45am  
Conference Room 211

Testimony by: Larry Jeffs  
Position: Support

Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran and Members of the Sen WTL/WAM 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. I am a volunteer director for the West Oahu Soil and Water Conservation District (SWCD).

Water is the lifeblood of all farmers and without affordable and accessible water there will be no farming. No farming, no locally grown produce and livestock.

This bill acknowledges the need for additional time to convert existing water revocable permits to long term leases. Act 126 (2016) established a three year period for this conversion. This bill acknowledges that this conversion is of complex nature and difficult to meet by small farmers and ranchers.

Your support of this bill will bring much needed stability to irrigation systems affected by this situation. It is needed to support farmers and ranchers who rely on water to produce food for Hawaii's people.

Thank you for the opportunity to present testimony

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 9:09:39 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Emura	Testifying for Hawaii Hemp Farmers Association	Support	No

Comments:

The HHFA Supports HB 1326, HD 2, Proposed SD 1!

This bill will ensure that our farmer and ranchers who rely on diverted water for irrigation through revocable permits will be treated fairly and that any permit holdovers will be granted consistent with public trust principles.

HB 1326, HD 2, Proposed SD 1 is essential for hard-working local farmers and ranchers statewide to continue to access the water they need to provide food for our communities. Without water, agriculture will fail, our rural lands will become unproductive, and our beautiful green vistas will turn dry, brown, and more prone to devastating fires.

Mahalo!

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 9:15:02 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daryl Kaneshiro	Testifying for Omao Ranch	Support	No

Comments:

Please Support HB 1326, HD 2, Proposed SD 1!

This bill will ensure that our farmer and ranchers who rely on diverted water for irrigation through revocable permits will be treated fairly and that any permit holdovers will be granted consistent with public trust principles.

HB 1326, HD 2, Proposed SD 1 is essential for hard-working local farmers and ranchers statewide to continue to access the water they need to provide food for our communities. Without water, agriculture will fail, our rural lands will become unproductive, and our beautiful green vistas will turn dry, brown, and more prone to devastating fires.

Daryl Kaneshiro & Arryl Kaneshiro

Omao Ranch

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:53:50 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Colehour Bondera	Testifying for KANALANI OHANA FARM	Oppose	No

Comments:

Aloha Chair and Committee Members:

With all due respect, this is to testify in opposition to the piece of pending legislation. As a farmer and as a community member, we must recognize when something is not helpful and when something is hurting Hawaii and not necessary in order to maintain our health and well being.

Please vote against this legislation and at minimum defer to future consideration.

Sincerely,

Colehour Bondera

KANALANI OHANA FARM

Honaunau, HI



**Kalepa Koalition**

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

April 1, 2019

**TO: COMMITTEE ON WATER AND LAND**

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

**COMMITTEE ON WAYS AND MEANS**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

**RE:** HB1326 SD1, April 2, 10:45 am, conference room 211

Chairpersons Kahele and Dela Cruz and Members of the Committees:

We **support HB1326 SD1**. The Kalepa Koalition is a 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 Users Cooperative System can presently service more than 1,000 acres of the Kalepa lands. In just the last few years, ADC has converted nearly 300 acres of irrigable land from ranching to farming, and has more prospective farmers under consideration.

The Coop is in the process of having the system transferred to the Department of Agriculture through legislation pending in this session. The Coop's RP on the system expires in 2020, at which point the system would revert to DLNR. We need the flexibility of extending the RP long enough to complete the transfer to DOA.

We respectfully request that this bill be passed.

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

Leslie P. Milnes, President  
Kalepa Koalition

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:08:04 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keith	Testifying for McCandless Ranch	Support	No

Comments:

This is extremely important to all farmers and ranchers that are affected by these revocable water permits. Please support.

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:31:34 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sylvia Dolena	Testifying for Pele Lani Farm LLC	Oppose	No

Comments:

These bills create a loophole to get around Hawai'i's water protections by allowing corporate diverters to avoid more the rigorous environmental and cultural review that is required for a long-term lease application. Please do not give in to big Agribusinesses. **OPPOSE HB1326 and HB1171.**

**Mahalo.**

**Sylvia Dolena**

**Pele Lani Farm LLC**



**HB-1326-HD-2**

Submitted on: 4/1/2019 2:39:06 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harry von Holt	Testifying for Ponoholo Ranch, Ltd	Support	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:50:38 AM

Testimony for WTL on 4/2/2019 10:45:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jonathan W Braley	Testifying for New Island Feed, Inc	Support	Yes

Comments:



Hawaii Cattlemen's Council, Inc.

**SENATE COMMITTEE ON WATER & LAND  
SENATE COMMITTEE ON WAYS AND MEANS  
Senator Kai Kahele, Chair  
Senator Donovan Dela Cruz, Chair**

DATE: Tuesday, April 2, 2019  
TIME: 10:45 AM  
PLACE: Conference Room 211

**HB 1326 HD2 and proposed SD1– RELATING TO WATER RIGHTS.**

Allows holdovers of revocable water permits to continue until the pending application for a lease is resolved. Requires prompt execution of contested case proceedings for 1-year holdovers. Allows holdovers to continue pending completion of contested case proceedings. Removes repeal and reenactment provisions relating to section 171-58(c), Hawaii Revised Statutes.

Chair Kahele, Chair Dela Cruz, and Members of the Committee:

My name is Alan Gottlieb, and I am Government Affairs Co-Chairman for 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 supports** HB 1326 HD2, which allows for the continuation of revocable water permits to continue throughout the application process. HD2 provides for 7 additional years, where as Proposed SD1 only provides for 3 additional years and places other restrictions on the process. We do not have faith that DLNR can clear up this mess within 3 years, since nothing was done to remedy the process during the last 3 years, so here we are again.

Through no fault of the farmers and ranchers, there has been no changes made to the process that would allow these RPs to be converted to long term leases. In some cases, performing an EA may cost a million dollars or more which the small farmers and ranchers cannot afford to do. Furthermore, if they did pay for the EA, when the lease goes to public auction, if the farmer who paid for the lease loses at auction, there is no means for them to get paid back for the EA they performed and someone else reaped the benefits for.

We do ask that the committee include language in the measure that "if an applicant provides an EA and that applicant loses the auction of the lease, the winner of the auction shall reimburse the other applicant for the EA costs". This would help level the playing field for those applicants for the permits. A better option would be for DLNR to perform and pay for any required EA to convert these RPs to a long term lease, in line with the best use of these public trust resources.



In addition, the provision limiting the revocable permit only to the amount of water to “*the applicant's demonstrated actual, reasonable, beneficial needs for the holdover period*” is problematic; Water use from year to year can change greatly based on such events such as drought, which we have no control over.

Water is critical for agricultural production and the consistency of their delivery systems are necessary for meeting the challenges of local food production. These systems are often times subject to difficult permitting processes and contested case hearings which can leave producers in limbo.

This measure will allow for the continued delivery of water for agricultural use throughout the application process. Also, providing an expedited process for contested case hearings will prevent drawn-out proceedings and reducing uncertainty in continued water delivery. This measure could also help prevent the potential for costly litigation which will ultimately increase the cost of water delivery to end users.

We respectfully ask for this committee to support this measure and we appreciate the opportunity to provide this testimony.

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:47:06 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chris Manfredi	Testifying for Hawaii Coffee Association	Support	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:00:56 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

Very important for lawmakers to extend the allowance of water diversion until the people understand what is a stake for agriculture if it is denied. Reliance on wells will be disastrous fiscally, environmentally and municipally. I urge pushing for education on this matter to get the facts on Hawaii's fresh water resource. You lose this source of water and there is no turning back.



# Chamber of Commerce HAWAII

*The Voice of Business*

## Testimony to the Senate Committees on Water and Land, and Ways and Means

Tuesday, April 2, 2019 at 10:45 A.M.  
Conference Room 211, State Capitol

**LATE**

**RE: HOUSE BILL 1326 HD2, PROPOSED SD1, RELATING TO WATER RIGHTS**

Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees:

The Chamber of Commerce Hawaii ("The Chamber") **supports the general intent of** HB 1326 HD2, Proposed SD1, which allows for six consecutive one-year holdovers of water permits under section 171-58(c), HRS. The bill would also place conditions on holdovers that authorize the use of over two million gallons of water per day and would require the Board of Land and Natural Resources, prior to authorizing holdovers after January 1, 2020, to hold a public hearing on the adoption of proposed administrative rules on the disposition of water rights. HB 1326 HD2, Proposed SD1 also extends the repeal and reenactment provision for Act 126 (2016), from June 30, 2019 to June 30, 2022. While the Chamber supports the intent of this proposed draft, we prefer the language of HB 1326 HD2.

The Chamber is Hawaii's leading statewide business advocacy organization, representing 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber supports passage of a bill that would help to enable temporary water permits to be extended in order to allow the permittees time to make their way through the state's long-term water leases process. Additionally, the Chamber notes that the provision limiting the revocable permit only to the amount of water needed during the one-year revocable permit period may be problematic. Farmers make their investments based on the future expansion of crops, many of which may not occur within the one-year revocable permit period.

At the end of 2018, of the 13 water revocable permits that were outstanding at the time of the passage of Act 126 (2016), only one appears to have a good chance of converting to a long-term water lease during calendar year 2019. If Act 126 is not amended to extend the time holdovers of water revocable permits pending resolution of their lease applications, all the other water revocable permit holders will face the prospect of not being able to legally access water that they've relied on for years.

Thank you for the opportunity to testify.



**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**LATE**

**HEARING BEFORE THE SENATE COMMITTEES ON  
WATER & LAND AND WAYS & MEANS  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 211  
TUESDAY, APRIL 2, 2019 AT 10:45 A.M.**

To The Honorable Kaiali'i Kahele, Chair;  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair; and  
Members of the Committee on Water and Land,

To The Honorable Donovan M. Dela Cruz, Chair;  
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair; and  
Members of the Committee on Ways and Means,

**TESTIMONY IN SUPPORT OF HB 1326 SD1 RELATING TO WATER RIGHTS**

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce with approximately 650 members. I am writing share our support of HB 1326 SD1.

We would prefer that the Committee use version HD2, as the 3 year extension in the proposed SD1 is not enough time to complete the process.

Agriculture has long been a staple on Maui and is vital to our County and State's sustainability efforts. As an organization that believes in the quadruple bottom line – economy, environment, social wellbeing, and culture – we seek to find a balance for the use of this precious resource to serve those needs. While each of those elements in the quadruple bottom line need water, the issue is transmission and priority. What we seek is a way to balance our use to support further development of agriculture, value-added manufacturing, development of affordable housing, new industries, and the environment.

Water is important to all agriculture and access to water is critical to agricultural planning. Therefore, we support the continuation of water permits because we are experiencing a major transition in our agriculture industry in Maui County with Mahi Pono's purchase of approximately 41,000 acres from A&B. They are actively engaged in planning farming operations and need certainty that they will have water availability, at least at the current capacity available now.





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**Testimony on HB1326  
Page 2.**

Further, it is critically important that we as a community are able to maintain our water resources and the infrastructure surrounding them, which we have heard Mahi Pono plans to do. Therefore, to best help this new company support Maui County's agricultural industry, we support this bill.

Support for this bill also includes support for other industries, such as value-added manufacturing, affordable housing, the development of new industries who rely on water, and support for a greener Maui, which both residents and visitors enjoy.

Mahalo for your consideration of our testimony and we hope you will go back to HD2 and move this bill forward.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



**Testimony to the  
Senate Water and Land and Ways and Means Committees  
Tuesday, April 2, 2019  
Conference Room 211 State Capitol  
415 South Beretania Street**

**RE: Support for HB1326 HD2**

Aloha Chairs Kahele and Dela Cruz, Vice-Chair Keith-Agaran, and honorable members of the committees:

As a supporter of responsible use of water resources for public trust and other beneficial uses such as drinking water, agriculture and renewable energy, I encourage you to support HB 1326 HD2. This measure will assure that the State and water lease applicants on Kauai, Maui and Hawaii island have enough time to complete due diligence and make the best possible decisions regarding use of state waters.

Mahalo for your consideration and support of HB 1326 HD2.

Mahalo nui loa,

A handwritten signature in blue ink, appearing to be "MP" or similar initials.

Mark Perriello  
President & CEO  
Kaua`i Chamber of Commerce

**LATE**



**MAUI TOMORROW**

Protecting Maui's Future

Testimony before the  
Senate Committees on  
Water and Land, and Ways and Means

April 2, 2019  
H.B. No. 1326 HD2 – Relating to Water Rights

**STRONG OPPOSITION**

By Albert Perez  
Executive Director  
Maui Tomorrow Foundation, Inc.

Aloha Chairs Kahele and Dela Cruz, Vice Chair Agaran, and members of the committee:

The Maui Tomorrow Foundation OPPOSES HB 1326.

Article XI, Section 1 of the state constitution clearly states that "[a]ll public natural resources are held in trust by the State for the benefit of the people"; this includes stream resources. Unfortunately, the conditions with which water dispositions have been issued by the board of land and natural resources have not been enforced, and have not protected these public trust resources. HB1326 would not change this situation.

The December 2018 report prepared by the Department of Land and Natural Resources in response to Act 126, Session Laws of Hawaii 2016 states that in 2016, "there were a total of 15 pending applications for water leases with the DLNR." "No additional applications for water leases have been received since then."

According to this DLNR report, only one of these applicants, Hawaii Electric Light Company, has completed a Final Environmental Assessment since Act 126 SLH 2016 was enacted. Two other applicants, Alexander and Baldwin and East Maui Irrigation, have begun work on an Environmental Impact Statement. Although three years have gone by the DLNR does not report progress by any other applicants toward getting lease approval. The deadline set by the Legislature has not been complied with, and now these revocable permit holders are expecting the Legislature to simply extend the deadline. This situation perpetuates what has gone on for

decades, and is inexcusable. Defense of the public trust requires that we create some urgency, or else there will be no incentive for these applicants to actually obtain leases.

In its current form, HB1326 does just the opposite, extending the status quo of little to no results. Given that the previous three-year deadline produced little action, it can be expected that another three-year deadline will have the same result.

These are public trust waters, and these applicants do not have a "right" to them unless granted by the state. It is long past time to be firm in protecting our public trust, as required by the state constitution.

Maui Tomorrow supports fair sharing of water in accordance with the public trust doctrine. HB1326 in its present form does not achieve this goal.

With regard to the Upcountry Maui water situation, the County of Maui has made a choice to have its public water system rely on private corporate decisions made by A&B/East Maui Irrigation, and now Mahi Pono. This is a risky public policy choice, and we are seeing the result right now. If the County were to take charge of its own water system and manage its own watersheds and ditch system, we wouldn't be having this discussion.

It's very telling that the Maui County water director told our Board of Water Supply not to worry, that Upcountry would have water regardless of whether HB1326 were to pass or not, and then was forced to recant. However, his revised statement that Upcountry water would be at risk "because it would be difficult for EMI to operate the ditch system solely for the County's needs" does not stand up to scrutiny. The Memorandum of Agreement between EMI and the County states that A&B/East Maui Irrigation will deliver surface water to the County for its Upcountry system – it doesn't specify that this water will only be from state lands.

Mahi Pono's "No-Lease" farm plan narrative states that without water from state lands, they will still have about 22 mgd of surface water. How much of this will enter the Wailoa Ditch that can be delivered to the County? We don't have that information, but there are four streams that are diverted by the Wailoa Ditch after it leaves state lands. In addition, it does not appear that water in the Wailoa Ditch will stop flowing even if no holdover permits are granted. Much of the flow that enters the Wailoa Ditch from state lands will continue, because many streams flow directly into the ditch. The County of Maui will continue to receive water even if A&B/EMI doesn't get any more holdover permits.

This begs the question: why is it that we are managing public trust waters without information on how much water there is? You manage your checkbook. You know what's going into your bank account, and you know what's going out. We need accountability for our public resources as well. Otherwise we are making decisions in the dark. All diverters of water should be

required to meter the amount they are taking. This requirement would also allow the state to obtain fair market value for water diversions.

Finally, there has not been enough discussion of the impacts to fisheries that result from interruption of flow in our streams. When we have mauka-to-makai flow, native stream life such as 'opae , o'opu and hihiwai can flourish. When storms wash them out to sea, they provide food that sustains our fisheries. Much has been made of the fact that the water commission ordered the full restoration of 10 streams in East Maui, and partial restoration of another 7. However, there are over 100 streams and tributaries that were historically diverted by East Maui Irrigation. When they stopped diverting so much water for sugar, much of the flow was restored. The stream life is already coming back, and the fisheries are already starting to improve. If you pass HB1326, A&B/East Maui Irrigation will be allowed to start taking all the water from the other streams and tributaries that are not subject to the water commission decision. The recent gains in native stream life and associated fisheries will be lost.

Please vote No on HB1326.

Mahalo for the opportunity to comment on this important legislation.

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:35:21 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jean McEntee	Testifying for Showing up	Oppose	No

Comments:

Please oppose this bill. Our water is life



Board of Directors:

**Senate Committee on Water & Land  
Senate Committee on Ways & Means**

Gary L. Hooser  
*President*

**Hawai'i Alliance for Progressive Action (HAPA)  
OPPOSES HB 1326 SD1**

Andrea N. Brower  
Ikaika M. Hussey  
*Co-Vice Presidents*

Kim Coco Iwamoto  
*Treasurer*

Bart E. Dame  
*Secretary*

Aloha Chair Kahele, Chair Dela Cruz & Members of the  
Committee,

On behalf of the Hawai'i Alliance for Progressive Action (HAPA),  
**I strongly urge you to oppose HB 1326 SD1.**

Paul Achitoff

HAPA is a statewide environmental, social and economic justice  
organization that engages over 10,000 local residents throughout  
Hawai'i annually.

Laura Harrelson

We appreciate the proposed improvements in the SD1, however  
we don't feel that they go far enough to ensure that our streams  
and public trust uses are protected. Therefore we feel that Act 126  
should be allowed to sunset.

Kaleikoa Ka'eo

Michael Miranda

Walter Ritte Jr.

Given that A&B is the only entity required by a court ruling to  
discontinue operating on revocable permits, this body should not  
assist A&B in continuing to circumvent the law. Because the East  
Maui ruling against A&B was decided in circuit court, it is not  
precedent setting and therefore does not affect other parties. All  
our other RP holders will be able to re-apply for the revocable  
permits as they have done prior to Act 126. If they are not abusing  
public trust resources and causing harm, as A&B has done for  
generations, their use will not be challenged.

Pua Rossi-Fukino

Karen Shishido

Leslie Malulani Shizue Miki

RP's were intended to temporarily provide time for diverters to  
prepare their long-term lease applications, the hold over of  
revocable permits has been utilized as a mechanism to avoid  
environmental and cultural review and perpetuate the wholesale  
dewatering of our streams. The three-year holdover in HB 1326  
further incentivizes this bad practice.

While we recognize that there are a range of diverters across the state that are currently utilizing revocable permits, our organization is headquartered on Kaua'i and is most intimately acquainted with the impact that this proposed bill would have on our Wailua Watershed.

On Kaua'i, our utility, Kaua'i Island Utility Cooperative (KIUC) has been diverting approximately 100% of the baseflow of Wai'ale'ale Stream for over 17 years without needing to quantify its water use needs, or appropriately assess the environmental and cultural impacts of 100% base flow diversion.

In the case of Wailua there is enough water to share equitably - to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture. However, this is currently not happening, the abuse of temporary permits has led to massive water banking at the expense of the public trust and the state coffers.

### **KIUC's Hydropower Doesn't Pencil Out**

KIUC has operated the two uppermost diversions in the Wailua watershed, at Wai'ale'ale and Waikoko Streams since 2001. Both are located on State Conservation Land. Since 2002, they have applied for annual renewal of their RP, but have failed to take the steps necessary to convert the RP to a lease. KIUC has dragged their heels for 17 years in the preparation of their long-term lease application, so why is the legislature proposing to give them an additional 3 years?

KIUC's hydropower operation at Waiahi involves the diversion of at least 30 million gallons of water daily from the Wailua watershed, from diversions on state conservation land, and lower diversions on Grove Farm land, to generate approximately 1% of Kaua'i's power needs. None of this water is returned to the streams of origin. If operated at capacity, the two Waiahi hydro's can produce only 1.5 Mw/D. Per KIUC's records, the two one hundred year old Waiahi hydro's operate at less than 50% of capacity. The diversion of 30MG/D from Kaua'i's most revered and sacred streams, for 1% of the island's energy needs simply doesn't pencil out.

Although KIUC's RP limits the water use to hydropower, ultimately waters diverted under this RP (RP 7340) are co-mingled with water from unpermitted diversions on private Grove Farm land and delivered downstream to Grove Farm, both to the Kapaia Reservoir for Grove Farms agricultural tenants, and to Grove Farms Waiahi surface water treatment plant (see attached CWRM diagram). Since 2004 Grove Farm has sold water to the Kauai Department of Water (KDOW) for over \$2 million annually. Neither KIUC nor Grove Farm pay the State at a consumptive rate for all the waters they are diverting.



HB 1326 extends the holdover of revocable permits without ensuring that our streams are protected; there is currently no provision for minimum amounts of water in the stream, requirements for gauging or ensuring mauka to makai connectivity.

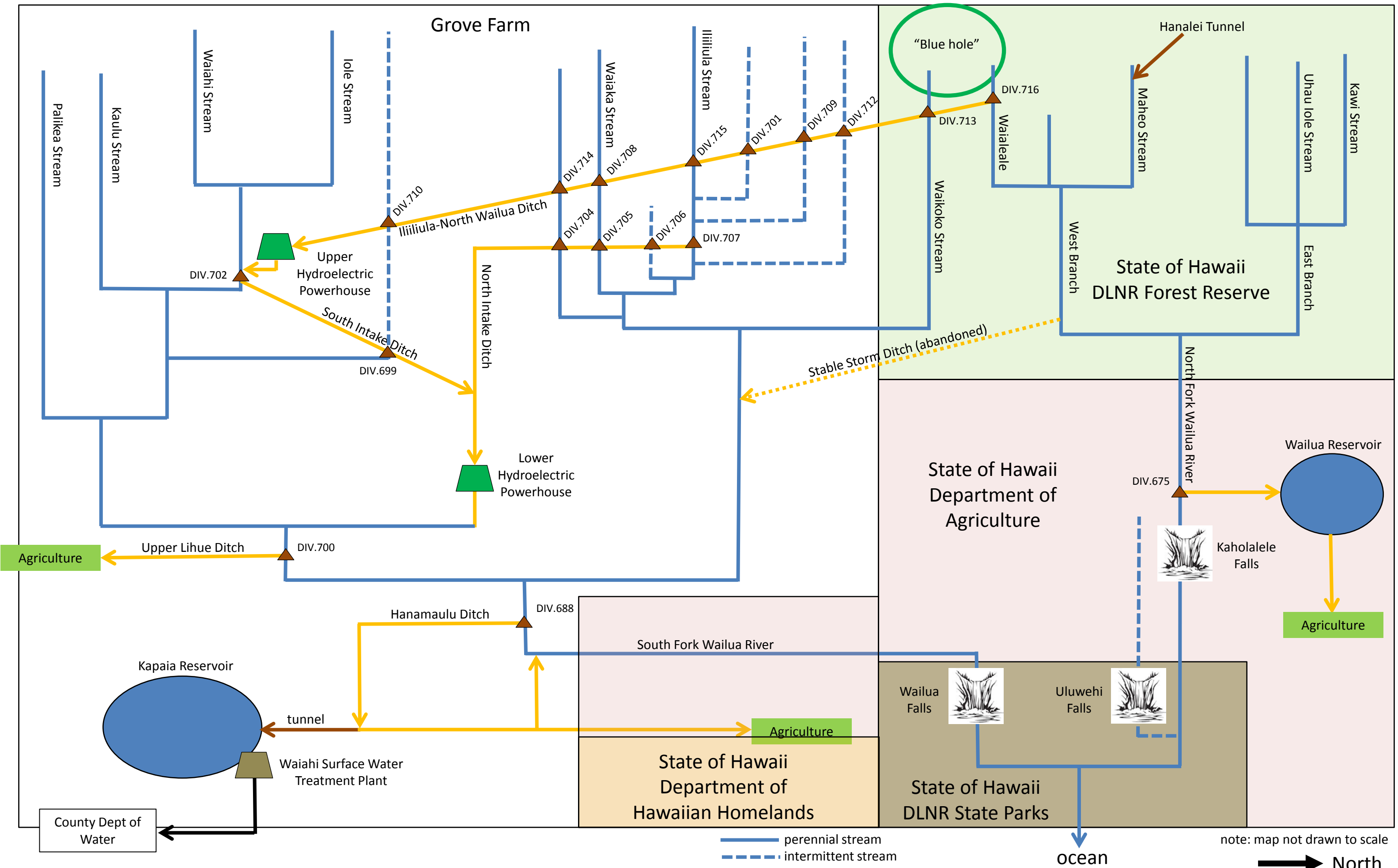
I urge you to oppose HB 1326 and stop the generational theft of our precious water resources.

Mahalo for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Anne Frederick", with a stylized, cursive script.

Anne Frederick,  
Executive Director



Agriculture

Agriculture

Agriculture

note: map not drawn to scale



— perennial stream  
- - - intermittent stream

ocean

County Dept of Water

Waiahi Surface Water Treatment Plant

Kapaia Reservoir

tunnel

Wailua Reservoir



Kaholalele Falls

State of Hawaii Department of Agriculture

State of Hawaii DLNR Forest Reserve

State of Hawaii DLNR State Parks

State of Hawaii Department of Hawaiian Homelands

Grove Farm

"Blue hole"

Hanalei Tunnel

DIV.716

DIV.713

Waialeale

Maheo Stream

Uhau Iole Stream

Kawi Stream

West Branch

East Branch

Upper Hydroelectric Powerhouse

Lower Hydroelectric Powerhouse

South Intake Ditch

North Intake Ditch

DIV.702

DIV.699

DIV.688

DIV.700

DIV.675

South Fork Wailua River

North Fork Wailua River

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Stable Storm Ditch (abandoned)

Upper Lihue Ditch

Hanamaulu Ditch

Palikea Stream

Kaulu Stream

Waiahi Stream

Iole Stream

Waiaka Stream

Iiiliula Stream

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**Chairs Kahele & Dela Cruz**  
**Vice Chair Keith-Agaran**  
**Senate Committee on Water & Land**  
**Senate Committee on Ways & Means**

**Tuesday, April 2, 2019**  
**10:45 AM**

**TESTIMONY IN OPPOSITION OF HB1326 HD2 AND THE SD1 AS PROPOSED RELATING TO WATER RIGHTS**

Aloha Chairs Kahele & Dela Cruz, Vice Chair Keith-Agaran, Members of the Senate Committee on Water & Land, Members of the Senate Committee on Ways & Means,

My name is Jun Shin. I am the Environmental Justice Action Committee Chair for the Young Progressives Demanding Action (YPDA), a member of the Common Good Coalition. YPDA represents approximately 1,000 Hawai'i residents, mostly of Honolulu who seek to build a Hawai'i that is just, equitable, and sustainable. YPDA is in **opposition to HB1326 HD2 and the SD1 as proposed relating to water rights.**

YPDA thanks Senator Kahele and the members of the Senate Water & Land Committee for going to Maui to do some learning, while also listening to members of the community. We would also like to thank Senator Kahele also for reducing the timeframe in this measure in the proposed SD1, while establishing some more requirements and exemptions. Unfortunately we join other community members and groups that still believe that these protections are not enough to protect our water, which is a public trust resource that is protected under our constitution.

This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, this bill would also allow DLNR to continue its mismanagement of public trust lands and waters, and no enforceable benchmarks to prevent this extension situation from happening once more. This needs to be emphasized because in 2016 with HB2501, Alexander & Baldwin received a three year extension of their month-to-month permits for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and benefited. Now, the community is once again back here in 2019. Instead of this being a continuous cycle where we come back to fight this time and time again, we should instead be building on the

environmental progress we have made together, and help Hawai'i move forward in becoming a leader in areas like sustainability and food security.

We are opposed to abuses taking place in stream diversions for private profit. Alongside it being a serious environmental issue, this also is a matter of good government as well, as we need our leaders to represent all of us. Diverters should not be allowed to continue getting temporary water permits, the holdover of revocable permits is being utilized as a mechanism to avoid environmental and cultural review, while perpetuating the wholesale dewatering of our streams. Necessary standards are not being met, and water needs of different communities like kalo farmers, as well as the health of our streams are not being considered.

We need our leaders to act now, and hold these corporations accountable. Please uphold your responsibilities to the public trust. With an organization that has students and young professionals who are Millennials and Gen Z, YPDA can't help but look toward the future. With studies out there that tells us that we will be facing the brunt of climate change in our life times, we understand that we can't wait for action. Now more than ever in the face of climate change, we as a society, a society in the Pacific needs to take very seriously the protection of our natural resources. Water is literally life.

Everyone can equitably share do well, there is water available for many different purposes, a place for renewable energy, a place for large scale agriculture, as well as for cultural practices, subsistence farming, etc, etc. Quoting Article XI of the constitution, "For the benefit of the present and for future generations", Young Progressives Demanding Action urges your committee to **oppose the SD1 as proposed for HB1326 HD2**. If you stand with the people, the people will stand with you.

E ola i ka wai, Water Is Life!

Jun Shin  
Environmental Justice Action Committee Chair  
Young Progressives Demanding Action (YPDA)  
1561 Kanunu St.  
Cell: 808-255-6663  
Email: junshinbusiness729@gmail.com



Tuesday, April 2, 2019

House Bill 1326 HD2  
PROPOSED SD1  
Testifying in Strong Opposition

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees on Water Land and Ways and Means,

The Democratic Party of Hawai'i (The Party) **strongly opposes the Proposed SD1 for HB1326 Relating to Water Rights**. The proposed draft seeks to extend temporary water permits to corporate entities, allowing them to take excessive amounts of water from Hawai'i's streams for three more years.

While we appreciate Senator Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not nearly sufficient to protect the public's trust. The bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and provides no assurance of enforceable benchmarks to prevent the legislature from simply extending this situation in another three years. The Proposed SD1 does nothing to prevent the Department of Land and Natural Resources' (DLNR) continued mismanagement of public trust lands and waters.

Act 126, Session Laws of 2016 provided Alexander & Baldwin (A&B) and the DLNR a three year extension of their month-to-month permits in for the purpose of finishing the environmental impact statements **required 15 years ago** and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unconscionable and unjust for these entities to receive yet another extension.

Further, this bill does little more than serve as a direct instrument of A&B's interests, helping ensure it holds on to the \$62 million commitment they made to Mahi Pono to provide for water rights that don't belong to them, while simultaneously failing to protect Hawai'i's native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. That A&B be allowed to again use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people is an abdication of the Legislature's responsibility to protect and defend the Hawai'i Constitution and antithetical to the values of the Democratic Party of Hawai'i.

We ask the committee members to honor these commitments and reject HB1326 HD2 Proposed SD1.

Mahalo for the opportunity to testify,



Josh Frost  
Co-Chair, Legislation Committee  
Democratic Party of Hawai'i



Zahava Zaidoff  
Co-Chair, Legislation Committee  
Democratic Party of Hawai'i

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:59:29 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Oppose	No

Comments:



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## Progressive Democrats of Hawai'i

<http://pd-hawaii.com>

PO Box 51 Honolulu HI 96810

email: [info@pd-hawaii.com](mailto:info@pd-hawaii.com)

March 31, 2019

To: **COMMITTEE ON WATER AND LAND**  
Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

**COMMITTEE ON WAYS AND MEANS**  
Senator Donovan Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Re: HB 1326, HD 2, **Relating to Water Rights**  
Hearing: Tuesday, April 2, 2019, 10:45 a.m., Room 211  
Position: **Strong Opposition**

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees,

Progressive Democrats of Hawai'i strongly urge you to oppose and defer HB 1326, HD 2. We believe that this bill is **unnecessary, unfair, and it attempts to undermine Hawai'i's public trust doctrine** by giving large corporations an additional three years to drain water from streams without proper environmental oversight. More specifically, it gives Alexander & Baldwin a \$62 million-dollar bailout, for very nominal costs, rather than requiring them to follow the law.

A&B and others were provided revocable permits to give them time to adjust to court decisions that require them to prepare long-term lease applications. The holdover of revocable permits has been utilized as a mechanism to avoid environmental and other legal reviews. By giving these large-scale users a three-year extension in 2016 by Act 126, the State has extended a good-faith hand to large-scale users. They have had time to make adjustments. They cannot come back for more hand-outs.

The bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements. We also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture. Please don't perpetuate the generational hoarding of Hawai'i's precious waters. Please defer HB 1326.

Thank you for the opportunity to testify.

Alan B. Burdick, Co-Chair  
Progressive Democrats of Hawai'i  
[Burdick808@gmail.com](mailto:Burdick808@gmail.com)/ 486-1018





AMERICANS FOR DEMOCRATIC ACTION

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Ken Farm	Stephen O'Harrow	P.O. Box 23404
Alan Burdick, Vice President	Guy Archer	Chuck Huxel	Doug Pyle	Honolulu
Marsha Schweitzer, Treasurer	Juliet Begley	Jan Lubin		Hawai'i 96823
Dylan Armstrong, Secretary	Gloria Borland	Jenny Nomura		

March 31, 2019

TO: Honorable Chairs Kahele/Dela Cruz & WTL/WAM Committee Members

RE: HB 1326 HD2 Relating to Water Rights

Opposition for hearing on April 2

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We oppose HB 1326 HD2 as it seeks a seven-year extension on the use of temporary permits for permanent diversions of public water. The extension would build on the three-year extension stream diverters already received when lawmakers passed H B 2501 in 2016. Thus it would allow Alexander & Baldwin to continue circumventing an unfavorable court ruling and creates a \$62,000,000 bail out for A&B.

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass.

Oppose this bill. Also oppose HB1171 for the same reasons.

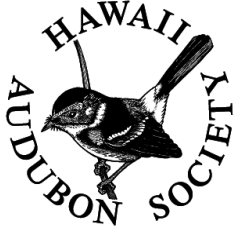
Thank you for your favorable consideration.

Sincerely,

John Bickel President







*For the Protection of Hawaii's Native Wildlife*  
**HAWAII AUDUBON SOCIETY**

850 Richards Street, Suite 505, Honolulu, HI 96813-4709

Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com

www.hawaii-audubon.org

THE HOUSE  
THIRTIETH LEGISLATURE  
REGULAR SESSION OF 2019

COMMITTEE ON WATER AND LAND  
Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON WAYS AND MEANS  
Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Tuesday, April 2, 2019  
10:45 a.m., Conference Room 211, State Capitol

HB 1326, HD1 and Proposed SD2  
RELATING TO WATER RIGHTS

Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran and members of the committees, my name is Linda Paul and I am testifying **against** HB 1326, HD1, proposed SD2 as a volunteer, President of and in behalf of the approximately 1800 members of the Hawaii Audubon Society. The proposed SD2 would remove the three-year maximum time limit for holdovers of revocable water leases pending final resolution of an application for disposition of "water rights" and authorize the use of over two million gallons per day for a total of ten consecutive one-year holdovers.

There are no "water rights" to water resources under the Hawaii Constitution. Hawaii is not the wild, wild west. All state water resources are public trust resources held in trust for the people of Hawaii and are to be managed by the Board of Land & Natural Resources for the benefit of the people of Hawaii. Currently many entities have been redirecting, using and consuming public trust waters for private purposes under month-to-month revocable permits for years, often without having ever completed an EA or an EIS that assesses the impacts of their water removal actions on the watersheds, native and endangered species, and the cultural practitioners that this water supports. These private entities sell this public water and pocket the profits without ever paying for the use of it or restoring it to the watershed.

Instead of a bill that directs BLNR to enforce the three-year maximum time limit for holdover of revocable water leases, the proposed SD2 allows a total of ten consecutive one-year holdovers. This time extension invites lawsuits against the State for mismanagement of public trust water resources in violation of the Constitution of the State of Hawaii. Please do not pass this bill.

Thank you for the opportunity to testify.

Linda M. B. Paul

President of the Hawaii Audubon Society

808-262-6859



To: The Senate Committee on Water and Land  
and  
The Senate Committee on Ways and Means  
From: Sherry Pollack, 350Hawaii.org  
Date: Tuesday, 4/2/19

### **Opposition to HB1326 HD2**

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith-Agaran, and members of the WTL and WAM committees,

I am Co-Founder of the Hawaii chapter of 350.org, the largest international organization dedicated to fighting climate change. On behalf of our 6,000 members and supporters, 350Hawaii.org **strongly opposes HB1326 HD2.**

While we appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Water rights are protected by the public trust doctrine in our constitution to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.

We know that global warming will, and already does, impact our precious water. All the more reason why we must steadfastly uphold the Hawaii State Constitution's public trust doctrine. We are counting on you.

Thank you for the opportunity to testify.  
Sherry Pollack  
Co-Founder, 350Hawaii.org

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:15:27 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeffrey Bronfman	Testifying for Aurora Foundation - Maui	Oppose	No

Comments:

There are so many things wrong with this bill. The sponsors should be ashamed of themselves for agreeing to attach their name to it. It is born of corruption, disregard for the law, and the bedrock principal of the State Constitution, upon which ALL LAWS in the State of Hawaii must be based. This bill DOES NOT serve the Public Interest. It is written for the benefit of ONE EXTREMELY CORRUPT COMPANY, who has repeatedly ignored legal mandates that it justify its water use requests according to State Law. NO MORE !! With rights, come responsibilities. A+B continues to seek "entitlements" without doing the even the minimum required to earn them. Don't be fooled by the seeming concessions being made to small farmers. They don't need them. It is only A+B whose "hold over permit" scam was judged to be illegal by the courts. Don't change the laws from them again ! Mahi Pono will still do farming (perhaps giving even more back to the community) without the necessity of a 63 million dollar pay-back to A+B. Let the new land owners ask for the water they determine that they need to do farming, based on the required studies, themselves.

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:37:04 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stuart Coleman	Testifying for Surfrider Foundation	Oppose	No

Comments:

Dear Chair, Vice Chair & Committee Members,

My name is Stuart Coleman, and I am writing in strong opposition to HB1326 SD2 on behalf of the Surfrider Foundation's five Hawaii Chapters. *This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years. While we appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.*

*Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.*

*This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them. Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.*

Aloha, Stuart Coleman



*Hawaii's Thousand Friends*

300 Kuulei Rd. Unit A #281 \* Kailua, HI 96734 \* Phone/Fax (808) 262-0682 E-Mail: [htff3000@gmail.com](mailto:htff3000@gmail.com)

April 1, 2019

**LATE**

COMMITTEE ON WATER AND LAND

COMMITTEE ON WAYS AND MEANS

HB 1326 HD1 Proposed SD1  
RELATING TO WATER RIGHTS

Aloha Chairs Kahele and Dela Cruz, Vice Chair Keith=Agaran, and Committee Members;

Hawaii's Thousand Friends (HTF), a non-profit statewide organization dedicated to ensuring that land use planning and decisions protect the environment, human health and natural and cultural resources, opposes HB 14326 HD1 Proposed SD1 that allows for a total of six consecutive one-year holdovers of water permits.

Extending water permit holdovers to six years allows the Department of Land and Natural Resources to further ignore the requirements of §171-58 *that upon renewal of a water lease the water rights lease shall contain a covenant requiring the lessee and DLNR to jointly develop and implement a watershed management plan and that the Board shall not renew any lease of water rights without this covenant or a watershed management plan.*

Extending water permit holdovers to six years from the already too long three-year holdover limit means that the Department of Land and Natural Resources does not have to conduct any comprehensive resource planning to evaluate the land and water relationships that keep our streams clean, strong and healthy.

The continual month-to-month role over of water leases means that the applicant does not have to conduct an EA or EIS on this public trust resource to evaluate the impacts of water use on native and endangered species, watersheds, streams, small farmers and cultural practitioners.

Without frequent and active oversight the State is evading its public trust responsibilities to *...conserve and protect Hawai'i's natural beauty and natural resources, including land, water... and its obligation to protect, control and regulate the use of Hawai'i's water resources for the benefit of its people.* (State Constitution Article XI Sections 1 and 7)

Help ensure that Hawai'i's Constitution has significance and that Hawai'i's public trust water resources are adequately managed and planned for by deferring HB 1326 HD1 proposed SD1.



**HB-1326-HD-2**

Submitted on: 4/1/2019 9:43:47 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Mulinix	Testifying for Our Revolution Hawaii	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:47:27 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John & Rita Shockley	Testifying for FREE ACCESS COALITION	Oppose	No

Comments:

Aloha!

We oppose any "Gut & Replace" legislative Bills. We see that the original bill was killed but this new "gut&replace" bill had cropped up from Donovan Dela Cruz. This is not the way to conduct legislative business.

Mahalo for your time.



Pu'uhonua Bumpy D. Kanahela  
*Head of State, Nation of Hawai'i*  
**Email:** puuhonua13@gmail.com

**LATE**

April 2, 2019

**Committee on Water and Land**

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S. C. Keith-Agaran, Vice Chair

**Committee on Ways and Means**

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S. C. Keith-Agaran, Vice Chair

**HEARING**

Date: Tuesday, April 2, 2019  
Time: 10:45 A.M.  
Place: Conference room 211  
State Capitol  
415 South Beretania

Testimony in **Strong Opposition** of HB 1326, HD2 and HB1171 HD1 SD1

ALOHA, My name is Pu'uhonua Bumpy Kanahela, Head of State for Nation of Hawai'i. Pursuant to U.S. Public law 103-150, the Apology law in 1993 (see attach 1), 103<sup>rd</sup> Congress Senate congressional record ( see attach 2), St. Thomas Law Review (see attach 3), 1995 Hawaii Constitution promulgated in January 16, 1995 (see attach 4) and U.S. Public law 100-606, the Genocide act (see attach 5), the Nation of Hawai'i sets forth its Legal Foundation, and its citizens continue to assert their national sovereignty over their lands and natural resources. My testimony today is presented on behalf of the Nation, people, land, animals, and waters of Hawai'i.

The proposed extension of water diversion permits for Alexander & Baldwin presented in these Bills is both disturbing and illegal, pursuant to Public law 103-150. The time is overdue for the repeat offenders responsible for the illegal overthrow and long-term desecration of Hawai'i -- especially the 'Big 5' -- to stop, acknowledge and be held accountable for their part in the systematic destruction of our islands.

The United States government and the United Church of Christ both apologized for their actions and roles in the illegal overthrow and continued occupation of Hawai'i, and reconciliation efforts have begun. U.S. Public Law 103-150, also known as the Apology Resolution, officially recognizes the illegality of the overthrow and identifies the activities perpetuated by sugar planters, descendants of missionaries, and financiers as illegal and "devastating to the population and health and well-being of Hawaiians." The passage of the Apology Resolution set the tone for every primary participant to acknowledge and be held accountable for their illicit actions spanning the last two centuries. As part of the "Big 5," Alexander & Baldwin are a part of that group, yet they have never acknowledged their role in the destruction of Hawaii. Furthermore, they are still being encouraged to this day through legislation such as HB 1326 to continue misusing Hawaii's resources without any formal acknowledgement of their role in the illegal overthrow or efforts towards reconciliation. Nobody has held them accountable.

Any leniency towards the perpetrators of the illegal overthrow of Hawai'i, such as the proposed extension of permits to allow the continued diversion of water, is a serious offense to Hawaiians and all who stand for justice. By allowing A& B to repeatedly and continuously divert millions of gallons of our water -- water that belongs to the land, people, and animals of Hawai'i -- with minimal to zero oversight, the State of Hawaii is sanctioning and conspiring on activities that are in violation of both International and U.S. Public Law.

The diversion of streams by A&B is legally, morally, and environmentally unsound. While the DLNR has indicated that stream diversion does no harm, those claims have been proven false. Diversion of streams has serious effects on the ahupua'a and the livelihoods that depend on it. Dry streambeds fundamentally change the flora and fauna of an ahupua'a, and also impact our ability to practice our cultural traditions. If the State denies the extension of the A&B permits, the ahupua'a on Maui can be restored and water can be shared and used to feed people downstream.

A&B has profited grossly from stolen Hawaiian lands and waters for over a century; their legacy is tied directly to the overthrow of our Kingdom. The unjust actions perpetuated by A&B and the rest of the "big five" over the last 126 plus years will not go unnoticed, and justice will eventually prevail regardless of the decisions made in this room today. That being said, a line has been drawn in the sand, and I urge you as Hawaii's elected legislators to take this as an opportunity to be on the right side of our history. Our waters are as essential to Hawai'i as our people. The two are intrinsically tied, and not one of us in this room should allow for the continued destruction of either.

Mahalo for allowing me to testify today, in **Strong Opposition to HB 1326, HD2 and HB1171**

Signature: \_\_\_\_\_  
Head of State, Nation of Hawai'i

## 103d Congress

## Joint Resolution

Nov. 23, 1993  
(S.J. Res. 19) To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas, a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas, the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas, the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed a Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands."

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas, the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an “act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress”, and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas, President Cleveland further concluded that a “substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair” and called for the restoration of the Hawaiian monarchy;

Whereas, the Provisional Government protested President Cleveland’s call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas, the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the “Committee”) to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas, the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas, the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas, the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas, the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas, the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas, the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993, should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas, the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas, it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians; Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SECTION 1. ACKNOWLEDGMENT AND APOLOGY.**

The Congress -

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

## **SEC. 2. DEFINITIONS.**

As used in this Joint Resolution, the term "Native Hawaiians" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

**SEC. 3. DISCLAIMER.**

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993

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LEGISLATIVE HISTORY – S.J. Res. 19:

SENATE REPORTS: No. 103-125 (Select Comm. on Indian Affairs)

CONGRESSIONAL RECORD, Vol. 139 (1993):

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**RESTORATION OF THE INDEPENDENT  
NATION STATE OF HAWAII UNDER  
INTERNATIONAL LAW**

*Francis Anthony Boyle*

**SYMPOSIUM  
TRIBAL SOVEREIGNTY: BACK TO THE FUTURE?**

Volume 7

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# RESTORATION OF THE INDEPENDENT NATION STATE OF HAWAII UNDER INTERNATIONAL LAW

Professor Francis Anthony Boyle

I understand that the Sovereignty Commission' is looking into models and examples, of where the native people of Hawaii can go in light of the state legislation that has been adopted, and also in light of the recent federal law that has just been signed into law by President Clinton.<sup>2</sup> I have been asked to discuss one particular model for the future for Native Hawaiian people to consider. I was not invited here to go through all the possibilities that you might have. The model I discuss here is certainly not the only potential option for the people of Hawaii. It is not for me to tell Native Hawaiian people what to do. You, the native people of Hawaii, must decide for yourselves. But one thing I can do is to describe a particular vision of the future; how you might go about achieving it; what would be the consequences; and what would be the basis of authority for doing it, particularly in light of Public Law 103-150 signed by President Clinton.

When I read the Public Law for the first time, the first thought that occurred to me is that now, after 100 years, the United States government, has finally and officially conceded, as a matter of United States law, that Native Hawaiian people have the right to restore the independent nation state that you had in 1893 when the United States government came and destroyed it. Also as a matter of international law, the Native Hawaiian people have the right to now go out and certainly proclaim the restoration of that state. I am not talking about the State of Hawaii as part of the United States of America. Rather, I

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\* An earlier version of the author's remarks was delivered to the Hawaiian Sovereignty Advisory Commission on December 28, 1993.

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1. See 1993 Haw. Sess. Laws 1009, 1011 (creating the Hawaiian Sovereignty Advisory Commission to advise the Legislature in carrying out the purposes of The Act Relating to Hawaiian Sovereignty).

2. Overthrow of Hawaii Resolution, Pub. L No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

3. Id

am talking about an independent state under international law, and ultimately a member of the United Nations and other international organizations.

There is a recent example that was pursued by the Palestinian People, who in 1988 decided, of their own accord, to proclaim their own state.<sup>4</sup> This was a decision taken by the Palestinian People as a whole. It was subject to a majority vote because there was not unanimous consent, but even those who opposed it agreed to be bound by a majority vote. In 1988, the Palestinian people unilaterally proclaimed their own state in a Declaration of Independence. This unilateral Declaration of Independence eventually led to the recognition of the Palestinian state by 125 nation states in the world.<sup>5</sup> You don't read about that much here in the United States because the United States government is one of the few governments in the world to oppose the Palestinian state. But almost all of Latin America, Africa, and Asia recognize the existence of the state of Palestine. Again, these are indigenous people, like Native Hawaiians, striving for their right of self-determination. Indeed the Palestinians have the amount of votes to be admitted to the United Nations organization as a sovereign independent nation state, yet it is the threat of a United States veto that has prevented the admission of the state into the United Nations organization.<sup>6</sup> This however, has not prevented the vast majority of the states in the world from recognizing the existence of the Palestinian state. Even most of Europe would accord them formal *de jure* diplomatic recognition if not for the pressure brought to bear by the United States government. Therefore, many of the European states, which are the last holdouts, are today according them *de facto* recognition as an independent state. That is, they are treating the Palestinians as if they are an independent state, without formally coming out and announcing it.

So, this is one model to consider that I will discuss. Not that the plight of the Palestinians are on all fours with Native Hawaiians, but there too, you have a situation of massive violations of fundamental human rights and people living under a regime of military occupation. In their case, for the last forty-five years; in your case, for the last one hundred years. So I will discuss some of the parallels with that process

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4. See John Quigley, *Self-Determination: Declaration Of Independence: Self-Determination And The Right of The Palestinians to Statehood*, 7 B.U. INT'L. L.J. 1 (1989).

5. *Id.*

6. See, e.g., Ved Nanda et al., *Self Determination: The Case of Palestine*, 82 AM. SOC'Y INT' L. L. PROC. 334, 344 (1988).

and what could be the Native Hawaiian process in the event that you were to decide to move in that direction.

I am not here to survey all the possibilities you might have, but I am prepared to comment on them. There are other things you could consider such as autonomy, returning to Article 73 status at the United Nations,<sup>7</sup> and semi-sovereignty. There are various different types of status. But from my perspective, this is the route that other people in your situation have chosen to go. There is ample authority and precedent under international law for the Native Hawaiians to decide to move in that direction.

I begin by asking, how can this be done, how can you do it? What I am suggesting is that instead of asking the permission of the United States Congress to declare independence, you exercise your right of self-determination that has been afforded to you by the United Nations Charter, which states that, "[t]he purposes of the United Nations are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."<sup>8</sup>

In contemplating this, there are four characteristics, or requirements, to consider in the creation of an independent state.<sup>9</sup> I submit— as I will point out as I go through the analysis—that the Native Hawaiian people, Kanaka Maoli, have all the requirements you need to go ahead and do this if this is your choice. This is your decision.

The first requirement is that of a fixed territory. Clearly we have the Hawaiian Archipelago. Second is a population, a distinguishable population of people. The Native Hawaiians are such a distinguishable population who would trace their ancestry back before the appearance of Europeans on these lands. Third, there must be a government. Here you have your communal structures, the kupunas—Kekune Blaisdell, my friend—and the kupuna council, that you have traditionally had. You do not need a government along the lines of the federal government of the United States or the State of Hawaii to have a government. Rather, what you need is a way to organize your people to govern

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7. U.N. CHARTER art. 73 ("Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount . . .").

8. U.N. CHARTER art. I, 11 2.

9. See Convention on Rights and Duties of States adopted by the Seventh International Conference of American States, Dec. 26, 1933, 165 L.N.T.S. 19, 25 (listing the requirements for an independent state).

your relations with each other, and clearly you have that. The fourth requirement is the capacity to enter into international relations, to deal with other states, and to keep your commitments. As I understand it, there are already states in the Western Pacific region that support the Native Hawaiian people, and would probably be prepared to give you diplomatic recognition as an independent state, if this is your desire. I also suspect, like the Palestinians, there would be a large number of states—certainly in the Third World, that have come out of a colonial situation, in Latin America, Africa, and Asia — that would also be prepared to recognize you as an independent state and enter into diplomatic relations with you. Whether you would someday be allowed into the United Nations, of course, would depend on the U.S. veto. But the U.S. veto does not go on forever. Eventually the United States lifted its veto on the admission of Vietnam to the United Nations, despite the enormous hostility towards the people of Vietnam. Vietnam then became a member nation of the United Nations organization.<sup>10</sup>

So, that being said as preliminary, introductory remarks, I would like to go through the Public Law on a line-by-line basis and provide my analysis of it. Indeed, I would encourage all of you, as Native Hawaiians, to study this. It makes it very clear what happened to you. This is now officially recognized as a matter of United States domestic law. You should be able to take this law, any time you are in court, and show it to the judge and the jury, and say, "this is the law; this is what has happened to me and my people and I am basing my conduct, whatever I am doing, on the basis of this law. It cannot be denied any more." As a litigator before the International Court of Justice, I would be able to take this law to the World Court and say, "the United States government has now officially conceded that it illegally invaded and occupied the Kingdom of Hawaii. For this reason, the native people of Hawaii would be entitled to a restoration of their independent status as a sovereign nation state, to go back to what they were before the U.S. invasion, to undo the damage that had been done."

This law is styled as an apology, and one might say that yes, an apology is certainly here and it is long overdue. But it is not enough. When a government commits a severe violation of international law, as happened here, it should not simply apologize and then walk away. Damages are required, reparations, and in extraordinary circumstances,

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10. Assemh/y Opens Nev Session: Admission of Djbouti, Vietnam, UN MONTHLY CHRON., Oct. 1977, at 5, 6.

restitution, that is, to return the situation to what it was before the violation.<sup>11</sup>

This is especially true when you have a treaty violation. In the case of the Kingdom of Hawaii, there were three treaties on point, in law, with the United States government that were violated by means of the invasion. This violated international law at the time, the basic principle- - *pacta sunt servanda* - treaties must be obeyed.<sup>12</sup> It even violated the terms of the United States Constitution at that time.<sup>13</sup> Treaties were the "supreme law of the land," and the invasion and annexation of Hawaii not only violated international law, but the United States Constitution itself.

It's clear then, that the United States admitted in the law that they overthrew the Kingdom of Hawaii.<sup>14</sup> There is no question or doubt that this was a clearly illegal act, under the standards of international law in existence at that time.

An apology is certainly a start, but now we really have to deal with the consequences. What are the implications of this apology, of this law? That is the topic of which I address here. Indeed, the implications, I submit, are what you, the Hawaiian people, make of this. It is for you to decide the implications, not the Congress, not the State of Hawaii government, but rather the Hawaiian people, pursuant to your right of self-determination. What will be the implications of this, as you see it? What do you want?

In a meeting with Judge Nakea,<sup>15</sup> where I spoke on behalf of the Graces,<sup>16</sup> the judge said, "well, yes, but in the United States law, the

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11. Case concerning *The Factory at Chorzow*, 1928 P.C.I.J. (ser. A) No. 17, at I (Sept. 13).

12. Vienna Convention on the Law of Treaties, May 23, 1969, art. 26, 1155 U.N.T.S. 331.

13. See U.S. CONSR. art. VI, cl. 2 ("all Treaties . . . shall be The Supreme Law of the Land").

14. Overthrow of Hawaii Resolution, Pub. L. No. 103- 150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512 ("Whereas it is proper and timely for the Congress . . . to acknowledge the historic significance of the illegal overthrow").

15. The Honorable Clifford L. Nakea serves in the 5th Judicial Circuit of the State of Hawaii, District Court.

16. Michael Grace and Sondra Field built a house in the Anahola Beach Park on the island of Kauai. When ordered to vacate the park by the Hawaiian Homes Commission, they refused, were arrested and then convicted in the Hawaii state courts for trespassing. Their dwelling was destroyed. Grace and Field argued that they had title to the occupied property based on their status as citizens of the independent Nation of Hawaii. The federal courts, to whom the Graces had turned arguing a denial of due process, refused to acknowledge their property claim. For a full accounting of the case see *Grace v. Drake*, 832 F.Supp. 1399(D).

United States government has always been able to extinguish the right of native peoples, and the Supreme Court has seen nothing wrong with that." I replied that, "well, that might be the case with respect to Native Americans living in the United States, but here in Hawaii you're in a very different situation. You had these three treaties, one of which was a treaty of friendship, commerce, and navigation,<sup>17</sup> that established good relations between two sovereign states, and they violated that, too."

This issue, a treaty of this nature, came up most recently in the World Court in the Nicaragua case,<sup>18</sup> when the World Court condemned the United States government for violating a treaty of friendship, commerce, and navigation by mining the harbors in Nicaragua. Certainly the World Court can do the same thing—condemn the United States—for overthrowing a monarch and for overthrowing and destroying an entire sovereign nation state.

Here you have the Congress of the United States of America admitting that in one of its own laws. That is very clear, this admission, what we lawyers call an "admission against interest." Congress has admitted what the United States did and it has opened this Pandora's Box. How should this be remedied? Again, the one point to keep in mind here is that it is now for the Hawaiian people to decide the appropriate remedy, not the Congress. The United States government is the criminal. The government admitted what it has done now, for the last 100 years - and that the American presence, then, in Hawaii, for the last 100 years has been nothing more than an illegal, colonial, military occupation regime.

In reading the Public Law it is important to remember the so called "whereas" clauses. These clauses are official findings of fact and law by the United States Congress. These findings bind all state and federal courts here in Hawaii. I was pointing this out this afternoon to Judge Nakea with respect to the case of Mike and Sondra Grace, that the court and judges are bound by these findings of fact. They can no longer be contested or denied. The United States is stuck with them.

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Haw. 1991), *aff'd*, 1993 U.S. App. LEXIS 24968 (9th Cir. 1993).

17. Treaty of Friendship, Commerce, and Navigation, Dec. 20, 1849, U.S.-Haw., 103 Consol. T.S. 391. "The cession of the Hawaiian Islands to the United States having been accepted by the resolution approved by the President, July 7, 1898 (30 Stat. 75), the treaties with that country terminated upon the formation of the government for the Islands." WILLIAM MALLOY, *TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS 1776-1909* 908 (1910).

18. *Military & Paramilitary Activities (Nicar.v. U.S.)*, 1986 I.C.J. 4 (June 27).

The next sentence of this law reads: "Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system? based on communal land tenure, with a sophisticated language, culture, and religion."<sup>19</sup> That concedes that Native Hawaiians, at that time and as of today, still have one requirement for an international state, which I mentioned, a government. You have a means to govern yourselves as a people. Congress has effectively conceded it right there. It still is in existence today. This is a type, a system of government that is historically separate and apart from the State of Hawaii or the United States federal government. It is still there, and it still works today. I have seen it in my visits with the Ohana Council - the people of Hawaii providing shelter, food, housing, education, dispute settlement procedures and mechanisms. The types of things that you did a hundred years ago, before the U.S. invasion, to some extent you are still doing today. It would simply be a matter of expanding those types of functions that you provide for your own people.

In the case of Palestine, this involves building the state from the ground up. The Palestinian People rejected participation, acquiescence, and collaboration with, Israeli military occupation forces. They proceeded to provide to their own people, social services such as health, education, judges, dispute settlement, etc.<sup>20</sup> That is building the state from the ground up; that is how you build a state. No one is going to give it to you. I doubt very seriously that tomorrow the U.S. Congress is just going to pass a statute and give you a state. Rather, you must go out and say, "we're creating our state. Here it is, and we ask you to recognize the state, and then the consequences from there."

The next sentence of the law reads: "Whereas, a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii."<sup>21</sup> Again, Congress is admitting that you had a government. You had a state. It was there. It was viable and functioning. It was internationally active. This was not a position the U.S. government maintains with respect to Native Americans.<sup>22</sup> Now here the government is wrong too. The United States

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19. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. I (107 Stat.) 1510.

20. See Alon Ben-Meir, *An Intelligent Middle Ground on Which to Build Peace*, CHI. TRIB., Aug. 26, 1987, at 17.

21. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. I (107 Stat.) 1510.

22. See generally Markus B. Heyder, Note, *The International Law Commission's Draft*



maintains that Native Americans did not have a state-type structure that had to be recognized, because it was somewhat different from the structures of government that Europeans were under on the North American continent.<sup>23</sup> We know the government is wrong. The Native Americans did have a governing structure. The Europeans simply did not want to recognize it, but instead wanted to steal the land.<sup>24</sup>

Putting that aside, you are in a very different situation here from Native Americans. Congress has conceded what it will not concede for the Native Americans<sup>25</sup> - that you had a state, a state just like any other state in existence at that time—just like the United States of America—and that you were entitled to as much respect and dignity. Congress has now conceded this point. I read in the newspaper that during his visit to Hawaii, Secretary of Interior Bruce Babbitt asked, "should Native Hawaiians be treated by the federal government like the Native Americans?" My response to reading that was, "why would you want to do that?" The tape of the San Francisco Tribunal shows that Native Americans are up against genocide and extermination. That is the policy of the federal government with respect to Native Americans. So I do not understand why Native Hawaiians would want to buy into that system, and be treated in that system in a way that ultimately would lead to your extermination. That is certainly the way large numbers of Native Americans see it. That was the purpose of the San Francisco Tribunal. I would encourage you, if you haven't seen it, to look at that tape. So whatever you do, I would certainly caution you against trying to seek the same type of treatment that the federal government has doled out to the Native Americans. We know where that will lead.

On the basis of this statute, moreover, you are entitled to a lot more than they give the Native Americans. That is not to say that, in my opinion, the Native Americans are not also entitled to establish themselves as independent nations, if that is their desire. But the difference

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Article on State Responsibility: Draft Article 19 and Native American Self-Determination, 32 COLLIM. J. TRANSNAT'L. L. 155 (1994); Susan Lope, Note, Indian Giver: The Illusion of Effective Legal Redress for Native American Land Claims, 23 Sw. U. L. REV. 331 (1994).

23. Lope, *supra* note 22, at 333-34. "Discovery . . . initiated the inevitable erosion of the Native American nations." *Id.*

24. See generally Heyder, *supra* note 22.

25. See William J. Murphy, Jurisdiction - Sovereign Immunity - Business Owned by Native American Nation Granted Sovereign Immunity from Suit Arising From Its Private Off-Reservation Transaction, In *Re* Greene, 980 F.2d 590 (9th Cir. 1992), cert denied, 114 S. Ct. 681 (1994), 17 SUFFOLK TRANSNAT'L L.J. 599, 601 n.16 (1994) (listing cases in which Congress' power to regulate Native Americans was upheld).

here is that your right to do this, the predicate to do this, has now been recognized by the United States Congress itself,<sup>26</sup> whereas the Congress has never recognized this for Native Americans.<sup>27</sup> I doubt Congress ever will, because to fully recognize Native American sovereignty would eliminate the whole basis of pseudo-legitimacy upon which the United States Congress rests—land title and everything else. I doubt very seriously that Congress would want to do that.

The next paragraph of the law states that, "from 1826 to 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, entered into treaties and conventions. . . to govern commerce and navigation and friendship."<sup>28</sup> Congress did not draft the word "friendship" into this law.

In fact, Congress wanted to the word "friendship" but the treaty was friendship and commerce. Here Congress admits that the invasion, overthrow, occupation, and annexation, starting in 1893, violated all these treaties. It violated basic norms of international law, even in existence at that time and that was a pretty bad time, one must admit. States were going to war, people were killing each other, the strong doing what they will, the weak suffering what they must, pretty much like today in the New World Order. But again, here, the United States Congress has taken the position that this behavior was illegal under international law, even in accordance with the minimal standards in effect at that time. Again this distinguishes the case of the Native Hawaiians from the Native Americans, where they have yet to admit that there was anything wrong under international law with the way they treated the Native Americans. If you read all the Supreme Court cases, they say that this is just the right of conquest, and those were the rules in existence at that time.<sup>29</sup> But in the case of Native Hawaiians, the

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26. Overthrow of Hawaii Resolution. Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

27. "In the context of Native American efforts to regain self-determination, the combination of adverse judicial doctrines and the professed plenary power of Congress over Native Americans frustrates any move toward genuine self-determination by Native American peoples." Heyder. *supra* note 22, at 155.

28. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

29. *Contra American Insurance Co. v. Peters* 26 U.S. ( 1 Pet.) 511 where Justice Marshall, in an 1828 decision involving the rights of the inhabitants of Florida following the cession of that state from Spain to the United States, states "[t]he usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace." *Id.* at 542.

United States admits that this was not just a question of right of conquest, but of treaty violations. They were violated.

The government acts violated international law. It even violated the terms of the United States Constitution at the time when treaties were the "supreme law of the land."<sup>30</sup> So again, legally you are in a much different, much better situation than Native Americans.<sup>31</sup>

"On January 14, 1893, John L. Stevens. . . the U.S. minister . . . conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States, to overthrow the indigenous and lawful government ...."<sup>32</sup> So again, Congress concedes that the government of the Kingdom of Hawaii was the lawful government at that time, and that an official agent of the United States government conspired to overthrow the government of Hawaii. The United States government is bound by the actions of its agents, of its ministers.<sup>33</sup> The government therefore cannot say, "he did it, and later on we condemned what he did." You know the President did shed a crocodile tear or two over what he did, did he not, right? There was a statement. That is not enough. Of course it isn't. If the minister did it, it is just the same as the President doing it. There is no difference. The President was bound by the actions of his minister. The United States government was bound by the actions of the minister. Thus, it was the United States government that conspired to overthrow the lawful government of the Kingdom of Hawaii. Again, an internationally illegal act at the time it was done.

The next paragraph continues, "pursuant to the conspiracy. . . naval representatives called armed forces to invade the sovereign Hawaiian

30. U.S. CONST. art. VI, cl. 2.

31. The next section of the law is on the Congregational Church. It is an attempt at reconciliation and does not need further elaboration.

32. *Id.*

33. See *Nuclear Tests Case (Austl. v. Fr.)* 1974 I.C.J. 252 (Dec. 20), where the International Court held that:

It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding.

*Id.* at 267. (holding France bound to statements made by government ministers). But see *Personnel Management v. Richmond*, 496 U.S. 414 (1990) ("The United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.").

nation on January 16, 1893, and to position themselves near the Hawaiian government buildings and the (Iolani) Palace to intimidate the Queen (Liliuokalani) and her government."<sup>34</sup> Notice the use of the word "invade." Today we prefer to use euphemisms such as "incursion." That is another word for invasion. But here Congress significantly calls an invasion an invasion. That is what it was, a clearly illegal act, an invasion in violation of treaties and international agreements, an invasion in violation of international law, and an invasion in violation of the United States Constitution—the overthrow of a lawful government.

Under international law when you have a violation of treaties of this magnitude, the World Court has ruled that the only appropriate remedy is restitution.<sup>35</sup> Damages are not enough. Reparations are not enough - that is the payment of money, or giving you an island over here and saying: Here, you can have that island. That is not enough. Restitution is to restore what you once had, that is the Kingdom of Hawaii, that is your independent nation state. This is the appropriate remedy, if that is what you want for what was done.

The Public Law goes on from here, reciting the sorry history of what happened, the establishment of the provisional government.<sup>36</sup> Well, that is not entitled to any legitimacy at all. It was imposed by raw, naked, and brutal military force, at the point of a bayonet, gunboat diplomacy, just as was practiced in many other countries, only here now Congress is finally admitting this.

The next paragraph points out that the establishment of this provisional government was without the consent of the Native Hawaiian people or the lawful government of Hawaii, and violated all of the international treaties and agreements.<sup>37</sup> So under international law, you

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34. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.

35. Case concerning the Factory at Chorzow, 1928 P.C.I.J. (ser. A.) No. 17, at 47 (Sept. 13). But see J. Patrick Kelly, *The Changing Process of International Law, and the Role of the World Court*, 11 *Mich. J. INT'L L.* 129, 159 (Fall 1989) ("actual practice indicates that compensation is now governed by the doctrine of unjust enrichment rather than a right of restitution").

36. "Whereas, on the afternoon of January 17, 1883, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers disposed the Hawaiian monarchy and proclaimed the establishment of a provisional government." Overthrow of Hawaii Resolution, Pub. L. No. 103- 150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1510-11.

37. "Whereas, the United states minister thereupon extended diplomatic recognition to the Provisional government that was formed by the conspirators without the consent of The Native Hawaiian people to the lawful government with Hawaii and in violation of treaties between the two nations and of international law." Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1510-11.

would not call this a provisional government - I certainly would not call it that. You would call it a government of military occupation. Certainly I would suggest that that would be an appropriate way to think about it. That is, you had military forces here and then you had a civilian arm of the military occupying regime.

You see the same thing today in the occupied Palestinian lands where the Israeli occupying forces have set up a civilian arm of their military occupation authorities to administer the civil affairs of the Palestinian people.<sup>38</sup> These matters, by the way, are currently the subject of the negotiations between the Palestinian Liberation Organization (PLO) and Israel today. The negotiations centered around the withdrawal of the civilian military occupation arm, and the withdrawal of the military occupation forces themselves.<sup>39</sup> Indeed, the September 13, 1993 agreement calls for the dissolution of the civilian occupation arm and then the withdrawal of the military occupation forces themselves.<sup>40</sup>

I submit, therefore, that this "provisional government" referred to in the Public Law is really the civilian arm of a military occupation force. That was the predecessor to the current government of Hawaii that administers you today. Again, following the implications of that law, the state government of Hawaii occupies a similar position to that provisional government. Of course you have federal military forces here keeping it in power. Again, somewhat similar to the arrangement in Palestinian lands.

We then come to the very famous statement by your Queen, "that I yield to the superior force of the United States of America,"<sup>41</sup> and you are aware of the rest of the language. She made it very clear that this statement and her later abdication were procured under duress and

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38. See J. Timothy McGuire, *International Law, and the Administration of Occupied Territories Two Decades of Israeli Occupation of the West Bank and Gaza Strip*, 8 EMORY INT'L L. REV. 383 (1994).

39. See David I. Schulman, *The Israeli-PLO Accord on the Declaration of Principles on Interim Self-Government Arrangements: The First Step Toward Palestinian Self-Determination*, 7 EMORY INT'L L. REV. 793 (Fall 1993); Gumar Halley, *Issues Confronting the Return of Palestinian Arab Refugees After the 1993 Declaration of Principles on Interim Self-Government Arrangements*, 8 GEO. IMMIGR. L.J. 149 (1994).

40. *Declaration of Principles on Interim Self-government Arrangements*, Sept. 13, 1993, Isr.-P.L.O., art. VI, 32 I.L.M. 1524, 1527. The author served as Legal Advisor to the Palestinian Delegation to the Middle East Peace Negotiations from 1991 to 1993.

41. *Overthrow of Hawaii Resolution*, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1511.

force. In other words, it could not be treated by anyone as a valid surrender of sovereignty by the Native Hawaiian people at all and she made that very clear in this language. So in other words, she was simply bowing to superior power, but not as a matter of right or of law. I have done a similar thing myself in the Bosnia case in the World Court.<sup>42</sup> I pointed out in a file communicating with the World Court, that the so-called Owen-Stoltenberg plan<sup>43</sup> to partition the Republic of Bosnia and Herzegovina, was concluded, or arguably still might be concluded, by means of threats and duress, compulsion and coercion. It was therefore invalid, or would be invalid, under international law and the Vienna Convention on the Law of Treaties.<sup>44</sup> This type of behavior still goes on today. But your Queen, a very powerful person, made clear that she was simply yielding to superior force, and thus preserving the rights of her people for the future their right of self-determination and their right to restoration of their sovereignty.

The law goes on, with Congress admitting that "[w]ithout the active support and intervention by the United States . . . the insurrection . . . would have failed for lack of popular support and insufficient arms."<sup>45</sup> I was reading a little letter by the fellow who traces his ancestry to one of the missionaries [Thurston Twigg-Smith] who pulled this thing off which states, "well, we should stop all this debate, these were real genuine patriots, etc., etc.,"<sup>46</sup> and of course they were entitled to do what they did. Well, apparently he didn't bother to read the law. He can say whatever he wants, but Congress has now made it very clear what happened. He can argue till the cows come home but this is now the law. He had better read it. In fact Congress has condemned

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42. See Case Concerning Application of the Convention on the Prevention and Punishment of The Crime of Genocide (Bosnia & Herzegovina v. Yugoslavia). 1993 I.C.J. 325 (Sept. 13). The author served as Bosnia's Agent before the Court.

43. See Alan C. Laifer, Note, Never Again? The 'Concentration Camps' in Bosnia-Herzegovina: A Legal Analysis of Human Rights Abuses, 2 NE.W EUR. L. REV. 159, 187 (Spring 1994). The author served as Legal Advisor to President Izetbegovic and the Members of the Bosnian Presidency during these negotiations during the summer of 1993 in Geneva.

44. "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations." Vienna Convention of the Law of Treaties' supra note 12, at art. 52.

45. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

46. "Honolulu advertiser publisher Thurston Twigg Smith, whose grandfather was one of the leaders of the overthrow, defended its legality in an editorial prepared for Sunday's edition." Lou Cannon, Waving (and Lowering) Flag in Hawaii Pride, WASH. POST, Jan. 17, 1993, at A33.

what his ancestors did. Now the simple question is, where do the Native Hawaiian people want to go from here?

Well, again, "the U.S. minister raised the flag and declared Hawaii to be a protectorate of the United States."<sup>47</sup> Of course that's nonsense. They did not protect anything, did they? Was there a need to protect Hawaii from itself, from its own people? Who was threatening Hawaii at that time? It was the United States. They needed protection from the United States, so this is absurd. It was entitled to no legal validity at all at the time and is not now. That is basically what Congress is saying.

The Blount Report states that "military representatives had abused their authority and were responsible for the change in government."<sup>48</sup> Again, this is further admission that the United States acted illegally under international law. But an admission is not enough. The implication then, of these admissions by Congress, by the Blount Committee, is that there must be restitution.<sup>49</sup> The Hawaiian people have a right to be returned to the situation they were in, as of January 17, 1893. This is your right if that's what you want. The federal government disciplined the minister and forced him to resign his commission. Well, of course they should have done that, but that should not have been the end of the process. The overthrow should have been reversed. They had the authority to do it; the President could have done it if he had wanted to, he just did not do it. So this is simply eye-washing. It is nice that they finally conceded these points, but it is not enough under international law.

I do not know how the Native Hawaiians feel about it. I suspect maybe they would agree with me that it is certainly not enough. Where it should lead from here is another issue. Again, I'm trying to point out, line by line, that this Resolution clears up all these matters, all debate, all argument, and it makes it very clear here. You have a right to restoration, to restitution, and to proclamation of your state. You do not need the permission of Congress to do this. Congress might not like it, but it is kind of stuck with its own law, is it not?

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47. Overthrow of Hawaii Resolution, Pub. L. NO. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

48. *Id.* ("Presidentially established investigation conducted by Congressman James Blount into the events surrounding the insurrection and overthrow").

49. See Mark A. Inciong, Note, *The Lost Truth: Native Hawaiian Beneficiaries Under the Hawaiian Homes Commission Act*, 8 ARIZ. J. INT'L & COMP. L. 174, 191 n.34 (1991) ("The Blount Report . . . found that the overthrow . . . had been illegal . . . and that Liliuokalani [should] be restored to power").

President Cleveland's message to Congress admitted all this. "An act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress."<sup>50</sup> The President clearly admitted that this was illegal behavior of the most heinous type. A "substantial wrong" was done, calling for the restoration of the Hawaiian monarchy.<sup>51</sup> Now of course, there was no restoration, but that does not change the legal situation. Today over 100 years later, you have a right to restore it yourselves, if that is what you want to do. You do not need to petition Congress to do it. Congress has given you everything you need right here to do it. The United Nations Charter provides the rest of the authority to do it.<sup>52</sup>

The Newlands Joint Resolutions<sup>53</sup> provided for the annexation of Hawaii. Where is the authority for this? There is none. They stole the land, the country, displaced the government, and now they have annexed it. This very issue was addressed by the Nuremberg Tribunal in 1945, where the German Nazi government tried to maintain that some of the annexations of foreign territory that it had undertaken before and during the Second World War were entitled to legal recognition. The Nuremberg Tribunal itself in 1945 said, "no annexations are valid prior to the conclusion of a peace treaty."<sup>54</sup>

The United States government and the President conceded that they engaged in acts of war, that they are occupying your land and that they put themselves at war with your people.<sup>55</sup> Now they have annexed it, but the annexation has no validity under international law. If, as part of the peace treaty between Hawaii and the United States you concede them some land that's up to you, that's your choice. Or if you want to give the federal government operating facilities for a base upon the payment of funds and rent or something, that's for you to decide. But, now they have effectively, in this law, invalidated the

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50. "Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators." Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1511.

51. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1511.

52. U.N. CHARTER, art. I, § 2.

53. Newlands Resolution, Pub. L. No. 55, 30 Stat. 750 (1898).

54. "[I]t was held that, by 1939, the rules on belligerent occupation [that it does not transfer sovereignty] had 'been recognized by all civilised nations and were regarded as being declaratory of the law and customs of war.'" GEORG SHWARZENBERGER, 2 INTERNATIONAL LAW 165 (1965) (citing Nuremberg Judgement, International Military Tribunal, Cmd. 6964 at 65 (1946)).

55. Overthrow of lHawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510.



entire annexation. The whole legal basis for it has now been invalidated.

If the annexation of the land is invalid, then where does the title come from, who has title to the land? It is the Native Hawaiian people who retain title to the lands of Hawaii, as a matter of international law. It is not the federal government, not the state government, but the people themselves. That is the implication here, certainly as I read this section, as an international lawyer. Again these findings of fact and conclusions of law are now officially set forth by Congress. It is only one step, as I am trying to point out here. What are the implications then of these findings of fact and conclusions of law?

The law next reads that, "[t]he Newlands Resolution, the . . . Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States."<sup>56</sup> But, the Republic of Hawaii never had sovereignty over the Hawaiian Islands.<sup>57</sup> We have already determined that the so called Republic of Hawaii was the civilian occupying arm of a military occupation authority. It had no sovereignty. Military occupation forces, even though they are there and are present, do not exercise sovereignty over the territories they occupy. Sovereignty remains in the hands of the displaced sovereign. This is black letter international law.<sup>58</sup> This is the issue at stake in the Middle East peace negotiations between the Israelis and Palestinians. The Israelis do not have sovereignty over the West Bank, the Gaza Strip, or East Jerusalem. They are a military occupation authority. They exercise administrative powers, but they do not have sovereignty. They never did. The sovereignty remains in the hands of the Palestinian people and they have proclaimed a state. Again I submit there is a parallel here for Native Hawaiian people. Sovereignty resides in your hands. This so-called Republic never had sovereignty to cede to the United States, and that is pretty clear from just reading through the Resolution and moving one step forward from the analysis set forth here.

"The Republic of Hawaii also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people, or their

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56. *Id.* at 1512.

57. Miiilami B. Trask, *Historical and Contemporary Hawaiian Self-Determination: A Native Hawaiian Perspective*, 8 *ARIZ. J. INT'L COMP. L.* 77, 91-95 (1991).

58. "[A]nnexation of occupied territory is a violation of international law . . . Title to the territory in question must not change until there is either complete subjugation (*debellatio*) or a peace treaty has been put into effect." GFRHARD VON GLAHN, *LAW AMONG NATIONS* 768 (1992).

sovereign government."<sup>59</sup> The Republic had no authority to do this, for the reasons I have already spelled out here. The government of the Republic of Hawaii was a military occupation authority, the civilian arm, without any sovereign claims to the land under the laws of military occupation and the laws of war. So they had no power to cede anything. The title to the land rested and still rests, under international law, with the Native Hawaiian people.

I tried to make this point in my discussion with Judge Nakea. How can it be said that the Graces trespassed on their own land? You cannot trespass on your own land. The trespassers then become the State of Hawaii, the land developers, the golf courses, and the resorts. Then, what this law does is point out that the whole situation is completely turned around on its head. It now changes the whole way that these authorities should be looking at the matter. The federal government is the trespasser and the criminal. You are simply the Native Hawaiians asserting your rights under international law. Now this arrangement, as it were, this reversal of positions between who is the criminal and who is the victim, and between who is asserting their rights and who is violating their rights, has been effectively conceded by Congress.

In this regard, I would encourage all Native Hawaiians to know what your rights are. Get a copy, a little hand copy, of the Universal Declaration of Human Rights<sup>60</sup> and carry it around with you. Your rights are in there.

With respect to what Bumpy Kanahale and his people are doing out on the beaches, in the settlements, Article 25 of the Declaration provides that "everyone has the right to a standard of living adequate for the health and well-being of themselves and their family, including food, clothing, housing, medical care and necessary social services."<sup>61</sup> They have a right to have housing, that is clear. The State of Hawaii has no right to throw you out of your own homes. Even if those homes are nothing more than tents on a beach, they are still your homes. Where is the government's right now, if they ever had any, after the passage of this law? I don't see it. It is no longer there.

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59. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

60. Universal Declaration of Human Rights, G.A. Res. 217 (111), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948).

61. *Id.* at art. 25.

The same right exists with respect to attempts to destroy your temples and places of worship. Article 18 of the Declaration provides that "everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to manifest his religion or belief in teaching, practice, worship, and observance."<sup>62</sup> So where is the right of the State of Hawaii, or a real estate developer, or a resort developer, to destroy any of your temples, when these are your temples, this is your land, and your right to worship is guaranteed in the Universal Declaration? I don't see that right any more and indeed it will be very hard for them to argue that now that this law has been passed. I won't go through the applicability of all the Universal Declaration of Human Rights to the activities of Native Hawaiians here in relations of the state and federal governments. Again I would encourage you to get this from Amnesty International. They have them available. Read through it, and understand what your rights are, and proceed to assert them in your dealings with the state and federal government.

"Whereas, the Congress . . . annexed Hawaii . . . and vested title to the lands in Hawaii in the United States."<sup>63</sup> This is clearly illegal. We have already seen it. The annexation was invalid. The United States cannot get title from the Republic of Hawaii because the Republic never had title in the first place. They had no sovereignty. They were nothing more than a military occupation power, and a military occupation power cannot validly transfer title to land. Again, black letter international law.<sup>64</sup> That is why, today, the United States government condemns the illegal settlements in occupied Palestinian land. You cannot transfer title; the occupying power cannot sell land legally. I mean they can do it, but that doesn't make it lawful. It is invalid. It is illegal. So an occupying power cannot sell land, they do not control title, sovereignty. They can administer, but that is all, arguably, that they can do. In theory, they are obliged to leave, not to stay.

The law goes on to state: "Whereas, the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States government."<sup>65</sup> The Newlands Resolution is entitled to no validity

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62. *Id.* at art. 18.

63. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

64. "Belligerent occupation does not transfer sovereignty. Instead it transfers to the occupant the authority to exercise some rights of sovereignty." VON GLAHN, *supra* note 58, at 774. See also SHWARZINBERGER, *supra* note 54, at 163-78.

65. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

at all, since it is based on an illegal invasion, a violation of treaties, and a violation of the principle of *pacta sunt servanda*.<sup>66</sup> Many, many violations of law have accrued as a result of this.

Congress admits that "the indigenous Hawaiian people never directly relinquished their claims to . . . inherent sovereignty.. . through a plebiscite or a referendum."<sup>67</sup> This gets back to the question of what happened, back in, what '59, right? What validity was that entitled to? Well, now Congress is saying, none. I would say even before this, none, because you did not have a plebiscite conducted by the United Nations organization itself. This would have been a requirement if Article 73 of the U.N. Charter had been carried out.<sup>68</sup> The United States did not do that. Congress is effectively conceding now that the so-called vote is meaningless, as a matter of international law and of United States domestic law. So you are not bound by it. Rather, I am suggesting that you are now free to determine your own fate pursuant to the principle of self-determination in Article 1, Paragraph 2 of the United Nations Charter.<sup>69</sup>

Moving further through the Public Law, we encounter more admissions. "Whereas, the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people."<sup>70</sup> Well that is an understatement. The Hawaiian people have been subjected to the international crime of genocide, as determined and defined by the 1948 Genocide Convention,<sup>71</sup> and the 1987 Genocide Convention Implementation Act,<sup>72</sup> the Proxmire Resolution. That is clear. That was one of the findings of the San Francisco Tribunal. That was one of the key findings of the Tribunal held here this summer concerning Hawaii (Ka Ho'okolokolonui Kanaka Maoli). Having argued genocide myself to the International Court of Justice, and having convinced them that genocide is going on in Bosnia-

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66. See Martin Hession, *The Legal Framework of European Community in International Environmental Agreements*, 2 *NEW EUR. L. REV.* 59, 103 (Spring 1994).

67. *Overthrow of Hawaii Resolution*, Pub. L. NO. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1512.

68. U.N. CHARTER art. 73.

69. U.N. CHARTER art. I. 11 2.

70. *Overthrow of Hawaii Resolution*. Pub.L. NO. 103-150, 1993 U.S.C.C.A.N. (107Stat.) 1510, 1512.

71. *Convention on the Prevention and Punishment of the Crime of Genocide*, Jan. 12, 1951, 78 U.N.T.S. 277.

72. *Genocide Convention Implementation Act of 1987*, Pub. L. NO. 100-106, 102 Stat. 3045 (1987).

Herzegovina,<sup>73</sup> I submit that there would be no difficulty in convincing the World Court that genocide has been practiced by the United States government against Native Hawaiians. Now, that is bad enough, but where does that lead you? I suggest that where it leads you is back to the creation of a State. One of the few and only protections a people have from being exterminated, by means of genocide, is their own state and ultimately, United Nations membership.

This is what happened to the Jews. From 1939 to 1945 they did not have a state. They did not have membership in the League of Nations. So everyone looked the other way and they were exterminated. Today, the situation is being replayed with the Bosnians. The Bosnians do have a state and they do have U.N. membership.<sup>74</sup> This is the one thing they have that is keeping them from going the same way as the Jews. The Palestinians recognize this, too. They had to proclaim a state in order to protect themselves from being annihilated. So a state, an independent sovereign nation state, is one way a people who are threatened with extermination by means of genocide, can attempt to protect themselves. According to the statistics that Kekune Blaisdell presented to the San Francisco tribunal, the Native Hawaiian people are threatened with extinction by the year 2030. This is something that has to be given very serious consideration. What is the best way to protect the existence of your people, as a people? Is it to accept the same status as Native Americans, which I guess Secretary Babbitt is considering graciously giving you? Or is it to proclaim your own state, and then ultimately seek international recognition and finally U.N. membership? Well again, this is for you to decide. You have to consider the alternatives because ultimately it is your future and that of your children and your children's children that is at stake.

In the final "whereas" clause, Congress states, "it is proper and timely for Congress to acknowledge the historic significance of the illegal overthrow."<sup>75</sup> Before this, Congress talked only about an overthrow. but did not concede it was illegal, although it violated all these treaties. But now Congress says that it was illegal. In other words, in this law, Congress is agreeing with what I am saying here. It was

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73. See Case Concerning Application of the Convention on the Prevention and Punishment of The Crime of Genocide (*Bosnia & Herzegovina v. Yugoslavia*), 1993 I.C.J. 325 (Sept. 13).

74. Status of the U.N Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crime; Against Humanity, 33 I.L.M. 1394 (1994).

75. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

illegal. If you had any doubt, now even Congress is agreeing. It was an illegal overthrow. It had no validity at all. The fruits of this overthrow are entitled to no recognition as being valid today. That calls into question the title to all the land here. Who's land is it? Well, it seems to me, from what Congress seems to be saying, the land is that of the Native Hawaiians.

The Resolution then addresses reconciliation efforts, about support for the reconciliation efforts.<sup>76</sup> Well, of course I am in favor of reconciliation. But there is more to it than that. Under international law, if you have a violation of this nature the appropriate remedy is not simply reconciliation, apology, or reparations, but is restitution.<sup>77</sup> That is, to set right the harm that has been done—to restore the situation to what it had been before the violation in 1893. There is a very famous case by the World Court, the Chorzow Factory<sup>78</sup> case, that would be the authority for this. In other words, sure, have reconciliation, but what about restoration? That clearly is what you are entitled to.

We now move to this Section 1, acknowledgment and apology.<sup>79</sup> The law again repeats, "illegal overthrow," so it is not simply my interpretation of the significance of the various "whereas" clauses. The "whereas" clauses were "resolved by the Senate and House of Representatives of the United States of America, in Congress and Senate, and signed by the President."<sup>80</sup> This operative provision of the law recognizes the illegal overthrow and "acknowledges the historical significance of this event which was ultimately the suppression of the inherent sovereignty."<sup>81</sup>

The law, in effect, says that the Native Hawaiian people still have sovereignty. The sovereignty inheres in you. Now it is for you to decide what to do with this sovereignty, because the State of Hawaii and the federal government, are, as I have explained, the civilian arms of the military occupation authority. Military occupation authorities do not have sovereign powers. The sovereignty resides in the people. That is clearly the implication of Section I of the operative provision of the statute.

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76. Id.

77. Case Concerning the Factory at Chorzow, 1928 P.C.I.J. (ser. A) No. 17, at I (Sept. 13.).

78. Id.

79. Overthrow of Hawaii Resolution, Pub. L. No. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

80. Id.

81. Id.

Paragraph 3 apologizes for the overthrow "with the participation of agents of the United States."<sup>82</sup> The U.S. government again is responsible for the actions of its ministers, Congress now called these people "agents." So their conduct, their illegal conduct, binds the United States government. Which means the United States government, then, is under an obligation to undo the harm that was done. But even if they do not, the Native Hawaiian people have a right to act to undo that harm. And if you doubt that, the rest of the sentence reads, "the deprivation of the rights of Native Hawaiians to self-determination."<sup>83</sup>

So in other words, Congress has conceded that the Native Hawaiian people have a right to self-determination. What does that right include? Well, as I have said, self-determination of peoples under the U.N. Charter provides a right to a state of your own and to membership ultimately, someday, in the United Nations organization,<sup>84</sup> just like the 188 other states that are currently members of the United Nations today.

Paragraph 4 expresses its commitment to acknowledge the ramifications.<sup>85</sup> What are the ramifications? Well, that is the subject of my discussion here. If you followed the analysis that I presented before, then I put forward here what I believe are the ramifications, the implications, of the overthrow of the Kingdom of Hawaii. Now, whether that is the direction you want to go, that is for you to decide, not me.

Then finally, in the definitional section, Congress defines Native Hawaiians as "any individual who is a descendant of the aboriginal people, prior to 1778 . . . occupied and exercised sovereignty, in the area that now constitutes the state of Hawaii."<sup>86</sup> This again, affirms that the native people of Hawaii were, and by implication still are, the sovereign authority in these lands. It is not the state, not the federal government, but the Native Hawaiian people themselves.

Based then on this public law, and going through it line by line, I would express the opinion that today the Kanaka Maoli have the right to exercise self-determination as a people in accordance with the U.N. Charter: To proclaim an independent state, if that is your desire, to join the world community of states as an independent nation state. This also

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82. Id.

83. Id.

84. U.N. CHARTER art. 1. 11 2.

85. Overthrow of Hawaii Resolution. Pub. L. NO. 103-150, 1993 U.S.C.C.A.N. (107 Stat.) 1510, 1513.

86. Id.

means that you have the right to determine your political status, your type of governmental organization to govern yourselves through customary systems, and to freely pursue your economic, social, and cultural development in accordance with Article I of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.<sup>87</sup> The United States government is a party to that first treaty. That treaty also recognizes the right of Native Hawaiians to freely dispose of your natural wealth and resources, without prejudice to obligations arising out of international economic cooperation. This is your land. These are your natural resources. Whatever powers are exercised by the state and federal governments are those of a colonial occupation military regime. But the sovereignty still resides in the hands of the Native Hawaiian people. You have the territory necessary for a state. That is, the Hawaiian Archipelago, the lands that you had before the invasion of 1893. You would be entitled to claim a twelve mile territorial sea and a 200 mile exclusive economic zone, in accordance with customary international law and the Law of the Sea Treaty of 1982.<sup>88</sup>

The second requirement of an independent state are the people. Again Congress has recognized the Kanaka Maoli people are a group of people with sovereign powers. You have lived here forever. You are the original inhabitants and occupants of these islands. You have always been in possession of your land. And so you would be entitled to reestablish an independent sovereign nation state in that land. Possession is nine-tenths of the law. You are still here; you are still living in your homes; you are still occupying your land. It might be true that the state and federal governments are illegally dispossessing you. But, you are still going back in there; you are still building settlements; you are still occupying it, and you are staying there. That is all that international law requires. As I have suggested, that certainly is your right under the Universal Declaration of Human Rights.<sup>89</sup>

Who would be your citizens? Well certainly the citizens would be those who are descendants of the Kanaka Maoli, who occupied and exercised sovereignty in Hawaii prior to the Europeans in 1778. You would trace your ancestors back. Again, it would be your right to

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87. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966).

88. United Nations Convention on the Law of the Sea, opened for signature Dec. 10, 1982, U.N. Doc. A/CONF.62/122, reprinted in 21 I.L.M. 1261 (1982).

89. Universal Declaration of Human Rights, G.A. Res. 217 (111), U.N. Doc. A/810, at 71 (1948), reprinted in 2 DUSAN J. DJONOVICH, UNITED NATIONS RESOLUTIONS (1973).



determine who your citizens are. I take it you would reject this blood percentage that has been set up by the United States government. This is reminiscent of Nazi laws, that were applied to decide who was Aryan. Those laws, in turn, were patterned on laws in the American South, on miscegenation, who was a black and who was a white.<sup>90</sup> A state is free to determine who its own citizens are. Certainly you would be free to determine that all those who could trace their ancestors back to 1778 would automatically become citizens of the new state.

Now, what about those who are living here, who are not able to trace their ancestors back? What about them? This is an issue that has confronted several states today. For example, in the Baltics, Lithuania, Latvia and Estonia, there are large numbers of Russian citizens who were left behind as a result of the Russian/Soviet occupation for the last fifty years. This is about half the amount of time you are dealing with here. The three Baltic states have taken different approaches. For a period of time, I advised the Republic of Lithuania under President Landsbergis, who was the hero and leader of their independence movement. He subsequently lost an election and the people voted the communists back in, so I no longer advise them. But the Lithuanians have taken a very generous approach to those Russians who remain, trying to integrate them into their society.<sup>91</sup>

Certainly the Hawaiian state could take the position that you'll set up a procedure to provide citizenship to all people who are habitual residents of the new state of Hawaii, as of a certain date. This would mean that those who have lived here continuously five years, ten years—whatever cut off point you want—are also themselves entitled to become citizens of this state on a level of equality with everyone else. Unlike the Native Hawaiians who would automatically become citizens, the habitual residents would have to apply for citizenship.

Again, there are precedents here in the way the Palestinians are dealing with these issues. They too have a diaspora population. You have large numbers of Hawaiians all over the world who had to leave. Approaching it in this way would enable you to allow all them to claim Hawaiian citizenship, if that is the case, if that's what they want to do, and to return. The Palestinians did it that way. They set up a state, and said that they were setting up a state for all

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90. RACIAE DETERMINATION AND THE FEAR OF MISCEGENATION (John D. Smith ed., 1993).

91. See Stephen Kenyer, Soviet Turmoil: Issue of Citizenship For Ethnic Russians is Dwindling Latvians, N.Y. TIMES, Sept. 7, 1991, at A1 ("The Lithuanian . . . authorities are preparing to offer citizenship to all residents who want it").

Palestinians everywhere in the world. In theory, those who want to be citizens of the state can claim it and be admitted. Also there are a large number of Jewish settlers living in occupied Palestine. The Palestinians have taken the position that they are prepared to accept a certain number of Jewish settlers as citizens of their state on a basis of equality with everyone else, provided that they are prepared to be peaceful, law abiding citizens, treated as equals.

So there are precedents for the new state of Hawaii to take a similar position for those non-Native Hawaiians who live here. That is, telling non-natives residents that you are setting up an inclusive state and want them to stay and to apply for citizenship in the new state. It could be done in a way that they would not have to renounce their U.S. citizenship if that's what the Native Hawaiians decide. That could be a big issue with the current generation of non-Native Hawaiians living here. It probably would not be a big issue for the next generation. They would be Hawaiian at birth, entitled to citizenship at birth, and probably whether they would claim U.S. citizenship would not be all that important. But for those who are here who are U.S. citizens, it would be possible to allow them to become dual nationals. That is, they would apply for Hawaiian citizenship without having to give up U.S. citizenship. This would be fully consistent with United States law.

I was born in the United States, but I applied for Irish citizenship. My family is Irish, I have Irish citizenship and an Irish passport. The Irish have been subjected to genocide, too. We know what it is all about. We are a diaspora people too. We have people all over the world. So we have an inclusive form of citizenship that allows people to claim it without having to give up whatever other citizenship they have as well. The Native Hawaiian state could approach the question of citizenship in a similar way.

I have already discussed that the system of government, again the third requirement that you would need, and I believe you have it, for an independent state. You have your Kupuna system. As I said, Congress has recognized "a highly organized, self-sufficient, social system based on communal land tenure, maintaining order through mediation."<sup>92</sup> That is all you need, and you have that. So you would simply work that out, the implications of that system on a nation state basis, that is, the new Hawaiian state basis. That would be the way the new

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92. Overthrow of Hawaii Resolution. Pub. 1.. No. 103-150, 1993 U.S.C.C.A.N. ( 107 Stat.) 1510.

Hawaiian state would be governed, not the current situation as you see it today.

The final requirement is the capacity to enter into international relations. Again here, if you were to declare an independent state, you would probably obtain recognition in that capacity from a fairly large number of states. I could not predict the number of states that would recognize you. I don't know. You would have the same problems encountered in the creation of the Palestinian state. We<sup>93</sup> did not know how many states would recognize the Palestinian state back in August of 1988, before it was created. But as of December 1993, 125 states recognize the state of Palestine. Someday the state of Israel will recognize the state of Palestine. The state of Palestine already recognizes the state of Israel. There can be peace and reconciliation between those two peoples as well.

I cannot predict how long this would take, what would be the consequences, or how many states will recognize you. However, I take it that the plight of the Hawaiian people is generally well known in the world, and there's a great deal of sympathy. For a variety of reasons, the Palestinians have had an uphill struggle and battle in obtaining that recognition. So, it might be that you would be able to obtain recognition quickly, especially if you pursue this process in accordance with principles of peaceful, non-violent struggle. I submit that is the most effective technique you have today. If you doubt me, you should read Gandhi's book, *Satyagraha*, about non-violent civil resistance.<sup>94</sup> The book explains how Gandhi threw the mighty British Empire out of India without using force. People power is what we call it today. I submit that the Native Hawaiian people would be able to do the same thing, moving in this direction and adopting the techniques of peaceful, non-violent action, such as those called for by Gandhi.

In conclusion, I reiterate that this discussion is not presented as a solution to any problems. My assignment here, as I understood, it was to sketch, briefly, one outline, one alternative, that the Native Hawaiian people can consider among other available alternatives. Ultimately, it is your choice—not the choice of the United States Congress, not the choice of the State of Hawaii. And with all due respect to the Commissioners here, it is the choice of the Native Hawaiian people. They

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93. The author served as the legal advisor to the Palestine Liberation Organization on the creation of the Palestinian State from 1987 to 1989.

94. M.K. GANDHI, *NON-VIOLENT RESISTANCE (SATYAGRAHA)*, (Schocken ed., 1971 ) (1951).

have the right to self-determination. They have the inherent sovereignty. Their rights have now even been recognized by the United States Congress itself. So, it is no longer just me giving an opinion as a law professor. But rather, the opinion presented here is based upon these formal findings of fact and law by the United States Congress.

Recent actions continue to provide the Hawaiian sovereignty movement greater power and legitimacy. Since these remarks were presented in Hawaii in December, 1993, new developments have continued to demonstrate the importance of the Hawaii sovereignty issue.

The plebiscite to be conducted late this year will allow about 274,000 Native Hawaiians to cast a ballot deciding whether or not they want to elect delegates to a convention that may recommend some form of native Hawaiian government.<sup>95</sup>

The Ohana Council, however, condemns this upcoming vote as "a direct interference with the recognized inherent right of the people and their process of self-determination, a deliberate attempt to confuse the issue and suppress the rightful process of restitution and restoration."<sup>96</sup> The Ohana Council declared its independence (for both its 10,000 members and all native Hawaiians) from the United States in January 1994, proclaiming itself the Nation of Hawaii.<sup>97</sup>

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95. Joy Aschenbach, Aloha to a New Nation?, SACRAMENTO BEE, Feb. 12, 1995, at F01. The results from the December balloting will be announced on January 17, 1996, on the 103d anniversary of the overthrow of the Kingdom of Hawaii by American businessmen and sugar planters. The ballot issued by the Hawaiian Sovereignty Advisory Commission, may be voted on by any adult of Hawaiian origin, even if not currently residing in Hawaii and even if incarcerated. Rick Carroll, Hawaiian Natives Want to Say 'Aloha' to U S: But Reliance on Tourism Makes Return to Old Ways Impossible, WASH. TIMFS, Dec. 23, 1994, at A6. Cf HAW. REV. STAT. 10-2 (1994), defining "Hawaiian" as "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." Section 10-2 defines "Native Hawaiians" as:

any descendant of not less than on-half part of the races inhabiting the Hawaiian Islands previous to 1778, as defined by the Hawaiian Homes Commission Act, 1920, as amended; provided that the term identically refers to the descendants of such blood quantum of such aboriginal peoples which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter continued to reside in Hawaii.

See also *Hooihull v. Ariyoshi*, 631 F. Supp. 1153 (D. Haw. 1986) (Office of Hawaiian Affairs definition of "Hawaiian" to include all persons who are descendants of aboriginal Hawaiians is constitutional as it has a rational basis and reasonably furthers legitimate legislative purpose) (cited in *Trustees of Hawaiian Affairs v. Yamasaki*, 737 P.2d 446 (Haw. 1987)).

96. *Id.* (quoting Nation of Hawaii leaders). But see John Hughes, Career Options for 50th State, CHRISTIAN SCI. MONITOR, May 5, 1994, at 18 ("No serious observer believes that the sovereignty debate will result in the secession of Hawaii, or even part of it, from the United States .... [H]ow would a sovereign nation support itself economically? But substantial support exists for some kind of compensation for the overthrow of the monarchy.").

97. The Nation of Hawaii declared its independence from the United States on January 16, 1994.

In the spring of 1994, following President Clinton's formal apology to native Hawaiians in November 1993, the United States Navy returned the island of Kahoolawe, which had been taken during World War II. The federal government signed quitclaim deeds (one in English and one in Hawaiian) returning the island, which will hold the island in trust for the Hawaiian Sovereign Nation. Congress has since authorized \$400 million for restoration of the island long used as a bombing and target range.<sup>98</sup>

There is much yet to be done, however. In October 1994, the Intermediate Court of Appeals of Hawaii rejected claims by Native Hawaiians that the state courts lacked jurisdiction over members of the Kingdom of Hawaii, a sovereign nation.<sup>99</sup>

If Native Hawaiians wish to establish their sovereignty, then this court opinion is not determinative of the recognition at stake. This is simply another state action that would not be binding upon an independent state. The recognition of the illegal overthrow has already been made by the United States. Because the overthrow was illegal, the present governing system could be rejected by the native Hawaiians. The law now exists, admitting the illegality of government action. It is now up to the Native Hawaiian people to decide how to proceed.

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16, 1994. *Hawaii's Search for Sovereignty*, CHRISTIAN SCI. MONITOR, Oct. 17, 1994, at 9. The Proclamation of Independence is reproduced here as an appendix. See *infra* app.

98. See Aschenbach, *supra* note 95; Christopher Merrill, *A Little Justice in Hawaii: Kahoolawe Lives!*, THE NATION, Sept. 5, 1994, at 235.

99. *Hawaii v. French*, 883 P.2d 644 (Haw. Ct. App. 1994); *Hawaii v. Lorenzo*, 883 P.2d 641 (Haw. Ct. App. 1994). The *Lorenzo* court cited 1993 Haw. Sess. Laws 1009, 1010, Act 359, § 1, which recognized that following the overthrow, "the indigenous people of Hawaii were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources." The court further noted that the stated purpose of Act 359 is to "facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing." *Lorenzo*, 883 P.2d at 643 (citing 1993 Haw. Sess. Laws 1009, 1010, Act 359, § 1). Notwithstanding the court's recitation of the Act, it concluded that "while the legislature has tacitly recognized the illegal overthrow, Act 359 indicates that the State of Hawaii does not recognize that the Kingdom exists at the present time. *Id.* The court left that burden to the defendant, and held that he had not presented any factual basis for concluding that the Kingdom exists. *Id.* at 643-44.

*PROCLAMATION RESTORING THE INDEPENDENCE OF THE  
SOVEREIGN NATION STATE OF HAWAII JANUARY 16, 1994*

Today the Kanaka Maoli proclaim our Right of self-determination as a People in accordance with Article I (2) of the United Nations Charter, and join the World Community of States as an independent and Sovereign Nation state. We hereby re-establish our Independent and Sovereign Nation State of Hawaii, that was illegally taken from the Kanaka Maoli on January 17, 1893.

By virtue of our Right to self-determination the Kanaka Maoli claim the Right to freely determine our political status and freely pursue our economic, social and cultural development in accordance with common Article I of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Kanaka Maoli claim the Right, for our own ends, to freely dispose of our natural wealth and resources . . . including our lands and our waters without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit and international law.

We the Kanaka Maoli, claim all the Land, and Natural Wealth, Resources and Minerals, and Waters, which has always resided and will always reside within the Hands of the Kanaka Maoli, to be ours forever, originally under communal land tenure.

Hawaii comprises 132 islands, reefs and shoals, stretching 1,523 miles (2,451 kilometers) southeast to northwest across the Tropic of Cancer between 154 40' and 178 25'W longitude, and 18 54' to 28 15'N latitude, consisting approximately of a total land area of 6, 425 square miles (16,642 square kilometers), including I percent of less than six square miles of land area, made up of islands off the shores of the main islands and the Northwestern Hawaiian Islands, from Kure Atoll in the north to Nihoa in the South. The Hawaiian Islands form an Archipelago, which extends over a vast area of the Pacific Ocean, possessing a 12 mile Territorial Sea, and the 200 mile Exclusive Economic Zone, in accordance with generally recognized Standards of International Law.

In the Independent and Sovereign Nation State of Hawaii lives the Kanaka Maoli. We have lived here forever, since time immemorial. We are the original inhabitants and occupants of these Islands. We have always been in possession of our land and are thus entitled to re-establish our Independent and Sovereign Nation State.

The current citizens of the Independent and Sovereign Nation State of Hawaii consist of all those who are descendants of the Kanaka Maoli prior to the arrival of the first westerners in 1778, and those persons who have lived in Hawaii prior to the illegal Overthrow, invasion and occupation of January 17, 1893, in the area which now constitutes the Archipelago of Independent and Sovereign Nation State of Hawaii.

The Independent and Sovereign Nation State of Hawaii will establish procedures for according citizenship by means of naturalization to all people who are habitual residents of Hawaii as of today's date.

The Kanaka Maoli fully support and subscribe to all of the Rights of the 1948 Universal Declaration of Human Rights for all of the people living in our Independent and Sovereign Nation State of Hawaii.

The Independent and Sovereign Nation State of Hawaii adheres to the generally recognized principles of international law, including the terms of the United Nations Charter. We will apply for Membership in the United Nations Organization in due course. We will conclude other international treaties and agreements at the appropriate time. In the meantime, we call upon the foreign military occupation forces in the Independent and Sovereign Nation State of Hawaii, to withdraw from our Sovereign Territory immediately.

Since time immemorial, the Kanaka Maoli, has maintained their close relationship to the 'aina (land) and its natural surroundings, through practice wholistically spiritual in nature and in harmony with natural law. The natural belief and practice that the 'Aina was considered "sacred" for the well-being of the human sustenance of life.

Prior to the first European invasion, of 1778, Hawaii was known to have unique culture and system of government. Through customs and

traditional practices, The Kupuna (Elders), were highly regarded and respected, as the keepers of the wisdom and knowledge, in a highly organized self-sufficient and sustainable social system, based on a communal land tenure system, and were always consulted upon to maintain order and ho'oponopono.

The Kanaka Maoli of today, embody within their governmental structure, traditional customs and culture, the Aha Kuka O Na Kupuna (Council of Elders), based on mutual respect and practice, and family order. Their advice on many decisions, is highly regarded for the basis of all authority and principles as handed down through generations in their teachings. Their natural ability and practice of Natural Law was understood to be commonly known and exercised, by their deep spiritual connection to nature, its use, application and practice of the Law of Nature, then and now. The Kanaka Maoli believe that all things have life, be it animate or inanimate, because everything has been derived and created from one Source, the Creator.

Today the Kanaka Maoli, respectfully continue to seek the guidance of our Kupuna, be it Spiritually, Mentally and Physically, on authority and decisions that affect our lives, to restore our customs and teachings of our culture, language, and knowledge, from being exploited, desecrated, and on the verge of eventually becoming extinct. For all these reasons, the Kupuna Council will serve as the Provisional Government of the Independent and Sovereign Nation State of Hawaii, until such time when the Kanaka Maoli will convene a constitutional convention.

Despite the historical injustices and abuse, that has documented a time and dark chapter of the lives of the Kanaka Maoli, so unimaginable to the conscience of humanity, and to all human life as a whole, we have come to realize, that in the course of this modern times, we could never depart and separate our undying love and connection, "sacred ties," with the Spirit of this Land, Aloha 'Aina, which is the heart and life of all living things, as taught and handed down from the ancient wise ones (Kupuna). For we must protect it from such invasion and exploitation, to liberate it from alien destructive forces, to preserve our cultural heritage for future generations, from the devastation of extinction.



The Kanaka Maoli, has continued to exercise, practice and occupy their lands, despite foreign powers, denying them their inalienable rights to self-determination and Independence, and Statehood. Thus were well recognized principles of international laws violated. Thus were the national identity, land, resources, Right to Sovereignty over their Territory violated, and a peaceful people Overthrown, by the invasion of foreign powers, who continue to occupy, exploit and destroy our way of life.

Today, the Kanaka Maoli, have united at this very historic and symbolic place, the Iolani Palace, wherein we remember the last days and the tragic moment in our history, that have affected the safety and well being of our people, to which our beloved Kupuna and Queen Liliuokalani, and her commitment to restore the rights of our People, have been stolen. Her dedicated endurance against the foreign powers, who have committed such acts of aggression and force, threats of fear and imprisonment, knowingly in violation of numerous treaties, agreements and principles of international customs and law, has never faltered, for the Love of her people, and those who stood on truth and justice, shall now prevail here today, and forever.

We here today have the same commitment. It is the duty and obligation of every Kanaka Maoli, young and old, to stand ready to restore and defend our natural rights, territorial integrity and independence without prejudice, and reject and resist all unlawful acts, injustice and complicity, violence and terrorism against our political independence, and also reject such use and violence against the territorial integrity against other peaceful states.

If not for those, who have continued the struggle for peace, justice and honor; who have passed in spirit, continue standing beside us here today,

If not for those who have sacrificed their families and lives; who have desired to go to prison, rather than be forced to adhere to unjust principles and acts, and have gone through the crossroads of temptation. If not for those of us who have awaited this day; who have considered the facts and evidence of such acts of oppression, subjugation and fear, and the lost of their honor, dignity and pride.

We the Kanaka Maoli, have historically been the victims of crimes against humanity and genocide as defined by the Nuremberg Charter and the Genocide Convention.

We, the Kanaka Maoli, today, have the duty to heal their wounds, and restore their integrity, for they have given their lives for us to be here today, that all Kanaka Maoli can once again determine to protect the future and destiny of our children, and their heritage.

The Independent and Sovereign Nation State of Hawaii, proclaims its commitment to the purposes and principles of the United Nations Charter. The Kanaka Maoli have long been recognized as a peaceful loving Nation, and to live in peaceful co-existence with other peaceful Nation States, based on equality, truth and justice, and for the respect of their undying Spirit of Aloha, and for the Rights of Humanity.

We proclaim that, despite of the continued interference of our rights to self-determination, Rights of Sovereignty, and Right of Independence, by the foreign occupying powers, we stand this day, in all honor, dignity and respect, of this sacred land, to restore our Independent and Sovereign Nation State of Hawaii.

We pledge that our commitment will continue until the illegal occupation ends, and the revival of our Culture of our Independent and Sovereign Nation State has been fortified, with the Spirit of Aloha totally restored, and the spirit of justice, freedom and liberation, shall once again bring peace on earth for all humanity.

We call upon our great people, and all Nations of the World, to unite and act this day, to declare and proclaim our inalienable Sovereignty of the Nation State of Hawaii, fully restored and functional, and arise in the uniting of freedom and dignity in our homeland, which is the homeland of the free, now and forever.

Therefore, the Kupuna, in General Council Assembled, by the Authority recognized and vested in the Aha Kuka O Ka Ohana, in the name of the Kanaka Maoli people, to preserve and to forevermore cultivate the Heritage and Culture of the Kanaka Maoli, do solemnly publish, declare and proclaim, that the Independent and Sovereign Nation State

of Hawaii, free and absolved from any other political connection from any other Nation State, and whomsoever disregards the principles and Rule of the Law of Nations, Justice, Integrity and Morality of Character and Humanity, who by force and acts of aggression, illegally occupy's our Territory.

We have therefore concluded, that the facts are self-evident. That to continue under any colonial regime would cause the destruction and extinction of our culture and people. Our firm commitment for the protection of our divine heritage, We mutually pledge our Lives, Our Fortunes, our Sacred Honor, in the Spirit of Aloha.

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**OFFICE OF THE HEAD OF STATE**  
Pu'uhonua O Waimanalo Village, Waimanalo, Oahu

**EXECUTIVE ORDER: 95-001** **April 11, 1995**

**THE REFUGE ACT**

By virtue of the authority vested in me by the Proclamation of Restoration of the Sovereign and Independent Nation State of Hawai'i of January 16, 1994, Resolution 94-006 of the Provisional Government of March 6, 1994, the Hawai'i Constitution of October 9, 1994 and the Hawai'i Constitution of January 16, 1995, Article VIII, Section 4.(e), the Declaration of National State of Emergency of January 17, 1995, and, finally by Natural Law of Na Kupuna o Hawai'i as the Head of State it is ordered as follows:

**PURPOSE, POLICY AND IMPLEMENTATION**

**Terms and Definitions**

**The Refuge Act:** In harmony with the cultural heritage and traditional values of Hawai'i there is established a new Pu'uhonua "Refuge Act" for the purpose of National and International peace and security for any individual no matter what the penalty or the avenger. Refuge in this law represents a superior law over all else and second only to the word of God. It shall protect and guard against any further abuses of our government and people and may be utilized by the Head of State during this State of Emergency for any reasons he deems necessary and required. The Refuge Act gives to the Head of State the Powers to act on behalf of the people in any order of business with the Full Authority of a country as an independent State with International Treaties, Conventions and Agreements. The laws of Hawai'i are carefully placed into The Refuge Act and shall remain within its protection until such a time that the Head of State shall terminate the State of Emergency and Transition of Hawai'i as an Independent State: Safe and Free.

The definition and use of the term "The Refuge Act" shall not be amended or altered in anyway and the contents therein shall be utilized to the fullest power of law under Present Law and Universal Law and shall remain the supreme authority of law throughout the transition.

**International Treaties, Conventions and Agreements:** In 1893 the United States breached the core principle of International Law by abridging their trust obligation to uphold the measures of the treaties they were in signatory with Hawai'i. Therefore the Treaties with the United States are violated and due to be addressed in the International Court of Justice. Because of this unlawful act the United States is also required to make a new treaty with Hawai'i should it be agreed upon by both parties at such time that the final business of Transition is addressed under the observations of the United Nations and under the Present Law.

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## Proclamation of Restoration

The Proclamation of Restoration of the Independent and Sovereign Nation-State of Hawai'i of January 16, 1994, is hereby adopted on behalf of the people of the Nation of Hawai'i, and is incorporated into this Constitution with full force and effect as law.

## CHAPTER I RIGHTS AND EQUAL PROTECTION

### ARTICLE I

#### Declaration of Fundamental Rights

Ke Akua has endowed every human being with rights and equal protection with the inherent and inalienable rights that shall not be denied nor infringed upon. Every individual person is born free by nature and is accorded the mutual respect of these rights. Every individual person has the corresponding obligation, duty and responsibility to honor and respect these basic fundamental rights before the law.

#### Section 1. The Fundamental Rights.

- a. The right of everyone to life, liberty and the pursuit of happiness.
- b. The right of everyone to religious freedom and spiritual practices, providing that it does not infringe on anyone's right to life, liberty and their pursuit to happiness.
- c. The right of everyone to choose one's nationality.
- d. The right of everyone to liberty of movement and freedom to choose one's residence.
- e. The right of everyone to be free from discrimination, regardless of race, creed, color, age, nationality, religion, gender or disability.
- f. The right of everyone to a healthy and sustainable environment.
- g. The right of everyone to a living according to the fruits of their labor.
- h. The right of everyone to work.
- i. The right of everyone to freedom of association.
- j. The right of every citizen to take part in government.
- k. The right of every citizen to vote.
- l. The right of everyone to freedom of speech.
- m. The right of everyone to an education.
- n. The right of everyone to privacy.
- o. The right of everyone to personal property.
- p. The right of everyone to be self-sufficient.
- q. The right to a nuclear free and independent Pacific.
- r. The right of everyone to speak the language of their choice.

#### Section 5. Cultural Preservation.

This Constitution, and all laws enacted hereunder, shall not infringe upon the right of the Kanaka Maoli Nationals to preserve their traditional culture. No law shall be enacted towards the destruction of either the culture or the practice of any Kanaka Maoli in his or her traditional culture.

### Article XVII

#### Transitional Provisions

#### Section 1. Corporate Entities.

Upon the ratification of this Constitution, any illegal entity, corporate or otherwise, shall not be immediately dissolved. The Nation of Hawai'i shall provide sufficient notice to these entities and their responsible officers, agents, owners, or otherwise. Time shall be granted to allow these entities to state their claims and desire to function under the Nation of Hawai'i.

#### Section 2. Accountability.

All illegal occupying governmental agencies of the State of Hawai'i, the United States of America, corporate entities, foreign governments and individuals shall be responsible and accountable for the actions of their agents and officials in any criminal or civil claims under either this Constitution or international customary, conventional or criminal law.

#### Section 3. Requirement for treaty.

Any settlement of claims between the Nation of Hawai'i and the United States of America can only be resolved by a Treaty which has been accepted in accordance with this Constitution.

#### Section 4. No limitations for remedies.

This Constitution, and any laws hereunder enacted, shall not limit the lawful government hereby constituted from seeking any other remedy provided by law.

#### Section 5. Governmental transition.

The illegal occupying foreign regime of the State of Hawai'i and the United States of America may continue to provide services in Hawai'i to such extent necessary as the government of the Nation of Hawai'i shall deem proper and expedient for a peaceful transition towards restoration.

#### Section 6. Repeal of inconsistent legislation.

Upon the ratification of this Constitution, all laws of the State of Hawai'i and the United States of America inconsistent with this Constitution are hereby repealed and have no force and effect.

## Article III

### Equal Protection

#### Section 1. Protection against discrimination.

No law shall be enacted prohibiting or abridging the free exercise of these fundamental and enumerated rights, nor shall any individual person be deprived or denied the equal protections of these rights on account of race, creed, color, age, nationality, religion, gender or disability, without due process of law.

#### Section 2. Protection against police powers.

Every individual has the right to be secure in their persons, houses, papers, effects, and personal property, against unreasonable searches and seizures. No warrants shall be issued, unless there is probable cause, good and sufficient reason(s), supported under Oath or affirmation under the penalties of perjury, and particularly describing that place, and the persons or things to be searched or seized.

#### Section 3. Infamous crime.

No individual shall be held to answer for any infamous crime, unless upon the presentment of indictment by a grand jury.

#### Section 4. Protection against the imposition of the death penalty.

There shall be no death penalty.

#### Section 5. Protection against unreasonable punishment.

The purpose for the penal laws shall be for the reformation, rehabilitation, and future deterrence of those persons convicted of criminal acts. In no way shall the penal laws of the Nation of Hawai'i be constructed or applied for the purpose of retribution against a person convicted of a criminal act. At no time shall a cruel or unreasonable punishment be applied to a person convicted of a criminal act.

## Article IV

### Reserved Rights and Powers

#### Section 1. Other Rights Retained by the People.

The enumeration in this Constitution of certain rights shall not deny, deprive, or disparage any other rights retained by the people. Any of the powers not delegated by this Constitution, respectively are hereby reserved to the people.

#### Section 2. National Review of the Nation's Constitution.

People shall retain the right to continuously review this constitution and have the right to demand nation-wide legislative review within three months following the directives by consensus of any one Island's legislative body.

#### Section 3. Supremacy Clause.

The Constitution and all Treaties made under the authority of the Nation shall be the Supreme Law of the Land. All elected officials, judges and officers of the Nation are bound by Oath thereby, anything contrary to the Constitution and the Laws of the Nation notwithstanding.

#### Section 4. Enforcement.

All citizens have a right to enforce the Constitution, Treaties, and laws of the Nation in any court or Tribunal having jurisdiction.

#### Section 5. Immunity.

Any official of the government for the Nation of Hawai'i shall have sovereign immunity, but only if said official was acting within the proper scope of his or her authority. No official shall have immunity for criminal acts committed, whether or not such acts were done within the scope of the official's authority.

#### Section 6. Public Access.

All citizens have a right of free access to public documents.

## Article XIII

### Home Rule

#### Section 1. Definitions.

##### a. Home Rule.

Home Rule is defined as those powers not specifically of a National character relating to Island or local government. Home Rule allows each Island to administer its own affairs without interference from the National Government.

##### b. Island Administration.

Each Island shall create an administration for those affairs which are the exclusive purview of the Island.

#### Section 2. Administration.

Domestic responsibilities of each Island are those powers not specifically reserved to the National government in this Constitution. Each Island shall be responsible for allocating powers of the Island government.

#### Section 3. Island Administration.

Each Island shall be responsible for setting up its own administration, which shall be of the same democratic form as the National government. Each Island government shall be independent from any other, and no Island shall be responsible for the actions of another Island.

#### Section 4. Limitation.

There shall be no laws or regulations inconsistent with this constitution.



## Section 2. Limitations.

- a. No member, in the capacity as an elected member in the Citizens' Assembly, upon their own initiative, may present any measure or bill for consideration or passage before the assembly.
- b. No member, having been elected an Official shall, during the time for which he or she is elected, be appointed to any other office, or accept any emoluments, gifts, trusts, or contributions from any organization, group, corporation, or person, with the exception of cultural protocol.
- c. All elected and appointed officials who have the authority to issue funds of the Nation shall be bonded.
- d. No ex post facto law or bill of attainder laws may be passed.

### Article VI

#### The Citizens' Assembly

The Citizens' Assembly shall consist of Representatives elected by the qualified voters from the Districts in which the Representatives reside.

#### Section 1. Composition

The Citizens' Assembly shall be comprised of 112 representatives, 56 Nationals and 56 Citizens. Every Island shall elect their own representatives to the Citizens' Assembly as follows:

- a. 14 Island of Hawai'i
- b. 14 Island of Maui
- c. 14 Island of Moloka'i
- d. 14 Island of O'ahu
- e. 14 Island of Kaua'i
- f. 14 Island of Lana'i (to be held in trust until there is representation)
- g. 14 Island of Kaho'olawe (to be held in trust until there is representation)
- h. 14 Island of Ni'ihau (to be held in trust until there is representation)

#### Section 2. Terms of Office.

Each Representative shall serve for a period of 3 years, beginning at the time of election and ending at the next general election.

#### Section 3. Qualifications.

Each Representative shall have attained the age of sixteen years, and shall be of good moral character and standing within the District. Each representative shall have resided within the community for no less than 4 years.

#### Section 4. Powers and Duties.

Any Representative of the Assembly shall propose for the passage into law any Resolution, Bill, or Act only upon the request by any initiative or proposal from any national, citizen, group, or organization duly represented in the Representative's District.

## Section 2. Charters of the Ministries.

Each Ministry shall have all functions listed in a Charter, and the Charter shall provide all legal authority and limitations for that Ministry. The Legislative General Assembly shall have full authority to modify a Charter at any time.

## Section 3. Heads of Ministries, Departments.

All Ministry personnel appointed by the Head of State shall be approved with the consent of a two-thirds vote of Na Kupuna Council.

### JUDICIARY

#### Article X

##### The National Tribunals

The National Tribunals are hereby established to exercise solely all judicial authority and functions as established by this Constitution. The Judicial Power shall be vested in one Supreme Tribunal, and in such inferior tribunals as the Legislative General Assembly deems necessary and proper to establish. The Tribunals shall have original and appellate jurisdictions, or as the Citizens' Assembly shall provide by law.

#### Section 1. Supreme Tribunal.

- a. The Supreme Tribunal shall be presided over by the Chief Justice and four Associate Justices;
- b. The Supreme Tribunal shall exercise original jurisdiction in all cases affecting Ambassadors and diplomatic representatives;
- c. In all other cases, the Supreme Tribunal shall have appellate jurisdiction and review, both as to questions of law and fact, as the Citizens' Assembly shall provide by law.

#### Section 2. Selection of Judges.

All judges shall be selected by Na Kupuna Council.

#### Section 3. Promulgation of Rules for the Tribunals.

The Supreme Tribunal shall promulgate rules and regulations in all civil and criminal cases with regards to procedure and appeals, which shall have the force and effect of law, with the advice and consent of a two-thirds vote of Na Kupuna Council.

#### Section 4. Circuit and District Tribunals.

The Circuit and District Tribunals shall have original jurisdiction in all civil and criminal cases, within the Circuit and District in which they sit.

#### Section 5. Qualifications of Judges.

Every judge shall be a Kanaka Maoli National, and use common sense to justify fairness, compassion, firmness and honesty in customary Hawaiian law and the laws of this Constitution.



## Section 5. Powers, Duties, and Responsibilities of Na Kupuna.

Na Kupuna Council is hereby delegated the following Powers, Duties and Responsibilities:

- a. The authority to initiate a Resolution, Bill, or Act whose subject relates to the preservation of Hawaiian cultural values.
- b. Each Kupuna, whenever any Resolution, Bill, or Act for maintaining cultural values has been duly presented to the Council for enactment into law, shall have one vote.
- c. Each proposed Resolution, Bill or Act for maintaining cultural values shall become valid upon the two-thirds majority vote of all the members in Council assembled.
- d. Whenever a Resolution, Bill, or Act for maintaining cultural values, passed by the Council and enacted into law by the Head of State, conflicts with a Resolution, Bill, or Act passed by the Legislative General Assembly, the Council law shall have supremacy.
- e. Na Kupuna Council has concurrent veto power with the Head of State over legislation passed by the Legislative General Assembly. This Na Kupuna Council may accept a veto submitted to it by the Head of State by a two-thirds majority vote of the Council assembled within twenty days of receipt of the veto.
- f. Na Kupuna Council shall be responsible for the establishment of a Schedule for voting and apportionment of Districts for all elected officials of government.
- g. Na Kupuna Council shall have exclusive jurisdiction for impeachment and/or recall of government officials. Na Kupuna Council shall promulgate the rules and restrictions for the impeachment process. Notwithstanding this section, any official who commits a felony or other crime while in office, upon good and sufficient evidence found, shall be criminally indicted before a Tribunal having jurisdiction.
- h. Na Kupuna Council shall advise and consent on all appointments made by the Executive Administration.
- i. At the request of Na Kupuna Council, any official of the government of the Nation of Hawai'i shall be required to disclose all relevant materials involving acts committed by that official in an official capacity.

## Section 6. Passage of Laws.

Each Resolution, Bill, or Act shall embrace but one subject, as described by its Title. The enacting clause on each law shall read:

“Be it enacted by Na Kupuna Council of the Nation of Hawai'i.”

## Executive Powers

### The Executive Administration

There shall be established an Executive Administration, which shall consist of the Head of State, a Deputy Head of State, and all Ministries established for the purposes of executing the laws and the business of the Nation.

### Article VIII

#### The Head of State

##### Section 1. Head of State and Deputy Head of State.

There shall be elected among the qualified voters of the Nation, a Head of State and a Deputy Head of State, to execute and administer the laws of the Nation.

##### Section 2. Term of Office.

The Head of State and the Deputy shall hold office for the term of 4 years beginning at the time of election and ending at the next general election.

##### Section 3. Qualifications.

A person shall only be eligible to the Office of Head of State or Deputy Head of State who is a Kanaka Maoli National and Descendant, who has attained the age of 30 years, and has been 10 years a resident within the archipelago of Hawai'i.

##### Section 4. Powers, Duties, and Responsibilities.

The Head of State is delegated with the following powers:

- a. The Head of State shall be the Commander-in-Chief of the armed services when called into the service of the Nation, and shall commission all officers of the Nation of Hawai'i;
- b. The Head of State shall have discretion to grant reprieves and pardons, except in cases of impeachment;
- c. The Head of State shall make appointments of Ministers and executive officers, and shall fill vacancies in the Executive Administration;
- d. The Head of State may require the opinion, in writing, from the principal heads of these Ministries, upon any subject relative to the duties of their respective offices;
- e. The Head of State shall address to the Legislative General Assembly information of the state of the Nation, and recommend for their consideration measures as the Head of State shall judge expedient and necessary; and may on extraordinary circumstances convene Na Kupuna Council or the Citizens' Assembly, or both, for consideration of measures deemed necessary for the Nation's business;
- f. The Head of State shall conduct the foreign affairs of the Nation;

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#### Article XVIII Ratification

**OFFICE OF THE HEAD OF STATE**  
Pu'uhonua O Waimanalo Village, Waimanalo, Oahu

**EXECUTIVE ORDER: 95-001** **April 11, 1995**

**THE REFUGE ACT**

By virtue of the authority vested in me by the Proclamation of Restoration of the Sovereign and Independent Nation State of Hawai'i of January 16, 1994, Resolution 94-006 of the Provisional Government of March 6, 1994, the Hawai'i Constitution of October 9, 1994 and the Hawai'i Constitution of January 16, 1995, Article VIII, Section 4.(e), the Declaration of National State of Emergency of January 17, 1995, and, finally by Natural Law of Na Kupuna o Hawai'i as the Head of State it is ordered as follows:

**PURPOSE, POLICY AND IMPLEMENTATION**

**Terms and Definitions**

**The Refuge Act:** In harmony with the cultural heritage and traditional values of Hawai'i there is established a new Pu'uhonua "Refuge Act" for the purpose of National and International peace and security for any individual no matter what the penalty or the avenger. Refuge in this law represents a superior law over all else and second only to the word of God. It shall protect and guard against any further abuses of our government and people and may be utilized by the Head of State during this State of Emergency for any reasons he deems necessary and required. The Refuge Act gives to the Head of State the Powers to act on behalf of the people in any order of business with the Full Authority of a country as an independent State with International Treaties, Conventions and Agreements. The laws of Hawai'i are carefully placed into The Refuge Act and shall remain within its protection until such a time that the Head of State shall terminate the State of Emergency and Transition of Hawai'i as an Independent State: Safe and Free.

The definition and use of the term "The Refuge Act" shall not be amended or altered in anyway and the contents therein shall be utilized to the fullest power of law under Present Law and Universal Law and shall remain the supreme authority of law throughout the transition.

**International Treaties, Conventions and Agreements:** In 1893 the United States breached the core principle of International Law by abridging their trust obligation to uphold the measures of the treaties they were in signatory with Hawai'i. Therefore the Treaties with the United States are violated and due to be addressed in the International Court of Justice. Because of this unlawful act the United States is also required to make a new treaty with Hawai'i should it be agreed upon by both parties at such time that the final business of Transition is addressed under the observations of the United Nations and under the Present Law.

Page 1 of 6

## Proclamation of Restoration

The Proclamation of Restoration of the Independent and Sovereign Nation-State of Hawai'i of January 16, 1994, is hereby adopted on behalf of the people of the Nation of Hawai'i, and is incorporated into this Constitution with full force and effect as law.

## CHAPTER I RIGHTS AND EQUAL PROTECTION

### ARTICLE I

#### Declaration of Fundamental Rights

Ke Akua has endowed every human being with rights and equal protection with the inherent and inalienable rights that shall not be denied nor infringed upon. Every individual person is born free by nature and is accorded the mutual respect of these rights. Every individual person has the corresponding obligation, duty and responsibility to honor and respect these basic fundamental rights before the law.

#### Section 1. The Fundamental Rights.

- a. The right of everyone to life, liberty and the pursuit of happiness.
- b. The right of everyone to religious freedom and spiritual practices, providing that it does not infringe on anyone's right to life, liberty and their pursuit to happiness.
- c. The right of everyone to choose one's nationality.
- d. The right of everyone to liberty of movement and freedom to choose one's residence.
- e. The right of everyone to be free from discrimination, regardless of race, creed, color, age, nationality, religion, gender or disability.
- f. The right of everyone to a healthy and sustainable environment.
- g. The right of everyone to a living according to the fruits of their labor.
- h. The right of everyone to work.
- i. The right of everyone to freedom of association.
- j. The right of every citizen to take part in government.
- k. The right of every citizen to vote.
- l. The right of everyone to freedom of speech.
- m. The right of everyone to an education.
- n. The right of everyone to privacy.
- o. The right of everyone to personal property.
- p. The right of everyone to be self-sufficient.
- q. The right to a nuclear free and independent Pacific.
- r. The right of everyone to speak the language of their choice.

#### Section 5. Cultural Preservation.

This Constitution, and all laws enacted hereunder, shall not infringe upon the right of the Kanaka Maoli Nationals to preserve their traditional culture. No law shall be enacted towards the destruction of either the culture or the practice of any Kanaka Maoli in his or her traditional culture.

### Article XVII

#### Transitional Provisions

#### Section 1. Corporate Entities.

Upon the ratification of this Constitution, any illegal entity, corporate or otherwise, shall not be immediately dissolved. The Nation of Hawai'i shall provide sufficient notice to these entities and their responsible officers, agents, owners, or otherwise. Time shall be granted to allow these entities to state their claims and desire to function under the Nation of Hawai'i.

#### Section 2. Accountability.

All illegal occupying governmental agencies of the State of Hawai'i, the United States of America, corporate entities, foreign governments and individuals shall be responsible and accountable for the actions of their agents and officials in any criminal or civil claims under either this Constitution or international customary, conventional or criminal law.

#### Section 3. Requirement for treaty.

Any settlement of claims between the Nation of Hawai'i and the United States of America can only be resolved by a Treaty which has been accepted in accordance with this Constitution.

#### Section 4. No limitations for remedies.

This Constitution, and any laws hereunder enacted, shall not limit the lawful government hereby constituted from seeking any other remedy provided by law.

#### Section 5. Governmental transition.

The illegal occupying foreign regime of the State of Hawai'i and the United States of America may continue to provide services in Hawai'i to such extent necessary as the government of the Nation of Hawai'i shall deem proper and expedient for a peaceful transition towards restoration.

#### Section 6. Repeal of inconsistent legislation.

Upon the ratification of this Constitution, all laws of the State of Hawai'i and the United States of America inconsistent with this Constitution are hereby repealed and have no force and effect.

## Article III

### Equal Protection

#### Section 1. Protection against discrimination.

No law shall be enacted prohibiting or abridging the free exercise of these fundamental and enumerated rights, nor shall any individual person be deprived or denied the equal protections of these rights on account of race, creed, color, age, nationality, religion, gender or disability, without due process of law.

#### Section 2. Protection against police powers.

Every individual has the right to be secure in their persons, houses, papers, effects, and personal property, against unreasonable searches and seizures. No warrants shall be issued, unless there is probable cause, good and sufficient reason(s), supported under Oath or affirmation under the penalties of perjury, and particularly describing that place, and the persons or things to be searched or seized.

#### Section 3. Infamous crime.

No individual shall be held to answer for any infamous crime, unless upon the presentment of indictment by a grand jury.

#### Section 4. Protection against the imposition of the death penalty.

There shall be no death penalty.

#### Section 5. Protection against unreasonable punishment.

The purpose for the penal laws shall be for the reformation, rehabilitation, and future deterrence of those persons convicted of criminal acts. In no way shall the penal laws of the Nation of Hawai'i be constructed or applied for the purpose of retribution against a person convicted of a criminal act. At no time shall a cruel or unreasonable punishment be applied to a person convicted of a criminal act.

## Article IV

### Reserved Rights and Powers

#### Section 1. Other Rights Retained by the People.

The enumeration in this Constitution of certain rights shall not deny, deprive, or disparage any other rights retained by the people. Any of the powers not delegated by this Constitution, respectively are hereby reserved to the people.

#### Section 2. National Review of the Nation's Constitution.

People shall retain the right to continuously review this constitution and have the right to demand nation-wide legislative review within three months following the directives by consensus of any one Island's legislative body.

#### Section 3. Supremacy Clause.

The Constitution and all Treaties made under the authority of the Nation shall be the Supreme Law of the Land. All elected officials, judges and officers of the Nation are bound by Oath thereby, anything contrary to the Constitution and the Laws of the Nation notwithstanding.

#### Section 4. Enforcement.

All citizens have a right to enforce the Constitution, Treaties, and laws of the Nation in any court or Tribunal having jurisdiction.

#### Section 5. Immunity.

Any official of the government for the Nation of Hawai'i shall have sovereign immunity, but only if said official was acting within the proper scope of his or her authority. No official shall have immunity for criminal acts committed, whether or not such acts were done within the scope of the official's authority.

#### Section 6. Public Access.

All citizens have a right of free access to public documents.

## Article XIII

### Home Rule

#### Section 1. Definitions.

##### a. Home Rule.

Home Rule is defined as those powers not specifically of a National character relating to Island or local government. Home Rule allows each Island to administer its own affairs without interference from the National Government.

##### b. Island Administration.

Each Island shall create an administration for those affairs which are the exclusive purview of the Island.

#### Section 2. Administration.

Domestic responsibilities of each Island are those powers not specifically reserved to the National government in this Constitution. Each Island shall be responsible for allocating powers of the Island government.

#### Section 3. Island Administration.

Each Island shall be responsible for setting up its own administration, which shall be of the same democratic form as the National government. Each Island government shall be independent from any other, and no Island shall be responsible for the actions of another Island.

#### Section 4. Limitation.

There shall be no laws or regulations inconsistent with this constitution.



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- e. 14 Island of Kaua'i
- f. 14 Island of Lana'i (to be held in trust until there is representation)
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Each Representative shall have attained the age of sixteen years, and shall be of good moral character and standing within the District. Each representative shall have resided within the community for no less than 4 years.

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## Section 2. Charters of the Ministries.

Each Ministry shall have all functions listed in a Charter, and the Charter shall provide all legal authority and limitations for that Ministry. The Legislative General Assembly shall have full authority to modify a Charter at any time.

## Section 3. Heads of Ministries, Departments.

All Ministry personnel appointed by the Head of State shall be approved with the consent of a two-thirds vote of Na Kupuna Council.

### JUDICIARY

#### Article X

##### The National Tribunals

The National Tribunals are hereby established to exercise solely all judicial authority and functions as established by this Constitution. The Judicial Power shall be vested in one Supreme Tribunal, and in such inferior tribunals as the Legislative General Assembly deems necessary and proper to establish. The Tribunals shall have original and appellate jurisdictions, or as the Citizens' Assembly shall provide by law.

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- b. The Supreme Tribunal shall exercise original jurisdiction in all cases affecting Ambassadors and diplomatic representatives;
- c. In all other cases, the Supreme Tribunal shall have appellate jurisdiction and review, both as to questions of law and fact, as the Citizens' Assembly shall provide by law.

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The Supreme Tribunal shall promulgate rules and regulations in all civil and criminal cases with regards to procedure and appeals, which shall have the force and effect of law, with the advice and consent of a two-thirds vote of Na Kupuna Council.

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The Circuit and District Tribunals shall have original jurisdiction in all civil and criminal cases, within the Circuit and District in which they sit.

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Every judge shall be a Kanaka Maoli National, and use common sense to justify fairness, compassion, firmness and honesty in customary Hawaiian law and the laws of this Constitution.

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Na Kupuna Council is hereby delegated the following Powers, Duties and Responsibilities:

- a. The authority to initiate a Resolution, Bill, or Act whose subject relates to the preservation of Hawaiian cultural values.
- b. Each Kupuna, whenever any Resolution, Bill, or Act for maintaining cultural values has been duly presented to the Council for enactment into law, shall have one vote.
- c. Each proposed Resolution, Bill or Act for maintaining cultural values shall become valid upon the two-thirds majority vote of all the members in Council assembled.
- d. Whenever a Resolution, Bill, or Act for maintaining cultural values, passed by the Council and enacted into law by the Head of State, conflicts with a Resolution, Bill, or Act passed by the Legislative General Assembly, the Council law shall have supremacy.
- e. Na Kupuna Council has concurrent veto power with the Head of State over legislation passed by the Legislative General Assembly. This Na Kupuna Council may accept a veto submitted to it by the Head of State by a two-thirds majority vote of the Council assembled within twenty days of receipt of the veto.
- f. Na Kupuna Council shall be responsible for the establishment of a Schedule for voting and apportionment of Districts for all elected officials of government.
- g. Na Kupuna Council shall have exclusive jurisdiction for impeachment and/or recall of government officials. Na Kupuna Council shall promulgate the rules and restrictions for the impeachment process. Notwithstanding this section, any official who commits a felony or other crime while in office, upon good and sufficient evidence found, shall be criminally indicted before a Tribunal having jurisdiction.
- h. Na Kupuna Council shall advise and consent on all appointments made by the Executive Administration.
- i. At the request of Na Kupuna Council, any official of the government of the Nation of Hawai'i shall be required to disclose all relevant materials involving acts committed by that official in an official capacity.

## Section 6. Passage of Laws.

Each Resolution, Bill, or Act shall embrace but one subject, as described by its Title. The enacting clause on each law shall read:

“Be it enacted by Na Kupuna Council of the Nation of Hawai'i.”

## Executive Powers

### The Executive Administration

There shall be established an Executive Administration, which shall consist of the Head of State, a Deputy Head of State, and all Ministries established for the purposes of executing the laws and the business of the Nation.

### Article VIII

#### The Head of State

##### Section 1. Head of State and Deputy Head of State.

There shall be elected among the qualified voters of the Nation, a Head of State and a Deputy Head of State, to execute and administer the laws of the Nation.

##### Section 2. Term of Office.

The Head of State and the Deputy shall hold office for the term of 4 years beginning at the time of election and ending at the next general election.

##### Section 3. Qualifications.

A person shall only be eligible to the Office of Head of State or Deputy Head of State who is a Kanaka Maoli National and Descendant, who has attained the age of 30 years, and has been 10 years a resident within the archipelago of Hawai'i.

##### Section 4. Powers, Duties, and Responsibilities.

The Head of State is delegated with the following powers:

- a. The Head of State shall be the Commander-in-Chief of the armed services when called into the service of the Nation, and shall commission all officers of the Nation of Hawai'i;
- b. The Head of State shall have discretion to grant reprieves and pardons, except in cases of impeachment;
- c. The Head of State shall make appointments of Ministers and executive officers, and shall fill vacancies in the Executive Administration;
- d. The Head of State may require the opinion, in writing, from the principal heads of these Ministries, upon any subject relative to the duties of their respective offices;
- e. The Head of State shall address to the Legislative General Assembly information of the state of the Nation, and recommend for their consideration measures as the Head of State shall judge expedient and necessary; and may on extraordinary circumstances convene Na Kupuna Council or the Citizens' Assembly, or both, for consideration of measures deemed necessary for the Nation's business;
- f. The Head of State shall conduct the foreign affairs of the Nation;





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# HAWAII CONSTITUTION

JANUARY 16, 1995



**THE UNITED STATES OF AMERICA**  
and  
**THE UNITED CHURCH OF CHRIST**  
APOLOGY TO THE  
KANAKAMAOLI PEOPLE  
(Native Hawaiian)

"WHEREAS, the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum,"

**October 27, 1993**  
**U.S. SENATE**  
**CONGRESSIONAL RECORD**

"I know that the two Senators from Hawaii do not agree with the radicals who wish independence as a result, but the logical consequences of this resolution would be independence. That is the only way that the clock can ever truly be turned back."  
Senator Slade Gorton from Washington Passed "Apology Resolution"

**November 15, 1993**  
**U.S. HOUSE OF REPRESENTATIVES**  
Passed "Apology Resolution"

**November 23, 1993**  
**PRESIDENT WILLIAM J. CLINTON**  
Signs "Apology Resolution" into Law  
U.S. Public Law 103-150

**December 28, 1993**

LEGAL OPINION ON U.S. PUBLIC LAW 103-150 BY  
**INTERNATIONAL LAW PROFESSOR FRANCIS ANTHONY BOYLE**

"When I read the Public Law for the first time, the first thought that occurred to me is that now, after 100 years, the United States government, has finally and officially conceded, as a matter of United States law, that Native Hawaiian people have the right to restore the independent nation state that you had in 1893 when the United States government came and destroyed it. Also as a matter of international law, the Native Hawaiian people have the right to now go out and certainly **Proclaim the Restoration of that State.**"

**January 16, 1994**  
Iolani Palace, Honolulu, HI  
**PROCLAMATION RESTORING THE INDEPENDENCE OF THE SOVEREIGN NATION STATE OF HAWAII**

**June 2, 1994**  
**LETTER FROM THE HEAD OF STATE, PU'UHONUA D. K. KANAHELE TO THE PRESIDENT OF THE UNITED STATES, WILLIAM J. CLINTON**

**September 8, 1994**  
**LETTER OF RECOGNITION TO PU'UHONUA D.K. KANAHELE AS HEAD OF STATE OF HAWAII FROM THE PRESIDENT OF THE UNITED STATES, WILLIAM J. CLINTON**

**October 9, 1994**  
**RATIFICATION OF THE NATION OF HAWAII CONSTITUTION**

**January 16, 1995**  
Iolani Palace, Honolulu, HI  
**PROMULGATION OF THE NATION OF HAWAII CONSTITUTION**

Head of State Pu'uhonua D.K. Kanahele  
JUDICIARY EXECUTIVE LEGISLATIVE  
NATIONAL TRIBUNALS ADMINISTRATION GENERAL ASSEMBLY

**January 17, 1995**  
**DECLARATION OF NATIONAL STATE OF EMERGENCY**

**April 11, 1995**  
**ISSUANCE OF EXECUTIVE ORDER 95-001, THE REFUGEE ACT**  
**ISSUANCE OF EXECUTIVE ORDER 95-002, THE PASSPORT ACT**

**1995 to Present**  
**NATION BUILDING/FUNCTIONAL GOVERNMENT**  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT

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- Section 4. Powers and Duties
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- Section 6. Publication of Laws
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- Section 4. Qualifications for Office
- Section 5. Powers, Duties, and Responsibilities of Na Kupuna
- Section 6. Passage of Laws

**Executive Powers**  
**The Executive Administration**

**Article VIII The Head of State**

- Section 1. Head of State and Deputy Head of State
- Section 2. Term of Office
- Section 3. Qualifications
- Section 4. Powers, Duties, and Responsibilities
- Section 5. Powers to execute laws
- Section 6. Power of veto
- Section 7. Of Foreign Relations
- Section 8. Deputy Head of State
- Section 9. In the absence of the Head of State

**Article IX The Executive Ministries**

- Section 1. Creation of Ministries
- Section 2. Charters of the Ministries
- Section 3. Heads of Ministries, Departments

**Judiciary**  
**Tribunal**

**Article X The National Tribunals**

- Section 1. Supreme Tribunal
- Section 2. Selection of Judges
- Section 3. Promulgation of Rules for the Tribunals
- Section 4. Circuit and District Tribunals
- Section 5. Qualifications of Judges
- Section 6. Independence

## Article XVIII

### Ratification

Done in Convention by the Unanimous Consent of na Kanaka Maoli present at 'Iolani Palace, Honolulu, O'ahu o Hawai'i Nei this Sixteenth Day of January in the Year of Our Lord one thousand nine hundred and ninety five for the Independence of our Nation in Witness whereof We hereunto place our names; 379 names signed on to the Nation of Hawai'i's Constitution.

Pu'uhonua B. Kanahele  
Head of State



**NATION OF HAWAII'**  
OFFICE OF THE HEAD OF STATE

PU'UHONUA O WAIMANALO

17 January 1995

DECLARATION

NATIONAL STATE OF EMERGENCY

By virtue of the authority vested in me by the, Resolution 94-006 of the Provisional Government of 6 March 1994, Proclamation of Restoration of the Sovereign and Independent Nation State of Hawai'i of 16 January 1994, the Hawai'i Constitution of 9 October 1995 and 16 January 1995, Article VIII, Section 4. (e) of the Hawai'i Constitution and finally by Natural Law of Na Kupuna o Hawai'i as the Head of State it is ordered as follows:

Due to the extreme and extraordinary circumstances in the development of Hawai'i as an independent State and its many needs as a developing Country to effect and execute policy and standards for the purpose of growth and transition I declare a National State of Emergency this Seventeenth day of January in the year of our Lord Nineteen Hundred and Ninety Five. And, by this declaration enact the powers of the issuance of Executive Order with full authority to act and execute business of the Nation in Transitional Preparedness. All Executive Orders issued by my office shall be submitted as proposed legislation to the Legislative General Assembly when it convenes for the adoption of National Policy and Standards established by Executive Order. This measure is determined as expedient and necessary under the National State of Emergency. It will remain in force until such time as Independence has been fully restored.

*Pu'uhonua B. Kanahele*

Pu'uhonua B. Kanahele



P.O. Box 80, Waimanalo, O'ahu - (808) 259-5049 - f (808) 259-9542

## Preamble Aloha Ke Akua

We the Kanaka Maoli Nationals and Descendants reaffirm our heritage, sacrifices, wisdom and 'Onipa'a (steadfastness) of our late Mo'i Wahine, Lydia Kamaka'eha Lili'uokalani Pahi and all our Ali'i, Kahuna (specialists), and Maka'ainana (people) from each of the Mokupuni o Hawai'i Nei, mindful of the Divine heritage and National creed which ke Akua has endowed upon us, and the legacy of Our Ancestors, who exercised sovereignty in a highly developed system of government based upon Aloha 'Aina, and who lived in and occupied the Archipelago of Hawai'i since time immemorial;

We the Kanaka Maoli Nationals and Descendants appeal to the Supreme Justice of the world, ke Akua, and Our Ancestors, for the integrity of our intentions, as we unite to protect our sacred lives and honor;

We the Kanaka Maoli Nationals and Descendants have been subjected to the international crimes of Genocide and Crimes Against Humanity, as defined in the Nuremberg laws;

We the Kanaka Maoli Nationals and Descendants have the right to be free and independent, unfettered from any foreign power;

We the Kanaka Maoli Nationals and Descendants do hereby declare Our Independence among the Nations of the World;

We the Kanaka Maoli Nationals and Descendants reaffirm Our right to self-determination as a people, and by virtue of that right, We freely determine to restore Our political, economic, social, and cultural rights;

We the Kanaka Maoli Nationals and Descendants maintain our spiritual relationship with nature and all our surroundings, in universal harmony, for the rights of humanity, in peace, love, and understanding;

We the Kanaka Maoli Nationals and Descendants maintain Divine justice and liberty to be guided by ke Akua and Our Kupuna, and those who are here with us today to light the way;

We the Kanaka Maoli Nationals and Descendants maintain a government of the people, by the people and for the people, to protect and preserve Our cultural heritage in perpetuity for the future of our posterity;

We the Kanaka Maoli Nationals and Descendants maintain 'Olelo Makuahine as our official language;

We the Kanaka Maoli Nationals and Descendants reaffirm and maintain the 'Ohana System of our society as a whole whereby Kupuna advise and consent, Makua act and lead, and 'Opio help and learn;

Thereby, We the People of the Nation of Hawai'i, do hereby ordain and establish this Constitution.



## Article XIV

### Amendments

#### Section 1. Amendments, How Instituted.

Any citizen registered to vote may propose an amendment to this Constitution. An Amendment must be brought forth as a proposition to the Legislative General Assembly, which must pass the Amendment by a two-thirds vote. The Amendment shall then be brought before the people of this Nation by referendum for a two-thirds vote of the qualified voters. Should the Amendment be approved, it shall take effect no less than 30 days after passage.

## Article XV

### Citizenship

#### Section 1. Citizenship.

- a. Kanaka Maoli National. A Kanaka Maoli is defined as any person who by birth or national origin and ancestry is a descendant of the original inhabitants who prior to 1778 exercised sovereignty over the Archipelago of Hawai'i.
- b. Citizens, Naturalized. The Legislative General Assembly shall provide by law a naturalization process for all persons who qualify and choose to become citizens of the Nation.

## Article XVI

### Laws Pertaining to Lands and Cultural Preservation

#### Section 1. National lands of the Kanaka Maoli Nationals.

Prior to 1778, the Kanaka Maoli Nationals lived in a communal land tenure system, and every National had the right and privilege to receive and acquire the use of land.

#### Section 2. Transition to communal land tenure.

Na Kupuna shall provide laws for a transitional system of land use for all its Nationals and Citizens.

#### Section 3. Communal land tenure.

No person or group of persons, or entity or groups of entities, may own or dispose of National land, all National land being held in trust for the Kanaka Maoli Nationals by this government. A person may apply for the usage of these lands, consistent with the requirements of law.

#### Section 4. Claims of the Kanaka Maoli Nationals.

All national lands and resources heretofore lawfully claimed by the Kanaka Maoli Nationals are held in absolute common undivided interest held in perpetuity for the Kanaka Maoli Nationals forever.

## Article II

### Enumerated Rights

The people of the Nation of Hawai'i, hereby establish these enumerated rights and equal protections before the law, in all civil and criminal cases, before any court or tribunal heretofore established by this Constitution, or by law. These rights include, but are not limited to, the following:

#### Section 1. In all civil cases.

- a. The right of everyone to the equal protection before the law.
- b. The right of everyone to a speedy and fair trial, before an impartial jury of one's own peers.
- c. The right of everyone to defend oneself, and of the right of legal assistance of one's own choosing.
- d. The right of everyone to services of an interpreter.
- e. The right to call, examine and cross-examine witnesses, on one's own behalf.
- f. The right of the accused or the incarcerated to a writ of habeas corpus.

#### Section 2. In any criminal prosecutions of an accused.

- a. The right of the accused not to be compelled to be a witness against oneself.
- b. The right of the accused or the incarcerated to a writ of habeas corpus.
- c. The right of the accused to a speedy trial, before an impartial jury of the Island or District, where the crime was committed.
- d. The right of the accused to be duly informed of the nature and cause of the accusations.
- e. The right of the accused to confront opposing witnesses in a meaningful manner.
- f. The right of the accused to produce by compulsory process witnesses for the defense.
- g. The right of the accused to have legal assistance of one's own choice or to act in propria persona.
- h. The right of the accused to be innocent until proven guilty and to be convicted by a standard of proof not less than beyond a reasonable doubt.
- i. The right of the accused to be tried by a jury of one's own peers.
- j. No person shall be convicted on the basis of an ex post facto law nor a bill of attainder.
- k. The right of the accused to be indicted by a grand jury of one's own peers.

#### Section 3. Ho'oponopono.

All civil and criminal cases will have automatic access to Ho'oponopono conflict resolution at all times upon consent of all parties.

## Section 6. Independence.

No judge or member of the Tribunals shall exercise any political or administrative function, or engage in any other occupation of a professional nature.

### Chapter III

#### Administration of the Nation

##### Article XI

###### Elections

There is hereby established a General Elections process.

#### Section 1. Voting Qualifications.

- a. Every National or Citizen of the Nation of Hawai'i who has attained the age of 16, has been a resident of the Archipelago of Hawai'i for not less than 3 years, and is a registered voter as provided by law, shall be qualified to vote.
- b. No person who is convicted of a felonious crime shall be qualified to vote, until such time as the person has fully served the sentence imposed or has been pardoned.
- c. The Citizens' Assembly shall provide by law for the registration of voters.

#### Section 2. Oath of Office.

All elected, public and civil officials upon entering their duties shall take the following Oath:

"I [name], do solemnly affirm in the presence of ke Akua, the Nation of Hawai'i and its people, that I will honor, support and defend the Constitution and the laws of this Nation, and that I will faithfully execute and discharge my duties as [office], to the best of my knowledge and ability, so help me Akua."

##### Article XII

###### Administrative Laws

#### Section 1. Compensation.

All elected members of the Legislative General Assembly, the Executive Administration, and the Tribunals shall receive fair compensation for their services. The Citizens' Assembly shall provide by law, wages or compensation for all government employees. All government employees shall serve in their official capacities based upon these individual contractual obligations.

#### Section 2. Limitations.

No governmental official, during the time for which he or she is elected, shall be appointed to any other office, or accept any money, emoluments, gifts, trusts, or contributions from any organization, group, corporation, person, or otherwise, with the exception of cultural protocol.

## CHAPTER II STRUCTURE

### Business of the Nation

#### The Legislative General Assembly of the Nation of Hawai'i

We, the Kanaka Maoli Nationals and Descendants hereby establish this Constitution, and acknowledge that the business of the nation shall be authorized in accordance with this Constitution. All government officials shall comply with this Constitution. All legislative powers shall be vested in a Legislative General Assembly composed of Na Kupuna Council and the Citizens' Assembly. All powers and subjects of legislation shall not be inconsistent with this Constitution.

##### Article V

###### Legislative Powers and Limitations

The Legislative General Assembly has the power to make all laws necessary and proper for carrying into execution the business of the Nation, and all other powers vested in this Constitution.

#### Section 1. Of Making Laws, Generally.

- a. To lay and collect taxes, duties, tariffs, and excises; to pay the debts and provide for the common defense and general welfare of the Nation. All duties and tariffs shall be uniform in nature throughout the Nation.
- b. To borrow money on the equity of the Nation.
- c. To regulate commerce with foreign nations.
- d. To establish a uniform rule of Naturalization and citizenship.
- e. To establish a uniform rule on the subject of bankruptcies.
- f. To coin money, regulate the value thereof, and of foreign money, and fix a standard of weights and measures; and to provide for the punishment of counterfeiting the securities and current coin of the Nation.
- g. To establish post offices and postal services, national and foreign.
- h. To promote the progress of science, technologies, arts and culture, and environment.
- i. To declare martial law in the event of rebellion, and to provide calling forth the militia to execute the laws to suppress insurrections and to repel invasions.
- j. To raise and support armies and navy for National Peace and Security.
- k. To exercise exclusive legislation, in all cases whatsoever, over the Nation and possessions over all places purchased by lawful cession by the Nation of Hawai'i, in foreign soil or territory.
- l. To define and punish piracies and felonies committed on the high seas, and offenses committed against the law of nations.
- m. To devise and make all laws necessary and proper for the execution of the powers vested by this constitution.
- n. To protect and defend the patent and copyright laws of the Nation.

- g. The Head of State shall be required to faithfully uphold and execute the laws of the Nation;
- h. The Head of State, or his Deputy by direction of the Head of State, may petition the Legislative General Assembly for the passage into law any Resolution, Bill or Act relating to the Executive Administration, consistent with this Constitution.

Section 5. Powers to execute laws.

The Head of State, upon the receipt of any Resolution Bill, or Act, lawfully passed by the Citizens' Assembly or Na Kupuna Council, shall faithfully sign all laws, and forthwith direct and execute said laws for implementation, excluding those laws over which the Head of State exercises the power of veto.

Section 6. Power of veto.

The Head of State, upon the receipt of any Resolution Bill or Act deemed unconstitutional or contrary to the will of the people, shall announce and in writing petition Na Kupuna Council a message to veto said law within twenty days; and if any such Resolution, Bill, or Act is not acted upon by Na Kupuna within the twenty day period, it shall become law.

Section 7. Of Foreign Relations.

- a. The Head of State may appoint Ambassadors and Consuls.
- b. The Head of State, his Ambassadors, Ministers or Consuls shall have authority to negotiate into Treaties, Conventions, or Agreements with foreign states.

Section 8. Deputy Head of State.

The Deputy Head of State shall preside over the Legislative General Assembly. The Deputy shall be responsible to the Executive Administration, and for advising and informing the Head of State of all necessary information with regard to the order of business within the Legislative General Assembly.

Section 9. In the absence of the Head of State.

In the event of the absence of the Head of State, the Deputy shall preside over the affairs of the Nation.

**Article IX**

**The Executive Ministries**

The Citizens' Assembly shall provide by Charter for the creation of any Ministry for the Nation, as is deemed necessary, essential and proper for the faithful execution of the business of the Nation.

Section 1. Creation of Ministries.

The Citizens' Assembly shall provide for the creation of Ministries, as the Nation deems necessary and proper for the public benefit of the people.

Section 5. Upon Vacancy in the Citizens' Assembly.

Any Vacancy preventing any member of the Citizens' Assembly to function in his or her official capacity resulting in the removal from office shall be filled by a special election of the candidate within his or her respective district, or should there be no other candidates the appointment shall be made by Na Kupuna Council.

Section 6. Publication of Laws.

The Citizens' Assembly shall provide for the publication of all laws.

Section 7. Passage of Laws.

Each Resolution, Bill, or Act shall embrace but one subject, as described by its Title.

**Article VII**

**Na Kupuna Council**

There shall hereby be established a Na Kupuna Council consisting of Kanaka Maoli Nationals. Na Kupuna Council shall be elected to sit in Council for a specified term of office.

Section 1. Composition.

Na Kupuna Council shall be comprised of 56 Members. Every Island shall elect their own members to Na Kupuna to sit in the Legislative General Assembly as follows:

- a. 7 from the Island of Hawai'i
- b. 7 from the Islands of Maui
- c. 7 from the Islands of Moloka'i
- d. 7 from the Island of O'ahu
- e. 7 from the Islands of Kaua'i
- f. 7 from Kaho'olawe (to be held in trust until there is representation)
- g. 7 from Ni'ihau (to be held in trust until there is representation)
- h. 7 from Lana'i (to be held in trust until there is representation)

Section 2. Na Makua and Na 'Opio Council

There shall be a Council of Na Makua and Na 'Opio consisting of Kanaka Maoli Nationals. Na Makua and Na 'Opio shall be selected to sit in council with Na Kupuna Council for a 2 year term of office.

Section 3. Term of Office.

Na Kupuna Council shall sit in office for a term of 4 years, beginning at the time of election and ending at the time of the next general election.

Section 4. Qualifications for Office.

All Kupuna shall be eligible for this office who are acknowledged and recognized ('ike) by their peers as teachers of the culture, and each Island shall determine the qualifications of its Kupuna. Kupuna shall be no less than 45 years of age.

Public Law 100-606  
100th Congress

An Act

To implement the International Convention on the Prevention and Punishment of  
Genocide.

Nov. 4, 1988  
[S. 1851]

*Be it enacted by the Senate and House of Representatives of the  
United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Genocide Convention Implementa-  
tion Act of 1987 (the Proxmire Act)".

SEC. 2. TITLE 18 AMENDMENTS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended  
by inserting after chapter 50 the following:

Genocide  
Convention  
Implementation  
Act of 1987 (the  
Proxmire Act).  
18 USC 1091  
note.

**"CHAPTER 50A—GENOCIDE**

"Sec.  
1091. Genocide.  
1092. Exclusive remedies.  
1093. Definitions.

**"§ 1091. Genocide**

"(a) BASIC OFFENSE.—Whoever, whether in time of peace or in  
time of war, in a circumstance described in subsection (d) and with  
the specific intent to destroy, in whole or in substantial part, a  
national, ethnic, racial, or religious group as such—

"(1) kills members of that group;

"(2) causes serious bodily injury to members of that group;

"(3) causes the permanent impairment of the mental faculties  
of members of the group through drugs, torture, or similar  
techniques;

"(4) subjects the group to conditions of life that are intended  
to cause the physical destruction of the group in whole or in  
part;

"(5) imposes measures intended to prevent births within the  
group; or

"(6) transfers by force children of the group to another group;  
or attempts to do so, shall be punished as provided in subsection (b).

"(b) PUNISHMENT FOR BASIC OFFENSE.—The punishment for an  
offense under subsection (a) is—

"(1) in the case of an offense under subsection (a)(1), a fine of  
not more than \$1,000,000 and imprisonment for life; and

"(2) a fine of not more than \$1,000,000 or imprisonment for  
not more than twenty years, or both, in any other case.

"(c) INCITEMENT OFFENSE.—Whoever in a circumstance described  
in subsection (d) directly and publicly incites another to violate  
subsection (a) shall be fined not more than \$500,000 or imprisoned  
not more than five years, or both.

"(d) REQUIRED CIRCUMSTANCE FOR OFFENSES.—The circumstance  
referred to in subsections (a) and (c) is that—



“(1) the offense is committed within the United States; or

“(2) the alleged offender is a national of the United States (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

“(e) **NONAPPLICABILITY OF CERTAIN LIMITATIONS.**—Notwithstanding section 3282 of this title, in the case of an offense under subsection (a)(1), an indictment may be found, or information instituted, at any time without limitation.

“§ 1092. **Exclusive remedies**

“Nothing in this chapter shall be construed as precluding the application of State or local laws to the conduct proscribed by this chapter, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any proceeding.

“§ 1093. **Definitions**

“As used in this chapter—

“(1) the term ‘children’ means the plural and means individuals who have not attained the age of eighteen years;

“(2) the term ‘ethnic group’ means a set of individuals whose identity as such is distinctive in terms of common cultural traditions or heritage;

“(3) the term ‘incites’ means urges another to engage imminently in conduct in circumstances under which there is a substantial likelihood of imminently causing such conduct;

“(4) the term ‘members’ means the plural;

“(5) the term ‘national group’ means a set of individuals whose identity as such is distinctive in terms of nationality or national origins;

“(6) the term ‘racial group’ means a set of individuals whose identity as such is distinctive in terms of physical characteristics or biological descent;

“(7) the term ‘religious group’ means a set of individuals whose identity as such is distinctive in terms of common religious creed, beliefs, doctrines, practices, or rituals; and

“(8) the term ‘substantial part’ means a part of a group of such numerical significance that the destruction or loss of that part would cause the destruction of the group as a viable entity within the nation of which such group is a part.”

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 50 the following new item:

"50A. Genocide ..... 1091".

Approved November 4, 1988.

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**LEGISLATIVE HISTORY—S. 1851 (H.R. 4243):**

**SENATE REPORTS:** No. 100-333 (Comm. on the Judiciary).

**CONGRESSIONAL RECORD,** Vol. 134 (1988):

Oct. 14, considered and passed Senate.

Oct. 19, considered and passed House.

**WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS,** Vol. 24 (1988):

Nov. 4, Presidential remarks.





**HB-1326-HD-2**

Submitted on: 3/31/2019 4:36:08 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeff vesci	Testifying for hapa	Oppose	No

Comments:

Enough is enough! Stop this theft now!



Aloha Senators!

March 30, 2019

First, thank you for all you do for the people of Hawaii. I'm sure most people can't imagine how difficult it can be to make the tough choices that govern a wealthy and complicated State like ours. Mahalo nui

I'd like to ask you to keep a four things in mind when you finalize and vote on HB1326 and HB1171.

**First**, as some of you may know, the 2018 Election here in Maui County was historic in many ways. Five new Council Members were elected, each with their own skill sets which as it turns out, are complimentary to one another. The 9 member Maui County Council is now comprised of 7 women and two men.

Since none of them held political office prior, I think their election illustrates a new mindset here on Maui; that people here want elected officials to put the people and the aina first. In my view, the message clearly stated "Let's put people before profits".

You can find info on each of them and which Committees they chair here and as well as contact info for you.

[www.TheMauiMiracle.org/Government](http://www.TheMauiMiracle.org/Government)

**Second**, the sustainability movement here on Maui is stronger than ever. In addition to the campaign platforms of many of our Council Members, organizations like Aina First have established a strong presence with an impressive foundation of professionalism and expertise.

Indeed, we ourselves played a role in this last election based on the notion of "Preserving the long term economic, cultural and environmental sustainability of Maui"

**Third**, Everyone on Maui wishes Mahi Pono well and we have very strong indications that they will do pono. Thousands of Maui residents have dreamed of the day when we'd see good stewardship of the land that brings us closer to food sustainability. We are too easily impacted by the effects of Climate Change that make us vulnerable to interruptions to our food supply. The last threat of a storm resulted in empty store shelves for up to 10 days.

That concern affects everyone on the island because in the words of Robin Knox here, it's "One Water". From the time rain clouds form to the water that nourishes reefs, fish and tourism, these basic areas of sustenance are no different than our dependence on the barges that bring supplies to us.

Generally, on one level or another, the people of Maui believe in the concept of one water and HB1326, as currently written, does not adequately recognize everything mentioned above and that's not fair. So we ask you to take that into consideration. Again, while I and others believe in Mahi Pono and recognize that in the end, this is a business issue, good business agreements also require equitability among all stakeholders. For some, simply just tossing us a bone will suffice. For others, it's a matter of respecting all the people of Maui. Whichever it is, the best business solution is to include a very visible recognition of all stakeholder interests.

**Fourth;** This is what we are looking at and it involves much more than one business entity.

- East Maui Stream flow enables Taro growers, native stream life, recreational uses, and beautiful waterfalls. Near shore fisheries are enriched by nutrients carried in fresh water streams. More water in the streams equals more fish in the sea!
- Our Upcountry Water Supply is NOT dependent on passage of House Bill 1326, because Judge Nishimura issued an order specifically protecting Upcountry water in her 2016 ruling. Maui County's Water Director recently confirmed that Upcountry water is NOT at risk.
- Sustainable Agriculture; There is plenty of water for all if used wisely. Small farmers need water, too – not just big corporate ones. House Bill 1326 will delay fair water use for another 7 years.

Please take these factors into consideration regarding HB1326 and HB1171.

Please also recognize that very clearly, voters are increasingly feeling like they are among "The Little People" as Leona Helmsley famously coined the phrase. That's an unhealthy circumstance for everyone. Not only is it One Water, we are One People. All of us. Your actions, by law, (below) are supposed to recognize that. Aside from the fact that you govern a land we took from a sovereign nation, this one feels different than all the others. That's what separates us from other State Legislatures.

Honestly, it's not right that citizens should have to grovel to get our representative to do pono. It's simply not right. People like WaiForAll.com and the Sierra Club are not naïve tree huggers whose views should be dismissed as if they were nothing. These are smart people, not rabble rouser hippies. Ultimately, they make good business sense. Our point of view means something.

Mahalo nui,

Nicholas James Drance  
The Maui Miracle.org

Please take a moment to re-read the Aloha Spirit Law again and I hope it will guide you in your work

**[§5-7.5] "Aloha Spirit".** (a) "Aloha Spirit" is the coordination of mind and heart within each person. It brings each person to the self. Each person must think and emote good feelings to others. In the contemplation and presence of the life force, "Aloha", the following unuhi laula loa may be used:

"Akahai", meaning kindness to be expressed with tenderness;

"Lokahi", meaning unity, to be expressed with harmony;

"Oluolu", meaning agreeable, to be expressed with pleasantness;

"Haahaa", meaning humility, to be expressed with modesty;

"Ahonui", meaning patience, to be expressed with perseverance.

These are traits of character that express the charm, warmth and sincerity of Hawaii's people. It was the working philosophy of native Hawaiians and was presented as a gift to the people of Hawaii. "Aloha" is more than a word of greeting or farewell or a salutation. "Aloha" means mutual regard and affection and extends warmth in caring with no obligation in return. "Aloha" is the essence of relationships in which each person is important to every other person for collective existence. "Aloha" means to hear what is not said, to see what cannot be seen and to know the unknowable.

(b) In exercising their power on behalf of the people and in fulfillment of their responsibilities, obligations and service to the people, the legislature, governor, lieutenant governor, executive officers of each department, the chief justice, associate justices, and judges of the appellate, circuit, and district courts may contemplate and reside with the life force and give consideration to the "Aloha Spirit". [L 1986, c 202, §1]

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:59:10 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gregory Friel	Individual	Support	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:17:21 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

**HB-1326-HD-2**

Submitted on: 3/29/2019 7:25:49 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John R. Gordines	Individual	Support	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 1:06:35 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James McCully	Individual	Support	No

Comments:

I testify in Strong Support of this bill.

There is a absolute neccessity to resolve the ongoing use of Revocable Permits in lieu of DLNR's long delayed issuance of leases to the permit holders. It is inexcusable to use the highly politicized controversy on Maui and Kauai seemingly based on personal grievances to subvert the ongoing process for resolving these issues thru legislation such as this bill. Opponents seek to delay any resolution, thus the Legislature must show the will to act. Amend the bills as you see fit, but move the bills to Conference and then on to the Governor for enactment. If resolution requires compromise, so be it.

In so doing though, please do not replace facts for opinions backed with a passionate intensity , do not make hysteria equivalent to reason, and do not allow a focused minority of opposition to outweigh the needs of those who actually use the water on a real time and on an historical basis in places like Kau, Oahu, and users not named A&B and Grove Farm. While those two giant entities are easy targets for citizen ire there are many more users who are in dire need of this corrective legislation.



April 2, 2019  
10:45 AM  
Committee WTL/WAM  
Room 211

**Testimony on HB 1326, Proposed HD2/SD1**  
Relating to Water Rights

Aloha Chair Dela Cruz, Chair Kahele, and members of the Committee,

My name is Randy Cabral. I have been a small farmer and rancher on the Big Island for over 40 years, supplying food to my community. I think what I do fits the definition of sustainable local agriculture.

**I support HB 1326 HD2/SD1 Proposed.**

Without water, we cannot grow crops or raise livestock. Many areas of the islands are ideal for agriculture except that they are too dry. These areas are dependent on waters from other locations.

This bill is not just about A&B, Mahi Pono, or the Kauai utility. It is not about corporations stealing water. I am only one of many other small farmers and ranchers who are totally dependent on waters controlled by revocable permits. We have no alternative water source. And after 14 years of working to resolve the permit issue, we still do not have a long-term water lease. The process is extremely complicated, lengthy, and expensive in part because of the detailed, site-specific documents that must be prepared by consultants, and because the leasing process must be sanctioned through DLNR's Land Division, Division of Forestry and Wildlife, the Water Commission, the Department of Hawaiian Homelands, and the Attorney General, among others, to ensure that the lease is consistent with the public trust.

This bill reasonably extends the time allowed to obtain a long-term lease. It will allow me to continue farming and ranching while the process continues. If this bill does not pass, there will be no water for my ranch and many others, forcing us to shut down.

Please support our local farmers and ranchers by passing this measure. Thank you.

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:25:26 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
J Ashman	Individual	Support	No

Comments:

I have worked with Hawaii's farmers and ranchers on environmental issues for 30 years.

This issue has become unnecessarily controversial. Everyone agrees that farmers, ranchers, the public, and the environment must have continued adequate access to water. Without passage of HB 1326 (preferably HD2 which give a longer time period) this session, farmers and ranchers will have NO water when their revocable permits expire because they still are not able to obtain water leases due to the complex and costly process. Well over 100 farmers and ranchers are currently in limbo awaiting your assistance.

Regarding the addition of conditions, DLNR/BLNR/CWRM **already** ensure that every water RP and lease is in the public interest. Please do not forget that agriculture is in the public interest! These government entities meet that standard that by requiring an enormous amount of data, reviewing and deliberating on all the complex information and placing conditions, including flow standards on the permits and leases.

I respectfully request that a bill is passed that extends the holdover permits for an additional period, long enough to realistically allow DLNR/BLNR the time to issue water leases.

This article helps outline the dire situation Hawaii's agriculture faces: <https://www.civilbeat.org/2019/03/water-rights-bill-affects-many-small-farmers-and-ranchers/>

Thank you.

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:42:13 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paulette Tam	Individual	Support	No

Comments:

HD1326, HD2

Measure Title: Relating to Water Rights.

Proposed SD1

(HSCR1252)

Allows for a total of six consecutive one-year holdovers of water permits under section 171-58(c), HRS. Places conditions on holdovers that authorize the use of over two million gallons of water per day. Requires holdovers to continue without BLNR action while a contested case hearing is pending. Makes conforming amendments to the reporting requirement in Act 126, SLH 2016. Requires the BLNR, prior to authorizing holdovers after 1/1/2020, to hold a public hearing on the adoption of proposed administrative rules on the disposition of water rights by lease at public auction and water valuation process and retain certified appraiser who has a sufficient understanding of real property and water law in the State. Exempts authorized instream, in-watershed use of water for wetland kalo cultivation done in a traditional manner. Requires BLNR, the chairperson of BLNR, and commission on water resource management to report to the legislature on the effectiveness of section 171-58, HRS. Extends the repeal and reenactment provision for Act 126, SLH 2016, from June 30, 2019, to June 30, 2022. (Proposed SD1)

Aloha and Peace Be Within You, Water and Land Chairman, Senator Kaiali'i Kahele; Vice Chairman Senator Gilbert S.C. Keith-Agaran and Committee Members; and Ways and Means Chairman, Senator Donavan M. Dela Cruz; Vice Chairman, Senator Gilbert S.C. Keith-Agaran and Committee Members:

My name is Paulette-Ann Tam, concerned Kane'ohe Resident. Former Kane'ohe Neighborhood Board Member from 1989 to 2005 with term breaks; today, I represent myself.

I support HB1326 HD2 Proposed SD1 (HSCR1252) intent and in its entirety, because Agricultural land is to be used for producer of safe sustainability crops for consumption and possibly export. Agricultural Properties aren't to be rezoned to build residential homes, shopping malls and other commercial property and industrial use in my opinion.

Mahalo to Alexander and Baldwin's sale to Mahi Pono LLC:

<https://mauinow.com/2018/12/20/new-era-of-agriculture-on-maui-ab-enters-agreement-with-mahi-pono/>

"New Era of Ag on Maui: A&B Sells 41,000 Acres to Mahi Pono December 20, 2018, 12:11 PM HST · Updated December 24, 6:59 AM 22 Comment

Paragraph Four

"With our purchase of this fertile land, we want to help ensure that Maui's residents can produce agricultural products for future generations," said Ann Chin, President, Mahi Pono. "We want to expand Maui's thriving and diversified agriculture industry. As we develop our plans, we will work closely with local stakeholders, including the agricultural community, our neighbors, government officials, civic leaders and the local community. Mahi Pono is committed to sustainable agriculture. We will be stewards of the land, and responsible users and protectors of Hawai'i's natural resources and environment."

Paragraph Ten

"Under the terms of the agreement, Mahi Pono purchased approximately 41,000 acres of agricultural farm land from A&B, along with the above mentioned companies. The \$262 million transaction closed today. A&B and Mahi Pono also will partner in the ownership and management of East Maui Irrigation Company."

Paragraph Eleven

"A&B's commitment, when we made the difficult decision to close our sugar operations, was to team up with qualified farmers and transition these lands to a diversified agriculture model. We acknowledged that this transition would take time, but could support the important goals of food and energy self-sufficiency for Hawai'i, preserve productive agricultural lands, and stimulate new economic activity on Maui and in the state," said Chris Benjamin, A&B President and CEO."

Paragraph Seventeen

"This transition represents a unique opportunity to advance diversified agriculture and increase local food production in Hawai'i," said Hawai'i Governor David Ige. "

Additionally, in my opinion, the highest and best use for Agricultural Properties are Non GMO fruits, vegetables and other such as Cacao for sustainable economic growth for the State of Hawaii's long term Safe Food Supply for statewide consumption and exports."

Please pass HB1326 HD2 Proposed SD1 (HSCR1252) .

On another note, in California one very cold morning at the break of dawn in the early 1960's, I sat on a pickup truck cab picking fresh apricots from the tree on a family friend's, Bob Wong, fruit farm. Rubbed the fuzz off on my shirt and ate them. Other fruits there were seasonal Bing Cherries, Peaches, and Pears. Blessings.

Mahalo and Aloha, Paulette-A Tam

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:53:56 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jill J Mattos	Individual	Support	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:15:51 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Ah Mai/HACD	Individual	Support	No

Comments:



**LATE**

Cindy Goldstein  
Ag Matters, LLC  
98-814 C Kaonohi St  
Aiea, HI 96701  
[Agmatters@hawaii.rr.com](mailto:Agmatters@hawaii.rr.com)

HB1326 HD2 proposed SD1:Relating to Water Rights  
Senate Committee on Water and Land & Committee on Ways and Means  
Hearing Tuesday April 2<sup>nd</sup> at 10:45 am Conf Room

Chair Kaiali'i Kahele, Vice Chair Gilbert Keith-Agaran; Chair Donovan Dela Cruz and Vice Chair Gilbert Keith-Agaran, and members of the joint committees,

Position: **Support.**

Support HB 1326 H.D.2 draft, do not support proposed SD1

Farmers face many challenges to their operations. We do not want to see creation of a situation that makes it impossible for farmers to continue operating. Policy that creates uncertainty about access to water, or even worse, that creates a situation where water is no longer available for animals, farm fields, and agricultural operations is bad policy and a step in the wrong direction.

It is unfortunate to see this issue portrayed as big companies stealing water. The unintended consequence is a negative impact on farmers and utility consumers. Farming operations are businesses that should be supported. We hear so much talk about Hawaii needing to become more food self sufficient. Farming operations need to make a profit to stay in business and do not need additional uncertainty. Farming cannot continue if there is no water or limited and uncertain amounts of water available. Utility companies that seek permits supply electricity to customers, with a negative impact on consumers should KIUC be prevented from access to needed water.

The permitting and access to water process needs to be clear and more time is needed to put policy in place. We have already seen that three years is not enough time for state agencies to provide the structure and guidance needed to have a sound reliable process that applicants can follow.

The SD1 draft is not a good alternative.

Mahalo for the opportunity to provide testimony in support of HB1326 H.D.2.



**HB-1326-HD-2**

Submitted on: 4/2/2019 9:14:12 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lorie Farrell	Individual	Support	No

Comments:

SUPPORT HB 1326 with NO AMENDMENTS

Give farmers waters, This is not a A&B Bill....

**HB-1326-HD-2**

Submitted on: 3/29/2019 7:46:42 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Moran	Individual	Oppose	No

Comments:

I join with the Democratic Party of Hawaii opposing this bill, the **corporate water theft bill**. It is obvious this is to benefit A & B; it is obvious that claims upcounty Maui would not have county water is shabai. It is obvious voters are watching to see who supports the people & who supports the corporation. Please vote with the people & say no to corporate water theft. Mahalo

**HB-1326-HD-2**

Submitted on: 3/29/2019 8:43:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nathan Yuen	Individual	Oppose	No

Comments:

Dear Chair Donovan M. Dela Cruz, Vice Chair Gilbert S.C. Keith-Agaran, and members of the Senate Committee on Ways and Means:

I strongly oppose HB 1326, HD2 which seeks a 7 year extension on the use of temporary permits for permanent diversions of public water. The claim made by Alexander & Baldwin (A&B) that HB 1326, HD2 benefits small farmers, ranchers and producers of hydro-electric energy is patently false -- they still have access to the water. A&B seeks to obfuscate the fact that it alone benefits to the tune of \$62 million from their real estate deal with Mahi Pono if they deliver water rights with the land.

With income inequality at near record levels why is this corporate giveaway even being considered? According to the Hawaii State Constitution waters is held in the public trust to benefit all of Hawaii's people not just landowners. To make matters worse, A&B is a real estate investment trust which pays zero Hawaii income tax. This bill enables A&B shareholders to make out like bandits.

For decades A&B diverted virtually all of the stream water from East Maui for sugarcane without conducting an environmental impact statement to assess any adverse impacts to the community and the aina. A&B diverted millions of gallons of water each year with little or no regard for taro farmers and stream wildlife in direct violation of the public trust doctrine in the Hawaii State Constitution. In 2016 A&B ceased to grow sugarcane but continued to take the water at the detriment of everyone else.

So egregious was A&B's abuse of the temporary permit system that the courts ruled against A&B in 2016, prohibiting A&B from using temporary permits to authorize permanent diversions of stream water. Instead of abiding by the circuit court's ruling, A&B flexed its economic and political influence by getting the legislature to do its bidding for three more years. This was wrong. Now that the 3 years have gone by A&B is asking for another 7 year extension. This cannot be allowed to continue.

On June 20, 2018, the Water Commission ordered A&B to restore full stream flow to 10 streams and substantial restoration to 7 other East Maui stream. A&B defied the order, did not decommission its diversions, and continues to take the water even when it has no use for it. Every religious and moral code teaches to take only what you need and to use it wisely. A&B is a water glutton. As a real estate investment trust A&B's only goal

is to maximize shareholder value. Such flagrant disregard cannot be rewarded with an extension.

There is a legal process administered by the Water Commission for private parties to request use of public water. This process is designed to ensure the watershed is protected, stream ecosystems are not harmed, and the public is properly compensated for the use of public trust resources. Any entity seeking to divert water away from the public should follow this process. The legislature needs to follow the state constitution to ensure the public receives fair compensation for the use of Hawaii's public trust resources, while protecting those resources from over-use and miss-use.

I urge you to kill HB 1326, HD2. The people of Hawaii are watching to see whose interest you serve. Thank you for this opportunity to testify on this important matter.

Sincerely,  
Nathan Yuen

**HB-1326-HD-2**

Submitted on: 3/29/2019 9:58:35 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow	Individual	Oppose	No

Comments:

This is shibai. It is a giveaway to Alexander and Baldwin and a slap in the face to native Hawaiians and others. Stop these giveaways now and vote no.

**HB-1326-HD-2**

Submitted on: 3/29/2019 10:26:06 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cory Harden	Individual	Oppose	No

Comments:

Aloha legislators,

Please vote down water theft. Don't kick the can down the road.

mahalo,

Cory

**HB-1326-HD-2**

Submitted on: 3/30/2019 7:06:00 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Scott Crawford	Individual	Oppose	No

Comments:

I oppose this bill. The public trust water resources should not be held hostage to make good on the promises of A&B so they can maximize their profits in the sale to Mahi Pono. Let Mahi Pono develop their ag plan and demonstrate how much water they actually need. They don't need seven more years of automatic holdover permits on top of the three years A&B has already had. The public trust benefit and water flowing in the streams and supporting East Maui taro farmers should be the top priority! Thank you for opposing this bill.

**HB-1326-HD-2**

Submitted on: 3/30/2019 7:08:42 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dee Green	Individual	Oppose	No

Comments:

I oppose HB1326 because it violates the Constitution, the Public Trust Doctrine, the Water Code and how we manage our resources. It gives corporations like Alexander and Baldwin, Mahi Pono and Kauai Island Utility Cooperative unrestricted use of our water at the detriment of downstream users, including those who have fought for generations to have their water restored.

Please oppose this bill and any reincarnation or amended version of it

Mahalo

Wendy Green



**HB-1326-HD-2**

Submitted on: 3/30/2019 10:42:58 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ted Bohlen	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/30/2019 1:50:12 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ashleigh Loa	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/30/2019 8:11:08 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri L Skillman	Individual	Oppose	No

Comments:

Dear Committee Members ~

I am writing to oppose HB 1326 HD2. The Hawaiian proverb, Ue ka lani ola ka honua, wisely comments on the relationship between rain and the life of the land. Part of that cycle includes the streams and rivers. For too long, Alexander and Baldwin has been raping the land by rerouting the streams and disadvantaging the Maui community.

It is time that we seriously look at what settlers have done to the islands in the name of profit and progress. This needs to stop. Recently the Pew Trusts published an article about leaving the water where it is, or should be.

<https://trend.pewtrusts.org/en/archive/spring-2019/sometimes-water-should-be-left-where-it-is/>

There are plenty examples globally of repatriating the water to streams and rivers and reversing the damages so that the environment rejuvenates. Please make this so for the Maui Community.

<https://www.youtube.com/watch?v=ysa5OBhXz-Q>

Please do NOT pass this bill. Maui needs its water. The rain to ocean cycle is connected and disruption should be viewed as a crime. The State Constitution of 1978 requires the State to be the steward for water in the islands. Please do not pass HB1326 HD2.

<https://www.boardofwatersupply.com/water-resources/the-water-cycle>

I strongly oppose HB1326 HD2.

Sincerely,

Teri Skillman

**HB-1326-HD-2**

Submitted on: 3/30/2019 2:39:35 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ken Stover	Individual	Oppose	No

Comments:

Protect our water from corporate theft!

**HB-1326-HD-2**

Submitted on: 3/30/2019 3:37:48 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Pappas	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/30/2019 2:07:48 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jonathan Boyne	Individual	Oppose	No

Comments:

Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

**Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

Jonathan Boyne

96822

**HB-1326-HD-2**

Submitted on: 3/30/2019 4:16:34 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Aleck	Individual	Oppose	No

Comments:

Please use your legislative powers to focus 7 generations in the future. Care for the people, the land, leave a positive legacy and support water rights by OPPOSING HB1326.

These measures violate the public trust as well as the state constitution and water code. They give unrestricted use of our water to large corporations.

Mahalo,

Nancy Aleck



**HB-1326-HD-2**

Submitted on: 3/30/2019 3:39:03 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paula Alcoseba	Individual	Oppose	No

Comments:

Aloha pumehana,

I am a student in Maui, and I am emailing you to humbly ask you to PLEASE END bill HB 1326. This bill is illegal and it is water theft. If you don't do anything to stop this, you are willfully taking away a precious resource that rightfully belongs to the people of the land. Please do something to stop this, otherwise you are complicit in altering our natural ecosystem for the worse by diverting water for private interests! Please do not allow this do happen, it will harm our environment and our people who all depend on this natural system to be restored!

These bills provide no standards or criteria ensuring that stream ecosystems are protected from excessive water diversions. There is no criteria or oversight written into this bill that protects streams, its native ecosystems, or the communities that depend on them for basic necessities. There are bills in front of the legislature that set a good example of how things should be done. Bills like HB848—that provide for the protection of stream resources, while allowing stream diversions for diversified agriculture so long as it does not harm the health of the streams. However, HB848 has yet to get scheduled for a hearing.

There is enough water for everyone to prosper, and allowing these bills to pass is like giving a blank check to these companies to continue robbing water from the ecosystem and people!

Please do the right thing and free our streams! This water deserves to flow and to bless our land and people, please do not be like the colonialists 100 years before you and change Hawaiian history!

E ola i kai wai!! Water is life!!

**HB-1326-HD-2**

Submitted on: 3/30/2019 5:35:38 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Caroline Kunitake	Individual	Oppose	No

Comments:

Aloha,

Please oppose HB1326 HD2. This bill needs to be revised to ensure water rights.

Mahalo,

Caroline Kunitake

**HB-1326-HD-2**

Submitted on: 3/30/2019 9:42:48 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Reed Gach	Individual	Oppose	No

Comments:

- HB 1326 SD1 grants a *three year extension* on A&B's revocable permits and imposes additional requirements on permits for diversions over 2 million gallons of water a day and an exemption for lo'i kalo cultivation. I oppose this bill.

**HB-1326-HD-2**

Submitted on: 3/30/2019 10:03:39 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eric Micha'el Leventhal	Individual	Oppose	No

Comments:

Aloha and greetings,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.

Thank you for doing the right thing!

**HB-1326-HD-2**

Submitted on: 3/30/2019 6:47:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dave Kisor	Individual	Oppose	No

Comments:

HB 1326 and HB 1171 will be the litmus test to see who supports the people of Hawaii. Just like the geothermal bills that shaft the state and especially Puna Makai, it's evident that industry had a very large hand in the legislation. It wouldn't come as any surprise if their lawyers drafted it and handed it over for approval. I've often wondered who really is in command of this fun house? I'm trying to be nice, but reality can be a real bite in the rump! Especially when the rump is your own.

A&B stands to make \$62M off of this deal by selling what really isn't theirs. If any of us sold stolen goods, we could face jail time, but corporations get rewarded for it. Just like the big banksters who gambled away retirement funds and when they were caught by the feds, they only had to ask for more money to fritter away and got it. It's times like that when I say there is neither justice nor a god.

Please reject these two bills.

**HB-1326-HD-2**

Submitted on: 3/31/2019 1:37:06 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara L. George	Individual	Oppose	No

Comments:

OPPOSE!!!!!! IN THE STRONGEST TERMS!!!

**HB-1326-HD-2**

Submitted on: 3/30/2019 11:22:41 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Danna Olsen	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:45:20 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Koohan Paik	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 3/31/2019 9:11:32 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kanani Kai	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:36:01 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
donald erway	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:37:04 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Hunt	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:35:48 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Hershey	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:01:57 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

Dear Committee,

I am writing to **STRONGLY** oppose this bill. Although I realize the time frame has since been amended, public water rights should not be given to private owners for free. It is a public resource.

I am a hydrologist - someone who studies water - in Hawaii, and advocate for public planning on the best use of the water resource, since it is shared. A&B would have full control to maximize profits, rather than protecting stream species, and making sure small farmers have access to water as well.

Thank you for your consideration,

Dr. Kim Falinski

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:52:29 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Anne Farrell	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:35:38 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Makaala Kaaumoana	Individual	Oppose	No

Comments:

On behalf of my grandchildren, I oppose this legislation and the impacts it will have on their lives.

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:37:14 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael J DeWeert	Individual	Oppose	No

Comments:

I strongly oppose both HB1326 and HB1171SD2. We need to support small and local agriculture. This bill instead gives away the people's water rights to a huge corporation for its private benefit. Please reject this water grab!

Aloha and Regards,

Michael J DeWeert

Kaneohe HI



**HB-1326-HD-2**

Submitted on: 3/31/2019 12:33:36 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary A. Wilkowski, Esq.	Individual	Oppose	No

Comments:

**The State is required to protect our natural resources with the "diligence and care of a fiduciary."** Nothing about this bill implements or even recognizes that mandate. The absence of rules to ensure that water flows to communities instead of into leaky coffers controlled by Alexander & Baldwin, one of the Big Five, does **not** signify public acquiescence to allowing A&B to maintain its greedy, entitled, and wasteful practices.

Consequently, I urge you to vote NO on this measure, and on its companion SB1171 SD1, a gut-and-replace measure also introduced by Sen. Donovan Dela Cruz that seeks a quick and dirty way to accomplish the same goal - to benefit a single uber-wealthy entity at the expense of the community. I'll leave to the Senate the odd matter of Dela Cruz's personal motivation in devoting uncompromising fealty to the A&B god.

Thank you.

Mary A. Wilkowski, Esq.

**HB-1326-HD-2**

Submitted on: 3/31/2019 12:50:04 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Valerie Barnes	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:27:50 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Avi Okin	Individual	Oppose	No

Comments:

Along with HB1171, we no longer, of we ever could, surrender to corporate control and profit of our water rights that belong to all the people of Hawai'i no matter which island we live on. Both bills need to be defeated now.

**HB-1326-HD-2**

Submitted on: 3/31/2019 1:10:16 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kenneth Cribbs	Individual	Oppose	No

## Comments:

I stand with Gary Hooser in opposition to HB1326 HD2. This proposed legislation should not be enacted. It is time for legislators to stop promoting big-money special interests. "Stream diversion" is water theft, plain and simple. Please vote "NO!" on this bill.

**HB-1326-HD-2**

Submitted on: 3/31/2019 1:18:16 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Emily Garland	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 1:29:38 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carol Hart	Individual	Oppose	No

Comments:

Aloha, my name is Carol Hart and I reside in Lawai, Kaua'i. I stongly oppose HB1326 as it stands. Water is a public trust, belonging to the people of Hawaii, and should not be given away to special interests, no matter how much money they throw around. Please kill this bill now!

Mahalo

Carol

**HB-1326-HD-2**

Submitted on: 3/31/2019 2:57:01 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Denise Boisvert	Individual	Oppose	No

Comments:

Dear Committees on Water and Land, and Ways and Means,

This is 2019 – another year, another insult to the Hawaiian people whose sources of water have been hijacked from them for almost two centuries. Will the oppressive and tyrannical days of The Big Five over the lives and livelihood of Hawaiians never end?

Passing HB 1326 SD1 will continue to sanction egregious water theft – there is no other way to look at it. Alexander & Baldwin’s entire history is one of power, greed, exploitation, and privilege at the expense of Hawaii’s people, independent farmers and fishermen, and the environment.

**TIME’S UP** on A&B’s revocable permits - - no more extensions!

Please show A&B that they are no longer in control. Thank you for your consideration.

Respectfully,

Denise Boisvert

Waikiki

## **VOTE NO ON BOTH HB1326 AND HB1171.**

The hearing for both of these bills is scheduled for Tuesday, April 2 at 10:45am.

**Just when you think things can't get worse, they do.**

**Welcome to "Gut and Replace"**

**The Corporate Water Theft Bill—HB1326 – HAS A TWIN BROTHER IN CRIME  
The NEW Corporate Water Theft Bill— HB1171.**

**A TWIN BROTHER IN CRIME, only for the purposes of diverting streams and enriching corporations.**

As has been stated many times and never disputed, the passage of HB1326 and now HB1171 will result in a \$62,000,000 financial benefit to Alexander and Baldwin (A&B). **Leadership in both the House and the Senate have clearly made this their top priority and are pulling out all the stops.** As has been stated many times and never disputed, the passage of HB1326 and now HB1171 will result in a \$62,000,000 financial benefit to Alexander and Baldwin (A&B).

## **VOTE NO ON BOTH HB1326 AND HB1171.**

The hearing for both of these bills is scheduled for Tuesday, April 2 at 10:45am.

**No amendments.** The intent of the bill and the process being utilized to pass it, lacks integrity. PLEASE JUST KILL BOTH BILLS.

Senator Donovan Dela Cruz Chairman of the Ways and Means Committee as if by magic, has created a second corporate water theft bill (SB1171 proposed SD1). Apparently, Senator Dela Cruz is concerned that HB1326 might be killed or weakened by Senator Kai Kahele, Chair of the Water Land Committee.

As insurance, the "Gut and Replace" technique is now in play. This occurs when a Committee Chair (Senator Dela Cruz) takes a bill that previously had nothing to do with water diversion, then schedules a hearing (with only his committee), and "inserts the



contents” of a new bill. In this case, the inserted contents are essentially a new corporate water theft bill, much like the existing corporate water theft bill.

**A TWIN BROTHER IN CRIME, only for the purposes of diverting streams and enriching corporations.**

As has been stated many times and never disputed, the passage of HB1326 and now HB1171 will result in a \$62,000,000 financial benefit to Alexander and Baldwin (A&B). **Leadership in both the House and the Senate have clearly made this their top priority and are pulling out all the stops.**

**No amendments.** The intent of the bill and the process being utilized to pass it, lacks integrity. PLEASE JUST KILL BOTH BILLS.

Short and simple, **this is special interest legislation driven by money.** Big money.

It is a sad reflection on the state of our democracy when legislators are forced into corners by the moneyed and the powerful, and then when they attempt to do the right thing, the process is manipulated to block and derail their efforts. To his credit, Senator Kahele has proposed amendments intended to satisfy concerns, even though these proposals continue to fall short. **Now, with the creation of HB1171, the process is further corrupted, shifting the power to WAM alone.**

Consequently, **we are asking Senators to vote NO**, and just kill the bill. To be clear, **no amendments can make this better.**

For far too long, there has been too much water flowing under this bridge and into the pockets of big business - and it's time to stop. #killthebill

Read more here: [Pulling Back The Curtain On Corporate Water Theft](#)

Read Civil Beat: [Lawmakers Should Reject A&B's Water Rights Bill](#)

**HB-1326-HD-2**

Submitted on: 3/31/2019 3:12:45 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kealii Kanahale	Individual	Oppose	No

Comments:

HB 1326, in any form is still a water theft bill. I am opposed to it. I am a kanaka maoli. I am a national tenant farmer in the Hanapepe ahupuaa of Kaua'i. I grow kalo and many other polynesian food plants for the kanaka of my community. The waters of my entire watershed have been diverted heavily since the early 1900s, to irrigate corporate cane fields. Every day, i water plants for two hours, by hand, by bucket, from roof water catchment tanks. Sometimes i run out of water because we have very little rain. In the 1970s the HI legislature finally enacted a bill to restore water to streams and to monitor its PROPER use as a PUBLIC trust resource. We all prayed that the law would be actually be enforced and that families could again grow their own food by small streams with water that was restored to rivers and streams. It sickens us that our sacred waters of the Wai'ale'ale and Waikoko streams continue to be diverted and their entire down-stream ecosystems left bare and perverted. HB 1326 is specifically written to go AROUND the laws we were counting on. It is without any doubt just a tactic to let corporation DELAY doing the right and pono actions. All kanaka maoli that i personally know... all of my friends associates and hundreds of cousins and ohana, we all want the water BACK in the streams. No more diversions without fully processed properly completed leases. No more extensions of permits! None. The days of corporate water theft are over. This bill needs to be thrown out.

**HB-1326-HD-2**

Submitted on: 3/31/2019 3:27:23 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 2:29:01 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
scott mahoney	Individual	Oppose	No

Comments:

IT REDICULOUS HOW A BILL LIKE THIS CAN EVEN GET THIS FAR. WATER IS OUR MOST PRECIOUS PUBLIC TRUST WE HAVE AND TO OBLIGE THE RICH AND CORRUPT IS MIND BLOWING!!!!!!!!!!!!1

**HB-1326-HD-2**

Submitted on: 3/31/2019 3:37:30 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Whispering Wind	Individual	Oppose	No

Comments:

Aloha Lawmakers,

I strongly **OPPOSE** HB1326.

Please, kill this "**WATER THEFT**" bill.

Hawaii's lawmaker's are putting the rights, and profits, of out-of-state corporations, ahead of the needs of the Hawaii people.

Hawaii water should be used by Hawaii's farmers to grow food for Hawaii, not to grow profits to export out of Hawaii to the enrich the investors in;

Pomona Farming LLC, which a California based "global investment and food branding company," and their international partner, the

Public Sector Pension Investment Board, which one of Canada's largest pension investment managers.

If Hawaii isn't going to own the land, the people should at least control the water.

I'm very disappointed in the Legislators for who are promoting this:

**WATER THEFT BILL!**

With hopes of a better future,

Mary Whispering Wind

Puunene, HI

**HB-1326-HD-2**

Submitted on: 3/31/2019 3:38:52 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Murphy	Individual	Oppose	No

Comments:

Aloha Lawmakers,

I strongly **OPPOSE** HB1326.

Please, kill this "**WATER THEFT**" bill.

Hawaii's lawmaker's are putting the rights, and profits, of out-of-state corporations, ahead of the needs of the Hawaii people.

Hawaii water should be used by Hawaii's farmers to grow food for Hawaii, not to grow profits to export out of Hawaii to the enrich the investors in;

Pomona Farming LLC, which a California based "global investment and food branding company," and their international partner, the

Public Sector Pension Investment Board, which one of Canada's largest pension investment managers.

If Hawaii isn't going to own the land, the people should at least control the water.

I'm very disappointed in the Legislators for who are promoting this:

**WATER THEFT BILL!**

**With hopes of a better future,**

Brian Murphy

Puunene, HI

**HB-1326-HD-2**

Submitted on: 3/31/2019 4:16:51 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Nandoskar	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 5:11:59 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ty P. Kawika Tengan	Individual	Oppose	No

Comments:

Aloha. My name is Ty Tengan, and I am originally from Waiehu, Maui but live in PÄ• lolo, O'ahu now and teach at the University of Hawai'i at MÄ• noa. I am writing on behalf of myself and my 'ohana to STRONGLY OPPOSE HB1326. Allowing corporations to continue to control our waters without doing the proper environmental studies is a violation of the public trust doctrine that governs water use, and it is a threat to the very life of the 'Ä• ina and the communities who rely on fully flowing streams for cultural and subsistence purposes. Please kill this bill.



**HB-1326-HD-2**

Submitted on: 3/31/2019 3:32:21 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Dinner	Individual	Oppose	No

Comments:

Confirming that I've already testified at the complete unfairness of this issue previously. We must live within the parameters of the law and not bend to the wishes of corporate power and large landowners moves to subvert it for their own means. Please oppose this bill.

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:40:44 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marion McHenry	Individual	Oppose	No

Comments:

This is a special interest bill driven by big money. No amendments can improve this bill to protect the public. The public is becoming increasingly aware of the intent of this bill. Water is a public resource and must be protected by public servants.

We remain extremely concerned,

Robert and Marion McHenry

Princeville, Kauai

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:10:52 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

Big money should not be above the law!

**HB-1326-HD-2**

Submitted on: 3/31/2019 8:13:14 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Forest Frizzell	Individual	Oppose	No

Comments:

Aloha, My name is Forest Frizzell. I am a registered voter. I am writing in regards to HB1326 and HB1171, the water rights bills. I respectfully ask that the Senator vote no on HB1326 and HB1171, and/or any amended version of it. I also want to express my strong disappointment in the second water theft bill HB1171, being introduced by gut and replace. That is no ok with me. The best option is to kill both bills now and end water theft for good. I oppose HB1326 and HB1171 because it violates the Constitution, the Public Trust Doctrine, the Water Code and how we manage our resources. It gives corporations like Alexander and Baldwin, Mahi Pono and Kauai Island Utility Cooperative unrestricted use of our water at the detriment of downstream users, including those who have fought for generations to have their water restored. The bills are unjust and no amendment will ever make it right. Small Farmers and Ranchers will not be adversely impacted if the bills do not pass because no one is challenging their water use; their water use is small and corporations are using them as human shields to conceal their water theft. I do not agree with this at all. Please know this issue is important to my family and I. Please also know, with the Senator's opposition, I will do my best to let our community know of his/her good work. I also encourage the Senator to be a champion to end this bill. Mahalo

**HB-1326-HD-2**

Submitted on: 3/31/2019 7:54:18 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Judie Hoepner	Individual	Oppose	No

Comments:

I want A & B and KIUC to follow the law, getting environmental and cultural review. There is no actual risk for small farmers and ranchers if it doesn't pass.

TESTIMONY OF ED AND MAHEALANI WENDT  
OPPOSING HOUSE BILL 1326, HOUSE DRAFT 2, and  
HOUSE BILL 1326, HOUSE DRAFT 2, PROPOSED SENATE DRAFT 1

Tuesday, April 2, 2019

Aloha Chairs Kahele and Dela Cruz, members of the Senate Water & Land and Ways & Means Committees. Thank you for doing a site visit and for convening a meeting on this important issue at Ha`iku Community Center. Thank you for this opportunity to testify on House Bill 1326, House Draft 2 and House Bill 1326 House Draft 2 Proposed Senate Draft 1.

We are members of Na Moku Aupuni o Ko`olau Hui, or "Na Moku", a 501(c)(3) non-profit organization whose members are the lineal descendants of the original settlers of the adjacent ahupua`a of Ke`anae and Wailuanui, Ko`olau Moku, Maui Hikina (East Maui). We actively farm taro in Wailuanui, as do many of the families in our community. We live the traditional lifestyle of farming, fishing, hunting, and gathering as a daily way of life. We are raising and teaching our grandchildren to follow in the footsteps of our kupuna.

Na Moku was the lead litigant in the East Maui case which sought restoration of streams. The waters are flowing and we are grateful to our kupuna, our family members and supporters who stood strong for many decades to fight for justice. We are grateful to OHA for its support, and to the Native Hawaiian Legal Corporation attorneys who championed our cause in many contested case hearings and court proceedings over the decades. We could never have accomplished what we did without their legal representation.

We have been asked why we oppose this bill even though we have our water. The fact is if it were left up to the corporation and DLNR, we wouldn't have our water today. Many years ago the Alexander and Baldwin attorney, Alan Oshima, said as much. As we were visiting diversion sites in the mountains high above Hana Highway, Mr. Oshima laughingly poured a drop out of a water bottle and said, "That's all you get". A&B, working with DLNR, had no mercy all those many years.

The revocable permit system under which they have operated for the past 33 years allowed them to divert 100% of all the streams within our Moku with impunity, no enforcement accountability. Even after preliminary CWRM decisions ordering release of waters, reported violations were never corrected by CWRM and we went without. The position of court-ordered monitor, to whom we were supposed to report violations, was filled for a few months and then arbitrarily abolished by DLNR.

So completely dried out were the streams, in the middle of the East Maui watershed, that the streambeds took on the white-grey appearance of roads paved with coral. The many families who made their living growing taro were forced to abandon their fields. We had families who supplied Aloha Poi in Honolulu, who were given military service deferments during world war II, so indispensable were our farmers to Hawai'i's food supply. These families were able to send their children to college growing taro. Our family had a thriving poi mill, Wailua Poi. As the corporate diverter increased the efficiency of its diversion system to

100%, the families were forced to abandon their lo`i. In our case, we had 52 lo`i in full cultivation which we had to walk away from. Some families continued raising dryland taro, in order to preserve the unique species, but nowhere near the scale of production before the lo`i were completely dried up. Generations of young farmers were lost, were forced to move outside the community because there was very limited opportunity to farm. We lost our farmers and are struggling to recover.

The holdover revocable permit, with its minimal accountability, was the legal mechanism used to inflict all of this suffering upon our people. Fifteen years ago, Na Moku was successful in getting Judge Eden Hifo to require an environmental assessment as a condition precedent to obtaining a long-term lease. Of course, we are here today because that precondition has never been complied with -- not in 33 years since the last long-term lease expired, not in the 15 years since Judge Hifo rendered her decision, and not in the 3 years since Act 126 was enacted. To add to the injury, the members of our community, who are strong supporters of farming and food sovereignty, were maligned when they sought stream restoration. They were labeled selfish, threats to sugar workers' jobs, other Maui farmers and ranchers. A very successful and ongoing misinformation campaign has divided and continues to divide our Maui community.

Not only has our community suffered, but the watershed has undergone great environmental degradation. The East Maui Watershed Partnership, whose membership is greatly influenced by Alexander & Baldwin subsidiary East Maui Irrigation, purposefully blackballed any representation by members of our community.

So we oppose holdover permits, period. Because they opened the door to abuse and the conditions in this proposed draft will not allay our fears that this bill is just a ruse to continue abuses of the past.

We have suffered from lack of enforcement for many decades -- why should we now believe that these conditions and restrictions will be enforced?

The auto-renewal feature is also a disincentive to cease violations. In Na Moku's case, A&B's many attorneys dragged out the contested case and court proceedings for many decades in the sure knowledge that as long as the legal cases were pending, they could continue their diversions. This default position favors the diverters against the public's interest.

Hearings on proposed administrative rules and reports to the legislature are not the same as protections.

The people need protection against corporate abuse. For the above reasons, Na Moku opposes House Bill 1326, House Draft 2, Senate Proposed Draft 1.

Thank you for this opportunity to testify.

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:17:11 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
kai nishiki	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 3/31/2019 9:20:33 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eliei Starbright	Individual	Oppose	No

Comments:

Please vote No on hb1326

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:31:25 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
janice palma-glennie	Individual	Oppose	No

Comments:

aloha,

It's beyond discouraging to see so-called DEMOCRATS gutting and replacing what was sound legislation to protect our islands and people and planet.

Water is a Public Trust resource and is Life. what happens to water on one island affects all islands and our democracy.

Protect the Public Trust, integrity and Hawaii's constitution.

Mahalo for doing the right thing and saying "NO" to this bad bill.

sincerely,

janice palma-glennie

kailua-kona

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:01:17 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
PETER STERNE	Individual	Oppose	No

Comments:

I am strongly opposed to this measure! Imagine giving people at Wilcox Hospital Red water and saying it's okay to drink, and that's without tests to see if the water is safe;

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:53:33 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Seena Clowser	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 9:54:48 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daniel Kanahale	Individual	Oppose	No

Comments:

I strongly oppose HB1326!!!

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:12:38 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Graham	Individual	Oppose	No

Comments:

I am writing in OPPOSITION to [HB 1326 SD2](#). This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.

Senator Kaiali'i Kahele, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
COMMITTEE ON WATER AND LAND

Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
COMMITTEE ON WAYS AND MEANS

RE: **OPPOSITION to HB 1326 HD2** pertaining to water rights on Maui

Senators Kahele, Dela Cruz, Keith-Agaran and members of the Committees on Water and Land and Ways and Means:

Alexander and Baldwin already took water from Oahu. The Honolulu Board of Water Supply and the heirs of the McCandless Estate took Windward Oahu water and shipped it off it off to Leeward Oahu development over the decades before others were aware that this was happening.

The Waiahole-Waikane battle over land rights in the 1960s and 1970s overshadowed the equally intense water fight that went on at the same time with many of the same proponents. The land fight happened before the destruction of agriculture was recognized.

It may be too late to save water rights but we *must* try.

Reverend Bob Nakata  
Water rights advocate and member of the Water Commission for decades

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:18:24 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Linda Hastings	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 3/31/2019 10:18:25 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ellen Ebata	Individual	Oppose	No

Comments:

Aloha Senate Committee Members,

Please vote NO on HB1326 and HB1171. Vote NO.

In December 2018 the Land Board ordered an end to the taking of all of the base flows from two of Kauai's sacred streams, Wai'ale'ale and Waikoko. KIUC helps Grove Farm get the water after it passes through their hydro plants. This water is taken without permits or payment to the State and neither KIUC nor Grove Farm has done environmental studies which are required for any commercial use of State waters.

Absent the required environmental studies the high aluminum content from the bauxite in the soil in the Waiahi area remained unknown. Thousands are drinking this water AND paying for it, in more ways than one.

How much longer and how many more people will have to suffer as corporation ignore regulations with impunity?

PLEASE VOTE NO ON BOTH BILLS.

Thank you for your consideration of these matters.

Sincerely,

Ellen Ebata

(808) 346-6359

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:25:37 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Glenn Metzler	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 3/31/2019 10:51:38 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Judith Michaels	Individual	Oppose	No

Comments:

I strongly oppose this bill.

I am a Maui resident.

Water is LIFE and water from all sources on Maui belongs to the people. It must be protected for the use of everyone - it is a public trust.

*There is a legal process for requesting access to public lands for the purpose of diverting some of the people's water for private use. We must ensure the watershed is protected, stream ecosystems are not harmed, and the public is properly compensated for the use of public trust resources. The Department of Land and Natural Resources and any entity seeking to divert water away from the public should be made to follow this process.*

*Please vote no on this bill.*

*Thank you.*

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:14:00 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kawika Hostallero	Individual	Oppose	No

## Comments:

Water is sacred the basis for chemical reactions. It is invaluable, it is life. To support footdragging is to support the continuance of a long enduring system of slavery and human rights violations. The commodification of life is the selling of our very essence. Restore the flows, so that we may be free again. As a private citizen, my voice is in opposition to public servant decisions that serve private corporate interests in the diversion and exploitation of public trusts. Peace.

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:30:05 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Kalani Flores	Individual	Oppose	No

Comments:

HEWA!! HEWA!! HEWA!! How many times does it have to be said, this bill is clearly wrong and lacks the integrity to protect our most valuable resource - KA WAI OLA - our life giving waters which are part of the public trust.

**HB-1326-HD-2**

Submitted on: 3/31/2019 11:51:51 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Cheryl O. Ho	Individual	Oppose	Yes

Comments:

**This calls to mind the determination in “Kaulana NÄ• Pua”:**

*‘A’ole mÄ• kou a’e minamina i ka pu’u kÄ• IÄ• o ke aupuni;*

*We do not value the sums of money of those in power;*

*Ua lawa mÄ• kou i ka pÄ• hakÄ•; i ka ‘ai kamaha’o o ka ‘Ä• ina!*

*We are satisfied with the stones; the astonishing food of the land!*

**We have a kuleana to prevent the unmonitored, reckless continuation of the use of sums of money to siphon off water that is meant for all of Hawai‘i’s people!! I oppose HB1326.**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:09:37 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wendy Beckett	Individual	Oppose	No

Comments:

I urge you to kill this bill . . . no amendments will fix it. Just kill it. Please vote NO ON HB1326. Mahalo.

Wendy W Beckett

4215 Hoala Streeet, Apt 123

Lihue, HI 967666

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:22:23 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tayemi Thompson	Individual	Oppose	No

Comments:

I STRONGLY oppose.



**HB-1326-HD-2**

Submitted on: 4/1/2019 12:30:27 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
L. Osterer	Individual	Oppose	No

Comments:

**OPPOSE HB1326 HD2**

I oppose any further holdover extensions since existing violations have not been cured and necessary permits have not been granted. These holdovers are enabling the parties to ignore these violations and avoid or delay any EIS with more and more yearly extensions.. Grove Farm does not have any permit from the State to take public water and KIUC does not have the right to divert public water to them instead of returning it to streams. Grove Farms stores it in a bauxite soil reservoir which is the source of unacceptable levels of aluminum. They have no permit to dispose of the aluminum laden water. They deliver water to the County as potable drinking water by treating it for bacteria and microbes, but not removing the aluminum or sediment. It doesn't pass DOH standards and Grove Farms has been refused a DOH permit. No environmental studies have been done for KIUC's use or Grove Farm's unpermitted use. This fact alone should stop the renewal of any further holdover permits, which have gone on far too long without investigation and public input. Violations in waste water from the water treatment plant have been known since 2008, without enforcement or penalties. The high aluminum turbid "red water" repeatedly reported in the supposedly potable water is a threat to the community, affecting the most vulnerable population, patients at Wilcox hospital and Garden Isle Healthcare, My Mom was one of them in long term care. Since Grove Farms is evidently not in compliance with DOH permits and standards, their use should be discontinued. This legislative body has the obligation to uphold the law, not to empower some wealthy corporation to circumvent the law.

Thank you for serious consideration, L. Osterer, Kauai resident and registered voter.

**HB-1326-HD-2**

Submitted on: 4/1/2019 1:46:06 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lela Kalama	Individual	Oppose	No

Comments:

Aloha

I oppose this Bill. Do not extend the lease for Alexander and Baldwin. Water is for the public, not something that is making money for a business. Return that water to our streams! Do what is best for the 'Āina cause once it's lepo is hard to go back. Vote NO! Mahalo!

**HB-1326-HD-2**

Submitted on: 4/1/2019 2:00:00 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Evern Williams	Individual	Oppose	No

Comments:

Our family strongly opposes this bill. It is wrong to put Alexander Baldwin ahead of the people. In addition, you should look at the long term consequences where they can monopolize the water. Small farmers and the community need to have our legislators protect our water rights, not restrict it. Thank you for doing the right things and do NOT support this bill.

Evern Williams  
3220 Esther Street  
Honolulu, HI . 96815  
392-1486

**HB-1326-HD-2**

Submitted on: 4/1/2019 2:35:15 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
joan Levy	Individual	Oppose	No

Comments:

Please vote no on this bill. It is clearly set up for corporate profit and not according to Kauai's general plan and resident population commitment to sustainability. An environmental study should have already been required and I don't understand why neither Grove Farm or KIUC have been required to do so.

We are already having toxicity in our water. No one on Kauai should be drinking "red water"!

Thank You for helping us protect our environment and ourselves.

**HB-1326-HD-2**

Submitted on: 4/1/2019 2:55:43 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kamuela Werner MPH	Individual	Oppose	No

Comments:

I strongly oppose HB1326 HD2.

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:13:32 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jami Power	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:55:40 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
mary Wright	Individual	Oppose	No

Comments:

The time is past due to hold KIUC and Grove Farm accountable for its water use on Kauai. There is no more precious resource to us all than the water there entities are extracting without due regard for environmental and health consequences.

Vote NO on HB 1326 and HB 1171.

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:58:50 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
scott lacasse	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 4/1/2019 5:42:54 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
George Carrick	Individual	Oppose	No

Comments:

As a longtime resident, homeowner and taxpayer on Kauai, I plea that the Senate Committee members **vote NO on both [HB1326](#) and [HB1171](#).**

**The future health, economic well-being and quality of life for all residents of and visitors to Kauai is heavily dependent on pure, clean water -- anything less is a tragedy, irresponsible and unacceptable. We should be a worldwide example of environmental care and social responsibility, a measure by which all other countries and communities are measured.**

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:08:27 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sally kaye	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:28:40 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wendy Arbeit	Individual	Oppose	No

Comments:

I strongly oppose HB1326.

No extensions for A&B. No amendments. No "Yes with reservations."

Just NO.

Return our water to our people. Stop A&B extensions benefitting A&B, its investors, and its developers.

Wendy Arbeit

Makiki, O`ahu

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:30:36 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

Aloha Lawmakers,

I strongly oppose HB1326, the Water Theft Bill. I will be flying to the State Capitol from Maui to oppose this immoral Bill on April 2nd.

The State Democratic Party has come out in opposition to this "special Interest" legislation. That should speak loud and clear to all lawmakers. It's not business as usual anymore.

A&B has had years to do their EIS and present their case for why they need the Wai. They have not bothered to do that. They have been terrible stewards of the Crown farmlands that they originally leased but now magically own. They have been poor stewards of the Wai without any oversight or monitoring from the State. I was told by Jeff Pearson of the Maui Water Commission that they "self-regulate" and that there was NO oversight on where the water was being used or drained back into the ocean.

Jeff Pearson also stated that upcountry water, the Kula Ag park and other customers being serviced by the Wai from E Maui is not going to be affected from the killing of this Bill even though Mayor Victorino is repeating the lies of A&B.

This is Legislation for A&B's benefit and it's time to stop doing their bidding for continued theft of water that does not belong to them. Their windfall of 62 million to A&B smacks of special interest legislation and must not be allowed. Those days are over.

This Bill needs to be Killed. No amount of amendments will salvage it. Don't be the Legislator backed into a corner by special corporate interest. Do the right thing, KILL THIS BILL now.

Mahi Pono is working on their farm plan and can use the 62. M to help clean up the plastic pollution, contaminated and compacted soils that A&B sold to them. Let them do their own bidding for their WAI needs. There are trying to do the right thing so let them follow the proper channels and secure what they need without the windfall of 62 M to A&B. It's time to stop the madness.

Mahalo,

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:32:58 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raymond Catania	Individual	Oppose	No

Comments:

Aloha Chair Donovan Delacruz and Vice Chair Keith-Agaran of Ways and Means,

I am opposed to HB1326 HD2 and see it a "water theft" for the benefit of large landowners like Alexander and Baldwin.

mahalo,

Raymond Catania 4215 Kole Place, Puhi, Kauai may11ninetee71@gmail.com

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:21:11 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eva K Hubbard	Individual	Oppose	No

Comments:

Subject: HB1326 and now HB1171

Aloha Senator Kouchi,

Please kill these bills! Free our waters!!!

I am a child of Hawaii and like many who live here, have the blood of Hawaiian, Haoli and Asian. Like you, I work hard for a living and want to ensure that I take care of this place for generations to come...just as our kupuna has done for us. I've lived long enough to experience big changes in our islands especially with our natural resources.

This issue is alarming and is blatantly stealing from the very livelihood of who we are as Hawai'i. Diverting our precious waters AND for profit...need I say more?

Please Senator, kill this Bill not for us but for our keiki.

Malama 'Ä€ina

Eva Hubbard

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:32:05 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michelle Cabalse	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 4/1/2019 7:33:52 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chezlani Casar	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:34:22 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Oppose	No

Comments:

**OPPOSE!**

Really tired of Hawai'i resources being so taken advantage of by large corporations. We see what's going on. Any Dem legislator who votes for this bill should be kicked out of the Democratic Party & deported to Los Angeles. Seriously.

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:52:20 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
claude medeiros	Individual	Oppose	No

Comments:

Aloha, please vote no on hb1326.

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:54:25 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
HENRY ROSEN	Individual	Oppose	No

Comments:

If not already aware, committee should know that high aluminum levels in water pose a health risk for severe bone disease in people with kidney disease, especially those who need dialysis.

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:59:20 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Judith A Mick	Individual	Oppose	No

Comments:

Aloha- Water is life and should not be the property of any corporation for their use and profit. Please deny A&B and other power groups from either owning or taking excessive amount of our precious water from the people. Mahalo for your consideration. Judy Mick, Kailua

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:59:31 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Fern Anuenue Holland	Individual	Oppose	No

Comments:

Legislators,

My family and I are absolutely appalled by the corruption and special interests that has lead to this bill and the violation of our own state water code and constitution by those that are entrusted with protecting and standing for them. Do not pass this bill. Do not support corporate interests over the public trust.

Do not fall for the fear mongering and lies, it will all be exposed.

Mahalo,

Fern

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:57:13 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
alex beers	Individual	Oppose	No

Comments:

To whom it may concern,

I am absolutely apposed to this bill. This bill is NOT the qill of the people, period. Please listen to the people of Hawaii and vote no on this measure.

Mahalo,

Alex Beers

20 Kaikai st.

Wailuku, HI

96793

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:37:55 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Will Caraway	Individual	Oppose	No

Comments:

Please protect our water by AT LEAST requiring that Grove Farm submit an EIS. As last April's floods have shown diverting the natural course of our waterways is a recipe for a disaster on many fronts. Mahalo nui loa for your time and consideration.

Will Caraway

Kapa'a High School



**HB-1326-HD-2**

Submitted on: 4/1/2019 8:39:30 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cherie Griffore	Individual	Oppose	No

Comments:

For my testimony I would like to have discussion on the Public Trust Doctrine

In strong language, the Hawai'i Supreme Court described the public trust doctrine as "the right of the people to have the waters protected for their use [which] demands adequate provision for traditional and customary Hawaiian rights, wildlife, maintenance of ecological balance and scenic beauty, and the preservation and enhancement of the waters . . ."

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."

**CONSERVATION AND DEVELOPMENT OF RESOURCES**

Section 1. For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people. [Add Const Con 1978 and election Nov 7, 1978]

## **WATER RESOURCES**

Section 7. The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources. [Add Const Con 1978 and election Nov 7, 1978]

## **ENVIRONMENTAL RIGHTS**

Section 9. Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law. [Add Const Con 1978 and election Nov 7, 1978]

March 7th, 2019 Piilani Partners, a privately owned corporation, is trying to tap into the Mauna Kea aquifer to profit off of our natural resource. This was the 5th time presenting at this commission's meeting. Piilani didn't make a presentation, saying they didn't want to go through the song and dance again. There was a room full of Big Island residents that opposed the approval of this permit, and oppose a water bottling plant.

Mr. John Repogle from the Windward Planning Commission for the Island of Hawai'i. "Permit SMA 18-00070 be denied for the following reasons:

We were given public trust factors to be considered when approving or denying applications.

One is the agency's duty and authority to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and

beneficial use. Giving private business access to our waters so that they may enrich themselves is not reasonable or beneficial use to our natural resource for our people. I see nothing in the application that is in the public trust or interest.

Number Two: The agency must determine whether the proposed use is consistent with trust purposes: maintenance of waters in natural state, protection of domestic water use, access and enjoyment, and resource protection. Will water remain in its natural state if at the time of drilling water from the Mauna Kea aquifer, excuse me, water from the Mauna Loa aquifer leaks into the Mauna Kea aquifer, a risk the public may be willing to take at a future date should the need for water arise as a result of water depletion in our present sources of water become acute. However, at this time, to take that risk will do nothing for the public trust or in the public's best future interest it will not provide protection of future domestic water use.

Three. The agency needs to apply a presumption in favor of public use, access, enjoyment, and resource protection. We are to presume in favor of the public use, the public has spoken given written testimony, that's what all this is (holds up the stack of testimonies received), this is one person per page stating they don't want this to happen.

The public has spoken and given written testimony stating why this application should be denied. All may not be legally part of the debate however, they are true in fact serious concerns of our natural resources beyond the extraction of water and a water bottling facility, so we're talking about plastic, or ecosystem services. Again, approving application SMA 1800070 is not in the best interest of the public trust.

(Skipped 4&5 and went to 6)

Six: the agency must supply reasonable beneficial use standard which requires examination of the proposed use in relation to other public and private uses. Having access to the land from which to pump the water, being close to all forms of shipping, and knowing all the right people does not give vested rights to water. Being private and commercial you are under greater scrutiny considering what appears to be happening on the world stage regarding the scrambling by corporate business and wealthy individuals to grab up and control all remaining natural resources at the expense of people who live in the region. Number Six takes us...I think that's enough"

So then Piilani is trying take our water from somewhere else, and in order to do so they have to change the zoning of this property to "light industrial" to get their plant started. This property is located right next to a recreational area.

March 28th, 2019 Hawai'i County Councilman Aaron Chung "You know it's been implied, and not wrongfully so of course, that this extension, this zoning extension is tied in to the water bottling plant project that was being discussed by the Planning Commission. I think it would be disingenuous of any one of us here to say its not connected, because it is, we know that. But by the time that it came to the County Council which is about a month ago, the matter at the Planning Commission had pretty much resolved itself, not completely, but pretty much. They had given a strong indication that they were not going to approve that water bottling, well the SMA permit that would be necessary for them to move forward with the water bottling facility. Now we're one month tense, during that time they actually denied the SMA permit, and it was done so, as best I could tell not so much on the use of plastics that it had to do with but the Public Trust Doctrine. And that becomes a very very compelling argument in my opinion, um, you know as a lawyer I'm trying to analyze, is there a way that these guys can actually prevail on an appeal, it would be very difficult in my opinion. And the time and energy and financial resources that would be devoted to such an undertaking would be problematic for them and it would probably take years. And what's going to be the end result, they'll probably get at the best for that applicant is to have it come back remanded to the Planning Commission and redo the whole thing over. And I don't that any appeal court whether it's circuit court or appellate courts will overturn that decision, that's my personal opinion. The fact of the matter is I think the finding of facts and conclusions have not yet been issued, I could be wrong, during that time there is a period in which the applicant can file an appeal. My request today to this body is to at least postpone this matter at least until we see what happens during that that period of time in which the applicant can file an appeal. If they file an appeal, at least we know, we know right. If they don't it's a moot point"

Also, a West Hawaii Today article on 2/10/19 from Hilo, HI DROUGHT POSSIBLE AS DRY JANUARY WEATHER CONTINUES. 51 of 52 rain gauges recorded less than average rainfall, Kona airport reported 0 rainfall for January. Mauna Loa typically receives 10.5 inches only received .7%, 7% of its normal average. ((This was originally the back up aquifer they were planning to use when they were trying to tap into Mauna Kea's aquifer, your back up aquifer isn't even getting it's normal supply.)) Kevin

Kodama, hydrologists for the National Park Weather Service said 2019 is “El Nino like...and is expected to continue until the spring...The ongoing dry weather will be a challenge for Big Island residents who rely on catchment.”

## Historic droughts in Hawaii

1901

1905

1908

1912

1953

1962

1965

1971

1977-1998

1980-1981

1983-1985

1996

1998-1999

2000

DNLR website last reported 3/26/19 shows that our WHOLE STATE is showing abnormally dry conditions

Please do not allow the commodification of our natural resources and enable a private corporation to make profits off our natural resources and no benefit to the public. The State has an obligation to protect, control and regulate the use of Hawaii's water

resources for the benefit of its people.

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:21:01 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
james trujillo	Individual	Oppose	No

Comments:

Members of the Committee,  
Please kill this bill!

mahalo for your consideration

sincerely,

James G Trujillo

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:41:49 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lacques	Individual	Oppose	No

## Comments:

I am submitting testimony in STRONG OPPOSITION to HB 1326 SD2 which would allow DLNR to continue mismanagement of public trust lands and waters. This bill would guarantee that Alexander & Baldwin holds on to the \$62 million they made on water on recent land sale, while failing to protect our native streams and the communities that rely on them.



**HB-1326-HD-2**

Submitted on: 4/1/2019 8:55:57 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Meagan-Joi Kimsel	Individual	Oppose	Yes

Comments:

I strongly oppose HB 1326, HD2 which seeks a 7 year extension on the use of temporary permits for permanent diversions of public water. The claim made by Alexander & Baldwin (A&B) that HB 1326, HD2 benefits small farmers, ranchers and producers of hydro-electric energy is patently false -- they still have access to the water. A&B seeks to obfuscate the fact that it alone benefits to the tune of \$62 million from their real estate deal with Mahi Pono if they deliver water rights with the land.

With income inequality at near record levels why is this corporate giveaway even being considered? According to the Hawaii State Constitution water is held in the public trust to benefit all of Hawaii's people not just landowners. To make matters worse, A&B is a real estate investment trust which pays zero Hawaii income tax. This bill enables A&B shareholders to make out like bandits.

For decades A&B diverted virtually all of the stream water from East Maui for sugarcane without conducting an environmental impact statement to assess any adverse impacts to the community and the aina. A&B diverted millions of gallons of water each year with little or no regard for taro farmers and stream wildlife in direct violation of the public trust doctrine in the Hawaii State Constitution. In 2016 A&B ceased to grow sugarcane but continued to take the water at the detriment of everyone else.

So egregious was A&B's abuse of the temporary permit system that the courts ruled against A&B in 2016, prohibiting A&B from using temporary permits to authorize permanent diversions of stream water. Instead of abiding by the circuit court's ruling, A&B flexed its economic and political influence by getting the legislature to do its bidding for three more years. This was wrong. Now that the 3 years have gone by A&B is asking for another 7 year extension. This cannot be allowed to continue.

On June 20, 2018, the Water Commission ordered A&B to restore full stream flow to 10 streams and substantial restoration to 7 other East Maui stream. A&B defied the order, did not decommission its diversions, and continues to take the water even when it has no use for it. Every religious and moral code teaches to take only what you need and to use it wisely. A&B is a water glutton. As a real estate investment trust A&B's only goal is to maximize shareholder value. Such flagrant disregard cannot be rewarded with an extension.

There is a legal process administered by the Water Commission for private parties to request use of public water. This process is designed to ensure the watershed is protected, stream ecosystems are not harmed, and the public is properly compensated for the use of public trust resources. Any entity seeking to divert water away from the public should follow this process. The legislature needs to follow the state constitution to ensure the public receives fair compensation for the use of Hawaii's public trust resources, while protecting those resources from over-use and miss-use.

I urge you to kill HB 1326, HD2. The people of Hawaii are watching to see whose interest you serve. Thank you for this opportunity to testify on this important matter.

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:56:08 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Autumn Ness	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:03:49 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rene Umberger	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:05:46 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mary Lu Kelley	Individual	Oppose	No

Comments:

Aloha. I am writing today to ask all Senators to simply vote NO HB1326 HD2.

Thank you.

**From:** [Eileen Kechloian](#)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** Hb1326 oppose  
**Date:** Saturday, March 30, 2019 3:09:57 PM

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Aloha from Kauai,

I adamantly oppose HB1326 in its entirety. I am from Koloa and have first hand knowledge of all the water banking going on by Grove Farms courtesy of KIUC 100% diversion of Wai'ale'ale and Waikoko Streams. This water banking is creating a hazard for the town of Koloa. Our homes were flooded in April directly below the Waita Reservoir owned by Grove Farms. The last report from USGS states there is water seeping from the bottom of the reservoir. They did not deem the reservoir structurally sound. Water from KIUC's diversion is never returned to the stream of origin but piped to Grove Farms unpermitted water treatment plant then contracted to Kaua'i Water Department for 2.2 million dollars a year then we, the beneficiaries of the Public Trust Doctrine, have to buy our water back. Some of the water is ditched to the Waita Reservoir and the another reservoir on Grove Farm property. HB1326 will allow this travesty to continue. Grove Farms diverts approximately 14 other streams that join up with the ditch that contains the KIUC diverted water, only thing is Grove Farms doesn't even have RPs for these streams. KIUC has had 14 years to do an EIS, they don't need more time, they need you to sunset HB 126! I have five children if every time I asked them to do something and they didn't I would just move the line for them, I would have raised five irresponsible adults. Don't move the line make them respect and obey the law. Oppose HB1326!

With aloha and respect,  
Eileen Kechloian  
Koloa

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:13:56 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keiko Gonzalez	Individual	Oppose	No

Comments:

I oppose HB1326 and HB1171 because they violate the Constitution, the Public Trust Doctrine, the Water Code and how we manage our resources. They give corporations like Alexander and Baldwin, Mahi Pono and Kauai Island Utility Cooperative unrestricted use of our water at the detriment of downstream users, including those who have fought for generations to have their water restored. They also threaten the habitat of native stream life like various species of 'o'opu found nowhere else in the world. The bills are unjust and no amendment will ever make them right. Small farmers and ranchers will not be adversely impacted if the bills do not pass because no one is challenging their water use; their water use is small and corporations are using them as human shields, they will continue to apply for permits under existing laws. Please know this issue is important to my family, friends, and me, and we all vote.

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:21:30 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Harley Simmons	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 4/1/2019 9:12:48 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raelyn Reyno Yeomans	Individual	Oppose	No

Comments:

Strongly OPPOSE this bill. We must stop pandering to large corporations. Water rights must not be given away. Small farmers can be assisted in other ways without giving away to huge corporate profiteers.

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:31:24 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brent Magstadt	Individual	Oppose	No

Comments:

Do the right thing: OPPOSE HB1326!

This bill creates a loophole to get around Hawai'i's water protections by allowing corporate diverters, such as agribusiness giants A&B and Grove farm, to avoid a rigorous environmental and cultural review - a review that is required for a long-term lease application.

Why would you possibly consider letting these corporations have free access to our resources, to abuse as they please? What about the LOCAL PEOPLE!??

Do the RIGHT THING PLEASE - OPPOSE HB1326!

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:28:50 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Emma L Ladendecker	Individual	Oppose	No

Comments:

Grove Farm does not have any permit from the State to take and now they have no permit to dispose of the aluminum laden water. When they deliver the water to the County, they treat it for bacteria and microbes. We can't find that they test the County water for aluminum but we do know the waste water from their treatment plant has for years had as much as 10 times more than the allowed level of aluminum.

An environmental study must be submitted by Grove Farm to determine the condition of the water.

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:38:04 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandra Herndon	Individual	Oppose	No

Comments:

VOTE NO! Kill this bill now- before it furthers ingrains the false opinion that corporate land owners, like Alexander Baldwin, own the water that may run across the property that they think they "own". Members of the Legislature should ALL understand that according to Hawaii state law, ALL water is a public trust resource and cannot be controlled by Private / Public Corporations, regardless of how long the founders of these companies have been stealing from the people.

Mahalo,

Sandra Herndon

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:41:08 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Wendy Gibson	Individual	Oppose	No

Comments:

Aloha Senate Chair, Vice Chair and Committee Members,

Please vote against this bill. The act of selling or transferring a temporary diversion is illegal.

It is not PONO divert streams of water and money to corporations at the expense of small farmers who may be producing healthy food. That is out of step with Hawaii's goal of increasing locally farmed foods. The protections for lo'i kalo cultivation are insufficient.

Please do not support this action.

Mahalo,

Wendy Gibson R.N.

Palolo

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:46:23 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
D. Encarnacion	Individual	Oppose	No

Comments:

Aloha,

The following text serves as documentation of my testimony **strongly objecting to [HB1326](#)**. To clarify, as an expert witness I **object to any further extension of time** that would be granted to comply with the environmental studies required under HI state law. State law requires environmental studies for any commercial use of State water, these studies have never been done and need to be completed as timely as possible. Please, no more holdovers of water permits that were obtained without proper environmental and cultural studies.

Water code requirements regarding cultural resources and native Hawaiian cultural practitioners have to be sufficiently satisfied.

On the island of Kaua'i, there is a unique classification system regarding *heiau*, or native temples and sacred sites. Diverting water from these sacred features constitutes a direct adverse effect on a cultural resource that has not yet been addressed by any environmental impact documents, and is not allowable under Hawai'i state law. Pools of water such as Ka'awako at the top of Wai'ale 'ale and Pihanakalani along the Wailua River are both considered *heiau*. Pihanakalani is specifically known as a home to akua (gods) and ali'i (nobility). The natural setting at these and other pools is such that the water itself serves the purpose that stone architecture serves elsewhere. Similarly, certain springs of water in Kaua'i were considered *heiau*.

The Hawai'i State Constitution has a Public Trust Doctrine that protects the waters of the State, providing that water must be protected for people of today and the future. In assuring its protection, the Court has recognized that any use of water must first assure the sufficiency of water to satisfy the four recognized public trust purposes, chief among them the needs of Hawaiians to support their traditional/cultural and customary practices. Environmental studies are further required by law to assess potential impacts. Permits should not have been issued without these studies in place.

Hawai'i state law values water as property of native Hawaiian people, and is of special importance to native cultural practitioners. Water nourishes the Hawaiian plants (indigenous and Polynesian-introduced) that are a foundation of diverse ecosystems, culture, and traditions, and that provide Kaua'i with significant educational, scientific,

and socioeconomic benefits. These include nutritional value, medicinal value, lei making, and cultural ceremonial use.

Regarding my qualifications, I have been employed in the disciplines of archaeology and anthropology continuously since 2001, earning my M.A. in Anthropology with an emphasis in archaeology in 2003, and a B.A. in Anthropology with a minor in Biology in 2000. From 2004 through the present, I began authoring, co-authoring, and editing historical/ archaeological impact assessments according to federal, state, and local statutes, contributing to hundreds of environmental impact reports.

Mahalo for this opportunity to provide my testimony,

-Deirdre Encarnación, M.A.-

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:53:41 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Adrian Bontje	Individual	Oppose	No

Comments:



**HB-1326-HD-2**

Submitted on: 4/1/2019 10:00:29 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mr Gary Passon	Individual	Oppose	No

Comments:

No... Big corp should not get free use of water at otherss expense!

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:57:00 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brant Page	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:05:32 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kimberly	Individual	Oppose	No

Comments:

Aloha,

I strongly urge you to OPPOSE HB1326 -

I am a resident of Palolo and live right next to Waiomao stream. I oppose HB1326 as our very own stream has come under threat of having a detention basin built and I don't want other streams to suffer the same fate by having streamflow diverted so that large corporations may benefit from it. I am very concerned that our stream will eventually dry out due to the upcoming bills and would hate to see this happen to other streams.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

This bill does not ensure that our streams are protected and allows big corporation to abuse our water supply. While both bills extend the holdover of revocable permits, neither ensure that our streams are protected; there is currently no provision for minimum amounts of water in the stream, requirements for stream gauging or ensuring mauka to makai connectivity.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

**Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by

their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Kimberly De Souza, Palolo

I am now humbly asking you to **please vote "NO" on: HB 1326 HD2 SD1.**

Although I am vice president of the Kula Community Association and the coordinator for the Alliance of Maui Community Associations, I am not writing to you in those capacities, but as a 52 year Maui resident with long-standing involvement in the future of Maui and Upcountry Maui in particular.

I write in OPPOSITION to HB 1326 HD2 SD1 because it would extend temporary water permits to the A&B REIT, allowing it to take excessive amounts of water from Hawai'i's streams for another 3 years.

I truly appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, but it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that a fair revenue will be collected, and no enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

For over a century, dating back to kingdom days A&B has been taking water from East Maui, paying almost nothing for the billions of gallons that they took annually. They have profited over the years at the expense of many native Hawaiian East Maui farmers, the streams and their biological resources, and the North Maui fishermen who depend on the flow of nutrients into the ocean.

In 2016 the legislature generously gave A&B 3 years to complete an environmental impact statement in preparation in seeking leases for the four state owned lands in the East Maui watershed. During these three years, A&B continued to pay almost nothing for the water and now they are seeking to extend that for another 3 - 7 years.

A&B has again showed its willingness to thumb its nose at the generosity of the State. With all that time, they have not even produced a draft of an environmental impact statement. Nothing!!

Now they are coming to the legislature seeking an additional extension so that they can complete an environmental impact statement and so they can profit from the sale of Maui's best agricultural lands to PSP, a Canadian pension fund. Local Maui investors wanted to buy that land, but A&B refused to deal fairly with them.

The representatives of the Canadian fund have made many promises: no GMOs, no developments, agriculture only, local labor, etc. However, even though they have been asked, the managers of the pension fund have been unwilling to come before the Maui public or to put on paper assurances that they will keep the promises that their representatives are making.

Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long-term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for this corporation to receive yet another extension.

This bill guarantees that A&B can hold on to the \$62 million they made on water from that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

Furthermore, I am hoping that you will convince your colleagues on the Ways and Means committee to vote "NO" on HB 1171 SD2 that is an even worse piece of legislation.

**Prof (Emeritus) Richard "Dick" Mayer    Kula, Maui    dickmayer@earthlink.net**

**From:** [Alicia Morrier](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposition  
**Date:** Saturday, March 30, 2019 8:40:50 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326

My name is Alicia Morrier and I am a resident of Kailua Kona.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

Mahalo,  
Alicia Morrier

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:17:46 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeannine Johnson	Individual	Oppose	No

Comments:

I strongly oppose HB1326 proposed SD1 that permits holdover of water leases to 6 years instead of the current 3 years and ignores the DLNR's public trust obligation to protect, control and regulate the use of Hawai'i's water resources for the benefit of its people. Please also oppose HB1326 as our water is a public trust resource that needs to be protected.



**From:** [amy.erenberger](mailto:amy.erenberger)  
**To:** [WTL Testimony](#)  
**Subject:** HB 1326  
**Date:** Sunday, March 31, 2019 4:57:04 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Amy Erenberger and I live in Eugene, Oregon where we fight strongly to protect our precious waters. I am also a frequent visitor to Kauai.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

Small water users not harmed

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Amy Erenberger  
Eugene, Oregon

Sent from my iPhone

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:25:31 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark K.Wilson III	Individual	Oppose	No

Comments:

**From:** [F A](#)  
**To:** [Paul Miller](#)  
**Cc:** [WTL Testimony: WAMtestimony@capital.gov](#)  
**Subject:** Re: HB1326  
**Date:** Sunday, March 31, 2019 9:27:51 PM

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Aloha Chair Kahele, Chair Dela Cruz and members of the committee,

Please oppose bill 1326. My name is Paul Miller and I live in Kapaa HI up towards the mountains. I feel it is important to protect our resources from exploitation whether it be individuals or corporate. Water is one of our most important resources and I have noticed that the reservoir up here on Kainaola Rd is near empty from time to time and the ditch in Kapahi off Helena Lane and Wanaau road is empty. Farmers live in these areas and are in need of water. They could be utilizing ditch water and the reservoir instead of using valuable drinking water from the city water pipes. I believe this problem is a result of the misuse of water by large companies such as A&B. HB 1326 will continue this abuse of this valuable resource. We need to hold everyone accountable for water use and especially companies that use millions of gallons a day. I feel high water users should do an environmental impact statement for this use which includes cultural impacts. I also don't feel small water users will be impacted by HB 1326 being opposed and knocked down. They can continue to reapply for permits yearly.

Mahalo for your consideration,  
Paul Miller  
Kapaa, HI

On Sun, Mar 31, 2019 at 8:52 PM Paul Miller <[cruzermilp@gmail.com](mailto:cruzermilp@gmail.com)> wrote:

Aloha Chair Kahele, Chair Dela Cruz and members of the committee,

Please oppose bill 1326. My name is Paul Miller and I live in Kapaa HI up towards the mountains. I feel it is important to protect our resources from exploitation whether it be individuals or corporate. Water is one of our most important resources and I have noticed that the reservoir up here on Kainaola Rd is near empty from time to time and the ditch in Kapahi off Helena Lane and Wanaau road is empty. Farmers live in these areas and are in need of water. They could be utilizing ditch water and the reservoir instead of using valuable drinking water from the city water pipes. I believe this problem is a result of the misuse of water by large companies such as A&B. HB 1326 will continue this abuse of this valuable resource. We need to hold everyone accountable for water use and especially companies that use millions of gallons a day. I feel high water users should do an environmental impact statement for this use which includes cultural impacts. I also don't feel small water users will be impacted by HB 1326 being opposed and knocked down. They can continue to reapply for permits yearly.

Mahalo for your consideration,  
Paul Miller  
Kapaa, HI

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Frildo Andersen  
808-384-7218

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:43:13 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diane de Vries	Individual	Oppose	No

Comments:

Aloha, Senate Committee. I am writing to oppose HB 1326 HD2. 6 consecutive holdover water permits seems way out of line, when Grove Farm has already had years to apply for a permit, does not have a NPDES permit, a lease to divert water, or permit to dispose of water that is potentially laden with aluminum and other contaminants.

Because they have not been required to get these permits, we have no documentation that they have done the proper environmental studies that may have detected aluminum and other toxic wastes in the water.

Water from this Grove Farm source is reportedly being used by the public, including at hospitals.

Without environmental studies, we have way to know if this water is safe to drink, eventhough the State requires the appropriate studies for commercial use of water.

Please oppose bill HB1326 and authorize the necessary studies.

Thank You

Diane de Vries

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:43:52 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kuulani Muise	Individual	Oppose	No

Comments:

Wai is a public trust resource, protected under the Hawaii state constitution and water code; however, for over 150 years, so much of Hawaii's wai has been managed, instead, as a private commodity, mostly by sugar plantations who have diverted millions upon millions of gallons a day, everyday, for over a century and a half, and disrupted the free flow of streams from mountain to sea.

What does this mean for our rivers, for the silently dry valley floors that were once rivers? What does this mean for our stream people - for the hihiwai, the pipiwai, the oopu, opae whose lives depend on "two runs" (diadromous) of wai that touch both the poowai and the puewai, the head and the mouth of the stream? What of the muliwai, the estuaries? What of protected cultural uses of wai like loi kalo, what they call "riparian rights" from the latin ripa meaning "bank" as of a river, yes, but in Hawaii's case might also allude to a reserve of wealth, one that has been diverted for far too long? And what of the kanaka who are themselves vessels of ka wai a Kane, reflective bodies of water, wai aka, of our streams? How can we begin to number and mitigate such losses?

Wendell Berry, famous essayist and farmer once said, "People exploit what they have merely concluded to be of value, but they defend what they love and to defend what we love we need a particularizing language, for we love what we particularly know." The idea that our kupuna looked at wai outside of a use-value framework is evidenced in all their term for water: Wai, wai honua, kumu wai, mano wai, poo wai, kahawai, waikahe, waiholomoku, wai pii, wai nui, wai pahu, wai aulia, lau wai, waina, moloalo, aumana, wai puna, aalu, wailele, wai puhia, waikoiki, lapa wai, waialeale, loko wai, wai au, wai auau, wai ahu, wai lohia, wai aka, wai ehu, wai eli, wai hi, wai hu, wai ko, wai lani, wai ua, wai welawela, wai hanai, wai apo, wai lau lau, wai ku, muliwai, puewai, puuone, wai kai.

Despite all the damming, streams of hope still run strong and true. Water warriors have fought for decades, for generations, resulting in landmark (read as watermark) cases for Waiahole, Na Wai Eha, and Waimea river, with much work ahead to increase and maintain new flow. Currently in East Maui and on Kauai, large water diverters are attempting to push bills through the capitol, an unbelievable display of political maneuvering, that would allow for continued and illegal holdover short-term permits helping them stave off the kind of scrutiny and assessment required of long term permits. The passing of these water theft bills will benefit one such large diverter

(Alexander and Baldwin) to the tune of 62 million dollars over the next two years. Water is wealth, indeed.

I urge you to OPPOSE HB1326!

Following the progression of these bills through the Legislature has led us, many times, back to our own source of wai, to Mahakea stream here in Kahua, to the waters that our children have been raised in, the wai to which they belong. To watch them walk the riverbeds, swim the streams, is to be flooded over in gratitude for what is still left, and in hope for what will flow again. "O Mahakea kuu wai," our children will say, as a term of identity, as a pledge of allegiance, as a prayer - he waiha, he waipa.

**From:** [weareallone](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** OPPOSE HB 1326!  
**Date:** Saturday, March 30, 2019 2:09:38 PM

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Hello Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of Hawaiian streams.

Small water users not harmed

While I appreciate that the bill attempts to provide some protection for small water users, allowing diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of  
Hawai'i's precious waters, and OPPOSE HB 1326.

Thank you,  
Valerie Gilbert



**From:** [Gabriela Taylor](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** Stop HB 1326 HD2 SD1, HB 1326 HD2 SD1  
**Date:** Sunday, March 31, 2019 11:48:26 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees.

I am a 46 yr. resident of Kapaa, Kauai and oppose both bills: [HB 1326 HD2 SD1](#) and [HB 1171 HD1 Proposed](#). Water is a precious resource that needs to e monitored and regulated. [Small Farmers & Ranchers Will Not Be Impacted if HB 13't Pass26 or HB 1171 doesn't pass.](#)

As if one water bad bill weren't enough, now the Senate has gutted and replaced the content of HB 1171. The two bills are almost identical, HB 1326 holds over revocable permits for another 3 years, while HB 1171 holds over revocable permits for another 7 years!

Perhaps the biggest misinformation being circulated is that small water users will be harmed if this bill doesn't pass. This simply isn't true. The large-scale diverters (A&B/Mahi Pono, KIUC/Grove Farm) are using small farmers and ranchers as human shields to justify an exception to the laws designed to protect Hawai'i's public trust water resources. A&B is the only entity that will be impacted if this bill does not pass.

We have an uncertain future with Global Warming and if passed, these bills could cause disaster to residents on Kauai. Please stop the passage of these two bills.

Sincerely, Gabriela Taylor  
1010 Kealoha Rd , Kapaa, 96746

**From:** [A.Russell](#)  
**To:** [WTL Testimony](#)  
**Subject:** HB1326 - PLEASE OPPOSE  
**Date:** Sunday, March 31, 2019 9:35:17 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

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There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

A. Russell  
Kapa'a

**From:** [Yvette Celiz](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** OPPOSE HB 1326  
**Date:** Monday, April 1, 2019 7:08:56 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

My name is Yvette Celiz from Lahaina, Maui. I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Yvette Celiz, Lahaina

**From:** [Noel Kent](#)  
**To:** [WTL Testimony](#)  
**Subject:** HB1326  
**Date:** Saturday, March 30, 2019 2:14:55 PM

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Dear Chair Kahele: Water is our most precious resource and critical to our lives. The continuing theft of our water by corporations (read REITs) like Alexander and Baldwin is an intolerable assault on the common good and our a'ina. This bill really constitutes a huge bailout for that corporation which has not operated in the public interest for many years. We need these resources to maintain our water resources intact and for the move towards agricultural self-sufficiency which is imperative for us in this, the most remote group of islands on this planet. Please safeguard the integrity of our water resources by rejecting this bill. Mahalo Noel Kent UH Manoa

**From:** [haiku.starlight@everyactioncustom.com](mailto:haiku.starlight@everyactioncustom.com) on behalf of [christina Hemming](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Sunday, March 31, 2019 8:52:02 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

I live on East Kuiaha stream, and according to the MOU between AB and County of Maui, (clause L)

"As longterm agricultural water needs are reduced, a stream restoration program will be studied, developed and initiated by BWS" (Maui) "BWS will develop and implement a stream monitoring program to provide current baseline data." sec K of MOU

"Any change in AB agricultural use for water triggers a review of Inflow Stream standards. I hereby request E Kuiaha stream 6-03-02, located in Haiku Hawaii to get 2-3 gages and a study of the stream to be created. The people who live along the stream deserve to have water, for agricultural use, stream wildlife, and life of the land, and it is supported in the Maui County water code, and the State Water Commissions own rules. We deserve to have life flow through our lands. East Maui needs to be designated a Water Management area in order to transfer water legally to Central Maui....please enforce the law as it exists.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue is mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them. East Maui Irrigation acquired the lands that EMI claims are theirs, and the transfer of water out of the region is illegal, according to the rules set forth in State Water Commissions own policies.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

Thank you,

Christina Hemming  
East Kuiaha rd  
Haiku, HI 96708  
[Haiku.starlight@gmail.com](mailto:Haiku.starlight@gmail.com)

Sincerely,  
christina Hemming  
Haiku, HI  
[haiku.starlight@gmail.com](mailto:haiku.starlight@gmail.com)

**From:** [msgingerbray@everyactioncustom.com](mailto:msgingerbray@everyactioncustom.com) on behalf of [Ginger Bray](#)  
**To:** [WTL Testimony](#)  
**Subject:** Oppose HB1326 SD2 and HB 1171  
**Date:** Sunday, March 31, 2019 10:45:06 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2 and HB 1171. KIUC and A&B has had more than a decade to prepare their long term lease applications as well as acquiring Environmental Impact Statements. However, they have failed to do so and their revocable permits are becoming permanent and not "temporary." These businesses are more than capable and have the means to do so; yet they continue to be non-compliant because they have been getting away with it for so many years.

The KIUC diversion at Blue Hole directly impacts my families farm that we've had for 18 years. Our farm borders the Wailua River North Fork, and the stream flow that feeds streams on our parcel has severely diminished over the years. It is visibly evident. There were parts of the river that we would have to wade across to go fishing, but now half of the flow is gone and the river bed is dry with rocks protruding. It is visibly evident.

Please stop the corporate profit and help honor the Public Trust. We need to ensure that these waterways are truly protected for the benefit of the people; both now and future generations.

Respectfully,

Ginger PD Bray  
Hanahanapuni Farm

Sincerely,  
Ginger Bray  
Kapaa, HI  
[msgingerbray@yahoo.com](mailto:msgingerbray@yahoo.com)

**From:** [atchesond@everyactioncustom.com](mailto:atchesond@everyactioncustom.com) on behalf of [David Atcheson](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposing HB1326 SD1 (hearing 4/2/19 WTL/WAM)  
**Date:** Monday, April 1, 2019 10:18:43 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

Our constitution says "The State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people." Despite the well-intentioned amendments to the permit requirements, passing HB 1326 SD2 would in my view still not be consistent with this provision. Let's restore balance, end the extension of these temporary permits, and put into practice the understanding that our wellbeing is bound up with that of our native streams and other natural systems. Please reject this bill so we can manage water resources in the best interests of Hawaii's people as a whole.

Sincerely,  
David Atcheson  
Honolulu, HI  
[atchesond@gmail.com](mailto:atchesond@gmail.com)

**From:** [Tlaloc Tokuda](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** Oppose HB 1326  
**Date:** Saturday, March 30, 2019 4:52:14 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees;

I strongly urge you to oppose HB 1326.

My name is Tlaloc Tokuda and i belong to HAPA and 350 HI. I live in Kailua Kona. I have followed water rights issues since the HI Supreme Court took up the Waiahole Ditch System case. HB1326 is a very bad bill and undermines Hawaii's Public Trust doctrine by giving Corporate diverters another 3 years to drain the water without any environmental oversight.

More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Tlaloc Tokuda, Kailua Kona



**From:** [larry heller](#)  
**To:** [WTL Testimony](#)  
**Subject:** Email Testimony Against HB 1326  
**Date:** Sunday, March 31, 2019 8:22:32 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I've been a resident in Lawai, Kauai for over 20 years now and have seen our water rates go up while the quality of our water goes down. This Bill as it is written gives a pass for these corporations and big land holders to continue getting what they want with out following State Laws.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

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There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

**larry heller, Lawai**  
[hellerl001@hawaii.rr.com](mailto:hellerl001@hawaii.rr.com)



**From:** [ANTHONY](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** HB1326 and HB1171  
**Date:** Monday, April 1, 2019 10:15:20 AM

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Aloha Chair Kanahale, Chair Dela Cruz and members of your committee

I strongly urge you to oppose HB1326 and HB1171.

I am a native Hawaiian born and raised in Koloa and have been an advocate for doing what's pono to the land we live on. Too much of our Hawaiian cultural values and beliefs are "diverted" to special interests and become political drama.

As a busy tutu lady of seven, who live here, I feel it is important to instill the lessons of pono.

I am also President of Malama Mahau'lepu, one of older preservation groups in the state.

You are in a position to do what is right. It is very simple. Vote no to HB136 and HB1171.

Mahalo,  
Miriam Napua Romo

Sent from Samsung tablet

**From:** [aikoy@everyactioncustom.com](mailto:aikoy@everyactioncustom.com) on behalf of [Aiko Yamashiro](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Monday, April 1, 2019 7:52:30 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I have been learning recently about fresh water and development in Okinawa and other island places. All this has taught me that our sources of water are the most important resources to protect and share. If we lose or damage them, it is so hard to go back. Once the water stops flowing, our connections to place and sustenance weaken or die. Development can run irresponsibly, because we no longer understand the true capacity of place. Our ocean suffers too, losing the nourishment of the stream. Our keiki grow up not knowing what streams are, closing off their ability to understand wellness and wholeness of 'aina.

In this powerful moment, as economies change and we have the chance to heal what has been damaged, we need our leaders to be very brave, and have really long vision, to protect what makes Hawai'i and its people unlike anywhere else, and demand very high standards of corporations like A&B, whose primary interest is profit, not the health of our home.

Sincerely,  
Aiko Yamashiro  
Kaneohe, HI  
[aikoy@hawaii.edu](mailto:aikoy@hawaii.edu)

**From:** [athurston@everyactioncustom.com](mailto:athurston@everyactioncustom.com) on behalf of [Anne Thurston](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Sunday, March 31, 2019 10:33:26 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I OPPOSE HB 1326 SD2 in the strongest possible terms.. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another three years. There is widespread opposition to this bill across the islands, and the community will be watching the outcome carefully.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue is mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

Sincerely,  
Anne Thurston  
Princeville, HI  
[athurston@irmt.org](mailto:athurston@irmt.org)

**From:** [Iao Edmonds](#)  
**To:** [WTL Testimony](#)  
**Subject:** Oppose HB 1326  
**Date:** Saturday, March 30, 2019 8:42:41 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo, Iao Edmonds  
Kilauea Paint & Feed Store  
Store #(808)828-6655  
Cellular #(808)639-2295  
2488 Kolo Rd.  
Kilauea, HI 96754

**From:** [David Sutton](#)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** OPPOSE HB 1326  
**Date:** Sunday, March 31, 2019 10:07:21 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is David Sutton. I have lived on the island of Kauai for the last 6 years.

Here on Kauai we have been impacted by issues regarding water diversion on Waialeale and the Wailua River, to name a few. Grove Farm and Kauai Island Utility Cooperative have been diverting water without the criteria for ensuring that stream ecosystems are protected, HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence

farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
David Sutton, Kilauea, Kauai



**From:** [larry heller](#)  
**To:** [WTL Testimony](#)  
**Subject:** Email Testimony Against HB 1326  
**Date:** Sunday, March 31, 2019 8:22:32 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I've been a resident in Lawai, Kauai for over 20 years now and have seen our water rates go up while the quality of our water goes down. This Bill as it is written gives a pass for these corporations and big land holders to continue getting what they want with out following State Laws.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

**larry heller, Lawai**  
[hellerl001@hawaii.rr.com](mailto:hellerl001@hawaii.rr.com)



**From:** [Maria Maitino](#)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** OPPOSE HB 1326  
**Date:** Saturday, March 30, 2019 8:29:07 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Maria Maitino. I have lived on the island of Kauai for the last 16 years.

Here on Kauai we have been impacted by issues regarding water diversion on Waialeale and the Wailua River, to name a few. Grove Farm and Kauai Island Utility Cooperative have been diverting water without the criteria for ensuring that stream ecosystems are protected,

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Maria Maitino, Kilauea, Kauai

**From:** [Maria Walker](#)  
**To:** [WTL Testimony](#)  
**Subject:** Please vote NO on HB1326  
**Date:** Sunday, March 31, 2019 9:41:59 PM

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Aloha Committee Members,

I live on Kaua'i in Kapa'a and live next to Kapa'a stream; I have seen first hand how sensitive the stream and its plant and animal life are to any disruptions in flow, or to construction work done along its banks. Our waterways are an irreplaceable resource that belongs to all the people of Hawai'i and must not be allowed to be exploited for profit. That is why my family and i are adamantly opposed to HB1326; this bill seems designed expressly to benefit large corporate entities who wish to have the rules changed for their own gain. We feel strongly that the continuance of revocable permits, with no requirements for environmental impact statements, and no stream monitoring for protecting the water and waterways, will inevitably result in abuse by large corporations and the degradation of our riparian environments.

Please remember that every elected official, including yourselves, has been given by your constituents the very sacred duty to uphold the public trust and protect our natural resources for the good of all the people. All of us are watching to see how each of you votes; will you choose to uphold the excellent water usage laws that are in our state constitution, designed to protect both our environment and the quality of water that our residents and visitors need to live, or will you choose to allow a corporation to get special treatment and flout our existing permit process so that they can benefit by millions of dollars when they already have enormous profits and wish to exploit our precious water with no concern for the future?

The answer to this question will help all of the citizens of Hawai'i know how they will be voting in 2020.

Please think of your great grandchildren and how you will answer their questions when they ask what you did while in office to protect our land and water so that they, too, could live healthy, happy lives here in Hawai'i.

Mahalo for hearing my testimony,  
Maria Walker  
PO Box 33  
Kapa'a, HI 96746  
(808) 821 0732

**From:** [kimikolahaelawalter@everyactioncustom.com](mailto:kimikolahaelawalter@everyactioncustom.com) on behalf of [Kimiko LaHaela Walter](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Monday, April 1, 2019 8:47:14 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

With all due respect, no version of any bill should be passed that allows corporations to divert millions of gallons of water from the land and its people. Last July, I toured the dry stream beds of east Maui and, especially as an ecologist, I was appalled that water diversions of this magnitude are allowed to continue across Hawai'i. Ecosystems cannot thrive in Hawai'i without flowing fresh water. The fact that corporations like A&B are continually allowed to divert millions of gallons is unacceptable. It is incumbent upon you to do the right thing and protect resources in the public trust.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

Please do the right thing and vote this bill down. Mahalo nui loa!

Sincerely,  
Kimiko LaHaela Walter  
Honolulu, HI  
[kimikolahaelawalter@gmail.com](mailto:kimikolahaelawalter@gmail.com)

**From:** [Merri Murphy](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposed to HB 1326  
**Date:** Saturday, March 30, 2019 5:03:28 PM

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Please do not let this happen. It is critical.  
Mahalo, Meredith Murphy

**From:** [Jonathan Boyne](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** I strongly urge you to oppose HB 1326.  
**Date:** Saturday, March 30, 2019 2:08:47 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

**Jonathan Boyne**  
96822

**From:** [michael greene](#)  
**To:** [WTL Testimony](#)  
**Subject:** Please  
**Date:** Saturday, March 30, 2019 10:29:39 PM

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Stop this water bill theft.

A & b has always been out for profit & self aggrandizement.

Please stop them.



**From:** [judie@aloha.net](mailto:judie@aloha.net)  
**To:** [WTL Testimony](#)  
**Subject:** OPPOSE HB 1326  
**Date:** Saturday, March 30, 2019 2:18:23 PM

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Aloha Chairs Kahele and Dela Cruz and Committee Members,

I want A & B to follow the law and get environmental and cultural reviews. There is o actual risk to small farmers or ranchers if this doesn't pass.

Please do the right thing!

Aloha, Judie Hoepner

Lihue

808 639 0212

**From:** [Liz Crites](#)  
**To:** [WTL Testimony](#)  
**Subject:** Water bills  
**Date:** Sunday, March 31, 2019 9:49:25 AM

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I live in Lihue and from what I understand of 2 bills coming up for consideration is that they are not people centered.  
I see them as theft of our resources without adequate compensation.

I strongly urge you to oppose HB 1326.

**Sincerely**  
**Liz Crites**

**From:** [Meredith Cross](#)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** Oppose HB 1326  
**Date:** Monday, April 1, 2019 9:50:25 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I, Meredith Cross of Kapaa, oppose bill 1326. We need to stop allowing those responsible from avoiding following laws and ignoring the impacts that are made on our environment. Stop the theft of our water and set a standard that all need to follow the law!

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

Meredith Cross  
Kapaa, HI

**From:** [Susan Stayton](#)  
**To:** [WTL Testimony](#)  
**Subject:** Strongly Oppose HB 1326  
**Date:** Sunday, March 31, 2019 8:06:12 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I am a resident of Lawai, Kauai. Having moved from California over 30 years ago, I am very aware of the horrors of corporations stealing water rights from the citizens. They make money and the people suffer. You cannot sell the right to Wai which is Life. You represent the people of this state, not the corporations. Vote against this corporate theft.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

**Small water users not harmed**

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There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration,  
Susan

#####

Susan Stayton  
PO Box 1113  
Lawai, HI 96765  
808-651-9070

**From:** [Micaela Coberly](#)  
**To:** [WTL Testimony](#)  
**Subject:** water theft  
**Date:** Saturday, March 30, 2019 4:12:17 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Micaela Coberly, and I have a small farm on the island of Kauai. The ditch that runs right on the property line and was supposed to be available to me as a source of ag water is now dried up. The water has been diverted upstream and never flows anymore. It is imperative that we, as farmers, have access to ag water as an alternative to using high priced county drinking water if diversified agriculture is to survive here on Kauai.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

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There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
[Your Name, Town]

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**BLESSED LOVE ALL WAYS**

**From:** [Croft, Parker](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposition to HB1326  
**Date:** Saturday, March 30, 2019 6:05:44 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Parker Croft and I live at 2895 H Kamookoa Road, Kilauea, Kaua'i on the Pohakuhonu Stream. For over ten years we have experienced the removal of water from this stream by at least two individuals. At the same time these individuals were dumping high nitrogen discharge into the stream. I spent many hours and went to Oahu with photographs and documentation without any effective response. As a result the stream has continued to be degraded. This is occurring throughout Hawai'i. It is illegal, but the laws are not enforced. Passing HB1326 institutionalizes the theft of our natural resources. This cannot be allowed by any moral steward of Hawai'i's resources. Do not pass this bill.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

Parker Croft  
Kilauea, Kaua'i

**From:** [Owen Wormser](#)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** Please oppose HB 1326  
**Date:** Sunday, March 31, 2019 3:49:05 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

Despite the fact that I am not a full-time resident I'm a regular visitor and I'm strongly opposed to giving away massive amounts of water to corporations that don't need all of it – all to the great detriment of Hawaii's sacred and sensitive environment.

HB 1326 blatantly undermines Hawaii's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawaii's streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawaii's precious waters, oppose HB 1326.

Mahalo for your consideration.

Owen Wormser  
4 Jackson Hill Road  
Leverett, MA, 01054

**From:** [Noreen Dougherty](#)  
**To:** [WTL Testimony](#)  
**Subject:** HB1326  
**Date:** Saturday, March 30, 2019 9:10:54 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Noreen Dougherty and I am a resident of Kapaa. Apopo Stream flowed through my property for many years . There was an abundance of crayfish, several fish species, fresh water clams, snails, damsel flies, water insects, o'opu, bullfrogs, and Auku'u herons living in and around the stream in a clean and balanced natural environment...

....until the water was diverted. The stream after the diversion had floating fish carcasses. The crayfish requiring moving water committed suicide on the banks of the stream. I called the State Board of Health due to the horrible smell and obvious bacteria and unhealthy condition of the puddles that were left to dry.

The lack of oxygen in the remaining water and absolutely disgusting condition of the stream. I had a State Licensed Daycare on the property for many years before the diversion and it was a major source of stress for the children to see what had occurred.

HB 1326 blatantly undermines Hawaii's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight.

I am asking you to please not let corporations and private interests rule your decision and oppose HB1326. I humbly ask that you restore faith in our state legislature by honoring the Hawaiian Culture, the residents of Hawaii, the keiki, local farmers, and this incredible natural environment of which we have stewardship. Show the keiki of Hawaii that you can stand up for what is in their best interest. Time and time again corporations and big money are behind major decisions, but please not this time. Let the blessing that our streams and rivers are flow without diversion.

I strongly oppose HB1326.

Mahalo for your consideration,  
Noreen Dougherty



**From:** [Paul Miller](#)  
**To:** [WTL Testimony](#); [WAMtestimony@capital.gov](mailto:WAMtestimony@capital.gov)  
**Subject:** HB1326  
**Date:** Sunday, March 31, 2019 8:52:25 PM

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Aloha Chair Kahele, Chair Dela Cruz and members of the committee,

Please oppose bill 1326. My name is Paul Miller and I live in Kapaa HI up towards the mountains. I feel it is important to protect our resources from exploitation whether it be individuals or corporate. Water is one of our most important resources and I have noticed that the reservoir up here on Kainaola Rd is near empty from time to time and the ditch in Kapahi off Helena Lane and Wanaau road is empty. Farmers live in these areas and are in need of water. They could be utilizing ditch water and the reservoir instead of using valuable drinking water from the city water pipes. I believe this problem is a result of the misuse of water by large companies such as A&B. HB 1326 will continue this abuse of this valuable resource. We need to hold everyone accountable for water use and especially companies that use millions of gallons a day. I feel high water users should do an environmental impact statement for this use which includes cultural impacts. I also don't feel small water users will be impacted by HB 1326 being opposed and knocked down. They can continue to reapply for permits yearly.

Mahalo for your consideration,  
Paul Miller  
Kapaa, HI

**From:** [pastronaut@everyactioncustom.com](mailto:pastronaut@everyactioncustom.com) on behalf of [Patrick Switzer](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Monday, April 1, 2019 8:21:42 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. It is time to return these water resources to the public. It is not appropriate for corporations to profit by stealing water that would otherwise improve Hawaii's ecosystems and biodiversity.

Sincerely,  
Patrick Switzer  
Honolulu, HI  
[pastronaut@hotmail.com](mailto:pastronaut@hotmail.com)

**From:** [Rick Janik](#)  
**To:** [WTL Testimony](#)  
**Subject:** HB 1326, opposed  
**Date:** Saturday, March 30, 2019 6:24:49 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I am Richard J Janik, MD a 13 year resident of Lihue, Kauai, 96766 and a 20 year resident of Hawai'i. I believe that due to water diversion, the incidence of staph bacteria, and MERA are ever increasing due to the rivers and streams not being able to flush the bacteria out to sea where the salinity of the ocean will kill it.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the holdover of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Richard J. Janik, MD  
Lihue, Kauai, HI

**From:** [Shay Chan Hodges](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposition to HB 1326  
**Date:** Saturday, March 30, 2019 4:21:43 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Shay Chan Hodges and I am Vice Chair of the Maui County Board of Water Supply. I am testifying as an individual.

If you haven't read the Maui News article from last week, I strongly encourage you to do so as it clarifies the issues related to Maui County's water supply:

**[“Controversy flows at water meeting” by Kahaulani Cerizo, Maui News](#)**

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.

Shay Chan Hodges, Haiku Hawaii

Author, [Lean On and Lead, Mothering and Work in the 21st Century Economy](#)

Catalyst, Family-Centered Design<sup>SM</sup> thinking

Twitter: @LeanOnAndLead

Facebook: Lean On and Lead

[Download the iBook:](#)

**From:** [nix@lifeislight.com](mailto:nix@lifeislight.com)  
**To:** [WTL Testimony](#)  
**Subject:** I strongly urge you to oppose HB 1326.  
**Date:** Sunday, March 31, 2019 12:28:16 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

We are Debra and John Nix DC from Kihei.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious

waters, oppose HB 1326.

Mahalo for your consideration,  
Dr. John and Debra Nix, Kihei

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**From:** [Rob Weltman](#)  
**To:** [WTL Testimony](#); [WAM Testimony](#)  
**Subject:** Oppose HB 1326  
**Date:** Sunday, March 31, 2019 5:09:07 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

I live in Kihei in South Maui but have friends in East Maui and often hike there, giving me the opportunity to see first hand the effects of denying water to the flora and fauna downstream of the diversions.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

Small water users not harmed

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There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Rob Weltman, Kihei

**From:** [roger harris](#)  
**To:** [WTL Testimony](#)  
**Subject:** HB 1326 Opposition  
**Date:** Sunday, March 31, 2019 2:01:43 PM

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Pineapple



I strongly oppose HB 1326 as I live on Kauai as even with the larger than normal amounts of rainfall, the streams near my home in Wailua are low and waterfalls which attract many tourist dollars are minuscule.

"Nuff said. By the way, i vote for those who protect the 'aina as do my friends.

Mahalo for your time.

Roger harris  
Wailua Homesteads, Kauai



*Yahoo Mail Stationery*



**From:** [sharonmokihana@everyactioncustom.com](mailto:sharonmokihana@everyactioncustom.com) on behalf of [Sharon Goodwin](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Sunday, March 31, 2019 10:41:07 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I vigorously oppose HB 1326 and HB 1171!

This holdover of revocable permits creates a "bypass" for corporate water diverters to ignore the more rigorous environmental and cultural reviews required for long-term lease applications. Diverters such as Kauai Island Utility Cooperative (KIUC) have been taking 100% of the base-flow of Wai`ale`ale and Waikoko Stream waters, 2 public streams on State Conservation Land, since 2004, causing de-watering of these Streams and degrading the forest environment. KIUC, which is my utility, lied to the Legislature as far back as 2002, stating their water use was non-consumptive. DLNR in 2016 said NOPE, your use is CONSUMPTIVE.

I have testified, along w/ other KIUC utility customers for well over a year in their monthly Board of Directors meetings, that KIUC needs to begin an EIS and Conservation District Use Permit. To date our testimonies have been ignored.

Lack of environmental studies which includes public hearings and information sharing with the public has unfortunately kept the high aluminum content from bauxite in the soil in the Waiahi area in the dark. KIUC assists Grove Farm Corp in getting the water after waters pass thru KIUC hydros. Grove Farm does not have a permit. Grove Farm does not pay the State for receiving waters. Grove Farm sells 3mgd of water to Kaua`i County Dept of Water for \$2,000,000 per year.

**REJECT HB 1326 and HB 1171. Hold diverters to the Existing Hawaii State Public Trust Laws!**

Sincerely,  
Sharon Goodwin  
Kapaa, HI  
[sharonmokihana@gmail.com](mailto:sharonmokihana@gmail.com)

**From:** [Paul Solomon](#)  
**To:** [WTL Testimony](#)  
**Subject:** TESTIMONY FOR HB 1326  
**Date:** Sunday, March 31, 2019 8:28:23 PM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I strongly urge you to oppose HB 1326.

My name is Paul Solomon and I live in Pukalani on the island of Maui. We are attempting to become more self-sufficient in terms of our food production. This bill hurts our small farmers in that it diverts water from their lands. The holding of water by A&B is for the sole purpose of their wanting to eventually overdevelop our island and to earn 62 million dollars a year at our farmers' expense.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a 62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

#### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Paul Solomon  
Pukalani, HI

**From:** [Patricia Fallbeck](#)  
**To:** [WTL Testimony](#)  
**Subject:** Water bills  
**Date:** Sunday, March 31, 2019 10:23:49 AM

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I am apposed to allowing water rights of corporate businesses to jeopardize small farms on Kaua'i. It is my understanding that many of these small family farms have been struggling with water access for decades.

Water needs change and the rights need to be flexible to be fair to all and establish a sustainable situation for corporate and small business alike.

Thank you for your consideration!

Dr. Patricia Fallbeck  
Koloa

Sent from my iPhone

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:46:57 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kaliko Amona	Individual	Oppose	No

Comments:

**LATE**

**From:** [haiku.starlight@everyactioncustom.com](mailto:haiku.starlight@everyactioncustom.com) on behalf of [christina.Hemming](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Monday, April 1, 2019 11:36:29 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years. The Ways and Means committee must require monitoring, at AB expense, on all streams for flow value and as our representatives, I ask you to enforce compliance on enforcing conditions on compliance, public access to State Lands, maintenance of the State managed Lands, which need enforcement and staff to do the work of the people. The residents of East Maui deserve DATA on each and every stream, where water is diverted, and the State must enforce the Public Trust Doctrine, where the residents, stream life, and diversified agriculture, and aquaculture are historical and presently done. There are only 4 gages that monitor the streams in this area, and 100 years ago there were 100, lets return to the correct monitoring and data gathering that creates bills based on knowledge, and facts. Over 2 million gallons a day allows for conditions to be placed on the continued leases. AB has had a lot of time to properly prepare for the EIS and place gages on streams to be honest about the water data.....Is the Ways and Means Committee going to look the other way and pretend it has data it does not have to make informed and prudent decisions? Maintenance of roads, and streams that have run dry are also a concern, for when a storm comes, streams become flooded and are diverted by unmaintained areas, causing much road destruction, which the Maui County taxpayer has to cover, and creates a dangerous situation for residents in the stream areas, as in 2 years ago. I am a voter, a County water user, and have family on Honopou road, and I oppose this bill, for it does not consider the local residents, the best interests of the public and residents of East Maui, and it most likely is a sweetheart Deal for EMI and not the Trust for the State or the Hawaiian people. Like in 1999 When Mr Agaron allowed for a \$600 annual lease cost for Kaupo ranch, the track record for high moral ground, accountability and fiduciary responsibility is suspect here also.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue is mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

This replaces my former testimony.

Thank you

Christina Hemming  
Haiku Hi

Sincerely,

christina Hemming  
Haiku, HI  
haiku.starlight@gmail.com

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:56:30 AM

Testimony for WTL on 4/2/2019 10:45:00 AM



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

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:01:22 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tiana Kaauamo	Individual	Oppose	No

Comments:

Aloha, My name is Tiana Kaauamo of Wailuanui Maui. I Oppose bill HB1326. It is time for the state and private cooperations to return our waters to the its natural streams. Our aina is dieing! Our resources are dieing. Ho'i i ka 'aina. Return the water to the land. We need to malama our land, for she can malama us. We are destroying our planets, let us starts by making sure we protect our home and our future. How can we countinue to malama our culture, heritage for our lahui and KEIKI. If we loose the WAI to our AINA we will not be able to protect our culture and practices. We will loose our Aina, loose our selves, how can we teach our keiki, we will teach them history?! 'A'ole We want to show them, EIA ka wai a kane. Ke'olu'olu pls, 'A'ole! Return stream FLOW!



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:09:34 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jim Klyman	Individual	Oppose	No

Comments:

Review of this bill, I can agree with many of its points, but there is a significant loop hole that overrides any further support for this bill. Requires holdovers to continue without BLNR action while a contested case hearing is pending. As long as a dispute is open, the other part of the regulation will never take place. In my mind, this is bad ledgislaton and should be eliminated. Put the permitting process back where the people have some say on water rights, instead of a perpetual loop of delays and inactivity.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:21:53 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carla Gimpel	Individual	Oppose	No

Comments:

Aloha, my name is Carla Gimpel. I strongly & unequivocally oppose to HB1326 since in my opinion is violently dismantling the right of living in harmony with nature. When controlling the water, the ecosystems are affected tremendously, and for the past decades this has been done mindlessly in our island. Enough is enough. Please, act pono in the name of the people that trusted you to do this work. Mahalo nui.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:45:53 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jennifer Milholen	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:50:56 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Howard Fu	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 11:55:40 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shane Sinenci	Individual	Oppose	No

Comments:

I am writing to express my strong opposition of this bill. This bill proposal would allow holdover permits to continue for an additional 7 years without first studying the impacts of these diversions or having accurate numbers of the water needed by the landowner. Recent misinformation has been provided in community discussions. The Maui Upcountry water system will not be adversely affected if these permits are not held over. Not only did the courts affirm the county's usage of this water in 2016, less than 30% of the Upcountry system comes from the water covered under these leases. In Hawaii, water is a public trust. This bill allows the continued subversion of this public trust without any restrictions. It is for these important reasons that I am in opposition of this bill.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:01:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Polli Oliver	Individual	Oppose	No

Comments:

Aloha,

I want to go on record as STRONGLY OPPOSING HB1326 and I urge you to Vote NO on it. There should be no extention of timeline on the lack of enviornmental assessment, required by law, of the safely of drinking water on Kauai.

Mahalo nui loa,

Polli Oliver

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:08:26 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael deYcaza	Individual	Oppose	No

Comments:

End corporate welfare. End gut and replace.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:10:36 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
BARBARA INGLIS	Individual	Oppose	No

Comments:

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

**Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill on other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:30:37 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nanea Lo	Individual	Oppose	No

Comments:

Hello,

My name is Nanea Lo. I am a registered voter. I am writing in regards to HB1326, the water rights bills. I respectfully ask that you all OPPOSE this bill HB1326, and/or any amended version of it. I also want to express my strong disappointment in the second water theft bill HB1171, being introduced by gut and replace. That is no ok with me. The best option is to kill both bills now and end water theft for good. I oppose HB1326 and HB1171 because it violates the Constitution, the Public Trust Doctrine, the Water Code and how we manage our resources. It gives corporations like Alexander and Baldwin, Mahi Pono and Kauai Island Utility Cooperative unrestricted use of our water at the detriment of downstream users, including those who have fought for generations to have their water restored. The bills are unjust and no amendment will ever make it right. Small Farmers and Ranchers will not be adversely impacted if the bills do not pass because no one is challenging their water use; their water use is small and corporations are using them as human shields, they will continue to apply for permits under existing laws. Please know this issue is important to my family and I.

me ke aloha 'Ä• ina,

Nanea Lo

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 12:35:08 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeffrey McDaniel	Individual	Oppose	No

Comments:

**LATE**

**From:** [Andrea Brower](#)  
**To:** [WTL Testimony](#)  
**Subject:** Opposition to HB1326  
**Date:** Monday, April 1, 2019 12:35:12 PM

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**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 2:03:04 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
pamela burrell	Individual	Oppose	No

Comments:

Absolutely NOT! No on HB1326, plain and clear.

mahalo,

Pamela Burrell, Kalihiwai, Kaua'i

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 2:21:09 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kehaulani Shintani	Individual	Oppose	No

Comments:

Aloha,

ʻO au nā ʻEʻo Kāhauani Shintani, he keiki i hā• nai ʻEʻia ma Hā• na ma Maui i aʻeʻo iho nei e pili ana i ka hoʻeʻokahe ʻEʻia ʻEʻo ka wai he 100 a ʻEʻoi makahiki.

**KĻ«E»Ā“ (OPPOSE) HB 1326 HD2** nā au i kāʻia. Nui ka poʻeʻe e pono ana e hoʻeʻonaʻeʻauao ʻEʻia ka poʻeʻe no ka pilikia o ka ʻEʻeconomy me ka poʻeʻe mahiʻEʻai inā• ʻEʻaʻeʻole nā kā• koʻeʻo ʻEʻia kāʻia. Hana nui ke kā• koʻeʻo ʻEʻana i kāʻia ma muli o ka hilinaʻeʻi i ka nā• nā• ʻEʻoiaʻeʻiʻeʻo ʻEʻia o nā• mahiʻEʻai ma maui hikina me ka ʻEʻimi ʻEʻoiaʻeʻiʻeʻo i ka hoʻeʻopono i nā• pilikia i helu pinepine ʻEʻia e ko laila poʻeʻe.

No laila au e kĻ«E»Ā“ nei i kāʻia.

na Kāhauani Shintani

**LATE**

TESTIMONY OF SUMMER SYLVA  
**OPPOSING** HOUSE BILL 1326, HOUSE DRAFT 2, and  
HOUSE BILL 1326, HOUSE DRAFT 2, PROPOSED SENATE DRAFT 1, and  
HOUSE BILL 1171, PROPOSED SENATE DRAFT 2

Tuesday, April 2, 2019

Aloha. I am an attorney with the Native Hawaiian Legal Corporation (NHLC). I submit this testimony, in my personal and professional capacity, to oppose HB 1326 HD2, HB 1326 HD2 Proposed SD1, and HB 1171 Proposed SD2, collectively and aptly titled the “water theft bills.”

I am one of many NHLC attorneys who championed the cause of East Maui farmers for decades, including our firm’s work on the case that precipitated the passage of Act 126 in 2016. The two end-run bills being heard today were not the desired outcomes when our clients sued A&B and BLNR in 2015. Their objective was to end, once and for all, a three-decades-old practice that allowed the state’s largest commercial water diverter to use 33,000 acres of state ceded land, and up to 450 million gallons of stream water daily, without first requiring the completion of an environmental assessment (EA) to determine, among other things, East Maui taro farmers’ riparian and native Hawaiian rights to the water being drained from their streams, kalo fields, and watershed.

While the 2016 circuit court ruling that declared A&B’s four revocable permits (RP) invalid was unprecedented, it did so some thirteen years after a 2003 court ruling had ordered A&B and BLNR to complete, at minimum, an EA for the company’s then-pending 30-year lease application for any or all excess water diverted from the same 33,000 acres of state land which were the subject of their RPs; a century-old water use so massive, so continuous, and so impactful that it, “as a matter of law, [did] not constitute a minimal or no significant effect on the environment.” That two courts, thirteen years apart, looked at the same set of facts and similarly concluded that BLNR’s practice of rubber-stamping a water diversion of this

magnitude year after year for decades, underscore how egregious, systemic, and manifest the violations were. It also underscores how egregious, systemic, and manifest these violations should be to you as lawmakers entrusted to pass bills that protect our state's best and highest interests.

For decades, we counseled our clients that their faith in our state laws, our state courts, our state administrative processes, and their strongly-held belief that justice would ultimately prevail were well-placed. We were wrong. Because instead of complying with either court ruling or repairing the flawed process for issuing water leases and permits, A&B and BLNR exacted even more harm and suffering on the East Maui community by wresting from them their faith and confidence in you, our state lawmakers. In 2016, Act 126 ripped from them a legal victory that generations of farmers, fishers, hunters, gatherers and their families fought long, hard, and most importantly, ***fairly***, to achieve. In all their years of suffering and going without -- deprived of water to grow, gather, or catch food to feed their families using traditional and customary practices -- our clients never once came to the legislature with their hand out, asking lawmakers to pass bills that would aid them in depriving others of water necessary for sustainable irrigation, or denying others (including their critics) of their due process rights, or selling not-for-sale life-giving water just as you would a commodity, never mind that it is unlawful to do so and violative of our shared values of *mālama ʻāina*, *mālama kahawai*, and *mālama honua*.

Nobody knows better than East Maui kalo farmers and gatherers how laws can be used to deprive communities of their water rights, or foreclose the marginalized from benefiting from the relief and protections our state laws were intended to provide. My opposition testimony is also addressed to the small farmers and ranchers from Kāʻū and Kauaʻi with whom my East Maui clients have more in common, than the big, commercial diverters (A&B, KIUC) and their enablers (BLNR) who have exploited their fears and their powerlessness to detract from long-standing wrongdoings ripe for change. The true, the original East Maui *mahi pono* understand your fears

because they have endured (and continue to endure) more suffering than most at the hands of corporate diverters hell-bent on using their money, power, and influence to deprive them of water and justice. My clients do not wish that suffering be revisited on you or any other small farmer or rancher, on any other island, anywhere in our state, now or in the future. You are not synonymous with those who wish to exploit and profit from our public trust resources with impunity. You are law-abiding. You are stewards of our land and waters. Your environmental impacts are minimal and the laws in place after Act 126 sunsets will protect you, too. You are more like us. And we must stand together to protect our shared resources.

Do not pass these bills. Do not throw your support behind this *hewa*.

*Mahalo palena 'ole.*



**HB-1326-HD-2**

Submitted on: 4/1/2019 2:53:52 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hannibal Starbuck	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:00:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Martha Lind	Individual	Oppose	No

Comments:

My husband and I own a small coffee farm in Upcountry Maui. We STRONGLY OPPOSE HB 1326. This bill would extend the holdover status of temporary permits (again) that allow corporations to continue to take millions of gallons of water from Hawai'i streams with very little oversight. This bill continues the unlawful historic practice of water theft, fails to protect Hawai'i's streams and native species, and favors corporate profit over public needs. Although this bill imposes additional reporting requirements and requirements to hold hearings on new rules, the protections are still insufficient. Please do not pass this bill!

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:20:21 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Donovan	Individual	Oppose	Yes

Comments:

Aloha,

My name is Donovan Kanani Cabebe. I am writing today in strong opposition to HB 1326. This bill undermines the law and is a betrayal of the public trust. Large water diverters, such as KIUC and Grove Farm on Kaua'i have been abusing temporary water permits for years. What happens in 7 years when they still haven't converted to long term leases? Some had over 15 years to comply, were given another 3, and now need another 7? There is plenty of water to share. We can support the needs of small and large agriculture, hydropower, drinking water and stream life but only with the right political will. It is not the responsibility of the state to accommodate and protect the will and interests of the large corporations currently in control of and illegally diverting water in the state. Our most valuable resource should not be treated with such poor regard, The of more than 100-year-old practice of diverting water in the manner that is currently done cannot continue and has contributed to what amounts to ecological genocide. Entire species have been at risk of extinction or gone extinct entirely, natural habitat erased from the landscape and is affecting the livelihoods and traditional practices of Hawaii's host culture peoples. Hawaii's water laws are some of the best and most stringent in the world, are forward thinking and in line with Hawaiian ethics. We lead the way the world over in protecting this vital resource on paper. I ask this committee to continue to lead the way in practicality by upholding the law as it is and not allow the continued misuse and abuse of our water and that of the public trust. Please vote against HB 1326.

Sincerely,

Donovan Kanani Cabebe O.C.

po box 1056 Koloa, HI. 96756

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:22:28 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gregory Raab	Individual	Oppose	No

Comments:

Strongly Oppose.

A&B has contractually put a \$62,000,000 value of these extensions. Other than the inflated sales proceeds for A&B and their improved stock value, what benefit does the public get from this transfer of wealth?

**Any member that owns A&B stock should recuse themselves from voting on this bill for the obvious conflict of interest in this matter.**

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:24:16 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nicole Chatterson	Individual	Oppose	No

Comments:

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:13:26 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Douglas	Individual	Oppose	No

Comments:



**From:** [mak221@aol.com](mailto:mak221@aol.com)  
**To:** [WAM Testimony](#); [WTL Testimony](#)  
**Subject:** STRONG OPPOSITION TO HB1326 HD2  
**Date:** Monday, April 1, 2019 1:57:24 PM

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Aloha esteemed committee members:

HB1326 is an outrageous bill that gives permission to corporations to continue to pollute our water.

It must not pass.

Mahalo,

Mark Koppel  
Ninole

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:47:16 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kelson Poepoe	Individual	Oppose	No

Comments:

I strongly oppose this measure that allows big corporations to extort our precious resources and create corruption within our system.



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:41:03 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Simonsma	Individual	Oppose	No

Comments:

I am very much opposed to this legislation.

Water rights are protected by the public trust doctrine in our State Constitution--to protect our communities and watersheds from corporate exploitation these bills seek to allow. That A&B be allowed to again use its political influence to pass laws that benefit its corporate interests above the interests of Hawaii's people is an abdication of the Legislature's responsibility to protect and defend Hawaii's Constitution and antithetical to the values of the Democratic Party of Hawaii.

Protect WE THE PEOPLE and the environment. Corporations should not have more rights than the citizens of our state.

For those against it will be seen as DINO, voting like Republicans who favor corporations.

Sincerely,

William B Simonsma, Waikoloa, HI 96738

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:50:40 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marjorie Bonar	Individual	Oppose	No

Comments:

Water rights must be protected for the populace, farmers, cultural practices and environment preservation. Open ended permission to take water without any accountability is wrong. There has been enough comment to help you make the right decision and let this bill die .

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:51:36 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Caron	Individual	Oppose	Yes

Comments:

Aloha Chairs Dela Cruz and Kahele,

I strongly oppose the continued theft of public water resources by corporate interests, specifically Alexander & Baldwin, represented in HB1326. This is a clear violation of the public trust doctrine enshrined within our state constitution, which is why special permits need to be granted in the first place.

The 2016 Supreme Court ruling did not apply to ranchers and farmers, and only applied to A&B. But instead of obeying the law, they flexed their corporate muscles and demanded a carve-out just for them. This is just plain wrong. Do not allow them to continue their exploitation of Hawaii and its people.

While I appreciate Senator Kahele's attempts to make the bill less damaging than its original version, it still gives A&B public water for corporate gain at the expense of people and planet, to say nothing of a \$62 million windfall via Mahi Pono that should never have been put on the table in the first place. And considering that there is another bill attempting to do this too, it seems clear that this is merely a half-measure.

The time for half-measures is over. The people and the planet require bold action and leadership. Reject these corporate water theft bills. Reject insider horse-trading that ties these bills to the Real Estate Investment Trust issue as well. The people are watching. Please do the right thing. Mahalo.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:52:14 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sylvia Cenzano	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:56:45 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Poepoe	Individual	Oppose	No

Comments:

Please be responsible and have integrity as our public trust defenders. Do not support this bill which is unfair to the people of Hawaii.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:05:44 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gail Jackson	Individual	Oppose	No

Comments:

Aloha,

I am very much against this bill. No amendments. Kill the damn thing.

If you pass this bill it will indicate you favor Corporations above We the People. Are you DINO's? It sure looks like it, voting like a Republican favoring corporations above We the People and the environment.

And using Gut and Replace? Guess that shows us (Democrat delegates) where you stand ... ignoring our resolution at the last state convention!

Sincerely,

Gail W Jackson

Waikoloa, Big Island, HI

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 3:59:04 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
elizabeth hansen	Individual	Oppose	No

Comments:

Dear Senators

Please oppose this bait and switch bill. Not appropriate for Hawaii.

Mahalo.

Elizabeth Hansen,

Hakalau HI 96710

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:00:32 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rodger Hansen	Individual	Oppose	No

Comments:

Aloha -

Please oppose this bait and switch bill. Not appropriate for Hawaii.

Mahalo.

Rodger Hansen,

Hakalau HI 96710



**HB-1326-HD-2**

Submitted on: 4/1/2019 3:59:04 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Juliet Begley	Individual	Oppose	No

Comments:

Why is the Legislature doing everything possible to lose access to our water? - its as though the State believes that Corporations are Super-people, subject to MORE rights than the people of Hawaii.

Aloha - Juliet Begley

**LATE**

**From:** [ruth.mizumoto@everyactioncustom.com](mailto:ruth.mizumoto@everyactioncustom.com) on behalf of [Ruthdine Mizumoto](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in OPPOSITION to HB1326 SD1  
**Date:** Monday, April 1, 2019 3:55:22 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. Give the water back to the land. We need to protect the natural resources of the land.

Sincerely,  
Ruthdine Mizumoto  
Kailua, HI  
[ruth.mizumoto@gmail.com](mailto:ruth.mizumoto@gmail.com)

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:10:11 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bruce Conrad Welti	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:28:09 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Constance Keoahunui Uale Warrington	Individual	Oppose	No

Comments:

Dear Chair Donovan M. Dela Cruz, Vice Chair Gilbert S.C. Keith-Agaran, and members of the Senate Committee on Ways and Means:

I strongly oppose HB 1326, HD2 which seeks a 7 year extension on the use of temporary permits for permanent diversions of public water. The claim made by Alexander & Baldwin (A&B) that the bill benefits small farmers, ranchers and producers of hydro-electric energy is patently false -- they still have access to the water. A&B seeks to obfuscate the fact that it alone benefits to the tune of \$62 million from their real estate deal. with Mahi Pono if they deliver water rights with the land.

With income inequality at near record levels why is this corporate giveaway even being considered? According to the Hawaii State Constitution waters is held in the public trust to benefit all of Hawaii's people not just landowners. To make matters worse, A&B is a real estate investment trust which pays zero Hawaii income tax. This bill enables A&B shareholders to make out like bandits.

For decades A&B diverted virtually all of the stream water from East Maui for sugarcane without conducting an environmental impact statement to assess any adverse impacts to the community and the aina. A&B diverted millions of gallons of water each year with little or no regard for taro farmers and stream wildlife in direct violation of the public trust doctrine in the Hawaii State Constitution. In 2016 A&B ceased to grow sugarcane but continued to take the water at the detriment of everyone else.

So egregious was A&B's abuse of the temporary permit system that the courts ruled against A&B in 2016, prohibiting A&B from using temporary permits to authorize permanent diversions of stream water. Instead of abiding by the circuit court's ruling, A&B flexed its economic and political influence by getting the legislature to do its bidding for 3 more years. This was wrong. Now that the 3 years have gone by A&B is asking for another 7 year extension. This cannot be allowed to continue.

On June 20, 2018, the Water Commission ordered A&B to restore full stream flow to 10 streams and substantial restoration to 7 other East Maui stream. A&B defied the order,

did not decommission its diversions, and continues to take the water even when it has no use for it. Every religious and moral code teaches to take only what you need and to use it wisely. A&B is a water glutton. As a real estate investment trust A&B's only goal is to maximize shareholder value. Such flagrant disregard cannot be rewarded with an extension.

There is a legal process administered by the Water Commission for private parties to request use of public water. This process is designed to ensure the watershed is protected, stream ecosystems are not harmed, and the public is properly compensated for the use of public trust resources. Any entity seeking to divert water away from the public should follow this process. The legislature needs to follow the state constitution to ensure the public receives fair compensation for the use of Hawaii's public trust resources, while protecting those resources from over-use and miss-use.

I urge you to kill HB 1326, HD2. The people of Hawaii are watching to see whose interest you serve. Thank you for this opportunity to testify on this important matter.

Sincerely,  
Constance Keoahunui Uale Warrington

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:31:57 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patricia Blair	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:33:29 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christian Palmer	Individual	Oppose	No

Comments:

Dear Legislators,

I am writing to express my concerns with HB1326. The bill as stands gives away free public resources to large corporations. If I get water from the State of Hawaii I have to pay for it, I don't see why large landowners should get water rights for free. The current version of the bill gives away a limited public resources to a large development corporation without adequate oversight. Please vote against this bill.

Mahalo,

Christian Palmer

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:34:56 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mimi Campbell	Individual	Oppose	No

Comments:

Water is the most vital resource on our [planet . It must not only be protected and gaurded from large corporations and theyre impatient profits, it must bbelong to the people of the island. This abuse and diversion must be stopped and rectified. Please do your best to protect our land ,its people, and the ester.

Sincerely, Mimi Campbell



**HB-1326-HD-2**

Submitted on: 4/1/2019 4:35:21 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joe Wilson	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:40:54 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Vanessa Owens	Individual	Oppose	No

Comments:

Our water must be regulated and tested before use in all ways. Grove Farm and KIUC really need to do environmental studies prior to releasing it for agricultural or human consumption. This water should also be tested before going into streams, rivers, and oceans.

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:41:53 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

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

Comments:

Here we go again! One of the BIG FIVE getting their way with water rights and being allowed to unless this bill dies or is voted down.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:23:44 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Harriet Witt	Individual	Oppose	No

Comments:

If we want to feed ourselves without being dependent on the mainland, we need to stop this bill from passing. It will not promote sustainability.

**From:** [earask@everyactioncustom.com](mailto:earask@everyactioncustom.com) on behalf of [Erik Rask](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45 AM  
**Date:** Monday, April 1, 2019 4:29:55 PM

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**LATE**

Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in STRONG OPPOSITION to HB 1326 SD2. This bill represents YET ANOTHER effort by Sen. Dela Cruz and Co. acting in collusion with corporations to steal resources that belong to citizens of Hawaii. Vote against corporate welfare funded at the expense of our local ecosystem and the people of Hawaii who rely upon natural flowing waters in our streams to preserve their culture and provide sustenance for their families. Vote against HB1326 SD2.

Sincerely,  
Erik Rask  
Honolulu, HI  
[earask@gmail.com](mailto:earask@gmail.com)

**From:** [Harriet Witt](#)  
**To:** [WTL Testimony](#)  
**Subject:** please vote no on HB1326  
**Date:** Monday, April 1, 2019 4:31:31 PM

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If we want to feed ourselves without dependence on the mainland, we need to stop this bill from passing.  
Mahalo, Harriet Witt

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:46:37 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Robert Wintner	Individual	Oppose	No

Comments:

I oppose HB1326. Water is currency in Hawaii and warrants proper management that factors changing conditions and needs. HB1326 seeks entrenchment of the status quo and fails to account for changes in life and nature.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 4:51:28 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeanie Vance	Individual	Oppose	No

Comments:

I am writing today to urge the legislature to vote DOWN HB1326 (and HB1171). I applaud my (Democratic) party for taking a stand against these bills and I agree with them that it is time to follow Act 126. It is LAW. There has been ample time for compliance, and it is time to do the right thing! Yes, change is hard, we simply need to do what's right for the people. Our local leaders need to do and say the right thing, too. Please stop the fear tactics and look to the greater good for our future.



**HB-1326-HD-2**

Submitted on: 4/1/2019 4:50:02 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Donna Sterling	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 5:05:19 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Marshall	Individual	Oppose	No

Comments:

Please **vote NO** on [HB1326](#). Thank you very much.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 5:25:02 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kim Coco Iwamoto	Individual	Oppose	No

Comments:

Testimony in STRONG OPPOSITION to HB 1326 SD2.

This bill would grant corporations an exemption to the Hawaii Constitution pertaining to the public trust of water. They were initially granted these holdover "extensions" 5 years ago! That should have been more than enough time to comply with all the requirements.

It is clear to the public that this bill, is in part, motivated by a \$62 million windfall or loss to A&B. The public can and will follow the money trail and make note of which lawmakers sellout the Hawaii Constitution in exchange for campaign contributions from A&B, their lobbyist, employees, and other similarly situated corporations.

You have all taken the oath to support and defend the Hawaii Constitution. Voting this bill out of committee and/or voting to pass it in a floor vote, complete disregards this promise you made in front of your families, the Supreme Court officiant, your colleagues - but most importantly to your constituents.

Please, I urge you to do the right thing and stop enabling these corporations to disregard the 1976 Constitutional Amendments ratified by the vote of the people.

Mahalo,

Kim Coco Iwamoto

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 5:47:48 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
pumehana howard	Individual	Oppose	No

Comments:

I oppose HB1326. This bill is unconstitutional and breaches native Hawaiian rights. Water is uncommodifiable and is protected for the public in trust. It is the responsibility of the state to manage water and regulate water usage for the public to use. These revocable permits are merely a way to avoid the proper permits and paperworks required and it is despicable. Water is essential for so many aspects of our life, so we must learn to manage it well. What are your intentions? Are you fine with stealing from our children and their futures?

**LATE**

Aloha Chairs, Members of the Committee's,

My name is Keoki Fukumitsu, I am here to request that you oppose HB 1326 SD1.

I am seven-generation kalo farmer, primarily on the windward side of Oahu. I have networked with many farmers across the islands to preserve our water and natural resources, maintain the forest reserve to continue to saturate our aquifer and our serve our estuaries. My primary location is Koolaupoko, where our districts serve hand in hand with rivers of nine ahupuaa that enter into Kaneohe Bay. We have three primary focuses – our forest reserve, our water table and our fisheries. The focus area is conservation, preservation in perpetuity and to promote our existing diversified agriculture.

I was on the board of the taro task force under the Lingle administration to protect the purity and security of our kalo.

I followed in the footsteps of my grandparents that led me into two Hawaii Supreme Court water decisions, leaving our family with the Konohiki water rights to hold and protect our waters for taro farming.

Water has always been our life and that life kept us on the land as a lifestyle and livelihood. Our family has also been the highest tax paying individuals on lands in windward Oahu.

I oppose the ongoing holdover of revocable permits that have dewatered streams for generations. Having been through a generational water struggles I have seen the impact in our communities an on our natural resources.

Despite the court ruling in favor of stream flow restoration, the legislature has given A&B a pass to continue dewatering streams. We need accountability, and justice for the Native Hawaiian communities who have seen their taro patches dry up, and their fisheries suffer, leaving their community struggling with no resources to depend on for their livelihood.

I currently live on Kauai, and farm kalo in Kealia.

Please exercise your duty to protect our public trust resources and vote no on HB 1326.

Mahalo,

Keoki Fukimitsu  
Kealia, Kauai

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:32:27 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michele Nihipali	Individual	Oppose	No

Comments:

*I am writing in OPPOSITION to [HB 1326 SD2](#). This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years.*

*While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.*

*Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.*

*This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.*

*Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.*

*Mahalo for your consideration in this matter,*

*Michele Nihipali*

*54-074 A Kam Hwy.*

*Hauula, HI 96717*

**HB-1326-HD-2**

Submitted on: 4/1/2019 6:38:14 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
anne skabo	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 7:18:25 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sommer Kauakahi	Individual	Oppose	No

Comments:



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 5:19:12 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
christine trecker	Individual	Oppose	No

Comments:

I urge you to oppose HB1326 HD2. After a thorough reading of the testimony in opposition to this bill by various credible/knowledgeable organizations and individuals, I am strongly convinced that this bill should be stopped in its tracks.

Thank you for your consideration.

**LATE**

Aloha Senators;

It deeply saddens me to write this testimony, although I believe there are honorable legislators among you.

As legislators, and many of you with law backgrounds, every one of you knows that it is illegal to sell or transfer a permit for water use, a public trust resource, which is essentially what is being attempted by A&B, EMI and Mahi Pono (MP). A&B is banking \$62 million on you to keep them from having to return that money to Mahi Pono on a water transfer promise they *knowingly* do not have the authority to give. Hence, HB1367 and HB1171 amount to corporate bailouts, with or without the new language.

These bills also represent a handing over of our public trust water resources to private land owners and corporations without limitations or controls. In contested case after contested case, the Public Trust Doctrine has held up, yet, the legislature would, in these two bills, act to abrogate not only case law and agency authority but the very foundations of the United States system of governance, *trias politica*, which limits any one branch from exercising the core functions of another. Hence, Act 126 which extended A&B's hold-over permits for three years, an agency duty, overrode a court of law decision and should have been challenged as an overstepping of boundaries by the Legislature. Further, HB1326 and HB1171 again seek to overstep the boundaries between Legislative and Executive duties. *The decision over allocation of water and awarding of water permits is the kuleana of the Commission on Water Resources – not the Legislature.*

It has also not been lost on the public, and especially the Hawaiian community, that the architects of these bills are the same Senators and Representatives that pushed the Public Lands Development Corporation through the legislature in a back door gut and replace in 2011.

HB1326 and HB1171 are an open-ended private water development deal. Yet, residents on Maui know, based on MP's agriculture plan submitted to the County Council (March 2019), the company will need only half of the 53M gallons/day *already available from ground water sources on MP's newly purchased A&B lands*. They have not proven a need for additional surface water from East Maui. EMI/MP has not yet submitted an EIS for review detailing the impacts of existing and ongoing stream diversion, a prerequisite for further water permit requests as determined by the courts. *The 2016 court decision specifically carved out Maui County water use to provide for UpCountry users*. Additionally, only 27 percent of UpCountry water comes from East Maui water sources. Sugar production ended on Kauai in 2010 yet water continues to be diverted with little justification and limited use. Small farms and ranches, taro farmers and riparian land owners are protected under the Water Code and the CWRM permit process. They use substantially smaller amounts of water than EMI/A&B/MP and KIUC/Grove Farm. *These bills are a slap in the face to every taro farmer and small user who has had to go through the permit process, who has waited through decades of contested cases to get sufficient water returned to our streams to grow kalo, food for local consumption instead of export, and restore our reef ecology. Corporate ag should not get a free pass to the front of the line!* In scheduling and hearing HB1326 and HB1171, let alone voting aye or aye with reservations, you demonstrate you serve corporate interests and no longer serve the communities, nor the long term survival of the 'āina, you claim to represent.

I am ashamed for our keiki that this is what they learn and experience about the governmental process – that it appears to be non-existent in our Legislature, nor can it be trusted. We still have hope that Trump politics and plantation deals will not claim that last vestiges of decency in Hawai'i.

Please, do not shoot your grandchildren's future in the foot. I urge you to find your honor again and do what is pono - kill these two bills and vote NO today.

Mahalo  
Penny Levin

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:25:15 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sandra Fujita	Individual	Oppose	No

Comments:

I am oposed **HB1326 HD2**.

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:18:07 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
James McCay	Individual	Oppose	No

Comments:

Seems those without vested interests and good legal backgrounds are OPPOSED.  
There is much confusion around this Bill - for less than good reasons.  
Many edits needed. So please oppose until it works for the best of all not the few.  
Mahalo,  
James  
HNL 96815

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:37:07 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dawn Morais Webster Ph.D.	Individual	Oppose	No

Comments:

I STRONGLY OPPOSE THIS BILL. This is a bill that places corporate interests-- Alexander & Baldwin's interests -- before the interests of the people.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation oof this kind. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests at the expense of the best interests of Hawaii’s people. It is the responsibility of the legislature to put the people first. Please put an end to this bill.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:40:50 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Seikai Darcy	Individual	Oppose	No

Comments:

Aloha,  
Please oppose this bill. Please vote no.  
Mahalo,  
Lisa Darcy

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:43:29 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sylvia Ching	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 9:57:58 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cadence Feeley	Individual	Oppose	No

Comments:

Aloha,

I am writing in OPPOSITION to HB 1326 SD2.

I support protecting Maui's resources. There is mismanagement in this bill!

Alexander & Baldwin sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

I support protecting our native streams and the communities that rely on them. I don't believe diverting this much water without oversight is right.

Water rights are protected in our constitution—to protect our communities and watersheds from corporate exploitation just like this. There is too much political influence and not enough protecting the 'aina.

I stand with my community and we ask that this bill is opposed!

Mahalo,

Cadence Feeley



**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:07:52 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Jensen	Individual	Oppose	No

Comments:

Dear Committee Members,

I am writing in OPPOSITION to [HB 1326 SD2](#). This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.

Thank you,

Dale Jensen, Professional Engineer, Kailua, Oahu

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:19:16 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Josalind Akoi	Individual	Oppose	No

Comments:

Aloha,

I am married into a Native Hawaiian family from East Maui, who actively engage in traditional practices in their ahupuaa.

Without healthy ecosystems from mauka to makai, my family would be put at risk emotionally and spiritually. They use their time in nature to "feed" their bodies literally and their souls spiritually.

My husband and I are makua to 4 (and their spouses) and kupuna to 9. Additionally I am a DOE Hawaii Teacher. There are so many whose lives we touch. Our health and well being is intrinsically and unequivocally connected to the 'aina of East Maui. The water in the streams supports these ecosystems. These ecosystems support us. We support and guide so many others!

Please vote NO on HB 1326 SD2, tomorrow on 4/2/2019, to show your support for the PEOPLE of Hawaii and East Maui.

Support healthy systems; mauka, makai, family and community. LEAVE EAST MAUI IT'S WATER.

Aloha, Josalind Akoi

**HB-1326-HD-2**

Submitted on: 4/1/2019 10:33:12 PM

Testimony for WTL on 4/2/2019 10:45:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Sam Akoi IV	Individual	Oppose	Yes

Comments:

Aloha,

I am a Hawaiian man from East Maui.

I am a traditional practitioner of hunting, farming and gathering mauka to makai. I have immediate family ties from Kaupo to Keanae; and currently live on family land in rural, off-grid Kipahulu.

My physical, emotional and spiritual well being as a Hawaiian, is tied to access rights within healthy land systems. It is here that I AM HAWAIIAN. It is here that I am connected, guided and comforted.

I don't need anger management classes, drug rehab, special educational health and eating programs to address diabetes or hypertension; when I can go into nature and connect, release, rejuvenate and gather.

As a healthy man, I support my wife, children, grandchildren, 'ohana and community.

Health builds on health.

Please support the health and wellness of East Maui; vote NO on HB 1326 SD2.

Mahalo,

Sam Akoi IV

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 12:36:10 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lois Langham	Individual	Oppose	No

Comments:

I oppose HB1326 as it is not in the best interests of the land and people of Hawaii, as in keeping with the state constitution. Rather, it is in the interest of a business which does not have the aforementioned interests at heart. Please consider the aim of the constitution: the health and well being of Hawaii and all its residents. Thank you.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 6:01:11 AM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Fred Flores	Individual	Oppose	No

Comments:

I Peleke Flores of Waimea, Kaua'i oppose proposed bill HB1326 HD2. Ho'i i ka wai!

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 6:27:12 AM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon	Testifying for Hot Yoga Hilo	Oppose	No

Comments:

Please do not pass this bill. Why the heck are we still making decisions that benefit large corporations before people? This is not what your job is supposed to be. Protect public resources for people before profits. Do you want this to be your legacy? I have neither the time nor the energy to write you all a letter explaining why this is wrong and why you should be ashamed of yourselves if this passes. Seriously, listen to the Native Hawaiian opposition to this bill and do the right thing. Mahalo nui loa.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 7:19:32 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Pamela Lota Fujii	Individual	Oppose	No

Comments:

Dear Char Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committee,

My name is Dennis H. Fujii and my wife is Pamela Lota Fujii.

We write in **STRONG OPPOSITION** to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. **It is the responsibility of the legislature to put the people first.**

**WE trust you our legislatures to do the right thing and to protect our waters for future generations.**

Aloha 'Ä• ina momona,

Dennis and Pamela Lota Fujii

**LATE**

**HB-1326-HD-2**

Submitted on: 4/1/2019 8:22:43 PM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kim Jorgensen	Individual	Oppose	No

Comments:

I strongly OPPOSE HB1326 SD1 because this bill is fundamentally wrong, for many reasons, and everyone knows it.

Is HB1326 SD1 getting special consideration because it will benefit the great and mighty Alexander & Baldwin, a powerful and domineering company that has a shameful history of taking land and everything on it from the Hawaiian people? It certainly won't benefit the farmers and fishermen who depend on the water A&B has been stealing for almost two centuries.

Please do not allow A&B to continue to dictate what happens in Hawaii and to control the water that belongs to the people.

A&B begged for and agreed to a deadline years ago; that time has come. They must honor it.



**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 7:47:25 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
John Gelert	Individual	Oppose	No

Comments:

This bill is nothing but water theft for A & B so they don't have to pay \$62 million to Mahi Pono. Mahi Pono needs to come up with a farming plan to apply for the water they actually need. They should not be given unlimited cheap water while others in East Maui suffer environmental damage and inability to farm due to dry streams.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 8:13:11 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

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

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 8:23:30 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stanley koga	Individual	Oppose	No

Comments:

Access to and the management of water for the people and by the people is a right. Deny corporate overlords that which they have already abused and soiled into a for-profit commodity. Do the correct thing for the people and make things right. Or stand by and lose your place as a supposed representative of the people. Your choice. We are your master. Not A&B. Nor KIUC, nor any other corporate entity that cuts you a check.

**HB-1326-HD-2**

Submitted on: 4/2/2019 8:21:16 AM

Testimony for WTL on 4/2/2019 10:45:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Cecilia Reid	Individual	Oppose	No

Comments:

*I am writing in OPPOSITION to [HB 1326 SD2](#). This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawaii's streams for another 3 years.*

*While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.*

*Alexander & Baldwin received a three-year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.*

*This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.*

*Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawaii's people. It is the responsibility of the legislature to put the people first.*

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 9:06:19 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Marcia Linville	Individual	Oppose	No

Comments:

I am Marcia Linville testifying in opposition to HB 1326HD2 which will adversely affect Hawaiian ecology and unjustly enrich corporated interests at the expense of the Hawaiian people.

Thank you

Marcia Linville

**JOINT SENATE COMMITTEES ON WATER AND LAND AND WAYS AND MEANS  
HB1326 SD1 & HB 1171  
TUESDAY, APRIL 2, 2019 AT 10:45 AM  
CONFERENCE ROOM 211**

**LATE**

From: Kau‘i Pratt-Aquino, Esq.

45-735 Wainānā St., Kāne‘ohe, HI 96744

Aloha Senators on the Committees of Ways and Means and Water and Land,

Mahalo for the opportunity to submit testimony **IN STRONG OPPOSITION** to **HB1326 SD1 and HB 1171.**

First, I want to mahalo Senator Kai Kahele for his good faith effort to find a compromise on HB1326 SD 1. Unfortunately, the proposed amendment, or SD1 version, does not provide sufficient protections for streams and perpetuates the historical injustice that has already occurred over a century.

The bill violates the State’s affirmative duty to protect our natural resources pursuant to the Hawai‘i State Constitution, Water Code and Public Trust Doctrine. The bill drives into the heart of our problems in Hawai‘i that our legislature is being run by corporations and not the people.

HB1326 gives Alexander and Baldwin a \$62 million payout for *public* water they were never authorized to offer in a private sales agreement. Please do not reward a bad actor who has been complicit in exploiting our natural resources and people for profit for years.

Through this process, A&B, Kauai Island Utility Corporation and Mahi Pono (and to some extent our leaders) have manufactured crises to confuse the public. They told us that people would lose their drinking water despite protections afforded under the Waiahole and Carmichael cases.

They used small farmers and ranchers to pit against those historically harmed from the diversions as human shields to conceal the \$62 million reward.

Small farmers and ranchers will not be negatively impacted if this bill is killed and Act 126 sunsets. BLNR/DLNR policy will dictate the process for RP holders. Prior practices will resume pre-Act 126. Small farmers and ranchers will apply, as they did for a decade or more pre-2015, for exemptions and temporary permits. Further, no one is challenging their water use. The amount of water they use is objectively less than large corporate diverters.

The only party to truly benefit is A&B.

**BLATANT DISREGARD FOR THE JUDICIAL BRANCH**

By voting for HB1326 (or HB1171), in any form, you effectively “de-power” the rule of law and the Judiciary’s legal authority to place a check on the legislature. In January 2016, the Honorable Judge Rhonda Nishimura, after a lengthy judicial process on the merits, invalidated A&B’s temporary permits concluding that A&B’s use of HRS 171-58 was inappropriate as it

was intended to *be a temporary* measure until A&B could establish a long-term lease. The process to establish a long-term lease requires that A&B account for the water they use.

In response to the ruling, in 2016, A&B ran to the legislature to beg lawmakers to change the law. Lawmakers did despite strong opposition and a judicial process on the merits. I was there to object to this effort. Through that process, I witnessed lawmakers make promises that the 3-year extension would be sufficient for A&B to comply with law. Three years later, A&B is back asking for another extension for three or seven years so that they can have a guarantee to the \$62 million bail out for water they illegally offered to Mahi Pono. The seven-year request in the original HB1326 is directly tied to A&B's private sales agreement and has no basis in the law.

By supporting this bill, you slap down the independence and power of the judicial branch to clarify the law, the obligations and rights of people and government. In fact, it appears the legislature is unilaterally acting for the benefit of special interests and not the people. Support for this measure has no basis in the law.

By rejecting HB1326, you let the rule of law take course. Be confident in that.

### **GUT AND REPLACE IS AN UNJUST PRACTICE**

Moreover, I am alarmed that Chair Donovan Dela Cruz of the Ways and Means introduced HB1171 under the bad practice of "gut and replace" as a last-ditch attempt to control the legislative process. Although the bill was removed from the agenda, I reject this practice and urge you to do the same. It is unconscionable to "gut and replace" an existing *non-related bill* that has already been vetted with completely new language. Further, HB 1171 is almost identical to HB 1326 but seeks to extend the hold over period to 10 consecutive years favoring corporate interests over those of the public.

That speaks volumes to the respect Senator Dela Cruz has for a fair and equitable legislative process. When friends tell me that the legislature is "rigged", the bad "gut and replace" practice reaffirms their horrible notion of this process.

I urge you, if necessary, to kill HB1172 immediately. Anything short of this, I see the public perceiving a "yes" vote as a vote in support of this bad practice.

Please stop pandering to corporations. Stand with the people in justice and put a final end to water theft, kill HB1326. Please feel free to contact me at [pratt.kaui@gmail.com](mailto:pratt.kaui@gmail.com) or (808) 393-1948.

Mahalo,

Kau'i Pratt-Aquino, Esq.

**LATE**

**From:** [sledge77@everyactioncustom.com](mailto:sledge77@everyactioncustom.com) on behalf of [Chris Bruns](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Monday, April 1, 2019 6:07:21 PM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

The water of Hawaii belongs to the people of Hawaii, not Corporations.

Sincerely,  
Chris Bruns  
Haleiwa, HI  
[sledge77@hotmail.com](mailto:sledge77@hotmail.com)



Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

**LATE**

I strongly urge you to oppose HB 1326.

My name is Carolyn Flacker I currently reside in Kaimuki. I am a student at the University of Hawai'i Mānoa studying natural resources and environmental management with a focus on community and cultural resource management. On both sides of my family I come from small-scale farmers on the mainland. Small farmers and ranchers have been the backbone of these islands and this nation. My focus in my studies is aimed towards increasing self-sufficiency in food production, passing HB1326 will negatively impact small farmers and lead Hawai'i to a larger reliance than we already have on imported foods. HB1326 will give A&B more power than they already have.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

### **Small water users not harmed**

While we appreciate that the bill attempts to provide some protection for small water users -- allowing the diversion of up to 2 million gallons of water a day without having to fulfill other requirements -- we also know that there is no actual risk to small farmers and ranchers if this bill does not pass. They can continue to apply for and receive revocable permits, as they did before Act 126 was adopted. A&B is the only entity unable to reapply for its revocable permit. If these small water users do not abuse their revocable permits as A&B did, then they will not be challenged by someone harmed by their water usage.

There is enough water to share equitably. Hawai'i streams hold enough water to support native ecosystems, subsistence farming, cultural practices, renewable energy, and large-scale agriculture.

Please don't perpetuate the generational hoarding of Hawai'i's precious waters, oppose HB 1326.

Mahalo for your consideration.  
Carolyn Flacker, Kaimuki

**In Opposition of HB 1362; Tuesday, April 2, 10:45 A.M.**

Dear Hawai'i State Senate Water and Land Committee,

I am writing in strong opposition to HB 1362, which was drafted solely for the purpose of aiding corporate diverters in their effort to circumvent Hawai'i's water code.

The only revocable permit holder affected by this egregious corporate giveaway of Hawai'i's public trust is Alexander & Baldwin, a company that has demonstrated they no longer need the water when it sold its interest in the land. The new land occupier can apply for a new permit just like anyone else.

Every justification for this bill has been debunked. The small water diverters are not affected by Alexander & Baldwin's 2016 court ruling, and are not being contested. The Upcountry Water System is not under threat, as the 2016 ruling specifically allows for county usage.

Generations have passed waiting for water to be restored to their streams. Native species have been lost and kalo farms have been abandoned.

For these reasons, I urge you to oppose HB 1326. Thank you for your time.

1. Miles	Mulcahy	miles@everyactioncustom.com
2. J A	Wilson	wwbyjw@everyactioncustom.com
3. Thomas	Friedman	tfriedman21@everyactioncustom.com
4. Brett	Gobar	uluusurf@everyactioncustom.com
5. Dan	Capello	louis21329@everyactioncustom.com
6. Chai	Blair-Stahn	chai.blairstahn@everyactioncustom.com
7. Don	Atay	kokialau9@everyactioncustom.com
8. Don	Cooke	manaulu@everyactioncustom.com
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## Testimony OPPOSING HB1326 & HB1171

Testimony Aloha Chairs Dela Cruz and Kahele,

I strongly oppose the continued theft of public water resources by corporate interests, specifically Alexander & Baldwin, represented in both HB1326 and HB1171. This is a clear violation of the public trust doctrine enshrined within our state constitution, which is why special permits need to be granted in the first place.

The 2016 Supreme Court ruling did not apply to ranchers and farmers, and only applied to A&B. But instead of obeying the law, they flexed their corporate muscles and demanded a carve-out just for them. This is just plain wrong. Do not allow them to continue their exploitation of Hawaii and its people.

Reject these corporate water theft bills. Reject insider horse-trading that ties these bills to the Real Estate Investment Trust issue as well. The people are watching. Please do the right things. Mahalo.

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**I SUPPORT THE INTENT of HB 1326, HD 2, Proposed SD1**

Dear Chair Kahele, Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committees,

I support the intent of HB 1326, HD2 (Proposed SD1), which will enable temporary water permits for our farmers and ranchers to be extended to allow the permittees time to obtain a long term water lease.

I support the intent of HB 1326, HD2 (Proposed SD1), but prefer HB 1326 HD2. As included in HB 1326 (Proposed SD1), the three-year extension is not enough time for those presently on revocable water permits to secure long term water leases.

This bill will allow farmers and ranchers access to water needed to grow food for our local communities. It will also provide domestic water for rural communities. Without access to water, agriculture will fail.

I urge you to pass either HB 1326, HD2 or HB 1171, HD1, SD1 (Proposed SD2) to extend the time period during which revocable water permit holders can secure long term water leases.

Thank you for the opportunity to testify on this measure.

Mahalo!

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96. Michael	Blietz
97. Dennys	Eymard
98. Kaelin	Sylva
99. Sylvian	Cho-Moody
100. Donna	Marie

**Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM**

Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

Aloha! Thank you for your consideration, I nearby one of these streams and am directly affected by wayerflow both as for health and beauty of the valley ( vs dry stinky) and how it affects small Bnb and farm education business adjacent to stream. I know you are all in your city offices but I am one of many hundreds and most likely thousands who worked or supported Earth justice and Sierra Club to get these steams restored over decades!

I will be following closely these votes, who supports local residents and longterm health of 'āna and who supports these corporate profits That many don't even live here. I strongly support the rest of this letter penned by Sierra club. Thank you, Amy Chang. Music Educator, Performer and Health Coach. I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue is mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first. Sincerely, Amy Chang

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**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 10:14:08 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lawrence S Franco	Individual	Oppose	No

Comments:

I am opposed to the extension of permits for A&B. A&B should get a lease as any other person or corporation. Water is for the public and we need to weigh that interest against private interests like A&B. We need to stop this practice of renewal of permit by legislation for a private interest.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 11:14:38 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Molly Mamaril	Individual	Oppose	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 11:21:45 AM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lahela Hekekia	Individual	Oppose	No

Comments:

Alexander and Baldwin should be prevented from their continued theft of water rights. Already it is revealed that they may owe \$62 million for apparently selling water rights that they did not have. They need to be sued.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 11:30:49 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lisa Wood	Individual	Support	No

Comments:

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 11:33:14 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ronni Pratt	Individual	Oppose	No

Comments:



**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 5:07:35 PM  
Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jordan Moniuszko	Individual	Comments	No

Comments:

The legislature needs to commission a study into the justifiable quantities of water needed based on present use as well as planned future use. If there is not yet a plan for future use or prevention of dust bowl- this needs to be incorporated into the study as well. Until such a study is performed there is no reasonable basis to make a decision one way or another.

**LATE**

**HB-1326-HD-2**

Submitted on: 4/2/2019 11:00:42 AM

Testimony for WTL on 4/2/2019 10:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Oppose	Yes

Comments:

**WE STRONGLY OPPOSE THE CONTINUED THEFT OF OUR WATERS BY BIG CORPORATIONS!**

**LATE**

**From:** [Grant Goin](#)  
**To:** [WTL Testimony](#)  
**Subject:** Oppose HB 1326  
**Date:** Tuesday, April 2, 2019 9:47:02 AM

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Aloha Chair Kahele, Chair Dela Cruz and Members of the Committees,

I am here in opposition of HB 1326 and strongly urge you to oppose as well,

My name is Grant Thomas Ryo Ka'ehukai Goin, I am from Makiki, O'ahu. I grew up being able to hike tatalus throughout my life with seeing beautiful sites like the streams running flowing down the mountain giving life to everything in it path. At the bottom of the mountain Halau Ku Mana the Hawaiian public charter school really shows how we can utilize such a precious resource. In the middle of town and the concrete jungle they still stick to the old Hawaiian way taking care of the resources the 'aina has provided so that everyone can benefit, not just them. As a advocate to the land myself, I would not want to see the things of beauty in my own backyard disappear more importantly the culture and its people. Hawai'i is a one of a kind place in the world. Do not take away the things that define this place and its people.

HB 1326 blatantly undermines Hawai'i's public trust doctrine by giving corporate diverters another 3 years to de-water streams without proper environmental oversight. More specifically it gives A&B a \$62 million dollar bail out, rather than requiring them to follow the law.

While revocable permits were intended to temporarily provide time for diverters to prepare their long-term lease applications, the hold over of revocable permits has been utilized as a mechanism to avoid environmental and cultural review and perpetuate the wholesale dewatering of our streams.

Please don't help perpetuate the downfall of Hawai'i's precious resources, Oppose HB 1326

Grant Goin, Makiki, O'ahu

**LATE**

**From:** [jkeliikuaaina@everyactioncustom.com](mailto:jkeliikuaaina@everyactioncustom.com) on behalf of [Julie Siphers](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Tuesday, April 2, 2019 11:32:04 AM

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Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

Large corporations do not need handouts. The legality of A&B's original land purchase is questionable to begin with. I have seen no proof that the land in question in central Maui is planned to provide sustainable agriculture and food for the people of Hawaii. Lawmakers need to put the people first and put an end to corporate greed and control of our wai. The prosperity and health of our land and people is at stake. We need a straightforward restoration of streams and water flow with no loop holes for corporations to own and redirect water from other wahi. I strongly oppose this bill as is.

Sincerely,  
Julie Siphers  
Haiku, HI  
[jkeliikuaaina@yahoo.com](mailto:jkeliikuaaina@yahoo.com)

**From:** [wildman1101@everyactioncustom.com](mailto:wildman1101@everyactioncustom.com) on behalf of [MEL Wildman](#)  
**To:** [WTL Testimony](#)  
**Subject:** Testimony in STRONG OPPOSITION to HB1326 SD1 - WTL/WAM, April 2 10:45AM  
**Date:** Tuesday, April 2, 2019 1:28:10 PM

**LATE**

Dear Chair Chair Kahele, Chair Dela Cruz and members of the Water and Land and Ways and Means Committees,

I am writing in OPPOSITION to HB 1326 SD2. This bill would extend temporary water permits to corporations, allowing them to take excessive amounts of water from Hawai'i's streams for another 3 years.

While I appreciate Sen. Kahele's effort to reduce the timeframe on this bill and establish some requirements for action, it is not sufficient to protect the public's trust. This bill provides no mechanism for protecting streams from excessive diversion, no assurance that fair market value will be collected, and enforceable benchmarks to prevent this extension situation from reoccurring. This bill would allow DLNR to continue its mismanagement of public trust lands and waters.

Alexander & Baldwin received a three year extension of their month-to-month permits in 2016 for the purpose of finishing the environmental impact statements required 15 years ago and completing the long term lease application. Instead of following through on that, A&B sold their private lands and pocketed the profits. It is absolutely unjust for these corporations to receive yet another extension.

This bill guarantees A&B holds on to the \$62 million they made on water in that land sale, while failing to protect our native streams and the communities that rely on them.

Water rights are protected by the public trust doctrine in our constitution—to protect our communities and watersheds from corporate exploitation just like this. A&B should not be allowed to use its political influence to pass laws that benefit its corporate interests above the best interests of Hawai'i's people. It is the responsibility of the legislature to put the people first.

When GOD ALMIGHTY SAID , let the world be shared by all !...HE DID NOT SAY WATER MUST BE SOLD IN BOTTLES FOR PROFIT ! AIR/ WATER/ ARE ELEMENTS THAT ARE GOD GIVEN FREE ....IT DOES NOT COME FROM A CORPORATION OR A SENATOR !...IT COMES FROM GOD ! WHAT DO YOU PLAN TO TELL HIM WHEN YOU ARE DECEASED WHICH COULD BE AT ANY GIVEN MOMENT AND TIME !...HOW WILL YOU ANSWER TO WHY YOU SOLD SOMETHING THAT WAS FREE BY GOD ! And you all will have to pay him for what you did !

In further context : HOLD ON PEOPLE !.....WE GOT UPDATE HERE !

DID I HEAR that Senator DELA CRUZ received \$27,000 in contribution from A&B ? AND WAS NEVER REPORTED ?....i didn't see anything regarding that information because i researched it and its wasn't there !.. who else is involved , RAPOZA ? BAKER , KAHELE ?

We have a few of our so called TIME LIMIT SENATORS That need to be removed from office !...This is one of them, the other is Rapoza and the other one is GLENN WAKAI of ways and means committee. A&B, Don't even pay their share of taxes , and for years have been taking full advantage of this opportunity because they have members of the STATE getting kickbacks from A&B to support them. THIS HAS GONE VIRAL. Wildman.

Sincerely,  
MEL Wildman  
Honolulu, HI  
[wildman1101@gmail.com](mailto:wildman1101@gmail.com)

**LATE**

**Aloha HAWAII State Legislature Senate Leadership**

**I Noa Kanealiiopnoi Mau – Espirito in my full capacity as appointed Governor of Kauai and Niihau Island by the Kingdom of the Hawaiian Islands Executive Branch take this time to Notify HAWAII State Senate President Ronald D. Kouchi that under 18 U.S. CODE §2441 I will be working with all Konohiki Landlords, Chiefs, Heirs, Title Holders, Ahupuaa Tenants, Hoaina and Volunteers in Defending, Protecting, Restoring and Preserving the Irrigation and Flow of Water from the mountain to the ocean on all Protected Private Properties on the Island of Kauai not being used by United States Military Occupying Forces.**

**Furthermore under the STATE OF HAWAII Senates own oath to uphold Constitution, Laws and Treaties of the United States the STATE OF HAWAII Senate Legislature is Liable through 42 U.S. CODE §1983 for Violating United States Laws 18 U.S. CODE §956, §957, §1091, §2441, 5 U.S. CODE § 1331 and United States Constitution Article 6 §2 through and by the Passing of “bills” to divert the irrigation and flow of water on Protected Private Properties in the Hawaiian Islands / Sandwich Islands not being used for military necessity.**

**I OPPOSE Hawaii State Legislature proposed BILLS SB1326 SD1 and HB1171 SD2 is a Violation of the 1949 Geneva Conventions therefore committing a Felony under 18 U.S. CODE §2441 because it “appropriates and destructs Protected Private Properties not needed for Military necessity”**

Contact :  
nkeliiva@icloud.com

**NOTICE OF LIABILITY AND ACTUAL NOTICE**

**FROM:**

**Chief Kaimi C.D. Hermosura, Konohiki / Landlord**  
**Chief Punohu Nalimu Kekauaulua III, Konohiki landlord**  
**Chief Lance Kamuela Gomes, Konohiki Landlord**  
**Chief Thompson Nawai Aipa Rivera, Sheriff**  
**Chief Charles D. Hepa, Konohiki / Landlord**  
**Chief Alicia Napuaonalani Hueu, Governor of Maui, Lanai and Moloka'I Island**  
**Chief Mary Ann Kamalani Pahukoa, Resource Ranger**  
**Chief Noa Kanealiioponoi Mau – Espirito, Governor of Kauai and Niihau Island**

**TO:**

**STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES (BLNR)**  
**BOARD CHAIRPERSON Suzanne D. Case**  
**STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL Attorney General**  
**Clare E. Connors**  
**STATE OF HAWAII OFFICE OF THE GOVERNOR David Y. Ige**  
**STATE OF HAWAII DLNR DOCARE Enforcement Chief Jason Redulla**  
**STATE OF HAWAII KAUAI DISTRICT LAND AGENT Wesley T. Matsunaga**  
**HAWAII State Legislature President Ronald D. Kouchi**  
**COUNTY OF KAUAI Mayor Derek S.K. Kawakami and Attorney Mathew M. Bracken**  
**KAUAI POLICE DEPARTMENT CHIEF OF POLICE Todd Raybuck**  
**COUNTY OF MAUI MAYOR Michael P. Victorino**  
**COUNTY OF MAUI POLICE DEPARTMENT CHIEF OF POLICE Tivoli Faaumu**  
**UNITED STATES Department of Justice Attorney General William P. Barr**  
**UNITED STATES Department of State Secretary of State Mike R. Pompeo**  
**UNITED STATES DEPARTMENT OF TREASURY (IRS) Internal Revenue Services**  
**UNITED STATES PACIFIC FLEET ADMIRAL John C. Aquilino**  
**KAUAI ISLAND UTILITY COOPERATIVE (KIUC) Secretary Calvin Murashige**  
**EAST KAUAI WATER USE COOPERATIVE President Jerry Ornellas**  
**MAHI PONO Shan Tsutsui**  
**ALEXANDER AND BALDWIN Chris Benjamin**

**[Re]: Liability through USC 42 §1983 for Violations of USC 5 §3331, USC 18 §956, §957, §1623, §1651, §1652, §1653, §1660, §1661, §1654, §1091, §2441, and U.S. Constitution Article 6 §2 under 28 U.S. CODE §1331.**

**NOTICE OF LIABILITY**

**FROM:**

**Chief Kaimi C.D. Hermosura, Konohiki Landlord**  
**Chief Punohu Nalimu Kekaulua III, Konohiki Landlord**  
**Chief Lance Kameula Gomes, Konohiki Landlord**  
**Chief Thompson Nawai Aipa Rivera, Sheriff**  
**Chief Charles D. Hepa, Konohiki Landlord**  
**Chief Alicia Napuaonalani Hueu, Governor of Maui, Lanai and Moloka'I Island**  
**Chief Mary Ann Kamalani Pahukoa, Resource Ranger**  
**Chief Noa Kanealiioponoi Mau – Espirito, Governor of Kauai and Niihau Island**

**TO:**

**UNITED STATES PACIFIC FLEET ADMIRAL John C. Aquilino**  
**UNITED STATES DEPARTMENT OF JUSTICE ATTORNEY GENERAL William P. Barr**  
**UNITED STATES DEPARTMENT OF STATE SECRETARY OF STATE Mike R. Pompeo**  
**UNITED STATES DEPARTMENT OF TREASURY (IRS) Internal Revenue Services**  
**STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL REOURCES BOARD**  
**(BLNR) CHAIRPERSON Suzanne D. Case**  
**STATE OF HAWAII ATTORNEY GENERAL Clare E. Connors**  
**STATE OF HAWAII DIVISION OF CONSERVATION AND RESOURCES**  
**ENFORCEMENT ENFORCEMENT CHIEF Jason Redulla**  
**STATE OF HAWAII OFFICE OF THE GOVERNOR David Y. Ige**  
**HAWAII State legislature Ronald D. Kouchi**  
**COUNTY OF KAUAI MAYOR Derek S.K. Kawakami and ATTORNEY Mathew M. Bracken**  
**KAUAI POLICE DEPARTMENT CHIEF OF POLICE Todd Raybuck**  
**COUNTY OF MAUI MAYOR Michael P. Victorino**  
**COUNTY OF MAUI POLICE DEPARTMENT CHIEF OF POLICE Tivoli Faaumu**

**NOTICE OF LIABILITY CONCERNING VIOLATIONS OF CONSTITUTION, LAWS**  
**AND TREATIES OF THE UNITED STATES OF AMERICA**

**Aloha Personnel, Agents and Agencies mentioned and identified above,**

**We, as Public Officials by way of Executive Branch of the Kingdom of the Hawaiian Islands hereby assert our Rights and Status as Internationally Protected Persons and Prisoners of War in times of conflict under the 1949 Geneva Conventions and contact you in this Notice of Liability in our full capacity as Public Officials representing our Hawaiian-Nationals in the Hawaiian Islands / Sandwich Islands under Kamehameha III 1850 self-executing Ratified Treaty with the United States of America.**

**As Public Officials, we represent our Nations Neutrality by and through our Nations recognition of independence, under the 1843 Anglo-French Proclamation at the court of London between the British and French Governments where we, the Hawaiian Islands / Sandwich Islands, were admitted into the Family of Nations.**



***It is our duty, under Kamehameha III Treaties, 1852 Constitution, Civil and (Penal Codes) of the Hawaiian Islands, to regulate the "division of Water" for irrigation and to collect taxes from tenants and businesses within the Hawaiian Islands on protected properties not being used for Military necessities U.S. Occupying forces.***

***The State of Hawaii and its Counties Agents and Agencies own Oath to uphold U.S. Constitution, Laws and Treaties, makes them legally Liable through 42 USC §1983 for Violations of 1949 Geneva IV, 1907 Hague Conventions IV Article 23, 25, 27, 28, 45, 46, 47, 55, 56, USC 5 §1331, USC 18 §956, §957, §1623, §1651, §1652, §1653, §1660, §1661, §1091, §2441, §1654 and Article 6 §2 of the United States Constitution that are being committed here in the Hawaiian Islands / Sandwich Islands by use of:***

- 1) (TMK)Tax Map Key Numbers to identify Location***
- 2) (TMK) Tax Map Key Numbers to determine Title***
- 3) (TMK) Tax Map Key Numbers to collect Taxes***
- 4) (TMK) Tax Map Key Numbers to retain Jurisdiction over Internationally Protected Persons and Internationally Protected Property***

***Therefore, committing the act of PILLAGING, DESTRUCTION AND APPROPREATION under Rules of War 1949 Geneva IV under 18 U.S. CODE Sec. 2441 and Violating his majesty king of the Hawaiian islands Kamehameha III 1850 self executing ratified Treaty with the United States of America under U.S. Constitution Article 6 Sec. 2.***

***Agents and Agencies mentioned above must comply and are Subject to Kamehameha III Treaty, Constitution, Laws, Civil and (Penal Codes) of the Hawaiian Islands once within 3 miles from the low water mark near the shore of the Hawaiian Islands.***

***To resolve the issue we the Executive Branch and Public Officials of the Kingdom of the Hawaiian Islands DEMAND the UNITED STATES PACIFIC FLEET ADMIRAL John C. Aquilino, STATE OF HAWAII ATTORNEY GENERAL Clare E. Connors, STATE OF HAWAII DLNR Division of Conservation and Resources Enforcement ENFORCEMENT CHIEF Jason Redulla, KAUAI, HONOLULU, MAUI COUNTY POLICE belligerent arm forces immediately Cease and Desist Violations of Rules of War and to comply with the 1907 Hague conventions, the 1949 Geneva Conventions and 18 U.S. CODE Sec. 2441 until Peace and Amity is restored between the Kingdom of the Hawaiian Islands and United States of America Military occupying forces.***

***Failure to comply with said U.S. LAWS and INTERNATIONAL LAWS stated above in this FORMAL COMPLAINT will result in legal proceedings in Court of competent Jurisdiction. Please respond to this Formal Complaint by United States certify mail within 10 days of receiving this NOTICE and Complaint at:***

***6160 A Olohena Rd***

***Kapaa HI 96746***

***No response of this Formal Complaint will be seen as non compliance.***

**ACTUAL NOTICE**

**FROM:**

**Chief Kaimi C.D. Hermosura, Konohiki Landlord**  
**Chief Punohu Nalimu Kekaulua III, Konohiki Landlord**  
**Chief Thompson Nawai Aipa Rivera, Sheriff**  
**Chief Charles D. Hepa, Konohiki Landlord**  
**Chief Alicia Napuaonalani Hueu, Governor of Maui, Lanai and Moloka'I Island**  
**Chief Mary Ann Kamalani Pahukoa, Resource Ranger**  
**Chief Noa Kanealiiopnoi Mau – Espirito, Governor of Kauai and Niihau Island**

**TO:**

**UNITED STATES DEPARTMENT OF JUSTICE ATTORNEY GENERAL William P. Barr**  
**UNITED STATES DEPARTMENT OF STATE SECRETARY OF STATE Mike R. Pompeo**  
**UNITED STATES PACIFIC FLEET ADMIRAL John C. Aquilino**  
**UNITED STATES DEPARTMENT OF TREASURY (IRS) Internal Revenue Services**  
**STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES BOARD**  
**(BLNR) CHAIRPERSON Suzanne D. Case**  
**STATE OF HAWAII DEPARTMENT OF THE ATTORNEY GENERAL ATTORNEY**  
**GENERAL Clare E. Connors**  
**STATE OF HAWAII OFFICE OF THE GOVERNOR David Y. Ige**  
**STATE OF HAWAII DIVISION OF CONSERVATION AND RESOURCES**  
**ENFORCEMENT ENFORCEMENT CHIEF Jason Redulla**  
**HAWAII State Legislature President Ronald D. Kouchi**  
**COUNTY OF KAUAI COUNTY MAYOR Derek S.K. Kawakami and ATTORNEY Mathew**  
**M. Bracken**  
**KAUAI POLICE DEPARTMENT CHIEF OF POLICE Todd Raybuck**  
**COUNTY OF MAUI MAYOR Michael P. Victorino**  
**COUNTY OF MAUI POLICE DEPARTMENT CHIEF OF POLICE Tivoli Faaumu**  
**KAUAI ISLAND UTILITY COOPERATIVE (KIUC) Secretary Calvin Murashige**  
**EAST KAUAI WATER USERS' COOPERATIVE President Jerry Ornellas**  
**MAHI PONO Shan Tsutsui**  
**ALEXANDER & BALDWIN Chris Benjamin**

**ACTUAL NOTICE**

**UNDER CONSTITUTION, LAWS AND TREATIES OF THE UNITED STATES**

**Aloha Persons, Personnel, Agents and Agencies mentioned and identified above,**  
**We contact you in this Actual Notice in our full capacity as Kingdom of the Hawaiian Islands**  
**Hawaiian-Nationals, Public Officials and Executive Branch under 18 U.S. CODE Sec. 2441**  
**Rules of War Geneva IV 1949, Kamehameha III 1850/1849 self-executing ratified Treaty**  
**with the United States of America, Constitution, Laws, Civil and (Penal Codes) of the**  
**Hawaiian Islands.**

*It is our intention to NOTIFY you in this ACTUAL NOTICE that, as Kingdom of the Hawaiian Islands Public Officials by way of Governor will be working with all Chiefs, Hawaiian Nationals and Subjects, Title Holders, Konohiki Landlords and Ahupuaa Tenants in defending, protecting, restoring and regulating the division of Water for irrigation, Poll Taxes, Land Taxes, Labor Taxes, Titles, Property, Mineral Rights, Streams, Aquifers, Springs, Farms, Tenants and Businesses on all Protected Properties on the Island of Kauai and Maui not being used by United States military occupying forces. Specifically, focusing on Protected Civilian, Cultural, Religious, Private Properties known as Wailua, Waipouli, Olohena, Pilaa, Moloa, Wahiawa, Koloa, Hanapepe, Mahaulepu, Kipukai, Anahola, Kapaa, Kealia, Kalihikai, Kalihiwai, Hanalei, Lepeuli, Waipake, Wainiha, Haena, Honomanu, Keanae, Keopuka, Loiloa, Kolea, Keauhou, Wailua Nui and Wailua Iki Ahupuaa's. These properties are currently unlawfully being identified through use of (TMK) Tax Map Key Numbers by the de facto STATE OF HAWAII and COUNTY Personnel, Agencies and Agents to retain jurisdiction, determine title, ownership and Pillage Protected, cultural, religious and Private Properties which is Pillaging and a act of WAR under Geneva IV violating 18 U.S. CODE §2441.*

*Any interference with conducted undertakings under Kamehameha III Constitution, Laws, Civil and (Penal Codes) of the Hawaiian Islands and under his majesty Kamehameha III 1849/1850 self-executing ratified Treaty of Friendship, Commerce, and Navigation with the United States of America will result in Legal Proceedings and Liability through USC 42 §1983 in court of competent jurisdiction for Violations of United States Constitution Article 6 §2, USC 5 §331, USC 18 §956, §957, §1623, §1651, §1652, §1653, §1654, §1660, §1661, §2441 U.S. Laws, 1949 Geneva Conventions IV, 1907 Hague Conventions IV Article 23, 25, 27, 28, 45, 47, 47, 55 and 56.*

*Under State of Hawaii and its Counties Agents and Agencies own Oath of office to uphold The United States Constitution, Laws and Treaties stated above. UNITED STATES OF AMERICA, STATE OF HAWAII, and COUNTY OF KAUAI, HONOLULU, MAUI and HAWAII Personnel, Agents and Agencies must comply with U.S. LAWS and INTERNATIONAL LAWS pertaining to Treaties and 1949 Geneva. Until Peace, Amity and Diplomatic Relations is restored between the Kingdom of the Hawaiian Islands and United of America. All Agents and Agencies mentioned above are subject to Rules of War under the 1949 Geneva Conventions and 18 U.S. CODE Sec. 2441.*

*We, the Executive Branch and Public Officials for the Kingdom of the Hawaiian Islands / Sandwich Islands, demand all United States of America, State of Hawaii and its Counties Police Personnel, Agents and Agencies identified and mentioned above immediately comply with Vienna Conventions Law of Treaties, Hague Conventions IV, Hague Conventions V, 1949 Geneva Conventions IV (Protocol 1) and Kamehameha III Constitution, Laws and Treaties once within 3 miles from the low water mark near the shoreline of the Hawaiian Islands / Sandwich Islands.*

*Please respond to this Notice by U.S. Certified mail within 10 days of receiving this Notice at:  
6160 A Olohena Rd  
Kapaa HI 96746*

**CERTIFICATE OF SERVICE**

**I HEREBY DECLARE THAT I, Noa Kanealiiopono Mau-Espirito,  
DID ON April 2, 2019 did SEND and FILE A TRUE AND CORRECT  
COPY OF THE FOREGOING INSTRUMENT BY UNITED STATES CERTIFY MAIL and or  
Hand Delivery TO the HAWAII State Legislature President Ronald D. Kouchi,  
STATE OF HAWAII Governor David Y. Ige, STATE OF HAWAII Attorney General  
Clare E. Connors, and STATE OF HAWAII (BLNR) Chairperson Suzanne D. Case.**

**In any and all actions civil or criminal to be brought under the Law.**

**Certificate of Service Rule 60(b)**

**All Rights Reserved  
Respectfully.**

Noa Kanealiiopono Mau-Espirito

**Dated: April 2, 2019**

**LATE**

Aloha Legislators and Everyone present here today. Thank you for this opportunity to stand before you and share my reason to be here. My name is Jade Alohalani Smith. I live in an off-grid, remote ancient Village, and.....a lineal descendant of the East Side. I know my Genealogy to at least 59 Generations back.

Now, going back in time, our ancient management system of our Cultural & Natural Resources has worked for thousands of years "proving" that it never depended on political or Western "cash" systems Process to be balanced and in abundance.

This very ancient management System was adopted by the United States when they illegally took over Hawaii and called our System the Department of Land and Natural Resources.

Today I'm here as the Aha Moku O Maui Island Council Representative for Kaupo. This is possible through our State of Hawaii Act 212, Section 1 of 2007, SB 1853 under DLNR.

I have been very active utilizing Act 212 since 2010 for its purpose of Community-Base to practice protecting and perpetuating our Cultural and Natural Resources.

Some accomplishments to mention is:

1. Acquiring DLNR Land at the Old Kaupo School for our Kaupo Community In 2011; with a Month to Month revokable permit.
2. Resurrected our dissolved Community Association.
3. Locked in Partnerships for moving projects forward for Kaupo Community
4. A Functioning Kupuna Advisory Council in Kaupo

Now HB 1326, recent HB 1171, or any future thought process for a HB. It shall be cast into the fire of Gehenna. I do not support this water theft process in any manner.

I ask that you please stop playing political and Business games with Our water.

1. We want our 17 streams returned with absolutely no strings attached for the water's Natural habitat's life cycle or cultural practices to be compromised. Hands: Mountain to Ocean to atmosphere back down
2. There shall not be any extensions for any justifications to hold this 33 year injustice to our people, public trust and the stewards to the water.

Here's a proposed Solution. Allow our Hawaii State Act 212, under Section 1 to organize Community-Base made up of Farmers, Fishermen and Partnerships to become original Stewards with our Lawful rights as Kanaka for regulating and enforcement. No funds? Easy, we utilize our Partnerships for grants, Sponsorship and donations saving the State of Hawaii the financial and manpower shortages in this Aha system. As Law Makers, you should be advocates for us and our resources not negotiate our Public Trust Purpose.

I end with this. Recently a Kula Resident on Maui simply justified by calculating the current matrix for water usage for the Upcountry District. He proved the false myth that Upcountry uses up to 80% Water when it actually uses 26.7% before the Maui County's Department of Water Supply. This Pure example of an Island Steward delivering and it didn't cost thousands of dollars for this transparent information to be developed and shared to the Public.

So please do the right thing and Kill House Bill 1326, 1171 and any last minute Bills! Start working with Act 212; Section 1 to work with the People of Maui and the original protected rights/ Laws that are being violated. DLNR can't fulfill all their obligations to the State Citizens so let us show them how. Thank you for your time

Jade Alohalani Smith  
Aha Moku O Kaupo Representative  
Hawaii State Act 212, Section 1  
Phone: 808-870-2820

**LATE**

**From: Ke'eaumoku Kapu**  
**Submitted on April 2, 2019**

**Testimony in opposition of HB 1326 HD2 Relating to Water Rights**  
**Submitted to: The Senate Committee on Water and Land and committee on Ways and Means.**

Aloha Chair Kahele, Chair Dela Cruz and members of the committee.

I oppose HB 1326 HD2 Relating to Water Rights.

To my understanding the passage of HB 1326 would Continue to allow A&B with not for filing there obligation of conducting the required Environmental Assessment for there diversions of East Maui Streams and to continue the mismanagement of our Natural Resources required by law.

The passage of HB 1326 HD2 would also disregard a recent court order that would allow BLNR the right to continue any holdovers to private corporations until an Environmental Assessment has been done.

To this day A&B has not complied or made any attempt to start an EA or EIS. Act 126 has been established by this committee in 2016 and there has not been any compliance by A&B for the protection of our Natural and Cultural Resources and historical site or properties for east Maui. What was the hold up. They had 3 years... what fears me the most is if we kalo farmers on the west side going get affected. What fears me the most is if this HB 1326 HD2 going apply to all streams throughout the State of Hawaii.

I don't live on east Maui whereas many feel that this bill will only impact but the true reality is it will impact all rivers and will also allow all other private companies that manage public utility companies (PUC) the right to do the same by the passage of HB 1326 HD2. So I came here today from Lahaina Maui to ask this committee, who will assure that my life as a kalo farmer and Kuleana land owner will not be affected by the passage of this bill.

I placed my life on time out to fly here to O'ahu to leave my family to fend for them selves to see who will be held accountable by the outcome of this measure and to remind this body to not forget my protective rights under article 12 section 7 of the Hawaii State Constitution.

I am not the same as all of you may think. My laws are held in the highest court. Through the Kingdom of Hawaii now illegally occupied by the United State of America. I encourage this body to understand this kanawai "Ua koe ke kuleana na kanaka" because there is no ignorance to the law. I am the smallest of a tenth percent of a descriptive definition that defines who I am and what you are required to provide. My Right to my resources as a kuleana land owner protected by the laws of this land that you all are required to follow.

I didn't come here to test any ones eagle or come to threaten anyone by my actions, I came because I am concerned that we are allowing foreign companies the right to manage our aina, our wai, our kai.

If you cannot make good decisions to protect our resources then you need to resign and get out.

A&B in trouble looking for the perfect bail out unilateral to Mahi Pono? a company from Canada? I ask this body Are we at a tipping point that we cannot manage what we have on our own? The question is for you. Do you really understand what you jobs are? Because for me to have to come to this god forsaken place and beg you to do your job pono, Hell no. my wife told me to get on the plane.

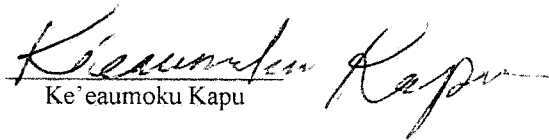
None of you did your home work This body didn't even come to the Aha moku Island council of Maui whereas S.B. 1853 was ratified by the Legislation and passed with flying colors in the house and the senate and signed by Governor Linda Lingle in 2007 we refer Act 212 as the people bill. and Act 288 under Governor Neil Ambacrombie. The formation of the Aha moku Advisory Committee AMAC. Under DLNR. On the island of Maui our island councils are managed by Aha moku o Maui Inc. Founded in 2011, I am the CEO. A quasi component to assist with the management of our natural resources from a bottom to top management approach through an advisory body from the moku with generational knowledge of Land, Water, Ocean, Air, shorelines and iwi.



Our island councils are still a viable resource and have been an advisory to the County, State and Federal agencies for the pass 7 years. Everyone comes to the Aha moku council of Maui. This body never come. So where you getting your resources from to make pono decisions about our water that we are dependant on. Especially for the east maui hui whom has been in litigation for over 20 years for stream restoration with this very entity EMI.

On West Maui we have in stream flow standard set through the commission on water resource Management. for 5 streams Ukumehame, Olowalu, Launiupoko, Kaua'ula and Kahoma. will this measure affect that..

I no like this HB 1326 HD2 Too many leaks. I OPPOSE HB 1326 HD2 FREE OUR STREAMS

  
Ke'eaumoku Kapu