



**SB1292**  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS  
Ke Kōmike ‘Aha Kenekoa o ka Wai a me ka ‘Āina  
Ke Kōmike ‘Aha Kenekoa o ka ‘Oihana Mahi‘ai a me ke Ao Kūlohelohe

February 12, 2021

1:15 p.m.

Room 229

The Office of Hawaiian Affairs **OPPOSES** SB1292, which would allow any wells to be drilled and constructed on lands leased from the Department of Agriculture (DOA) to be exempted from the environmental protections provided by Hawai‘i Revised Statutes (HRS) Chapter 343, provided that the land is being used to support agriculture and food production. OHA appreciates efforts to expedite projects that promote local food sustainability and agriculture, but **the exemption contemplated by this measure would subvert the laws and processes in place to protect Hawai‘i’s fragile natural and cultural resources from avoidable and unnecessary impacts.** Any substantial construction that could impact these sensitive resources, even those supporting food production, should be prudently planned in compliance with environmental protection laws.

The environmental review process embodied in Chapter 343, originally established over four decades ago, plays a vital role in the preservation of Hawai‘i’s limited natural and cultural resources. It provides a critical opportunity for stakeholders, government agencies, the Native Hawaiian community, and the general public to provide valuable insights into possible social, environmental, and cultural impacts of certain agency and applicant actions, and ensures that agencies explicitly consider these impacts in their planning and decision making. **This environmental review process demonstrates our state’s well-founded desire for careful, responsible planning that reflects the highly limited and often fragile nature of our islands’ lands and resources.**

SB1292’s exemption from the HRS Chapter 343 environmental review process might expedite the construction of wells, but at the cost of transparency and judicious planning for wells that may result in significant and avoidable impacts to natural and cultural resources and sites. Pursuant to HRS Section 343-6 and HAR section 11-200-8(a)<sup>1</sup>, DOA lessees already enjoy an exemption from HRS Chapter 343 for new construction of “small” facilities including for public utility services and “minor” accessory structures, which may potentially include small wells. SB1292 would apply a similar

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<sup>1</sup> DOA has published guidance, in consultation with the Environmental Council, via a list of types of actions that are generally declared exempt from the environmental assessment requirements of HRS Chapter 343. STATE OF HAWAII DEPARTMENT OF AGRICULTURE, EXEMPTION LIST FOR THE ANIMAL INDUSTRY DIVISION, QUALITY ASSURANCE DIVISION, AGRICULTURAL DEVELOPMENT DIVISION, AQUACULTURE DEVELOPMENT PROGRAM, AGRICULTURAL LOAN DIVISION, ADMINISTRATIVE SERVICES OFFICE, AND OFFICE OF THE CHAIRPERSON (2008) available at [http://oeqc2.doh.hawaii.gov/Agency\\_Exemption\\_Lists/State-Department-of-Agriculture-Department-wide-Exemption-List-2008-09-17.pdf](http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/State-Department-of-Agriculture-Department-wide-Exemption-List-2008-09-17.pdf).

blanket exemption to much more substantial well structures of potentially any size and number. Typically, environmental review of a proposed large well structure would highlight any likely short- and long-term cumulative impacts of the construction *and* any associated activities such as ground disturbing construction. **This may include impacts to streams and springs fed by groundwater sources, adjacent native species habitat, Native Hawaiian traditional and customary practices, and sites of cultural significance -- impacts that could be identified and mitigated or even avoided through the Chapter 343 environmental review process.** A blanket exemption such as that proposed by SB1292 would threaten a range of avoidable harms to irreplaceable natural and cultural resources and sites, including burials, and may further set a dangerous precedent by undermining state environmental policy.

For the above reasons, OHA respectfully requests that the Committees **HOLD** SB1292. Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



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

POST OFFICE BOX 621  
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**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

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
AGRICULTURE AND ENVIRONMENT**

**Friday, February 12, 2021  
1:15 PM  
State Capitol, Videoconference, Conference Room 229**

**In consideration of  
SENATE BILL 1292  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

Senate Bill 1292 proposes to amend Chapter 174C, Hawai'i Revised Statutes (HRS), by adding an exemption to the proposed drilling, construction, or use of a well on lands leased from the department of agriculture from the requirements of the environmental impact statements law, provided that the land is being used to support agriculture and food production. **The Department of Land and Natural Resources (Department) offers the following comments.**

Agricultural water needs are for uses such as irrigation of crops, pasture, livestock, and processing for sale and have been an important part of the State's economy. Currently, reported agricultural ground water use from 256 of the total 434 agricultural wells in the State is around 20 million gallons per day (mgd) as the industry transitions from large scale to smaller diversified agriculture. This does not account for surface water use, which has been equally if not more significant and an important issue with the changes in setting instream flow standards in various places of the State by the Department's Commission on Water Resource Management (Commission).

County Water Use and Development Plans and the State Water Projects Plan forecast that non-potable water use will increase over the next 20-years or so. The Commission's guiding policies in its Water Resource Protection Plan promotes alternative uses of water for agriculture in lieu of potable groundwater: (1) quality of the water source should be matched to the quality of the water needed, (2) if there is a practical alternative water source available, that alternative source should

be used in lieu of natural supplies, and (3) encouraging best and highest use of water while disallowing the application of lower quality water over a higher quality aquifer.

Research from the University of Hawai'i, Water Resource Research Center, and United States Geological Survey shows that agricultural water use may have significant impacts on: 1) ground water recharge and corresponding ground water sustainable yields; and 2) setting of instream flow standards.

Lastly, the Department also notes that there are provisions in Chapter 343, HRS, for agencies to request exemptions from environmental review. It would seem more appropriate to set such an exemption within Chapter 343, HRS, rather than Chapter 174C, HRS.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS ATTA  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON WATER AND LAND  
AND  
AGRICULTURE AND ENVIRONMENT

FEBRUARY 12, 2021  
1:15 P.M.  
CONFERENCE ROOM 229  
and VIA VIDEOCONFERENCE

SENATE BILL NO. 1292  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Chairpersons Inouye, Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 1292. This bill exempts the drilling, construction, or use of a well on lands leased from the Department of Agriculture from the requirements of the environmental impact statements law, provided that the land is being used to support agriculture and food production. The Department of Agriculture offer the following comments:

The Department recognizes the desire and intent of this bill. Chapter 343, HRS can add a significant amount of time and cost to a project. Exempting Departmental tenants from the requirements of the environmental impact statement law will lower the



costs of drilling and constructing wells, however, the Department feels it is still important to understand what the impacts are to construct a well.



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February 12, 2021

HEARING BEFORE THE  
SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 1292**  
RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Conference Room 229  
1:15 PM

Aloha Chairs Inouye and Gabbard, Vice Chairs Keith-Agaran and Nishihara, 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 1,800 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 supports SB 1292**, which will make it possible for farmers to produce more food on agricultural land leased from the department of agriculture. It is well-known that the requirements of the environmental impact statement law, while important, can delay beneficial projects until they are no longer feasible. In addition, the enormous cost of hiring consultants to conduct these reviews and provide reports can also preclude farmers from using land they own or lease.

The COVID-19 pandemic has brought a renewed awareness of the critical importance of growing food and other agricultural products. It has highlighted the need for our islands to become more self-sufficient. This bill will facilitate the achievement of those goals and our constitutional mandate because although water is essential for farming, it is not currently available to all agricultural lands that could be productive.

Thank you for the opportunity to provide our support on this measure and for your continued support of Hawaii's farmers and ranchers.

**SB-1292**

Submitted on: 2/11/2021 12:11:08 PM

Testimony for WTL on 2/12/2021 1:15:00 PM

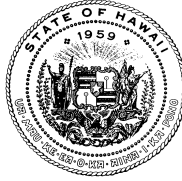
<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Neal Fujii	Testifying for CWRM	Comments	No

Comments:

I would like to testify on SB 1292. Please allow me Zoom access. Thank you.



DAVID Y. IGE  
GOVERNOR OF HAWAII



KEITH KAWAOKA  
ACTING DIRECTOR

ELIZABETH A. CHAR, Ph.D.  
DIRECTOR OF HEALTH

**STATE OF HAWAII**  
**OFFICE OF ENVIRONMENTAL QUALITY CONTROL**  
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**Testimony in OPPOSITION to SB1292**  
**RELATING TO ENVIRONMENTAL IMPACT STATEMENTS**

COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON AGRICULTURE AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator Clarence K. Nishihara, Vice Chair

Testimony of Keith Kawaoka  
Acting Director, Office of Environmental Quality Control  
Attached Agency to the Department of Health

Hearing Date: February 12, 2021  
1:15 p.m.

Room Number: 229  
Via Videoconference

- 1 **OEQC's Position:** The Office of Environmental Quality Control (OEQC), an agency attached to the
- 2 Department of Health and which administers Chapter 343, Environmental Impact Statements, Hawai'i
- 3 Revised Statutes (HRS) is opposed to SB1292.
- 4 **Purpose and Justification:** This bill would categorically exempt various activities associated with
- 5 drilling, constructing and using water wells on Department of Agricultural lands from complying with the
- 6 requirements of the environmental review law (HRS, Chapter 343). There are valid reasons and
- 7 longstanding policy and practices establishing why proposed uses on State lands that affect ground water
- 8 resources should undergo environmental review. HRS, Chapter 343 already provides a mechanism for
- 9 agencies to request exemptions from environmental review (HRS, 343-6 and Hawaii Administrative

1 Rules, Subchapter 8). Thus, there is no need to carve out an exemption for a range of activities proposed  
2 in this measure.

3 Further, this bill would create this exemption by making an amendment, not to HRS, Chapter 343, but to  
4 HRS 174C (the State Water Code). This would create a conflict between these two statutes, and affected  
5 actions would likely end up in prolonged legal battles to determine which statute prevails.

6 Thank you for the opportunity to testify.

**SB-1292**

Submitted on: 2/10/2021 6:46:39 PM

Testimony for WTL on 2/12/2021 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support SB1292.

Thank you,

Andrea Quinn