HB 3763
RELATING TO THE STATE WATER CODE

House Committee on
Water and Land Use Planning

Public Hearing - February 9, 1996
9:00 A.M., Room 312, State Capitol

By
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HB 3763 would enact amendments to Chapter 174C, HRS, the State Water Code: to require reports to be filed by
an owner or operator of a well or stream diversion; to allow judicial review of final decisions; to require the commission to
confirm a declared water use rather than issuing a certification; to repeal the requirement that water uses be reasonable and
beneficial; to allow transfer of a water use; to allow the commission to impose conditions on the termination or transfer of a
declared water use; and to require contested cases to be appealed to the circuit court rather than the state Supreme Court.

Our statement on this measure is compiled from voluntarily submitted opinions of the listed academic reviewers,
and as such does not constitute an institutional position of the University of Hawaii.

Although we have specific concerns regarding this bill, we would urge restraint on all proposed measures that
would amend the State Water Code at this time, for two reasons:

1. Ongoing litigation in the Waiahole Ditch contested case centers around provisions of the Water Code, and we suggest
that it would be inappropriate to enact amendments which would have the effect of creating substantial legal uncertainty,
thereby unduly influencing the proceedings.

2. Both legal and resource utilization issues are in the process of being refined, clarified, and reinterpreted by the Waiahole
case. It is arguable that the recent findings and recommendations of the Water Code Review Commission may be subject
to change in view of the outcome of this case. In any event, we are likely to be in a far better position to rationally and
judiciously approach amendment of Chapter 174C at the conclusion of the Waiahole litigation than we are now.

Apart from these considerations, we strongly disagree with the intent of several provisions, particularly those
developed in Section 4. The effect of removing the commission’s duty to determine that a proposed use is reasonable and
beneficial reduces the commission to a ministerial rather than a discretionary body, in complete contradiction of the
original intent of the State Water Code. Such a fundamental alteration in the function of the commission effectively would
nullify its ability to act as an agent of statewide, comprehensive water resources planning.