

Testimony of
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before the

House Finance Committee
Friday, March 21, 1986

on

S.B. No. 564, S.D. 2, H.D. 1
Relating to the Water Code

(This testimony does not represent an institutional position of the University of Hawaii, but is based in part on my research on Water Rights in Hawaii published in Land and Water Resources Management in Hawaii (Dept. of Budget and Finance, 1979).)

I oppose H.D. 1 of the Water Code and recommend that this committee support instead S.D. 1 of S.B. No. 564.

The faults of H.D. 1 include the following:

1. It grants--through the certificate of use concept--in perpetuity rights to present water users. These rights can apparently be freely transferred, without any review by the BLNR. In addition, there are no restrictions on changing the use of water. As a result, the public interest is effectively excluded from decisions affecting most of Hawaii's water.

2. Unless the water resource is in an area designated as a water management area, new uses are also subject to no public scrutiny.

3. The standards of Chapter 177 in designating water management areas are abandoned.

4. The restriction in Chapter 177 on the acquisition of prescriptive rights in groundwater is also abandoned.

5. The conciliation requirements are inconsistent with standard administrative and judicial review procedure.

Because of these and other deficiencies, H.D. 1 is inconsistent with Article XI, section 7 of the Hawaii Constitution, and should not receive the support of this committee.