



University of Hawai'i at Mānoa

Environmental Center
A Unit of Water Resources Research Center
Crawford 317 • 2550 Campus Road • Honolulu, Hawai'i 96822
Telephone: (808) 956-7361 • Facsimile: (808) 956-3980

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HB 1332 RELATING TO THE STATE WATER CODE

House Committee on Water and Land Use

Public Hearing - February 17, 1998
9:00A.M., Room 312 State Capitol

By
John T. Harrison, Environmental Center
David Penn, Geography

HB 1332 would amend the State Water Code (HRS 174C) to provide for development of a state agricultural water use and development plan, to elevate protection of existing agricultural water uses to a priority status, and to limit the discretion of the Commission on Water Resources Management (CWRM) in the setting of instream flow standards.

Our statement is compiled from voluntarily submitted opinions of the listed academic reviewers and does not constitute an institutional position of the University of Hawaii.

Although a clear need exists for creation of a State agricultural water use and development plan, it should be noted that funding for such a plan already has been requested by the Department of Land and Natural Resources. However, the other provisions of this measure are unwarranted and likely unconstitutional, as noted below:

Page 2, lines 12-14: This amendment institutes a fundamental revision of the scope and purpose of Section 174C-31(g). The original intent of this section to protect instream uses and to maintain groundwater yields is subverted by the inserted language to a blatant subsidy of consumptive uses. This amounts to a violation of Constitutional provisions for the protection and enhancement of the State's natural resources, as well as a violation of the State's Public Trust responsibilities under Article XI, Section 9.

Page 5, line 6: It would seem unwise to exclude access to consultation with the U.S. Fish and Wildlife Service, particularly in the light of federal management responsibilities in stream waters pursuant to the federal Endangered Species Act and to the federal Wild and Scenic Rivers Act.

Page 5, lines 17-22: A fundamental question raised by this inserted language is, who determines value? This section implies a pecuniary interest assignable to instream qualities that are by nature not readily quantifiable in such terms. Resolution of the issue of balance between economic, consumptive uses and ecologic sustainability is not formulaic, nor is it amenable to analysis following principles of monetary accounting. Ultimately, any process of valuation requires a consensus as to procedure, and the lack of such a consensus is evident.

Because of these concerns, we cannot support the intent of this measure.