

Hawaii

# Vote On Water Rights Bill Postponed After Heated Testimony

A Senate committee is expected to decide Thursday whether to extend stream diversion authority for another three years.



By Chad Blair    / April 2, 2019

 Reading time: 7 minutes.



After nearly six hours of often passionate testimony, two Senate committees Tuesday delayed voting on legislation allowing the land company Alexander & Baldwin, several farming and ranching operations and two utility companies to continue using public water for another three years.

The stream diverters already received one three-year extension from legislators in 2016.

State Sen. Kai Kahele, chair of the Water and Land Committee, said his committee and the Ways and Means Committee needed more time to evaluate written and oral testimony on the measure.

[House Bill 1326](#) is fiercely opposed by environmental groups and many Native Hawaiians. Some say it blatantly favors businesses — in particular A&B — and violates the public trust of water resources.

A&B has diverted stream water from East Maui to its agricultural land in central Maui for decades, while taro farmers in the region have long complained that not enough water is left for them.



Barbara Barry of Maui shared her sentiments on signs at the Capitol on Tuesday.

“East Maui kalo farmers, most if not all of whom enjoy constitutionally protected water rights, were for decades disrespected, ignored and forgotten,” Moses Haia, executive director of the Native Hawaiian Legal Corp., testified. “It has taken 18 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.”

But HB 1326 is supported by ranchers, farmers, utilities and other groups, who note the importance of water to agricultural and utility operations.

“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,” said Warren Watanabe, executive director of the Maui County Farm Bureau. “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.”

A state Circuit Court ruling in January 2016 prohibited A&B from using four revocable permits to authorize permanent diversions of stream water. That led to legislation that year — [Act 126](#) — that allowed the company to use the permits until 2019.

Now, three years later as Act 126 is set to sunset, some lawmakers feel there is a need for new legislation — in part because the state has not followed through on granting long-term water permits.

## ‘Confusion, Misunderstandings’

HB 1326 includes this passage:

*To date, the Department of Land and Natural Resources has yet to provide a meaningful process or clear guidelines regarding long-term water leases, which has led to confusion and misunderstandings amongst permit holders, applicants, and affected water users. Furthermore, the Legislature finds that the Board of Land and Natural Resources lacks sufficient administrative rules for rendering decisions on dispositions of water.*

The bill would extend the water diversions even though the companies have not completed required environmental reviews.

Some senators, including Kahele, expressed frustration that they could not get satisfactory answers from Suzanne Case, chair of the Land Board, and Attorney General Clare Connors.



Senators heard a full slate of bills prior to the hearing on the water rights bill Tuesday.

Case described the permitting process as complicated and lengthy, but assured senators her agency was working to facilitate long-term leases for the parties involved. She said that organizations holding revocable permits could also apply for permit exemptions.

Connors cautioned that the 2016 Circuit Court ruling regarding A&B's four permits is currently on appeal and so the Legislature must take into account the possibility that a higher court might determine that the ruling impacts others besides A&B holding revocable permits.

Kahele dismissed Connors' opinion as "speculation," while Sen. Kurt Fevella complained that the Legislature was having to deal with the water rights issue because "somebody dropped the ball."

Tuesday was a long day at the Capitol for supporters and opponents of the water rights bill.

Scheduled to be heard at 10:45 a.m., the hearing on HB 1326 was pushed back until 12:15 p.m. because earlier hearings ran late.

## Heavy Opposition

By 3 p.m., the hearing was still going on, with 60 organizations still left to testify along with individuals.

Kahele said that his committee received 747 pieces of testimony in total, 604 of them in opposition to the bill. Another 103 testifiers offered comments while just 40 supported HB 1326.

Many of the opponents sported small blue stickers on their shirts reading “Ola Ka Wai — free the streams.” At least one opponent disrupted proceedings several times by shouting. Staff from the Senate sergeant-at-arms and several deputy sheriffs were on hand to keep the peace.



Opponents of the bill gather in the Capitol Rotunda before Tuesday’s hearing.

Initially there were two water rights bills scheduled for simultaneous hearings Tuesday before the Senate Ways and Means Committee and the Water and Land Committee.

[House Bill 1171](#) was a gut-and-replace measure originally intended to fund the state's native resources and fire protection program but altered to instead extend water rights [for another seven years](#). It came Friday from Sen. Donovan Dela Cruz, the Ways and Means chair, and appeared to be a backup should HB 1326 fail or be weakened.

"Just when you think things can't get worse, they do," former state Sen. Gary Hooser emailed supporters, urging opposition to both bills. "Time to go to the mattresses."

But the hearing on HB 1171 was pulled from the agenda Monday evening.

## 'It's Tearing Half This Building Apart'

[Kahele's version](#) of HB 1326 would extend the leases for three years and not seven, as the bill called for when it crossed over from the House. Kahele and Favella, the lone Republican senator, both said that the issue had upset many people inside the Capitol.

"It's tearing half this building apart," said Kahele.

The Sierra Club and others argued that A&B sought the lease extension as part of a sales agreement with a company called Mahi Pono. A&B, which converted to a real estate investment trust in 2017, sold its land in central Maui for \$262 million in December.

### Contact Key Lawmakers

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"In the sales agreement, it is made clear that \$62 million of that deal was for 30 million gallons of water a day from East Maui for five years," the Sierra Club's director, Marti Townsend,



and Mahealani Wendt, an East Maui community advocate, wrote in [a Community Voice](#) for Civil Beat. “According to state law, all water in Hawaii is public. So the water of East Maui was not A&B’s to profit from, yet it did.”

The \$62 million was mentioned by other testifiers Tuesday, and some described it as a rebate.

A&B did not testify publicly on HB 1326 Tuesday. But the company did issue a statement while the hearing was still going on:

*The rebate issue is a red herring. The intent of the rebate in our contract with Mahi Pono was to acknowledge the diminished value of the Central Maui agricultural lands if surface water resources were no longer available for irrigation.*

*The rebate does not hinge solely on this legislation and the failure to pass this bill will not cost A&B \$31 million or \$62 million as inferred by many. These permits are just one step in the long process of securing long-term access to water, which remains critical to agricultural interests and renewable energy production across the state.*

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