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HAWAII NEWS

Water bill appears to give A&B a financial break

By [Timothy Hurley](#) • April 2, 2019

A state measure that would give an assortment of large landowners, agricultural concerns and electrical utilities seven more years to meet stricter requirements for access to public water appears to give one particular company a huge break.

Alexander & Baldwin Inc. could stand to lose as much as \$62 million if House Bill 1326 is not enacted into law.

That's the amount the company would owe Mahi Pono LLC, the farming venture that bought A&B's vast Maui holdings in December, if A&B is legally prohibited from delivering 30 million gallons of water a day for more than a year at any time over the next seven years, according to its sales agreement.

"Sometimes it is hard to tell what is really going on at the Capitol," said Marti Townsend, director of the Sierra Club of Hawaii. "But in this situation the facts of the bill and land deal line up so tightly that it is hard to deny the special benefit A&B gets if (the bill) is passed."

The measure, a version of which will be heard in a legislative hearing this morning, is billed as a temporary measure to give landowners who divert water from streams additional time to comply with a court ruling that requires the conversion of one-year revocable water permits to long-term leases.

As of Monday morning a version of the bill was written to allow for unlimited diversions for seven years, plus authorization to continue diverting while permits are challenged in court.

Critics, including environmentalists and Native Hawaiian groups, say the proposal sanctions "corporate water theft" while allowing these companies to put off required environmental reviews, consultations with Native Hawaiians about water needs, appraisals and other requirements.

In addition to Alexander & Baldwin, other companies accessing water under the short-term permits include East Kauai Users Cooperative, Hawaii Electric Light Co., Kapalala Ranch, Kauai Island Utility Cooperative, Kuahiwi Contractors, Jeffrey Linder, Edmund Olsen Trustee and Wood Valley Water & Farm Cooperative.

It can be argued, however, that no one has a greater stake in HB 1326 than Alexander & Baldwin, which sold 41,000 acres of former sugar land to Mahi Pono in December for \$262 million.

According to its sales contract, A&B promised to rebate Mahi Pono \$31 million if a minimum of 30 million gallons of water a day from East Maui is "legally prohibited" anytime between now and 2026.

The company promises to rebate another \$31 million, according to the contract, if it fails to deliver the daily 30 million gallons within one year of the disruption.

If A&B fails on both accounts, the company could be out \$62 million.

In 2016 an Oahu Circuit judge struck down the state Department of Land and Natural Resources' practice of continuously issuing one-year revocable permits allowing Alexander & Baldwin to divert millions of gallons of irrigation water daily from streams in East Maui.

The Legislature subsequently granted A&B and other water permit holders three years to obtain long-term leases, but none of the companies have come into compliance and the deadline is drawing near.

In written testimony, DLNR Chairwoman Suzanne Case said that while the department supports the transition to long-term leases, the complexities of obtaining such leases were not anticipated by lawmakers. HB 1326, she said, brings stability to irrigation systems affected by this issue.

For A&B the seven-year timeline allows the company to legally divert water until 2026, which would, if need be, fulfill the requirements necessary to avoid rebating \$62 million from its Mahi Pono sale proceeds.

Townsend said it appears this law goes out of its way to give A&B a break.

“We were wondering about the seven-year timeline,” she said. “Why not one year or two years or even 10 years? Why seven? Then someone looked at the sales agreement, and it lines up exactly.”

State Rep. Ryan Yamane denied the bill was written to benefit A&B. He said it’s for any company with a water permit, as well as the hundreds of people who could be affected if the water was stopped from any irrigation systems.

The seven-year timeline, Yamane said, came from feedback from different parties regarding how much time is needed to obtain a long-term lease, including securing funding, completing environmental documents and holding various hearings.

Alexander & Baldwin spokesman Darren Pai said the bill has nothing to do with the Mahi Pono sale.

“(The bill) is about providing an opportunity for the revival of sustainable and viable agriculture on Maui,” Pai said.

When the sale was announced, A&B and Mahi Pono declared a new era for agriculture on the Valley Isle. Mahi Pono said it planned to cultivate a variety of food and energy crops on the former sugar lands.

Today’s hearing will be in state Capitol Room 211 at 10:45 a.m.