

Hawaii

# Maui's Ancient Water Rights Debate Headed For Capitol Showdown

**UPDATED 4/6/2016:** Big Ag has long diverted water to serve Central Maui at the expense of others, and the dispute is outliving sugar cane farming.

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By Chad Blair    / April 5, 2016

 Reading time: 8 minutes.



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**UPDATE:** Ten Hawaii companies with water permits would be allowed to continue accessing public water in legislation that cleared a critical committee Monday at the Capitol.

But [House Bill 2501](#) was amended considerably in the Senate Ways and Means Committee, and the panel's chair, Sen. Jill Tokuda, said the measure would likely end up in House-Senate conference committee deliberations later this month.

HB 2501 would now allow existing applications for the leasing of water rights on state lands by the [Department of Land and Natural Resources](#) to continue until the summer of 2019.

The precise language of the bill, which was not available in written form at the time of the vote, seemed to have confused some senators who were under the impression that [Alexander & Baldwin](#) would retain its water rights, too.

Would A&B still be allowed to continue diverting water from East Maui streams? Tokuda did not return calls to Civil Beat, but the Honolulu Star-Advertiser reported last week that A&B was “stripped” from the bill and attributed it to the senator.



An aerial view of the Hawaiian Commercial and Sugar Company mill on Maui owned by Alexander & Baldwin.

At the center of the legislation is a standoff between A&B, one of the former Big Five companies that essentially ran Hawaii during the territorial years, and taro farmers in East Maui. The fight is over access to water rights that A&B has long controlled.

The dispute has origins that go back more than a century, from the beginnings of the sugar cane industry in the 1900s to an announcement earlier this year of [plans to close](#) the state's last remaining sugar plantation.

## Critics of House Bill 2501 say Alexander & Baldwin was trying to work around a recent court ruling.

A&B testified that it needs to make sure that its 36,000 acres of agricultural land in Central Maui has a sustained source of water as the company shifts from a plantation model to diversified agriculture. The company also says it must provide water to 36,000 farmers and residents in Upcountry Maui.

“Without this water, the central valley of Maui would be arid and never would have supported the development of an agricultural industry or the associated economic activity that has fueled Maui for nearly a century and a half,” said Meredith Ching, an executive with the company.

But taro farmers and their advocates complain that A&B will still be diverting millions of gallons of water from East Maui streams needed for other crops. The stream diversion has also harmed Native Hawaiian gathering rights, some testified, something protected under state law.

HB 2501's introduction was prompted by an Oahu judge's January ruling that struck down a state Land Board pattern of renewing A&B permits to continue diverting the Maui water. Judge Rhonda Nishimura determined that the DLNR, which has been issuing one-year revocable permits to A&B, violated state law.

**“This is a unique beast created out of thin air just for A&B.” — Marti Townsend, Sierra Club Hawaii**

The permits have been renewed every year from 2001 to 2014, even though they are supposed to be temporary and issued on a month-to-month basis.

Marti Townsend of the Sierra Club said Alexander & Baldwin has benefitted from “special treatment” that HB2501 would continue.

“A&B has been on a ‘holdover’ permit since 2002,” she explained. “This is a unique beast created out of thin air just for A&B. It is not a revocable permit that is renewed annually at a Land Board meeting, like everyone else’s permits for access to public resources. That is, they got a permit in 2002 and that same old permit was allowed by DLNR staff (without authority) to continue with no oversight by the Land Board, no annual renewal, no public meeting, nothing, until Judge Nishimura’s decision in January invalidating the stale permit.”

Townsend continued: “It’s an important distinction between the special treatment A&B has long received, and every other Ag operation in Hawaii that uses revocable permits to access state resources.”

Critics of HB 2501 say A&B was trying to work around the court ruling.

It has now been amended so that 10 other companies across the state that hold revocable permits would be allowed to use public water. They include other farmers and cattle ranchers, as well as electricity companies.

And the bill now appropriates \$150,000 and two full-time positions to DLNR so that it can assist in the holdover application permitting process. Annual reports to the Legislature on DLNR’s progress would also be required.

Separately, Tokuda said the Legislature would include \$1.5 million in general funds in the state budget to conduct an interim in-stream flow standards study, as requested by DLNR.

**‘A Great Wrong’**

The author of HB 2501 is Rep. Ryan Yamane, chair of House Water and Land Committee. Bill sponsors are Agriculture Committee Chair Cliff Tsuji and three Maui lawmakers, House Speaker Joe Souki and Reps. Justin Woodson and Kyle Yamashita.

A Senate companion measure, [Senate Bill 3001](#), was authored by Sen. Donovan Dela Cruz and co-sponsored by Sens. Maile Shimabukuro and Glenn Wakai, as well as three Maui senators, Rosalyn Baker, Gil Keith-Agaran and Kalani English. However, SB 3001 has been deferred.

Dela Cruz, vice chair of Ways and Means, voted for HB 2501 on Monday, but Wakai voted yes with reservations. So did another Democrat, Suzanne Chun Oakland, and Sam Slom, the only Republican in the Senate.



Sen. Kalani English said he voted against House Bill 2501 in recognition of his Hawaiian ancestry and longstanding injustice over Maui water rights.

English, who represents the areas on Maui directly involved in the water dispute, said he appreciated efforts to amend the bill and thought that the measure was on a “middle path” toward resolution.

But he decided to vote against HB 2501, explaining that it was a difficult decision but one that reflected his Hawaiian ancestry.

English noted that Hawaiian-language newspapers of the 19th century wrote that, before the plantation era, great clouds of red dust would blow across Central Maui because it was so arid. But his own family lived on the east side of the island, and he said that it “ingrained” in them that “an injustice, a great wrong” had been inflicted on his people for many years because of the stream diversion.

“So, my hope is at end of day we can find something that satisfies the Native Hawaiians, my people, and the people who need water Upcountry, and even satisfy keeping Central Maui green,” he said.

Another no vote came from Sen. Gil Riviere. While applauding some of the amendments, such as the annual reports, he reminded his colleagues that HB 2501 just buys A&B some time and sustains the status quo.

“And it is the status quo that is exactly the problem,” Riviere said, adding that he doubted that the bill would resolve the underlying issue, which is the addressing the repeated renewal of the water rights permits.

Native Hawaiians in East Maui, he said, “just want a share, a stream flow ... water is life.”

## ‘We Expect Action’

Sen. Brickwood Galuteria voted in favor of the bill, saying it will “hold A&B’s feet to the fire.”

“We expect answers, we expect action,” he said.

At the outset of decision-making on the measure Monday, Tokuda noted that legislators’ email inboxes had been flooded with testimony on HB 2501.

# “Since time immemorial, water in Hawaii has been considered a public trust resource.” — Office of Hawaiian Affairs

The bill is supported by the [Department of Agriculture](#), the [Hawaii Farm Bureau](#), the [Hawaii Cattlemen's Council](#), International Longshore Workers [Union Local 142](#), seed companies [Monsanto](#), [Syngenta](#) and [DuPont Pioneer](#) and dozens of other groups and individuals — generally speaking, proponents of larger-scale agricultural and ranching operations.

Opponents of HB 2501 include the [Office of Hawaiian Affairs](#), the [Hawaii Center for Food Safety](#), the [Aha Moku Advisory Committee](#), the [Sierra Club of Hawaii](#), [Maui Tomorrow](#), [Earthjustice](#), the [Native Hawaiian Legal Corporation](#) and many others — mostly groups representing Native Hawaiians, environmental interests and smaller farmers.

The 36,000-acre sugar plantation that is being closed in Puunene is owned by A&B subsidiary [Hawaiian Commercial & Sugar Company](#).

Scott Enright, chair of the Board of Agriculture, emphasized financial implications in his testimony.

“Without a continued water source, there may be significant economic and social impacts on Hawaii's agricultural community,” he said.



A&B's Hawaiian Commercial & Sugar Co. in Central Maui is being shut down this year.

But opponents complained that A&B has also not conducted an environmental review of the stream diversion and has long benefitted from a cheap supply of an invaluable resource.

“Since time immemorial, water in Hawaii has been considered a public trust resource, to be managed and administered for the benefit of present and future generations,” OHA stated in its testimony.

Marjorie Ziegler of the [Conservation Council of Hawaii](#) said that prolonging the “extreme” stream diversion is not in the public interest or consistent with resource conservation or self-sufficiency.

“It is a throwback to a cruel and destructive time for the land and the people,” Ziegler said. “It remains one of the most serious and harmful injustices of our time.”

## About the Author

**Chad Blair**   





Chad Blair is the Politics and Opinion Editor for Civil Beat. You can reach him by email at [cblair@civilbeat.org](mailto:cblair@civilbeat.org) or follow him on Twitter at [@chadblairCB](https://twitter.com/chadblairCB).

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