



Monday, April 22, 2019 | 🌤️ 85°

## HAWAII NEWS

# Water bill criticized as way to skirt court

By [Rob Perez](#) • Feb. 7, 2016

Just weeks after Alexander & Baldwin suffered a major court setback in a water rights case, legislators introduced a bill that critics say would circumvent the court ruling and allow the company to continue a yearslong sweetheart deal with the state.

But A&B says the legislation is needed to continue meeting the water needs of 36,000 Upcountry Maui residents and farmers and to transition the company's last sugar acreage on the Valley Isle to diversified agriculture.

And one of the key legislative sponsors of the bill, which gets its first hearings this week, said it is needed to ensure Central Maui has a sustained source of water for agriculture.

The long-running legal battle over the diversion of millions of gallons of water daily from dozens of East Maui streams flowing from state land has featured a David vs. Goliath-like showdown.

Native Hawaiian taro farmers, who say they have been harmed by decades of diversions, have taken on A&B, a \$1.5 billion real estate and agribusiness company, and the state Department of Land and Natural Resources, arguing that the water deal violates state law and amounts to theft of public trust resources.

No environmental assessment, for instance, has been done to gauge the effects of the diversions — a practice that has harmed downstream taro operations, fishing, Hawaiian gathering practices and ecosystems, the farmers say.

## WATER RIGHTS HEARINGS

*Legislative committees are scheduled to hear testimony at the following times:*

### House Committee on Water and Land

>> **Bill:** HB 2501

>> **Time:** 9 a.m. Monday

>> **Place:** Conference Room 325, state Capitol

### Senate Committee on Water, Land and Agriculture

>> **Bill:** SB 3001

>> **Time:** 3:30 p.m. Wednesday

>> **Place:** Conference Room 224, state Capitol

They also argue that A&B is getting public water at ridiculously cheap rates of less than a penny per 1,000 gallons, compared with the typical 75 cents paid by a Maui farmer.

Since 2000, A&B has had access to the water and 33,000 acres of state land through four DLNR revocable permits, which are supposed to be for temporary, month-to-month use of state property.

Since 2001, when the farmers filed their initial challenge, the four permits have been in a “holdover” status with DLNR. In 2001, A&B also applied for a long-term lease for the land. But the legal fights in administrative and court proceedings have meant no lease has been approved to date, with the department’s board instead renewing the holdover permits annually.

Land leases get significantly more oversight than revocable permits, require environmental reviews and are publicly auctioned through a competitive bid process designed to ensure the state gets fair market value for rents. Revocable permits, because they are supposed to be temporary, have far fewer requirements.

In the Maui case, the farmers won a major victory Jan. 8 when Circuit Judge Rhonda Nishimura declared the four A&B permits invalid, saying the company’s continuous, uninterrupted use of public land on a holdover basis for more than a dozen years was not temporary.

The court ruling prompted A&B to begin lobbying legislators, and the company also assisted in writing the bill, according to a lawmaker and several critics.

Identical companion measures, SB 3001 in the Senate and HB 2501 in the House, were introduced in late January. Though the legislation does not name A&B, it would add a general provision to existing state law that allows holdover permits to remain in place, even beyond a year, until a pending application for water rights is resolved.

No one besides A&B falls into that category, according to the opponents.

“In our view, this is a completely rigged situation,” said Summer Sylva, staff attorney for the Native Hawaiian Legal Corp., which represents the taro farmers in their lawsuit against DLNR, A&B and Maui County.

“This is clearly a special-interests bill that favors one company,” agreed Marjorie Ziegler, executive director of the Conservation Council of Hawaii.

“They’re running to the Legislature to figure out some way” to do an end-run around the court decision, added Marti Townsend, director of Sierra Club of Hawaii.

But Rick Volner, general manager for Hawaiian Commercial and Sugar Co., part of A&B, said the bill is needed to ensure water can continue to be legally collected off state lands, pending completion of the lease process.

That way, the 36,000 Upcountry residents and farmers can continue to be served and the HC&S efforts to phase out sugar and transition to diversified ag can be supported, Volner said in a written statement to the Honolulu Star-Advertiser. HC&S recently announced plans to end its Maui sugar operations by year’s end.

Volner also cited the need to avoid another lengthy court fight, blaming the repeated delays in obtaining a lease on “the numerous legal challenges by those opposing the diversion of stream water.”

The recent court ruling, he added, stated that DLNR’s board does not have the authority to grant permits longer than a year.

“While we disagree with the court’s decision, in order to avoid yet another protracted legal battle, this bill will clarify and confirm (the board’s) authority to grant such longer permits,” he wrote.

Volner also said that before any lease is issued for the East Maui water, various requirements, including an environmental impact statement, must be met, and none of those requirements will be affected by the bill.

“Maui is on the cusp of a significant transition,” he wrote. “After more than 145 years, sugar will not be grown across the central plain of Maui. Water needs will change. However, if there is to be any chance of an agricultural future for Central Maui, there will still need to be an adequate supply of reliable, affordable water.”

Sylva said the company’s position was disingenuous.

The court issued a ruling last week that allows the 36,000 Upcountry customers to continue to be served with water that Maui County gets from A&B through the stream diversions, according to Sylva.

She also noted that the company has access to East Maui water that does not originate from the 33,000 state acres, and A&B's water needs will be substantially reduced with the ending of sugar.

And she attributed the lease delays to what she said were continued law violations by A&B and the state.

"We expect the company to comply with the law, and we expect the state to enforce that law," Sylva told the Star-Advertiser. "This is hardly delaying tactics. It's ridiculous to suggest that."

Rep. Ryan Yamane (D, Mililani-Waipio-Waikale), chairman of the House Water and Land Committee and a co-sponsor of the bill, denied that the legislation was an attempt to circumvent the court ruling.

"My intent had nothing to do with what the opponents are saying," Yamane said in a phone interview. "My intent is to ensure that this specific area of Central Maui is going to be a viable, diversified ag area."

By ensuring long-term access to water, the chances of that prime ag land eventually being converted to urban or commercial use are reduced, Yamane said.

He acknowledged that his staff consulted A&B in drafting the bill.

The Star-Advertiser on Thursday asked DLNR for its position on the proposed legislation, but a spokeswoman Friday said she could not provide a response.

The diversions of the East Maui streams date back more than a century. The taro farmers, who advocate a sharing of the stream water, say the government-sanctioned arrangements have damaged the environment and interfered with constitutionally protected Native Hawaiian cultural practices.

"Senate Bill 3001 is a knee-jerk reaction to a court laying bare decades of abuse and arrogance," the farmers said in a statement to the Star-Advertiser. "If passed, Senate Bill 3001 would send the message that our laws do not apply to A&B, and our courts have no power over their illegal actions."