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# Column: Get past manufactured crisis, and have state move on water permits

By Gary Hooser • April 21, 2019

In my 20 years of experience in government, politics and policy-making, House Bill 1326 is the most egregious example of special-interest legislation I have ever seen.

Fortunately the state Senate has taken time to listen to public concerns. After weighing both sides, conducting a thorough public hearing, asking tough questions and even visiting the Maui community most impacted, the Senate led by Water and Land Committee Chairman Kai Kahele has decided to shelve HB 1326.

Key Senate members have stated publicly they have no intention of passing HB 1326, but technically, it remains alive. Until the session ends May 2, anything can happen.

Alexander & Baldwin (A&B) stands to gain or lose \$62 million, depending on the outcome of HB 1326. In essence, it is attempting to sell public trust water rights derived from stream diversions in east Maui. The intended beneficiary of this transaction is Mahi Pono — a California-based LLC, financed by a Canadian pension fund — which recently purchased the majority of A&B lands on Maui.

One fairly significant problem with this proposal is that A&B neither owns, nor has long-term control over this water.

In Hawaii, whether beneath the ground or flowing through our rivers and streams, water is a public trust resource. Businesses may use the resource, but must secure a permit that ensures sufficient water remains in the stream to preserve its natural ecosystem and that down-stream users also have access.

Yet this one company, the last remnant of the “Big 5” plantation era, and arguably the most politically powerful private landowner in Hawaii, is attempting, with the Legislature’s help, to secure those water rights without securing the proper long-term permits, and then transfer those water rights to Mahi Pono — pocketing a cool \$62 million in the process.

The original HB 1326 proposed giving A&B and a handful of others an unlimited amount of time to divert an unlimited amount of water, without securing the permits and without ensuring environmental or down-stream user protections.

The present measure, HB 1326 House Draft 2, allows them 10 years, three of which have already passed, to comply with permitting requirements and convert their “temporary” one-year revocable permits (RPs) to proper long-term water leases.

Though A&B is the primary proponent and largest beneficiary of the measure, nine other RPs also are impacted by HB 1326 HD2, including some utilized by small ranchers and farmers.

The current controversy surrounding the plight of the small farmer and rancher is a manufactured crisis, perpetuated by the primary beneficiaries of HB 1326 HD2 and designed to promote fear and uncertainty.

The state Department of Land and Natural Resources (DLNR) has issued RPs to small users in the past without a problem. There is no specific legal impediment that prevents DLNR from extending the temporary RPs of these particular small farmers and ranchers while they pursue long-term leases.

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The DLNR could provide certainty today, to all concerned by simply announcing its intent to continue extending the RPs of small users, so long as they demonstrate good faith and positive intent in pursuing a proper long-term water lease.

To his credit, Kahele, while acknowledging that DLNR could act unilaterally to resolve the situation, offered up a compromise that protected the little guy, while holding A&B accountable. Unfortunately, this overture was rejected.

The underlying problem is DLNR's inability to manage the permit process. However, it's neither the Legislature's job nor in the public's best interest to attempt to fix bad management with bad special-interest legislation.

And it's certainly not the Legislature's job to bail out a company that sold water rights it does not own.

It's time the Legislature demand that the DLNR do its job. We, the collective community and the Legislature, need to move past the distraction and passions generated by HB 1326, and focus instead on the myriad other important bills begging for our time and attention.

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