

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
WATER AND LAND

Wednesday, February 8, 2017
9:00 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 631
RELATING TO WATER

House Bill 631 proposes to amend Section 174C-87, Hawaii Revised Statutes (HRS), to require the owner of an abandoned well to properly repair or seal the well at the owner's expense and would also relieve new owners of any liability for abandoned wells if the Commission on Water Resource Management (Commission) had established abandonment prior to the transfer of the property. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure, but respectfully opposes this measure as written, as it would create a loophole in the law to the detriment of public trust ground water resources, drinking water supply, and public health. The Department offers an alternative remedy to address the issue of abandoned wells. The Department appreciates and supports the effort to provide for more staff, as long as it does not replace our priorities requested in the Executive Budget.**

The Department's main concern is that House Bill 631 could create a loophole in existing authorities to address abandoned wells. The Commission already has the authority under Section 174C-86, HRS, and Administrative Rule §13-168-16 to enforce the sealing or repair of abandoned wells through the Hawaii Well Construction and Pump Installation Standards where the Commission, after giving notice of the defect to the owner of the land on which the well is located, and giving such owner a reasonable time to correct the defect, may itself correct the defect and charge the land owner for the cost of such correction. Such cost constitutes a lien on the land until paid. The lien may be foreclosed in any court of competent jurisdiction, and in such foreclosure suit, the court shall allow the Commission reasonable attorney's fees.

The real issue is the lack of a well abandonment program within the Commission. The Commission already has the authority to create such a program, but lacks sufficient staff and funding resources to

SUZANNE D. CASE
CHAIRPERSON
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implement it. To support such a program, three additional staff positions are needed: two positions dedicated to site inspections to determine abandonment; and one position to oversee the procurement, management and monitoring of well sealing contracts and to administer the lien program. In addition, seed money for the lien program would be required. The Department believes that the issue of abandoned wells would best be resolved through the use of existing legal authorities and the provision of additional necessary staffing and funding support.

The Commission presently lacks staff resources to timely investigate and make a determination of abandonment. Section 174C-3, HRS, defines an abandoned well as "...any well that has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical." There may be up to 1,500 potentially abandoned wells statewide. These are wells that are either unused (no water use reported) or have no record of pump installation. Due to expense of sealing a well, many landowners will claim to have plans for future use of the well. As many of these wells are very old, in order to make a determination of abandonment, staff would need at a minimum to video-log each of the 1,500 wells to determine casing integrity. Only three of the Commission's twenty-three staff members are involved with ground water field work. These three staff are also responsible for hydrologic data collection and analysis, ground water resource assessment and monitoring, water use reporting, deep monitor well construction oversight, and ground water violation enforcement. Well abandonment determination may be done concurrently with other site visits, but there are currently insufficient staff resources for a dedicated well abandonment program.

However, the Commission is utilizing technology to bridge this gap in enforcement. With the roll-out of the Commission's online water use reporting database, the Commission is increasing its water use reporting enforcement efforts. All wells that have not been sealed will be required to report monthly water data, including water levels, chlorides, and temperature, in addition to pumpage. As we expand our enforcement of water use reporting from water management areas to non-designated areas, owners of unused wells are increasingly declaring their wells to be abandoned and voluntarily sealing their wells in order to avoid the need to report monthly water data and or avoid other liabilities related to the abandoned well. This alone is not likely to completely resolve the need for staff site investigations, but it is helping to address the issue.

Considering the Commission's current inability to timely establish well abandonment, **the proposed amendment to Section 174C-87, HRS, could create a loophole in this interim period as we are working to achieve greater compliance.** The Commission has no way of knowing when a transfer of real property is imminent. The Commission has approached the Hawaii Board of Realtors to try to have well disclosure included in the Deposit Receipt Offer and Acceptance form. The Commission will continue with these efforts. If the Commission happened to be informed of a transfer of real property and made a positive determination of abandonment during the transfer, but the well itself is not sealed in a timely fashion by the seller and the transfer closes, the Commission and taxpayers would be burdened with chasing the previous property owner for reimbursement. Thus, either the sale will be delayed or in a hasty transaction, the new owner will be absolved of responsibility of sealing the abandoned well and a lien risk to the property. Abandoned wells are a threat to both ground water

quality and quantity at all times. Prospective buyers of real property should do their due diligence and know what assets, as well as liabilities, they may be acquiring and negotiate accordingly.

Another issue is the lack of seed money for a revolving fund to initiate sealing work. However, a possible source of funding is the Department of Health's Drinking Water State Revolving Fund set-aside. The Commission is also exploring other potential sources of funding.

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CITY AND COUNTY OF HONOLULU
630 SOUTH BERETANIA STREET
HONOLULU, HI 96843
www.boardofwatersupply.com




February 8, 2017

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The Honorable Ryan I. Yamane, Chair
and Members
Committee on Water and Land
House of Representatives
Hawaii State Capitol, Room 420
415 Beretania Street
Honolulu, Hawaii 96813

Dear Chair Yamane and Members:

Subject: House Bill 631 Relating to Water

The Board of Water Supply strongly supports House Bill 631. This measure mandates the Commission on Water Resource Management (CWRM) to require an owner or prior owner of an abandoned well to repair or seal the well at the owner's or prior owner's expense and appropriates funding to the Department of Land and Natural Resources for inspection and enforcement of well construction standards.

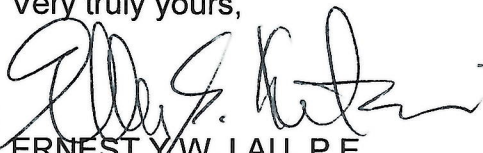
Well sealing is a source protection and water conservation strategy. If a substantial renovation or demolition/construction is proposed, the new construction could damage the old well, cover it up or build over it and then there would be no way to seal it. Old wells are a source of groundwater contamination and can also leak freshwater into the overlying caprock formation.

We understand the CWRM is updating their database by physically inventorying unused/abandoned wells in the field. The database could be used in the county/state building permit review process to have abandoned wells sealed as a condition to building permit approvals.

Thank you for your consideration of our testimony on House Bill 631.

Very truly yours,

FOR



ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer