July 15, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB975 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB975 HD1 SD1 CD1 A BILL FOR AN ACT RELATING TO AGRICULTURAL WATER SYSTEMS.

Sincerely,

LINDA LINGLE
EXECUTIVE CHAMBERS
HONOLULU
July 15, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 975

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 975, entitled "A Bill for an Act Relating to Agricultural Water Systems."

The purpose of this bill is to allow the Agricultural Development Corporation to accept agricultural water systems as a gift without gubernatorial oversight and without going through the standard prescribed county subdivision requirements.

The Agricultural Development Corporation already has the authority to acquire agricultural water systems, pursuant to the requirements of Chapter 163D, Hawaii Revised Statutes. However, this bill raises serious liability and home rule issues that go beyond the current authority of the Corporation.

This proposed legislation allows the owner of a water system to transfer that system to the State after they have completed a metes and bounds survey, but without executing the process of a formal subdivision as required by the counties. Failure to follow subdivision ordinances will mean the parcel being transferred, as well as the balance of the parcel not transferred, will not be formally recognized by the county. The absence of records will hinder the ability of the counties to issue building and related permits, as well as ensure that the parcel has adequate access for fire protection and police purposes, is not prone to environmental hazards, and does not
contain other features that can affect the surrounding community and adjoining property owners. For these reasons, the counties objected to this legislation.

The bill is silent as to the liabilities the State will be incurring upon acceptance of a gifted agricultural waterway. Many of these systems were built at the beginning of the previous century and require major repairs and renovations to their spillways, drains, flooding outlets, and ditch beds. To shift these responsibilities to the State, without accompanying resources, imposes upon the State significant costs, as well as exposes the State to liabilities should operational hazards occur with these ditches. A study of the Lake Wilson water system found, for example, that operational conditions of the dam and spillway could impose costs of $6-8 million on State residents.

The Administration recognizes the role that water pays in the success and sustainability of agricultural operations in Hawaii. We also recognize the important role the Agricultural Development Corporation plays in operating a limited number of agricultural water systems. However, to require the State to accept additional systems without adequate protections and by circumventing the counties and the land management procedures they have in place is not prudent public policy and does not work to the benefit of the parties involved.

For the foregoing reasons, I am returning House Bill No. 975 without my approval.

Respectfully,

[Signature]

LINDA LINGLE
Governor of Hawaii
A BILL FOR AN ACT

RELATING TO AGRICULTURAL WATER SYSTEMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. Chapter 163D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§163D- Agricultural water systems; acquisition. (a) The corporation may acquire or contract to acquire by grant, purchase, or gift the real, personal, or mixed property comprising an agricultural water system to provide water for irrigation of agricultural lands. (b) The owner of an agricultural water system to be acquired pursuant to subsection (a) shall provide a description of the system sufficient to identify the property being acquired, including a map of the land and description of the metes and bounds and other information required for recording under chapter 502. Conveyance of agricultural water system property to the corporation shall be exempt from county subdivision requirements; provided that no additional lots of record are created."
SECTION 2. Section 163D-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise limited by this chapter, the corporation may:

(1) Sue and be sued;

(2) Have a seal and alter the same at its pleasure;

(3) Make and alter bylaws for its organization and internal management;

(4) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its projects, operations, and properties;

(5) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;

(6) Carry out surveys, research, and investigations into technological, business, financial, consumer trends, and other aspects of agricultural production in the national and international community;

(7) Acquire or contract to acquire by grant, purchase, or gift any real, personal, or mixed property or any interest therein for its immediate or future use for the purposes of this chapter; own,
hold, improve, and rehabilitate any real, personal, or mixed property acquired, and sell, assign, exchange, transfer, convey, lease, or otherwise dispose of, or encumber the same;

(8) By itself, or in partnership with qualified persons, acquire, construct, reconstruct, rehabilitate, improve, alter, or repair any infrastructure or accessory facilities in connection with any project; own, hold, sell, assign, transfer, convey, exchange, lease, or otherwise dispose of, or encumber any project;

(9) In cooperation with the department of agriculture, pursuant to chapter 167, or otherwise through direct investment or coventure with a professional investor or enterprise or any other person, or otherwise, to acquire, construct, operate, and maintain water facilities for conveying, distributing, and transmitting water for irrigation and agricultural uses at rates or charges determined by the corporation; provided that:
(A) This chapter shall not be construed to permit or allow the department of agriculture or any agribusiness development corporation to:

(i) Amend or modify rights or entitlements to water as provided for by article XI, section 7, of the Hawaii Constitution [of the State of Hawaii], or the Hawaiian Homes Commission Act, 1920, as amended, and chapter 168;

(ii) Diminish or abridge the traditional and customary rights of ahupua'a tenants who inhabited the Hawaiian [islands] islands prior to 1778 under sections 1-1 and 7-1; and

(iii) Impair, abridge, or terminate the legal rights or interests to water and its uses, whether by lease, easement, or other means, [which] that are possessed or held by organizations whose primary purpose is to benefit people of Hawaiian ancestry; [and]
(B) All usage of water shall be in accordance with chapter [+]174C[+] and other applicable laws in the [State+] state;

(10) Assist agricultural enterprises by conducting detailed marketing analysis and developing marketing and promotional strategies to strengthen the position of those enterprises and to better exploit local, national, and international markets;

(11) Carry out specialized programs designed to develop new markets for Hawaii agricultural products;

(12) Receive, examine, and determine the acceptability of applications of qualified persons for allowances or grants for the development of new crops and agricultural products, the expansion of established agricultural enterprises, and the altering of existing agricultural enterprises;

(13) Coordinate its activities with any federal or state farm credit programs;

(14) Grant options to purchase any project or to renew any lease entered into by it in connection with any of its projects, on the terms and conditions it deems advisable;
(15) Provide advisory, consultative, training, and educational services, technical assistance, and advice to any person, partnership, or corporation, either public or private, [in order] to carry out the purposes of this chapter, and engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(16) Procure insurance against any loss in connection with its property and other assets and operations in [such] amounts and from [such] insurers as it deems desirable;

(17) Accept gifts or grants in any form from any public agency or any other source; and

(18) Do all things necessary or proper to carry out the purposes of this chapter."

SECTION 3. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:
(1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;

(2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;

(3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(f);

(4) Where real, personal, or mixed property comprising an agricultural water system providing water for irrigation of agricultural lands is to be conveyed to the agribusiness development corporation;

(5) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;

(6) To persons who are engaged in, and are duly licensed to engage in, the business of construction of
buildings for resale, or to persons who acquire an
interest in subdivided lands for the purpose of
engaging, and do engage in, and are duly licensed to
engage in, the business of construction of buildings
for resale;

[(6)] (7) Pursuant to court order;
[(7)] (8) By any government or government agency;
[(8)] (9) As cemetery lots or interests;
[(9)] (10) Registered as a condominium property regime
pursuant to chapter 514A or 514B; or
[(10)] (11) Registered as a time share plan pursuant to
chapter 514E."

SECTION 4. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.