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# HOUSE CONCURRENT RESOLUTION

REQUESTING THAT THE DEPARTMENT OF HAWAIIAN HOME LANDS ADVOCATE  
FOR THE PROTECTION OF MOLOKAI SURFACE AND GROUND WATER FOR  
HAWAIIAN HOMESTEADERS.

1           WHEREAS, the Hawaiian Homes Commission Act, 1920, in its  
2 original form, gave the Hawaiian Homes Commission authority to  
3 use, free of all charges, government water on the island of  
4 Molokai to irrigate any tract of Hawaiian Home Lands; and  
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6           WHEREAS, Act 164, Laws of the Territory of Hawaii, Regular  
7 Session 1955, amended Chapter 317, Revised Laws of Hawaii 1945,  
8 giving the Hawaiian Homes Commission and the lessees of the  
9 Hawaiian Homes Commission prior rights, upon actual need shown,  
10 to two-thirds of the water developed for the Molokai irrigation  
11 and water utilization project by the tunnel development  
12 extending to Waikolu valley and ground water developed west of  
13 Waikolu valley, upon actual need shown to the authority, as part  
14 of an agreement to construct the Molokai irrigation system; and  
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16           WHEREAS, Act 166, Session Laws of Hawaii 1961, amended  
17 Chapter 87, Revised Laws of Hawaii 1955, to have what is now the  
18 Department of Land and Natural Resources administer the Molokai  
19 irrigation and water utilization project, in compliance with the  
20 two-thirds preference clause described above; and  
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22           WHEREAS, the Department of Land and Natural Resources  
23 allowed the Molokai irrigation system to fall into disrepair and  
24 allowed the Molokai irrigation system to be used to transport  
25 water to west Molokai for non-agricultural uses without  
26 adequately monitoring the transmission of this water; and  
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28           WHEREAS, the contracts allowing the transmission of water  
29 to west Molokai through the Molokai irrigation system have been  
30 broken on several occasions, but no actions have been taken to  
31 enforce these contracts; and  
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1           WHEREAS, the Department of Land and Natural Resources was  
2 unable to secure sufficient funds to adequately manage the  
3 system and proposed a water rate increase in 1986 for all state  
4 irrigation systems, including the Molokai irrigation system, at  
5 a time when the Molokai irrigation system was generating  
6 revenues of one hundred forty per cent of the cost of operating  
7 the Molokai irrigation system; and

8  
9           WHEREAS, the prior right of the Hawaiian Homes Commission  
10 to water in the Molokai irrigation system continued to be  
11 violated by charging Molokai homesteaders more than the cost of  
12 transmission of water; and

13  
14           WHEREAS, management of the Molokai irrigation system was  
15 transferred to the Board of Agriculture in 1987; and

16  
17           WHEREAS, since their purchase of Kukui Molokai, Inc., the  
18 developer of the West Molokai Kaluakoi Resort, Molokai  
19 Properties, Ltd. (also known as Molokai Ranch) has also violated  
20 several provisions of the transmission agreement, and the  
21 Department of Agriculture has allowed this contract to be  
22 violated with no recourse to other water users of the Molokai  
23 irrigation system; and

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25           WHEREAS, each year for the last five years, the system has  
26 gotten dangerously close to running out of the water due to  
27 system breakdowns; and

28  
29           WHEREAS, in 2003 the Department of Agriculture ordered a  
30 mandatory water use cutback of forty per cent for all users of  
31 the Molokai irrigation system due to a water shortage that has  
32 had an adverse impact on Hawaiian Home Lands farmers, crop  
33 yields, and quality, but no restrictions were imposed on the  
34 west Molokai users; and

35  
36           WHEREAS, Hawaiian Home Lands farmers, despite having a  
37 prior right to two-thirds of the water in the Molokai irrigation  
38 system, have no decision making power in the management of the  
39 Molokai irrigation system; and

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41           WHEREAS, the Board of Agriculture does not have a Molokai  
42 representative on its board, leaving Molokai Hawaiian homestead  
43 farmers with no voice on this governing body; and

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1           WHEREAS, the Department of Agriculture is proposing a water  
2 rate increase that will have an adverse impact on a  
3 disproportionate number of native Hawaiian farmers and  
4 homesteaders who have given up much of their water rights as  
5 initially set forth in the original Hawaiian Homes Act in order  
6 to construct the Molokai irrigation system water system; and  
7

8           WHEREAS, the Department of Hawaiian Home Lands has over  
9 7,600 acres in the Molokai irrigation system service area, and  
10 Hawaiian homestead farmers will need the entire two-thirds  
11 preference in order to make their lands agriculturally  
12 productive; and  
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14           WHEREAS, the Department of Hawaiian Home Lands has a  
15 fiduciary responsibility to uphold the provisions of the  
16 Hawaiian Homes Commission Act, 1920, and is in a better position  
17 to protect the two-thirds prior right to water for Molokai  
18 Hawaiian homesteaders than the homesteaders themselves; and  
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20           WHEREAS, the State Water Code states that Hawaiian  
21 homesteaders have prior rights to water and these rights are  
22 superior to all water users; and  
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24           WHEREAS, in the case of *In re Wai'ola O Moloka'i, Inc.*, 103  
25 Hawaii 402 (2004), the Hawaii Supreme Court noted that it has  
26 consistently recognized the heightened duty of care owed to  
27 native Hawaiians and added that the State's fiduciary duty to  
28 uphold native Hawaiian water rights are no exception; and  
29

30           WHEREAS, the court held that the Department of Hawaiian  
31 Home Lands water reservations throughout the State are entitled  
32 to the full panoply of constitutional protections afford the  
33 other public trusts for the benefit of native Hawaiians; and  
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35           WHEREAS, today less than fifteen per cent of the twenty-  
36 five thousand acres of the Department of Hawaiian Home Lands  
37 farm lands have access to water; and  
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39           WHEREAS, six years ago, the Department of Hawaiian Home  
40 Lands requested an additional allocation of water from the  
41 Kualapuu aquifer to service new homesteads in Hoolehua and  
42 Kalamaula but the Commission on Water Resource Management has  
43 yet to take action on this request; and  
44



1 WHEREAS, Molokai Properties, Ltd. and Kukui Molokai Inc.  
2 opposed the request of the Department of Hawaiian Home Lands for  
3 this additional water allocation from Kualapuu; now, therefore,  
4

5 BE IT RESOLVED by the House of Representatives of the  
6 Twenty-third Legislature of the State of Hawaii, Regular Session  
7 of 2006, the Senate concurring, that the Department of Hawaiian  
8 Home Lands is requested to actively advocate for the protection  
9 of surface and ground water on Molokai for homestead and  
10 agricultural use in order to uphold the intent of the Hawaiian  
11 Homes Commission Act, 1920, by implementing the following  
12 initiatives:  
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- 14 (1) Conducting or contracting for a financial audit of the  
15 Molokai irrigation system and a performance audit of  
16 the water transmission agreement between Kukui  
17 Molokai, Inc., Molokai Properties, Ltd. and the  
18 Department of Agriculture;  
19
- 20 (2) Initiating the establishment of a community based  
21 group of farmers of Hoolehua Hawaiian homestead  
22 farmers to work with the Department of Hawaiian Home  
23 Lands;  
24
- 25 (3) Opposing any request for ground and surface water  
26 before the Commission on Water Resource Management or  
27 any other regulatory body and opposing any request for  
28 increased development before any council, commission,  
29 or other regulatory body that may infringe upon the  
30 prior rights of the Department of Hawaiian Home Lands  
31 or Hawaiian homestead farmers to adequate water on  
32 Molokai; and  
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- 34 (4) Implementing the Hawaiian Home Lands Agricultural Task  
35 Force report adopted by the Hawaiian Homes Commission  
36 in 2000; and  
37



# H.C.R. NO. 24

1 BE IT FURTHER RESOLVED that certified copies of this  
 2 Concurrent Resolution be transmitted to the Governor, the  
 3 Chairperson of the Hawaiian Homes Commission, and the  
 4 Chairperson of the Board of Agriculture.  
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 6  
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OFFERED BY: Michael P. Kalaluna  
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