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# HOUSE 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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33           WHEREAS, the Department of Land and Natural Resources was  
34 unable to secure sufficient funds to adequately manage the



1 system and proposed a water rate increase in 1986 for all state  
2 irrigation systems, including the Molokai irrigation system, at  
3 a time when the Molokai irrigation system was generating  
4 revenues of one hundred forty per cent of the cost of operating  
5 the Molokai irrigation system; and

6  
7 WHEREAS, the prior right of the Hawaiian Homes Commission  
8 to water in the Molokai irrigation system continued to be  
9 violated by charging Molokai homesteaders more than the cost of  
10 transmission of water; and

11  
12 WHEREAS, management of the Molokai irrigation system was  
13 transferred to the Board of Agriculture in 1987; and

14  
15 WHEREAS, since their purchase of Kukui Molokai, Inc., the  
16 developer of the West Molokai Kaluakoi Resort, Molokai  
17 Properties, Ltd. (also known as Molokai Ranch) has also violated  
18 several provisions of the transmission agreement, and the  
19 Department of Agriculture has allowed this contract to be  
20 violated with no recourse to other water users of the Molokai  
21 irrigation system; and

22  
23 WHEREAS, each year for the last five years, the system has  
24 gotten dangerously close to running out of the water due to  
25 system breakdowns; and

26  
27 WHEREAS, in 2003 the Department of Agriculture ordered a  
28 mandatory water use cutback of forty per cent for all users of  
29 the Molokai irrigation system due to a water shortage that has  
30 had an adverse impact on Hawaiian Home Lands farmers, crop  
31 yields, and quality, but no restrictions were imposed on the  
32 west Molokai users; and

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

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

42  
43 WHEREAS, the Department of Agriculture is proposing a water  
44 rate increase that will have an adverse impact on a



1 disproportionate number of native Hawaiian farmers and  
2 homesteaders who have given up much of their water rights as  
3 initially set forth in the original Hawaiian Homes Act in order  
4 to construct the Molokai irrigation system water system; and  
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6 WHEREAS, the Department of Hawaiian Home Lands has over  
7 7,600 acres in the Molokai irrigation system service area, and  
8 Hawaiian homestead farmers will need the entire two-thirds  
9 preference in order to make their lands agriculturally  
10 productive; and  
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12 WHEREAS, the Department of Hawaiian Home Lands has a  
13 fiduciary responsibility to uphold the provisions of the  
14 Hawaiian Homes Commission Act, 1920, and is in a better position  
15 to protect the two-thirds prior right to water for Molokai  
16 Hawaiian homesteaders than the homesteaders themselves; and  
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18 WHEREAS, the State Water Code states that Hawaiian  
19 homesteaders have prior rights to water and these rights are  
20 superior to all water users; and  
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22 WHEREAS, in the case of *In re Wai'ola O Moloka'i, Inc.*, 103  
23 Hawaii 402 (2004), the Hawaii Supreme Court noted that it has  
24 consistently recognized the heightened duty of care owed to  
25 native Hawaiians and added that the State's fiduciary duty to  
26 uphold native Hawaiian water rights are no exception; and  
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28 WHEREAS, the court held that the Department of Hawaiian  
29 Home Lands water reservations throughout the State are entitled  
30 to the full panoply of constitutional protections afford the  
31 other public trusts for the benefit of native Hawaiians; and  
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33 WHEREAS, today less than fifteen per cent of the twenty-  
34 five thousand acres of the Department of Hawaiian Home Lands  
35 farm lands have access to water; and  
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37 WHEREAS, six years ago, the Department of Hawaiian Home  
38 Lands requested an additional allocation of water from the  
39 Kualapuu aquifer to service new homesteads in Hoolehua and  
40 Kalamaula but the Commission on Water Resource Management has  
41 yet to take action on this request; and  
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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, that the Department of Hawaiian Home Lands is requested  
8           to actively advocate for the protection of surface and ground  
9           water on Molokai for homestead and agricultural use in order to  
10          uphold the intent of the Hawaiian Homes Commission Act, 1920, by  
11          implementing the following initiatives:  
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- 13           (1)    Conducting or contracting for a financial audit of the  
14                  Molokai irrigation system and a performance audit of  
15                  the water transmission agreement between Kukui  
16                  Molokai, Inc., Molokai Properties, Ltd. and the  
17                  Department of Agriculture;  
18
- 19           (2)    Initiating the establishment of a community based  
20                  group of farmers of Hoolehua Hawaiian homestead  
21                  farmers to work with the Department of Hawaiian Home  
22                  Lands;  
23
- 24           (3)    Opposing any request for ground and surface water  
25                  before the Commission on Water Resource Management or  
26                  any other regulatory body and opposing any request for  
27                  increased development before any council, commission,  
28                  or other regulatory body that may infringe upon the  
29                  prior rights of the Department of Hawaiian Home Lands  
30                  or Hawaiian homestead farmers to adequate water on  
31                  Molokai; and  
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- 33           (4)    Implementing the Hawaiian Home Lands Agricultural Task  
34                  Force report adopted by the Hawaiian Homes Commission  
35                  in 2000; and  
36



# H.R. NO. 17

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

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FEB 16 2006

