
SENATE 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
5

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
15

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
21

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
27

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
32



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

24
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

40
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

44



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
13

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
19

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
23

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
34

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
38

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 Senate of the Twenty-third
6 Legislature of the State of Hawaii, Regular Session of 2006, the
7 House of Representatives concurring, that the Department of
8 Hawaiian Home Lands is requested to actively advocate for the
9 protection of surface and ground water on Molokai for homestead
10 and agricultural use in order to uphold the intent of the
11 Hawaiian Homes Commission Act, 1920, by implementing the
12 following initiatives:
13

- 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
33
- 34 (4) Implementing the Hawaiian Home Lands Agricultural Task
35 Force report adopted by the Hawaiian Homes Commission
36 in 2000; and
37

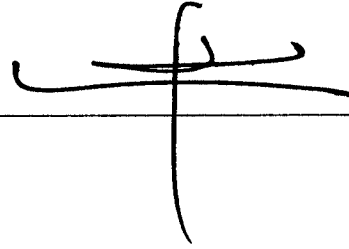


S.C.R. NO. 22

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.

5
6
7

OFFERED BY: _____

A handwritten signature in black ink, consisting of a large, stylized 'f' shape with a horizontal bar across the top and a vertical line extending downwards from the center.