
SENATE 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

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

33
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

38
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

5
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

11
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

17
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

21
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

27
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

32
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

36
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

42



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

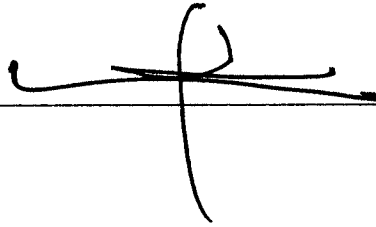
5 BE IT RESOLVED by the Senate of the Twenty-third
6 Legislature of the State of Hawaii, Regular Session of 2006,
7 that the Department of Hawaiian Home Lands is requested to
8 actively advocate for the protection of surface and ground water
9 on Molokai for homestead and agricultural use in order to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

- 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
32
- 33 (4) Implementing the Hawaiian Home Lands Agricultural Task
34 Force report adopted by the Hawaiian Homes Commission
35 in 2000; and
36



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.
5
6
7

OFFERED BY:



A handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be a single name.

