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## HOUSE CONCURRENT RESOLUTION

REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES AND THE  
COMMISSION ON WATER RESOURCES MANAGEMENT TO REPORT WHY EACH  
HAS NOT TAKEN PROACTIVE MEASURES TO ENSURE THE WATER RIGHTS  
OF EAST MAUI RESIDENTS AND TO ESTABLISH A SIMPLE, CLEAR,  
AND EFFICIENT PROCESS FOR INVESTIGATING VIOLATIONS OF WATER  
USE.

1 WHEREAS, in pre-Western contact Hawai'i, the high chiefs,  
2 known as *ali'i 'ai ahupua'a*, or *ali'i 'ai moku*, held in trust  
3 for the benefit of the people all of the land and natural  
4 resources and they, or their land agents, known as *konohiki*,  
5 oversaw the use of lands and resources by its native tenants;  
6 and  
7

8 WHEREAS, regime changes since ancient times have resulted  
9 in state government agencies assuming the oversight and  
10 management functions for the 1,800,000 acres of lands "ceded" to  
11 the United States under a trust in 1898; and  
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13 WHEREAS, chapter 171, Hawaii Revised Statutes, authorizes  
14 the Board of Land and Natural Resources to serve as the primary  
15 trustee to prudently manage and dispose of these resources; and  
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17 WHEREAS, chapter 174C, Hawaii Revised Statutes, designates  
18 the Commission on Water Resources Management as the agency  
19 responsible for protecting and managing all water resources,  
20 including all water streams on ceded lands; and  
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22 WHEREAS, taro farming, which utilizes natural water  
23 resources available from valley floors and slopes on which taro  
24 is cultivated, was the primary form of agriculture supporting  
25 Hawaiians in pre-Western contact Hawaii; and  
26

27 WHEREAS, the adjacent ahupua'a of Ke'anae and Wailua-nui,  
28 located on the northeast flank of Haleakala on the island of



1 Maui, supported intensive and extensive wetland taro cultivation  
2 that was irrigated by water streams in these respective ahupua'a  
3 since ancient times, and the streams have continued unabated  
4 until the present day; and

5  
6 WHEREAS, western contact brought about significant changes  
7 in both the traditional Hawaiian land tenure system and  
8 Hawai'i's social structure; and,

9  
10 WHEREAS, Hawaii's traditional land tenure system seemed ill  
11 suited for the western mercantile economy emerging as a result  
12 of these changes; and

13  
14 WHEREAS, on December 10, 1845, Kamehameha III established  
15 and outlined the responsibilities of the Board of Commissioners  
16 to Quiet Land Titles, otherwise known as the Land Commission, to  
17 oversee the conversion of the ancient land tenure system to a  
18 property system of private ownership; and

19  
20 WHEREAS, on August 6, 1850, the Kingdom enacted the Kuleana  
21 Act authorizing the Land Commission to grant fee simple title to  
22 native tenants, or *hoa'āina*, together with rights to access land  
23 and water necessary for the cultivation of taro and other  
24 traditional and customary pursuits; and

25  
26 WHEREAS, although approximately 4,200 of the 13,514  
27 applications for *kuleana* under the Māhele were not approved, the  
28 Land Commission ultimately awarded 28,658 acres to native  
29 tenants, less than one per cent of the lands available in the  
30 islands; and

31  
32 WHEREAS, in contrast, by 1864, two hundred thirteen non-  
33 native people in Hawaii had purchased over 320,000 acres of  
34 government land, subject to the rights of native tenants; and

35  
36 WHEREAS, in 1876, the predecessors to Alexander and Baldwin  
37 commenced construction of a system of ditches and tunnels that  
38 now divert, on average, 160,000,000 gallons of water per day  
39 from East Maui streams to irrigate sugarcane fields owned by  
40 Hawaiian Commercial and Sugar Company in Central Maui; and

41  
42 WHEREAS, in 1902, the Commissioner of Public Lands issued  
43 lease number 538 to H. P. Baldwin, leasing lands in East Maui  
44 until 1933 for the development, storage, transportation, or



1 other utilization of the water thereon, thereby allowing  
2 construction of a ditch system; and  
3

4 WHEREAS, this royal lease was issued subject to the  
5 condition that there would be no interference with the vested  
6 interests in water of land owners in Ke'anae, Wailua-nui, or  
7 other parts of East Maui; and  
8

9 WHEREAS, in 1904, Hawaiian Commercial and Sugar Company,  
10 which was Alexander and Baldwin's Maui sugar plantation, while  
11 continuing its out-of-watershed diversion of stream flow from  
12 East Maui streams, successfully sued to enjoin Wailuku Sugar  
13 Company's out-of-watershed stream flow diversions from the  
14 Wailuku Stream based upon Hawaiian Commercial and Sugar  
15 Company's claim of appurtenant rights connected with its  
16 purchase of interests in nearby *kuleana*; and  
17

18 WHEREAS, the Board of Land and Natural Resources presently  
19 leases over 33,000 acres of ceded lands to Alexander and  
20 Baldwin's East Maui Irrigation Company, from which it presently  
21 diverts an average of 60,000,000,000 gallons of water per year  
22 from East Maui streams at one-fifth of a cent per thousand  
23 gallons; and  
24

25 WHEREAS, the First Circuit Court has ruled that any  
26 diversion of water cannot injure others with appurtenant,  
27 riparian, or traditional and customary native Hawaiian rights to  
28 the same water; and  
29

30 WHEREAS, members of Na Moku Aupuni O Ko'olau Hui, Beatrice  
31 Kekahuna, Marjorie Wallett, and other native Hawaiian *kuleana*  
32 land owners in East Maui, have appurtenant, riparian and  
33 traditional and customary native Hawaiian rights that are  
34 violated by Alexander and Baldwin's East Maui Irrigation  
35 Company's stream diversions; and  
36

37 WHEREAS, this deprivation of water rights has resulted in a  
38 chronic injury to the residents of Wailua-nui and Ke'anae  
39 valleys and has directly impacted their capacity to continue  
40 traditional and customary practices, contrary to sound public  
41 policy and constitutional protections; and  
42



1 WHEREAS, the Board of Land and Natural Resources has, since  
2 at least May of 2001, failed to act to protect the rights of  
3 these residents of East Maui; and  
4

5 WHEREAS, for the past six years, the Commission on Water  
6 Resource Management has failed to act on petitions to amend the  
7 interim in-stream flow standards of twenty-seven East Maui  
8 streams filed on behalf of these East Maui residents; and  
9

10 WHEREAS, for the past six months, the Board of Land and  
11 Natural Resources has failed to act on a request by these East  
12 Maui residents for timely and prompt interim relief; and  
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14 WHEREAS, the State's failure to act results in ongoing harm  
15 to the superior water rights of these East Maui residents; now,  
16 therefore,  
17

18 BE IT RESOLVED by the House of Representatives of the  
19 Twenty-fourth Legislature of the State of Hawaii, Regular  
20 Session of 2007, the Senate concurring, that the Board of Land  
21 and Natural Resources and the Commission on Water Resource  
22 Management are each requested to submit a report to the  
23 Legislature not later than twenty days prior to the convening of  
24 the Regular Session of 2008, explaining why each agency has not  
25 ordered Alexander and Baldwin's East Maui Irrigation Company to:  
26

27 (1) Immediately and, at a minimum, release a combined  
28 total of 5,000,000 gallons of water -- which is  
29 calculated at fifty-one acres of taro land requiring  
30 100,000 gallons of water per acre per day -- that is  
31 diverted from Wailua-nui and Waiokamilo streams and  
32 their tributaries, and from the watershed mauka of the  
33 ili of Kupau, so that it is allowed to flow past its  
34 ditch system and into Wailua-nui Valley for taro  
35 irrigation;  
36

37 (2) Immediately release into Honopou Stream, below its  
38 Haiku diversion, additional stream flow so that, at  
39 the point of the Kekahuna and Walleth properties'  
40 diversion from Honopou Stream, if necessary, no less  
41 than 600,000 gallons per day may flow into their auwai  
42 to meet the irrigation water needs of the respective  
43 residents and their families without requiring them to



1 divert more than half of Honopou Stream flow at their  
2 diversion point; and  
3

- 4 (3) Immediately and affirmatively demonstrate, with clear  
5 and convincing evidence, their actual water needs and,  
6 within the constraints of available knowledge, the  
7 propriety of draining water from public streams to  
8 satisfy those needs, such as the practicability of  
9 using alternative sources; and  
10

11 BE IT FURTHER RESOLVED that the Board of Land and Natural  
12 Resources is requested to explain in its report why the Board  
13 does not have a regular system and protocol in place that would  
14 promptly require the timely release of water into the disputed  
15 streams that support the valleys of Ke'anae and Wailua-nui  
16 unless, and until, Alexander and Baldwin's East Maui Irrigation  
17 Company thoroughly demonstrates that the above taro farmers and  
18 stream gatherers no longer require the stream flow released from  
19 the Alexander and Baldwin's East Maui Irrigation Company ditch  
20 system; and  
21

22 BE IT FURTHER RESOLVED that as part of its report, the  
23 Board of Land and Natural Resources is requested to determine  
24 whether the staff of the Department of Land and Natural  
25 Resources is capable of monitoring the effect of any water  
26 diversions, now and in the future, allowed by the Board for any  
27 violations of the common law, the constitution, or statutory  
28 rights specified by the article XI, section 7 and article XII,  
29 section 7 of the Constitution of the State of Hawaii; section  
30 101 of the Hawaiian Homes Commission Act; and sections 171-58  
31 and 174C-101, Hawaii Revised Statutes, and thereafter, provide a  
32 simple, clear, and efficient process for investigating reported  
33 violations, and conducting timely and frequent reviews of any  
34 disputes that arise at regularly scheduled meetings of the Board  
35 of Land and Natural Resources so these water rights issues are  
36 promptly resolved; and  
37

38 BE IT FURTHER RESOLVED that as part of its report, the  
39 Commission on Water Resources Management is requested to  
40 determine the level of budgeting and staffing required to  
41 promptly respond to complaints of interference with appurtenant  
42 water rights and in-stream flows necessary to support the  
43 continued ability of Hawaiians to pursue their traditional and  
44 customary practices dependent on adequate stream flow, and,



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1 thereafter, provide a simple, clear, and efficient process for  
2 investigating reported violations of these rights, and  
3 conducting timely and frequent reviews of any disputes so these  
4 water rights issues are promptly resolved; and

5  
6 BE IT FURTHER RESOLVED that certified copies of this  
7 Concurrent Resolution be transmitted to the Chairperson of the  
8 Board of Land and Natural Resources and the Chairperson of the  
9 Commission on Water Resources Management.

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11  
12 OFFERED BY:

Melle Carroll

MAR 14 2007

