
HOUSE 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

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27 WHEREAS, the adjacent ahupua'a of Ke'anae and Wailua-nui,
28 located on the northeast flank of Haleakala on the island of
29 Maui, supported intensive and extensive wetland taro cultivation
30 that was irrigated by water streams in these respective ahupua'a



1 since ancient times, and the streams have continued unabated
2 until the present day; and

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

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

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

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

23
24 WHEREAS, although approximately 4,200 of the 13,514
25 applications for *kuleana* under the Māhele were not approved, the
26 Land Commission ultimately awarded 28,658 acres to native
27 tenants, less than one per cent of the lands available in the
28 islands; and

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

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

39
40 WHEREAS, in 1902, the Commissioner of Public Lands issued
41 lease number 538 to H. P. Baldwin, leasing lands in East Maui
42 until 1933 for the development, storage, transportation, or
43 other utilization of the water thereon, thereby allowing
44 construction of a ditch system; and



1
2 WHEREAS, this royal lease was issued subject to the
3 condition that there would be no interference with the vested
4 interests in water of land owners in Ke'anae, Wailua-nui, or
5 other parts of East Maui; and
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7 WHEREAS, in 1904, Hawaiian Commercial and Sugar Company,
8 which was Alexander and Baldwin's Maui sugar plantation, while
9 continuing its out-of-watershed diversion of stream flow from
10 East Maui streams, successfully sued to enjoin Wailuku Sugar
11 Company's out-of-watershed stream flow diversions from the
12 Wailuku Stream based upon Hawaiian Commercial and Sugar
13 Company's claim of appurtenant rights connected with its
14 purchase of interests in nearby *kuleana*; and
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16 WHEREAS, the Board of Land and Natural Resources presently
17 leases over 33,000 acres of ceded lands to Alexander and
18 Baldwin's East Maui Irrigation Company, from which it presently
19 diverts an average of 60,000,000,000 gallons of water per year
20 from East Maui streams at one-fifth of a cent per thousand
21 gallons; and
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23 WHEREAS, the First Circuit Court has ruled that any
24 diversion of water cannot injure others with appurtenant,
25 riparian, or traditional and customary native Hawaiian rights to
26 the same water; and
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28 WHEREAS, members of Na Moku Aupuni O Ko'olau Hui, Beatrice
29 Kekahuna, Marjorie Wallelt, and other native Hawaiian *kuleana*
30 land owners in East Maui, have appurtenant, riparian and
31 traditional and customary native Hawaiian rights that are
32 violated by Alexander and Baldwin's East Maui Irrigation
33 Company's stream diversions; and
34

35 WHEREAS, this deprivation of water rights has resulted in a
36 chronic injury to the residents of Wailua-nui and Ke'anae
37 valleys and has directly impacted their capacity to continue
38 traditional and customary practices, contrary to sound public
39 policy and constitutional protections; and
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41 WHEREAS, the Board of Land and Natural Resources has, since
42 at least May of 2001, failed to act to protect the rights of
43 these residents of East Maui; and
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1 WHEREAS, for the past six years, the Commission on Water
2 Resource Management has failed to act on petitions to amend the
3 interim in-stream flow standards of twenty-seven East Maui
4 streams filed on behalf of these East Maui residents; and

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6 WHEREAS, for the past six months, the Board of Land and
7 Natural Resources has failed to act on a request by these East
8 Maui residents for timely and prompt interim relief; and

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10 WHEREAS, the State's failure to act results in ongoing harm
11 to the superior water rights of these East Maui residents; now,
12 therefore,

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

22
23 (1) Immediately and, at a minimum, release a combined
24 total of 5,000,000 gallons of water -- which is
25 calculated at fifty-one acres of taro land requiring
26 100,000 gallons of water per acre per day -- that is
27 diverted from Wailua-nui and Waiokamilo streams and
28 their tributaries, and from the watershed mauka of the
29 ili of Kupau, so that it is allowed to flow past its
30 ditch system and into Wailua-nui Valley for taro
31 irrigation;

32
33 (2) Immediately release into Honopou Stream, below its
34 Haiku diversion, additional stream flow so that, at
35 the point of the Kekahuna and Walleth properties'
36 diversion from Honopou Stream, if necessary, no less
37 than 600,000 gallons per day may flow into their auwai
38 to meet the irrigation water needs of the respective
39 residents and their families without requiring them to
40 divert more than half of Honopou Stream flow at their
41 diversion point; and

42
43 (3) Immediately and affirmatively demonstrate, with clear
44 and convincing evidence, their actual water needs and,



1 within the constraints of available knowledge, the
2 propriety of draining water from public streams to
3 satisfy those needs, such as the practicability of
4 using alternative sources; and
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6 BE IT FURTHER RESOLVED that the Board of Land and Natural
7 Resources is requested to explain in its report why the Board
8 does not have a regular system and protocol in place that would
9 promptly require the timely release of water into the disputed
10 streams that support the valleys of Ke'anae and Wailua-nui
11 unless, and until, Alexander and Baldwin's East Maui Irrigation
12 Company thoroughly demonstrates that the above taro farmers and
13 stream gatherers no longer require the stream flow released from
14 the Alexander and Baldwin's East Maui Irrigation Company ditch
15 system; and
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17 BE IT FURTHER RESOLVED that as part of its report, the
18 Board of Land and Natural Resources is requested to determine
19 whether the staff of the Department of Land and Natural
20 Resources is capable of monitoring the effect of any water
21 diversions, now and in the future, allowed by the Board for any
22 violations of the common law, the constitution, or statutory
23 rights specified by the article XI, section 7 and article XII,
24 section 7 of the Constitution of the State of Hawaii; section
25 101 of the Hawaiian Homes Commission Act; and sections 171-58
26 and 174C-101, Hawaii Revised Statutes, and thereafter, provide a
27 simple, clear, and efficient process for investigating reported
28 violations, and conducting timely and frequent reviews of any
29 disputes that arise at regularly scheduled meetings of the Board
30 of Land and Natural Resources so these water rights issues are
31 promptly resolved; and
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33 BE IT FURTHER RESOLVED that as part of its report, the
34 Commission on Water Resources Management is requested to
35 determine the level of budgeting and staffing required to
36 promptly respond to complaints of interference with appurtenant
37 water rights and in-stream flows necessary to support the
38 continued ability of Hawaiians to pursue their traditional and
39 customary practices dependent on adequate stream flow, and,
40 thereafter, provide a simple, clear, and efficient process for
41 investigating reported violations of these rights, and
42 conducting timely and frequent reviews of any disputes so these
43 water rights issues are promptly resolved; and
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1 BE IT FURTHER RESOLVED that certified copies of this
2 Resolution be transmitted to the Chairperson of the Board of
3 Land and Natural Resources and the Chairperson of the Commission
4 on Water Resources Management.
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OFFERED BY: Mele Carroll

MAR 14 2007

