

**TESTIMONY OF MARION M. HIGA, STATE AUDITOR,  
ON SENATE BILL NO. 2486, PROPOSED SENATE DRAFT 2, RELATING TO WATER**

**Committee on Ways and Means**

**February 27, 2008**

Chair Baker and Members of the Committee:

Thank you for this opportunity to present a clarification on the proposed Senate Draft to this bill. The proposed draft establishes a special fund for the Molokai Irrigation System and creates a water user board to oversee the fund.

As you know, we recently completed a financial and management audit of the Molokai Irrigation System. The audit had been requested by Senate Concurrent Resolution No. 176 of the 2007 legislative session. The proposed draft before you makes reference to our report as a basis for the version of S.B. No. 2486 now before you for consideration.

However, I would like to clarify that we did not recommend the creation of either the special fund or a user board with management authority. Rather, with respect to the Irrigation System Revolving Fund, we recommended that the department work with the Legislature to identify the best means to fund the system if the annual appropriation to the revolving fund is necessary. This recommendation is grounded on one of the principles by which revolving funds—and, in fact, even special funds—ought to be created: that they be self-sustaining once their seed moneys are expended and not rely on continuous infusions of general funds. On the issue of the existing MIS Water Users Advisory Board, we recommended that the department (a) document the rationale and rules for the sake of transparency, (b) consider adding more homestead farmer seat(s) and develop guidelines for filling seats, and (c) define “homestead farmer” as the term

relates to the advisory board and work with the advisory board to create a unified mission statement.

We offer this clarification for the record and are available for any questions you might have. Thank you for this opportunity to present this testimony.

**testimony**

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**From:** FOSTER, RAY [AG/2004] [ray.foster@monsanto.com]  
**Sent:** Tuesday, February 26, 2008 12:29 PM  
**To:** testimony  
**Cc:** Helm, Adolph (AM)  
**Subject:** Oppose SB2486, Proposed SD2

**Testimony**

**In Opposition to SB 2486, Proposed SD2 – RELATING TO WATER, Establish a special fund and a water user board to oversee the fund.**

**Submitted for Hearing:**

THE SENATE

THE TWENTY-FOURTH LEGISLATURE

REGULAR SESSION OF 2008

**COMMITTEE ON WAYS AND MEANS**

Senator Rosalyn H. Baker, Chair

Senator Shan S. Tsutsui, Vice Chair

**DATE: Wednesday, February 27, 2008**

**TIME: 10:30 a.m.**

**PLACE: Conference Room 211, State Capitol**

415 South Beretania Street

Honorable Senators Baker, Tsutsui and Members of the Ways and Means Committee

I have been a Molokai resident for 18 years, employed in agriculture, and have worked with the Molokai Irrigation System all of that time.

**I oppose SB 2486, Proposed SD2.** The bill will establish a governing entity within the HI Department of Agriculture but offers no defined structure for the Board's position within that State agency. The bill offers no source of funding for Board activities, nor definition of liability coverage for an independent entity within a State agency. Does the State of Hawaii cover the actions of an independent governing Board and its members? As described in SB 2486, the governing Board's responsibilities and powers are extensive. Will the HIDO and its employees be expected to fund and manage the projects, surveys, and analyses that the independent governing board mandates? This approach to managing the Molokai

Irrigation System is impractical.

The existing Molokai Irrigation System User's Advisory Board, HIDOA personnel and the irrigation system users have worked together tirelessly over the last few years to secure funding for much needed improvements, improve communications, and stabilize the cost of water to system users. These efforts have been successful! Passage of SB 2486 will be a giant step backwards.

Respectfully,

Raymond J. Foster

Business Services Manager

Monsanto Molokai

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LINDA LINGLE  
Governor



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TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

WEDNESDAY, FEBRUARY 27, 2008  
10:30 A.M.

SENATE BILL NO. 2486, PROPOSED S.D. 2  
RELATING TO WATER

Chairperson Baker and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2486, Proposed S.D. 2. The purpose of this bill is to address the findings and conclusions of the State auditor's February 19, 2008 financial and management audit of the Molokai Irrigation System. The bill would establish a Molokai water users board and a Molokai irrigation system special fund which would be administered by the proposed Molokai water users board. The Hawaii Department of Agriculture (HDOA) is strongly opposed to the bill.

The audit does not include any recommendations to dissolve and replace the existing Molokai Irrigation System Water Users Advisory Board with a new board with powers equivalent to the Board of Agriculture. The entire set of recommendations pertaining to the Advisory Board are entitled "Relating to the MIS Water Users Advisory Board" and include in their entirety the following actions:

- a. Document the rationale behind the advisory board membership recommendations and procedural rules for the sake of transparency;
- b. **Consider** (our emphasis) adding additional homestead farmer seat(s) and develop procedural guidelines on how seats are filled; and

- c. Define "homestead farmer: as it relates to the advisory board to remove any appearance of impropriety; and work with the advisory board to create a unified mission statement.

The audit includes the statement on page 41 that "**We (the Legislative Auditor) do give the department credit; however, for beginning to bring the MIS to a better state of repair, and working with the advisory board to correct wrongs of the past.**"

The audit does not include any recommendations to establish a separate Molokai irrigation system special fund.

The entire set of recommendations pertaining to fiscal management are entitled "Relating to Fiscal Management" and include in their entirety the following actions:

- a. Work with the Legislature to identify the best means to fund the operation of the State's irrigation system, if the annual appropriation for the Irrigation System Revolving Fund is necessary;
- b. **Consider** (emphasis ours) adding staff to the fiscal office that is proficient in the creation of GAAP financial statements. If this is not feasible, ensure that CPA firms contracted to compile financial statements are independent of any further work (that is audit services);
- c. Develop the ability to segregate financial information on a system by system basis, **for use as a planning tool** (emphasis ours); and
- d. Review receivables collection process, and if necessary consider employing more aggressive tactics.

Detailed financial data about the MIS and each of the other four water systems that comprise the Irrigation System Revolving Fund has been presented at the Advisory Board meetings and posted on HDOA's website since last year.

On page 42 of the audit, the Auditor states that **“Moreover, some of this data (referring to financial data) has only recently become available, after our period of review, but we commend the department for attempting to provide appropriate tools for decision-making.”**

For over a year, HDOA has been working closely with the Board to improve communications, share information, and closely involve the Board in all decisions affecting the system. At the end of 2007, after three week-end meetings with the Board and the Molokai community, HDOA and the Board produced a document entitled “Roadmap to Improvement” which includes mutually agreed-upon objectives and indicators which we will work together on accomplishing. The “Roadmap” is posted on HDOA's website.

We also wish to note that there are no recommendations contained in the report that support the statement in the body of the report saying that “...The department is unable to balance its responsibilities in promoting agriculture, while guaranteeing Hawaiian homesteaders' rights to two-thirds of the water within the Molokai irrigation system.” HDOA is fully aware that the protection of homesteaders water rights is required by law (Chapter 168-4, HRS) and has mirrored the protection in its administrative rule (4-157-4 z(k)). The HDOA has always upheld the law and will continue to do so. We also devoted a good portion of one of the Roadmap meetings to explain exactly how we would protect the homesteaders right to water. The description

of the procedure we would follow is entitled "Conservation Measures and Protection of Homesteaders Preference Rights." It has been posted on HDOA's website since last year.

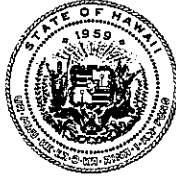
We further note that the current Board is comprised of four homesteader members. The fifth member is a non-Hawaiian farmer. There is one vacancy and the Governor's nominee is a native Hawaiian.

The HDOA is fully committed to working with the current Molokai Irrigation System Water Users Advisory Board on implementing the recommendations contained in the Auditor's report. We have already conducted a briefing of the Board on the Recommendations contained in the Audit and our perspective on how to proceed. We have asked for time on future Board agendas to begin discussion with the Board on how to prioritize the recommendations and merge them with the Roadmap objectives.

We believe that there is no justification in the Auditor's report for SB 2486, S.D. 2 and ask that this bill be held.



LINDA LINGLE  
GOVERNOR  
STATE OF HAWAII



MICAH A. KANE  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

KAULANA H. PARK  
DEPUTY TO THE CHAIRMAN

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**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**

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TESTIMONY OF MICAH A. KANE, CHAIRMAN  
HAWAIIAN HOMES COMMISSION

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

ON S.B. 2486, PROPOSED S.D. 2  
RELATING TO WATER

February 27, 2008

Chair Baker and Members of the Committee:

Thank you for the opportunity to testify. The Department of Hawaiian Home Lands (DHHL) supports the purpose and intent of S.B. 2486, proposed S.D. 2, to provide increased authority among users of the Molokai Irrigation System (MIS), especially homestead farmers, by creating a special fund for the MIS and creating a water user board to oversee the fund.

DHHL notes that the MIS will require a significant infusion of capital investments by the State of Hawaii (as trustee) to operate in an efficient manner. These improvements should be made before we can discuss transferring responsibility to a separate entity. Even with these improvements, it may still require operating subsidies. The new entity will not have the capacity to properly repair, maintain, and operate the MIS.

As an alternative, DHHL believes the "MIS Roadmap to Improvement" process needs to be implemented to provide a systematic and collaborative approach, with the stakeholders, to improve the MIS. S.B. 2486, proposed S.D. 2, is premature and should be deferred.

Thank you for the opportunity to testify on this measure.

**testimony**

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**From:** Alan Murakami [almurak67@gmail.com]  
**Sent:** Tuesday, February 26, 2008 3:34 PM  
**To:** testimony  
**Subject:** SB 2486, SD 2

THE SENATE COMMITTEE ON WAYS AND MEANS  
 Senator Rosalyn H. Baker, Chair  
 Senator Shan S. Tsutsui, Vice Chair

HEARING DATE: Wednesday, February 27, 2008  
 TIME: 10:30 a.m.  
 PLACE: Conference Room 211, State Capitol

RE: SB 2486, Proposed SD2, RELATING TO WATER

I support this proposed draft of SB 2486. This draft establishes a special fund for the Moloka`i irrigation water (MIS) system on Moloka`i and creates a water user board to oversee the fund. Previously, I supported the notion behind

- SB 3224 to empower a Moloka`i Water Users Board in lieu of the current advisory capacity of the Moloka`i Water Users Advisory Board. This draft effectively does the same thing.
- SB 2488, which would have created a separate account for the MIS, apart from other irrigation systems which are not obliged to service Hawaiian homesteaders as a priority under the HAHC trust.

I urge you to cure the effective date in this draft, currently 7/1/2050, so it takes effect July 1, 2008, or upon approval by the Governor.

There are very good reasons to support such changes, most of which relate to what appears to be a basic misunderstanding of the Department of Agriculture to operate the Moloka`i Irrigation System (MIS) as if it was merely one of the several irrigation systems that the state operates with no special distinction. That notion is sadly and tragically flawed and reflects a basic misunderstanding of the law behind the creation of the MIS.

As the Legislative Auditor points out in her recently released management audit of the operation of the MIS, the Department of Agriculture seriously misunderstands its obligation to homesteaders as trustees of the MIS. Her scathing report of the neglect by the DLNR/DOA throughout the history of the state's operation of the MIS is damning. The State is subjecting itself to great risk of monetary damage claims against it for failing to manage the system as a trustee.

At a very minimum, it must separate its accounting of revenues generated by the MIS from the other irrigation systems so there is no comingling of the monies involved. In most trust cases, there is a distinct requirement that the trustee maintain separate accounts for managing a program that involves the collection and disbursement of money. Consistent with this trust responsibility, the Legislative Auditor specifically recommends a segregation of financial information "on a system by system basis." MIS Audit 40. It also would require greater direct accountability for the maintenance and operational failures

by the managers of the MIS. Establishing a homesteader controlled water users board is the first necessary step to meeting that obligation. The Legislative Auditor goes so far as to say:

The department does not take seriously its responsibility of stewardship to the Hawaiian homesteaders. The unique relationship of the Hawaiian homesteaders to the MIS is found within HRS and the department's administrative rules. However, the deputy directory informed us that, "The reality is we will not have to cut back (water) unless homesteaders quadruple their usage. There is no likelihood in the future that we will have to protect homesteader' water rights. ...

[citing to HRS sec. 174C-101] The department's responsibility to provide water to homesteaders on Hawaiian homelands is clear. However, the department's inability to identify the homesteaders couples with the mindset that homesteaders will not likely assert their claims is **irresponsible.**"

**Background of the 2/3 preference for homesteaders.** The Legislative Auditor's conclusion notwithstanding, she actually misses the significance of the trust responsibility the DOA owes Hawaiian homesteaders. Her assessment of the level of negligence is understated under trust law principles applicable to the DOA. In *Seminole Nation v. United States*, 316 U.S. 286 (1942), the United States Supreme Court described the scope of relevant fiduciary duties in these words:

Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, [the Government] *has charged itself with moral obligations of the highest responsibility and trust.* Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by *the most exacting fiduciary standards.*

*Id.* at 296-97; *Accord, Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Navajo Tribe of Indians v. United States*, 364 F.2d 320 (Ct. Cl. 1966) (emphasis added). The use of the term "most exacting fiduciary standards" imports the notion that the court will strictly [**\*\*25**] scrutinize the actions of government.

*Ahuna v. Hawaiian Homes Commission*, 64 Haw. 327, 339 (1982). The Hawai'i Supreme Court explicitly adopted this standard to assess claims that the DHHL had violated its trust duties by not allowing a homesteader additional acreage to support his attempt to make agricultural use of a homestead in favor of the county of Hawai'i, which sought the same land for the extension of a public highway for the benefit of the general public.

As the Court concluded, one specific trust duty is the obligation to administer the trust solely in the interest of the beneficiary. *Id.* at 340. The DHHL could not adhere to that duty by granting land intended under the HHCA for a homestead purpose to be set aside instead for the expansion of a public roadway.

Similarly, the DOA, which is administering and managing the MIS largely for the benefit of Ho'olehua homesteaders, cannot ignore its exclusive duty to operate the MIS in the interest of the beneficiaries, in whose interest the MIS was built in the first place. Its conduct must be viewed in light of the duty of the trustee. A trustee should not be comingling irrigation accounts and diverting revenue raised by the MIS for the benefit of other irrigation accounts on other islands, especially where none of those other systems are subject to the obligations imposed on a state agency in charge of running the MIS. In addition, the DOA cannot be ignoring the representative input of the homesteaders by stacking the MIS Advisory Board with predominantly non-homesteaders and operating the system without regard for due maintenance and making adequate water supplies available to homesteaders under the HHCA, HRS chapter 174C-101, and trust law. Rather, the DOA is bound to operate the MIS "*with moral obligations*

*of the highest responsibility and trust." Ahuna, 64 Haw. at 339.*

For years before the actual construction of the system in the 1960's, there was much debate over the need to irrigate the farm lands of Ho'olehua so that homestead farmers could be successful after decades of trying to farm without a steady and reliable source of irrigation water. Those decades of struggle are a testament to the dedication, persistence, and creativity of native Hawaiians who struggled mightily to demonstrate the viability of homesteads for future generations. The contribution of these pioneers of the Hawaiian Homestead program need to be remembered, recognized and respected. Their sacrifices of yesteryear laid the foundation for all that is blossoming on Moloka'i today. But more needs to be done to recognize the trust status of this program and how the state trustee needs to act to assure that the assets of this trust are properly managed and protected for trust purposes.

The years of operation of the MIS under state guidance and governance have been fraught with mismanagement of assets, misuse of resources, and a general lack of accountability to native Hawaiians. The Legislative Auditor confirms these abuses.

When Congress initially passed the Hawaiian Homes Commission Act in 1920, it reserved ALL the water of Moloka'i to support purposes of the Act. However, the reality was that the water needed to be collected and distributed to make it available and useful to farmers on the island. Farmers needed an irrigation system, but the Territory did not have the means to afford one. The U.S. Bureau of Reclamation did, but had a requirement to make the system available to beneficiaries and non-beneficiaries alike in Kualapu'u.

In order to strike a compromise to recognize the BIA requirement and to address the irrigation water needs of the homesteaders, and after much debate, Congress amended in the 1950's to authorize construction of the MIS, but amended the water reservation to a 2/3 preference for Hawaiian homestead use, deleting the reservation of all island water. This preference still exists in our state law, in recognition of this trade off. HRS sec. 168-4 (emphasis added):

**[§168-4] Preference.** To the extent that the same may be necessary from time to time for the satisfaction of their water needs, domestic and agricultural, the Hawaiian homes commission and lessees of the Hawaiian homes commission shall at all times, upon actual need therefor being shown to the board of agriculture, have a prior right to two-thirds of the water developed for the Molokai irrigation and water utilization project by the tunnel development extending to Waikolu valley and ground water developed west of Waikolu valley, which was planned by the board of land and natural resources as the first stage of the Molokai irrigation project.

The MIS would not have been built otherwise. That preference survived over the years in the governing law, and served to buttress the state promise to "assure that the spirit of the Act was faithfully administered" as a condition of being allowed to enter the union as the 50th State. It is a very distinct and special project to which high trust responsibilities apply which do NOT apply to any other irrigation system. This high level of responsibility exceeds the degree to which the Auditor assigns responsibility to the DOA. In fact, as the Hawai'i Supreme Court concluded, a trustee in this situation

Moreover, there are over 25,000 acres of Hawaiian Home kinds on Moloka'i. Of these, over 7,800 acres are in Ho'olehua. The Moloka'i Irrigation System is only capable of delivering, at full pumping capacity and during months of high, trade-wind generated rainfall, sufficient water for less than 2,000 acres of crop planted. Recognizing this undeveloped potential, the Commission on Water Resources Management reserved 2.9 mgd in the Kualapu'u aquifer for future homestead development, as the Water Code requires. HRS sec. 174C-101(a) (emphasis added) provides:

§174C-101 Native Hawaiian water rights. (a) Provisions of this chapter

shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.

**A History of Neglect and Abuse.** Despite this storied background, it wasn't long before state bureaucrats lost sight of the original design and intent of the MIS preference.

- In the 1970's, when the MIS was managed by the DLNR, then director Chris Cobb led the move to allow Molokai Ranch to lease the system to transport water it pumped from its Well #17 in Kualapu`u through the MIS to reach its land developments at Kaluakoi. After lawsuits challenging the lease, the court then decided that the newly-enacted Hawai`i Environmental Policy Act had passed too late to require the preparation of an environmental assessment (EA), but noted that one would surely be required had the law been timely passed.
- During the 1980's and 1990's, during periods of drought, the Department of Agriculture, which succeeded the DLNR in 1988 periodically restricted homesteader use of the MIS without requiring similar restrictions by irrigation water users in the Kaluakoi area, where, in one instance a water customer registered the use of 35,000 gpd to irrigate a grassed airstrip for his private plane, while homesteaders lost crops.
- The DLNR lease of the MIS allowed the Ranch to take out as much water at the west end of the MIS at Mahana as they replaced in the MIS using pumped water from Well #17 on the eastern end of the MIS. However, the Ranch allowed its pumping to fail on numerous occasions, without any backup, while it continued to take water out of the MIS, a CLEAR VIOLATION of the original 1975 MIS lease. During these periods, reservoir levels fell to such an extent that the dirt and tilapia that lives in the reservoir clogged irrigation lines of homestead farmers, including one homestead venture growing alfalfa that went out of business because of these problems. These farmers never received compensation for the losses they sustained from the Ranch or the state.
- When the MIS lease came up for renegotiation, recognition of all of these problems led to homesteader resistance that ultimately blocked the lease being renewed, especially when the Department of Agriculture suddenly, but belatedly, recognized that it had failed to conduct an EA under HRS chapter 343 before issuing the lease. When the Superferry decision interceded during that debate, the AG opined that no lease could issue before an EA was conducted and informed homesteaders that he was taking steps to get the Ranch off the MIS. See, attached letter from Myra Kaichi, dated 9/4/07. The AG has yet to enforce the law as it applies to the Ranch.
- Mindful of what was at stake, homestead applicants and farmers twice challenged attempts by the Commission on Water Resources Management to grant water use permits to Molokai Ranch (now Molokai Properties, Ltd.) without adequately protecting the interests of homesteaders. These intervenors to those permit applications won TWICE, at great dollar and human resource cost and expense, before the Hawai`i Supreme Court, which vacated those decisions, in large part because of the failure of the CWRM to demand the showing required of a water diverter NOT to harm those with superior legal rights. *In re Wai'ola O Moloka'i, Inc.*, 103 Hawai'i 401, 429, 83 P.3d 664, 692 (2004) ; *In Re Kukui Molokai, Inc.*, 174 P.3d 320; (2007).

**Reaffirmation of the trust purposes.** In 1990, after a series of unprecedented hearings held by U.S. Senator Daniel Inouye as part of the work of the Senate Select Committee on Indian Affairs, this Legislature enacted the following provision in their HHCA (emphasis added), which in part provides:

**[§101. Purpose.]** *[Text of section subject to consent of Congress.]* (a) The Congress of the United States and the State of Hawaii declare that the policy of this Act is to enable native Hawaiians to return to their lands in order to fully support self-sufficiency for native Hawaiians and the self-determination of native Hawaiians in the administration of this Act, and the preservation of the values, traditions, and culture of native Hawaiians.

(b) The principal purposes of this Act include but are not limited to:

(1) Establishing a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act;

. . .

(4) Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible;

While the Congress has yet to ratify this provision, the Legislature enacted it, so presumably, it is the policy of this state to implement HRS sec. 168-4, 174C-101, and HHCA sec. 101(a) (4). Returning control to a Moloka'i Irrigation System Water Users Board will further the implementation of these provisions, especially in view of the chronic abuses that have befallen the management of the MIS under state agencies. What is needed is greater accountability by the trustee. Giving homesteaders direct control over water so essential to this trust program is in line with the fulfillment of the state's trust duties to native Hawaiians so long victims of state bureaucratic inaction or abuse of trust principles.

In fact, given the history of abuse of the administration of this system, which continues to the detriment of homesteaders until today, this step may be a required precaution the state owes these beneficiaries. Thirty years of abuse, neglect, or mismanagement is simply intolerable.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEE ON WAYS AND MEANS  
ON  
SENATE BILL NO. 2486, Proposed S.D. 2

February 27, 2008

RELATING TO WATER

Senate Bill No. 2486, proposed S.D. 2, establishes the Molokai Irrigation System special fund and replaces the current Molokai Irrigation System Water Users Advisory Board with a new Molokai Irrigation System Water User Board.

As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine at this time whether the fund will be self-sustaining.



**Senate Ways and Means Committee  
Testimony in SUPPORT of SB 2486, SD2  
Relating to Molokai Irrigation System**

Aloha Senators,

We are Hoolehua homestead farmers and we depend on the Molokai Irrigation System as the lifeline to the homestead farming community. The MIS is falling into disrepair due to poor management first by DLNR, and since 1989. It's been estimated that we will need about \$12 million to complete all repairs. The MIS has been the Cinderella of the state irrigation systems in that it generates over 60% of all revenues from the five state systems combined. The problem has been that all of these revenues are deposited into a State Irrigation Special Fund, and is expended based on need.

As a result, the MIS has been subsidizing the other systems for decades. Now, we have to approach the legislature to help us keep our system operational. This money is owed us from the DOA for all the years that we have paid for our cost of operation, and actually generated a profit. Due to this mismanagement, the users, especially the homesteaders must be given more power to manage the MIS, including making key decisions of budget and expenditures.

The second issue is representation on the MIS Users Advisory. Hawaiian Homesteaders gave up some of their rights to the water on Molokai to allow for the construction of the Molokai Irrigation System with Federal and State funds. The original Hawaiian Homes Act stated that homesteaders had prior right to all the government owned water on the island of Molokai. The Act was amended as a condition to constructing the Molokai Irrigation System. Today, the homesteaders have only 2/3's right to the water, with the remaining 1/3's right set aside for non-homestead farmers, specifically lessees of the Molokai Agricultural Park.

Since we have 2/3's prior rights to the water under the Hawaiian Homes Act, shouldn't we have 2/3's of the seats nominated by our fellow homestead farmers whom we represent? This is not the case today. The MIS Users Advisory was created to give farmers a say in the operations of the system since there were major problems in the mismanagement of the MIS, first by DLNR and more recently by DOA. Although DOA has recognized the homesteaders 2/3's right, they have failed to take the next step.

Having our own special fund will make the MIS more accountable and we will be better to reconcile expenses and plan for future repairs and CIP. Also, Hawaiian homesteaders need to decide the future of their water if they have 2/3's right to this water. Mahalo.



**SB 2486, Proposed SD 2, RELATING TO WATER**  
Senate Committee on Ways and Means

February 27, 2008  
Room: 211

10:30 a.m.

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The Office of Hawaiian Affairs (OHA) **SUPPORTS, with Amendments,** SB 2486, Proposed SD 2, which seeks to establish a special fund for the Moloka'i irrigation water system and create a water user board to oversee the fund.

Indeed, agriculture is generally vital to Hawai'i's future, and even more so for the island of Moloka'i. Article XI, section 3, of the Hawai'i State Constitution; Hawaii Revised Statutes Chapter 205; and even county ordinances all address the need to protect our agricultural lands. OHA recognizes that the state Department of Agriculture (DOA), as manager of the inherited Moloka'i Irrigation System (MIS), has done a poor job of managing the system for its users. (See State Legislative Auditor's report, released February 20, 2008). We also recognize that the MIS is the only agricultural system in the state that runs at a profit each year and thusly does not require any subsidies.

As such, OHA is supportive of the idea for the MIS to function more independently from the other State systems. It does not seem to make much sense to keep the only profitable system in hands which have demonstrated past mismanagement and then to use the profits from the Moloka'i system to fund other systems that are also potentially being mismanaged and certainly are not connected to the MIS.

OHA is concerned, however, about the wisdom of entirely cutting off the MIS from the State. Regardless of the faults that the DOA has shown in the past, they are still the agency with the most experience in dealing with these types of systems, and the numerous and varied problems that they can present. While this bill intends to place the MIS in local hands that are well versed in issues particular to Moloka'i, OHA is concerned about the experience and training that these hands have in running the finances and infrastructure of an agricultural system, especially one that is vital to the island and so many users rely upon. Further, OHA points out that if this bill is passed and a Moloka'i irrigation system water users board is established,

there must be adequate funding to allow them to properly run the system and perform all of the tasks enumerated in this bill.

Another issue of concern for OHA is whether or not the MIS will be used for nonagricultural purposes. It is unclear to us whether or not nonagricultural uses are permissible or if they would require an environmental review.

OHA urges the Committees to PASS SB 2643, Proposed SD 2, taking the previous considerations into account. Thank you for the opportunity to testify.



**Molokai Farm Bureau**



*An Affiliate of the Hawaii Farm Bureau Federation and the American Farm Bureau Federation*

TESTIMONY OF DONALD MAUM  
PRESIDENT, MOLOKAI FARM BUREAU

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
FEBRUARY 27, 2008, 10:30 A.M.

SENATE BILL NO. 2486, Proposed SD2  
RELATING TO THE MOLOKA'I WATER IRRIGATION SYSTEM

Re: Testimony to **OPPOSE SB2486**

Senator Rosalyn Baker, Senator Shan Tsutsui, and Members of the  
Committee:

My name is Donald Maum, President of the Molokai Farm Bureau,  
representing farmers on Molokai. The Farm Bureau wishes to testify in  
opposition of Senate Bill 2486, which will undermine working  
agreements that are currently in place.

The existing Molokai Irrigation System User's Advisory Board, HIDOA  
personnel and the irrigation system users have worked together  
tirelessly over the last few years to secure funding for much needed  
improvements, improve communications, and stabilize the cost of water  
to system users. These efforts have been successful! The recent  
"Road Map to Improvement Working Agreement" needs to be given a chance  
to work; passage of SB 2486 will be a giant step backwards.

For the well being of farmers on Molokai, we ask that you oppose  
SB2486.

Respectfully,

Donald G. Maum

Donald G. Maum  
President, Molokai Farm Bureau

TESTIMONY OF ADOLPH M. HELM  
CHAIRPERSON, MOLOKAI IRRIGATION SYSTEM WATER USERS ADVISORY  
BOARD

BEFORE THE SENATE COMMITTEE ON  
WAYS AND MEANS

February 27, 2008  
10:30 A.M.

SENATE BILL NO. 2486 SD 2  
RELATING TO WATER

Chairperson Baker and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2486 SD 2. The purpose of this bill is to address the findings and conclusions of the State auditor's February 19, 2008 financial and management audit of the Molokai Irrigation System (MIS). The bill would establish a Molokai water users board and a Molokai irrigation system special fund which would be administered by the proposed Molokai water users board. The Molokai Irrigation System Water Users Advisory Board (Board) is strongly opposed to the bill.

Molokai Irrigation System Water Users Advisory Board first approved of the concurrent resolution to conduct the audit as a means to identify ways to improve the MIS. It is our hope that we can use the recommendations from the audit in conjunction with the Roadmap to Improvement agreement to achieve the outcomes of the recommendations.

The Roadmap to Improvement agreement was unanimously approved by the Board as a means to improve and strengthen the relationship with the Department of Agriculture. This was the first time that a collaborative effort between the Board, DOA, and the water users was undertaken to address many of the long-standing issues that have complicated the relationship in the past.

The relationship between the Board and DOA has significantly improved in the past two years. Some of the “firsts” that have occurred include:

- Sharing of quarterly financial information with the Board and the community through posting on the DOA website;
- Regular presence of senior DOA management at monthly Board meetings;
- Creation of an MIS informational DVD;
- Clarification of how the homesteader water preference will be protected;
- Clarification of how DOA sets water rates;
- Dedicated use of MIS financial surplus to MIS needs;
- On-going and close consultation on the MPL agreement

Also

In the past five years, CIP in the amount of \$4.15 M has been legislatively appropriated.

The current Board is comprised of five individuals with one current vacancy. Four members are homesteaders, one member of the Board is a non-Hawaiian farmer and the nominee for the vacant position is a native Hawaiian, non-homesteader water user.

The Board has strong concerns about the bill because many of the expanded powers and authority raise questions about the potential liability to Board members.

The Board does not see any justification in the audit for the removal and replacement of the existing Board. The recommendations do not contain any direction or guidance that would lead us to conclude that a new Board is necessary.

Also, the Board sees no reason to set up a separate special fund for the MIS. We do not want to cut the system off from the other irrigation systems in the event that our financial situation changes or an emergency would occur in which we would need access to funds in the Irrigation Revolving fund to begin repairs.

The Board wishes to continue working with the DOA to implement the Roadmap to Improvement as well as the audit recommendations. Board members have invested a great deal of personal time and effort as have many community members. We do not want to see this effort disregarded. The relationship with DOA has improved significantly and we think that the Board and DOA should have the opportunity to continue forward together.

Please hold this bill and let us complete what we have started.