

SB 3224

LINDA LINGLE
Governor



SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 Fax: (808) 973-9613

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
FEBRUARY 12, 2008, 2:45 P.M.

SENATE BILL NO. 3224
RELATING TO THE MOLOKA'I WATER IRRIGATION SYSTEM

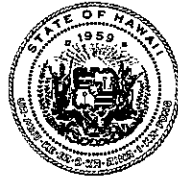
Chairperson Tokuda and Members of the Committee:

Thank you for the opportunity to comment on Senate Bill No. 3224. This bill proposes to repeal the Moloka'i irrigation system water users advisory board (Board) and replace it with the Moloka'i irrigation system water users board. The department opposes this bill.

For the past few years, the department has tried to work very closely with the Board. Comments and concerns raised at the Board meetings have been given thoughtful and serious consideration, and more times than not, changes or compromises have been made to items to address these concerns. This past summer the department held a series of Saturday "road mapping" meetings that were open to the public in an effort to receive commentary and suggestions as to the future of the Molokai Irrigation System (MIS) and the department's commitments to the MIS. These meetings resulted in a pledge to specific actions that are intended to open communication with the MIS users and community and show our commitment to the users of the system.

The department believes that the current advisory board structure is working and can achieve the desired outcomes for the water users and the department by improving communications between operations and the advisory board. We are actively working to put systems into place that will achieve this.

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

BEN HENDERSON
DEPUTY TO THE CHAIRMAN

KAULANA H. PARK
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF MICAH A. KANE, CHAIRMAN
HAWAIIAN HOMES COMMISSION

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND THE SENATE COMMITTEE ON WATER AND LAND

ON S.B. 3224
RELATING TO THE MOLOKAI WATER IRRIGATION SYSTEM

February 12, 2008

Chair Tokuda and Chair Hee and Members of the Committees:

Thank you for the opportunity to testify. The Department of Hawaiian Home Lands (DHHL) supports the purpose and intent of S.B. 3224 to provide increased authority among users of the Molokai Irrigation System, especially homestead farmers. DHHL believes the "MIS Roadmap to Improvement" process needs to be implemented and tested. S.B. 3224 is premature and should be deferred.

DHHL notes the progress made recently by the Department of Agriculture and the MIS Water Users Advisory Board in establishing a number of processes to set priorities and focus resources for MIS operations and facilities. This represents a major step in the right direction and requires time to work successfully. We look forward to working cooperatively to deal with the many complex problems and issues facing the MIS, to finding solutions to support our homestead farmers on Molokai.

DHHL recommends that S.B. 3224 be deferred.

Puakala Farms
Producers of Quality Fruits and Vegetables
P.O. Box 261, Kualapu'u, Molokai, HI 96757

Senate Committee Water and Hawaiian Affairs
Testimony in SUPPORT of SB 3224
Relating to Molokai Irrigation System Users Advisory

Aloha Senators,

My name is Glenn Ioane Teves and I'm a Hawaiian Homestead farmer. Along with my wife Jane, who is a fifth generation Hoolehua homestead farmer, we have grown apple bananas for 20 years in Hoolehua. We depend on the Molokai Irrigation System as the lifeline of the homestead farming community. Hawaiian Homesteaders gave up some of their rights to the water on Molokai in exchange for the construction of the Molokai Irrigation System. 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 in order 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 set aside for non-homestead farmers. I have been actively involved in the MIS for over 25 years.

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. If homesteaders have 2/3's right to this water, shouldn't they have 2/3's of the seats on the users advisory?

Recently, things have gone from bad to worse. Up to recently, homesteaders had a say on the selection of their one representative. Like the other seats, the respective organizations would nominate their representative. Instead of allowing input from the homesteaders, the Governor has put a friend of hers in the homesteaders. Unfortunately, Mr. Adolph Helm has not been involved in homestead farming nor is he in open communication with the homestead farmers. Instead, he's the president of the Hawaii Crop Improvement Association, the lobbying group for the corn seed companies and a major supporter of GMO technology. He's also an employee of Mycogen Seed company, a subsidiary of Dow Chemical. Mr. Helm is in conflict since the seed companies are the largest users of water from the MIS. Last year, Mr Helm even asked one of the Molokai legislative representatives to kill the DOA audit bill that was introduced by the homestead farmers. Mr. Helm has been working in opposition to the homesteaders and will probably do the same with this bill. In the meantime, there are three members of the MIS advisory working for the seed companies. This is wrong.

If homesteaders have 2/3's right to this water, they should have 2/3's of the seats on the MIS Users Advisory, clear and simple.

Recently, even with a moratorium on water meter due to a decreasing water supply due to long-term drought the MIS advisory allowed Monsanto, another corn seed company open over 1200 acres of additional crop land. The present total use of water from the MIS covers over 2200 acres, and it's believed it can grow very little. The question remains, although homesteaders use only 20% of the water from the MIS, when the homesteaders need the water, who has to cutback on this water? There will be a battle, and it will be political, and it will question the jobs being created by the non-homestead farmers. It won't be about who has first rights to the water. The only way we can prevent this from happening is to assure that homesteaders have a say in the operation of the system, and not by someone who talks from two corners of his mouth, but by 2/3's of the users who are Hawaiian homesteaders deciding the future of their water. Mahalo.

Puakala Farms*Producers of Quality Fruits and Vegetables***P.O. Box 261, Kualapuu, Molokai, HI 96757****Senate Committees on Agriculture and Hawaiian Affairs,
and Water and Land
Testimony in SUPPORT of SB 3224 and SB 2247
Relating to Molokai Irrigation System**

Aloha Senators,

My name is Glenn Ioane Teves and I'm a Hawaiian Homestead farmer. Along with my wife Jane, who is a fifth generation Hoolehua homestead farmer, we grow Apple Bananas in Hoolehua, and have supplied the local market through the major retail outlets in Kaunakakai for the last 20 years. I have been actively involved in the MIS for over 25 years, and we depend on the Molokai Irrigation System for our existence.

The MIS is falling into disrepair due to poor management first by DLNR, and since 1989. Its 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, is only fair that we as homestead farmers have 2/3's of the seats. And this means being 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.

Up to recently, homesteaders had a say on the selection of their one representative. Like the other seats, the respective organizations would nominate their representative, and the Governor's office would rubber stamp. Instead of allowing input from the homesteaders, the Governor has put a friend of hers in the homesteaders seat on the MIS Users Advisory.

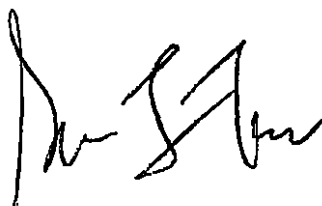
Unfortunately, Mr. Adolph Helm has not been involved in homestead farming nor is he in open communication with the homestead farmers. Instead, he's the president of the Hawaii Crop Improvement Association, the lobbying group for the corn seed companies and a major supporter of GMO technology. He's also an employee of Mycogen Seed Company, a subsidiary of Dow Chemical, and seed corn grower on Molokai.

Mr. Helm is in conflict of interest since the seed companies are the largest users of water from the MIS. Last year, Mr Helm even asked one of the Molokai legislators to kill the DOA audit bill that was introduced by the homestead farmers. Mr. Helm has been working in opposition to the homesteaders, and I'm sure he will oppose a bill that gives homesteaders 2/3's of the seats. He cannot continue to be our representative when he hasn't represented us in a way we expect. In the meantime, there are three members of the MIS advisory working for the seed companies. Although two of them are homesteaders, the fact remains that they represent the corn companies and were not selected by the homestead farmers. This is not

right and will create more tensions between homestead and non-homestead farmers.

Recently, DOA imposed a moratorium on the issuance of water meters, and this was prompted by a water shortage in the MIS due to long-term drought. DOA and the MIS advisory allowed Monsanto, another corn seed company access to water to over 1200 acres of additional seed corn acreage. The total daily water allotment from the MIS covers a total of over 2200 acres of cropland, and it's believed we're near our maximum in what can be extracted by the MIS.

The question remains, although homesteaders use only 20% of the water from the MIS now, when the homesteaders need the water, who will cutback on their water? There will be a battle, and it will be political, and it will bring into question jobs being created by the non-homestead farmers; it won't be about who has first rights to the water. The only way we can prevent this from happening is to assure that homesteaders have a say in the operation of the system, and that they occupy 2/3's of seats on the MIS Users Advisory. Hawaiian homesteaders need to decide the future of their water. Mahalo.

A handwritten signature in black ink, appearing to be "D. S. A.", written in a cursive style.

testimony

From: Maum, Donald (DG) [DGMaum@dow.com]
Sent: Monday, February 11, 2008 4:46 PM
To: testimony
Subject: MFB SB3224 testimony.doc
Attachments: image001.png; oledata.mso

SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
Re: testimony to OPPOSE SB3224



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 AGRICULTURE AND HAWAIIAN AFFAIRS
FEBRUARY 12, 2008, 2:45 P.M.

SENATE BILL NO. 3224
RELATING TO THE MOLOKA'I WATER IRRIGATION SYSTEM
Re: Testimony to **OPPOSE SB3224**

Chairperson Tokuda 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 3224, which proposes to repeal the Molokai irrigation system water user's advisory board and replace it with the Molokai irrigation system water user's board. Many of our members are users of the Molokai Irrigation System and do not support this for the following reasons:

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. As described in SB 3224, 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, HIDO 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 3224

2/11/2008

will be a giant step backwards.

For the well being of farmers on Molokai, we ask that you oppose SB3224.

Respectfully,

Donald G. Maum

Donald G. Maum
President, Molokai Farm Bureau

Adolph Helm
P.O. Box 391 Hoolahua Hawaii
Phone (808) 567-1270 Fax (808) 567-9426

TESTIMONY OF ADOLPH HELM
CHAIRPERSON, MOLOKA'I IRRIGATION SYSTEM WATER USERS ADVISORY BOARD
(MISWUAB)

BEFORE THE SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
FEBRUARY 12, 2008, 2:45 P.M.

SENATE BILL NO. 3224
RELATING TO THE MOLOKA'I WATER IRRIGATION SYSTEM

Re: Testimony to **OPPOSE SB3224**

Chairperson Tokuda and Members of the Committee:

Mahalo for the opportunity to comment on Senate Bill No. 3224. This bill proposes to repeal the Moloka'i irrigation system water users advisory board (Board) and replace it with the Moloka'i Irrigation system water users board. I oppose this bill for the following reasons.

The MISWUAB will be discussing proposed Moloka'i Irrigation System (MIS) bills for legislative session 2008 in our next advisory board meeting scheduled for February 19, 2008. As chairman of the MISWUAB it is in my opinion that the board needs ample time to understand clearly what the benefits and perhaps negative implications are regarding SB 3224. At this short of a notice it would be unfair to expect a fair assessment and response from board members to support or oppose SB 3224. Adding to the uncertainty is the fact the board recently approved the "Road Map to Improvement Working Agreement" which we believe is the first step to establishing a stronger and better relationship between the HDOA, MISWUAB and the MIS User community. In good faith and in the best interest of the MIS, the Users and the Agriculture community we need to give the Working Agreement a chance to work.

I believe the situation with the MIS has improved tremendously over the past two years as we are seeing positive outcomes and improvements. With much appreciation for your concern and interest I ask for you to not support SB 3224.

Mahalo,


Adolph Helm

MISWUAB CHAIRMAN

testimony

From: BROOKS TAMAYE [bktamfam@msn.com]
Sent: Saturday, February 09, 2008 8:33 PM
To: testimony
Subject: SB 3224

SB 3224

Senate Committee on Water and Land
Monday, February 11, 2008 2:30 p.m.
Conference Room 414

**TO: Senator Clayton Hee, Chair
Senator Russell Kokubun, Vice-Chair
Members Committee on Water and Land**

From: Brooks Tamaye
P.O. Box 2266
Wailuku, HI 96793
244-5751

RE: Hearing on SB 3224 – Relating Aquarium Fish Bag Limits

February 11, 2008, 2:30 pm

Conference Room 414, State Capitol

Testimony in Support of SB 3224

Dear Chair Hee, Vice-Chair Kokubun and Committee Members:

Commercial collection of aquarium fish from our near shore waters needs to be better managed. Currently, there are no limits on the number of fish commercial operators can take. The intent of SB 3224 is to establish some kind of limit on the take of these species. Please support this bill.

Sincerely,
Brooks Tamaye

Senate Committee Water and Hawaiian Affairs
Testimony in SUPPORT of SB 3224 and SB 2247
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.

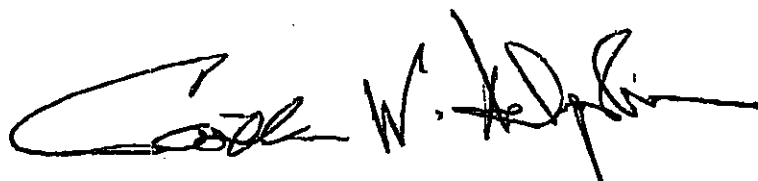
Recently, things have gone from bad to worse. Up to recently, homesteaders had a say on the selection of their one representative. Like the other seats, the respective organizations would nominate their representative, and the Governor's office would rubber stamp. Instead of allowing input from the homesteaders, the Governor has put a friend of hers in the homesteaders seat on the MIS Users Advisory. Unfortunately, Mr. Adolph Helm has not been

involved in homestead farming nor is he in open communication with the homestead farmers. Instead, he's the president of the Hawaii Crop Improvement Association, the lobbying group for the corn seed companies and a major supporter of GMO technology. He's also an employee of Mycogen Seed company, a subsidiary of Dow Chemical.

Mr. Helm is in conflict since the seed companies are the largest users of water from the MIS and compete with the homesteaders for this limited resource. Last year, Mr Helm even asked one of the Molokai legislators to kill the DOA audit bill that was introduced by the homestead farmers. Mr. Helm has been working in opposition to the homesteaders and will probably do the same with this bill. He cannot continue to be our representative when he doesn't represent us. He cannot wear two hats. In the meantime, there are three members of the MIS advisory working for the seed companies. Although two of them are homesteaders, the fact remains that they represent the corn companies and were not selected by the homestead farmers. This is not right and will create more tensions between homestead and non-homestead farmers.

Recently, DOA imposed a moratorium on the issuance of water meters, and this was prompted by a water shortage in the MIS due to long-term drought. DOA and the MIS advisory allowed Monsanto, another corn seed company access to water to over 1200 acres of additional seed corn cropland. The present total use of water from the MIS covers over 2200 acres, and it's believed we're near our maximum in what can be extracted by the MIS.

The question remains, although homesteaders use only 20% of the water from the MIS now, when the homesteaders need the water, who has to cutback on this water? There will be a battle, and it will be political, and it will bring into question jobs being created by the non-homestead farmers. It won't be about who has first rights to the water. The only way we can prevent this from happening is to assure that homesteaders have a say in the operation of the system, and that they occupy 2/3's of seats on the MIS Users Advisory. Hawaiian homesteaders need to decide the future of their water. Mahalo.



Castle W. Adolpho

Testimony
SB3224 Related to the Molokai Water Irrigation System
Senate AHW and WAM
Submitted by: Alton S. Arakaki

I am in support of SB3224. While the service industry has become the dominant economic sector other islands of the State, agriculture continues to be primary economic engine on Molokai as it has for over 150 years. In 2004 it generated \$12 million to the State economy.

The availability of dedicated agriculture irrigation water through the State Department of Agriculture, Molokai Irrigation System, MIS, is one of the primary reason agriculture continue to grow and prosper on Molokai. In 2004 the MIS provide 1.2 billion gallons of water to the farming community, contributed toward generating approximately \$10,000 for every million gallons it provided.

It is very important for the Molokai Irrigation System to perform efficiently and with predictability in order for the farming community to have confidence to continue investing into their businesses and to achieve economic growth on the island. SB3224, that establishes the “user board”, will contribute towards improving MIS performance by providing the users, whose lives depend on it, with more responsibilities in the management of the irrigation system.

Potted Beauties
Producing Potted Plants for Pleasure
 P. O. box 481, Hoolehua, Molokai, Hawaii 96729

**Senate Committee water and Hawaiian Affairs and Water and Land
 Testimony in support of SB 3224 and SB 2247
 Regarding the Molokai Irrigation System**

Aloha Senators,

My name is Rogerene K. M. Arce but, better known as Kali Arce. My husband, Thomas and I are homesteaders with an agricultural lot in Hoolehua. Thomas' parents, Esteban Arce and Anita Naeole Arce were farmers and the original homesteaders. Of the 40 acres they had, they farmed the detached five acres with their seven children over 20 years even during the pineapple days. In 1998, the 35 acres was signed over to us.

We always knew we would one day use it to farm but, never had the means or time to start. By 2006, we made up our minds that we wanted to start a small plant nursery on our lot and eventually farm. We applied for a Molokai Agriculture Development Program (MADP) grant to help us realize this dream. We were ecstatic that we were awarded. We applied for an MIS meter in December 2006. In January 2007, upon inquiry, Tom was verbally told by an MIS employee that our meter was denied. The next day, I attended the MIS Advisory meeting and verbally inquired if that was true since we did not yet receive a letter stating this was so. Randy Teruya of the DOA MIS said that it was denied because they were not allowing any more meters to be installed. Soon after, he said that DOA was mistaken and there was a misunderstanding. He explained that DOA thought our land was a non-homestead parcel for which the moratorium was for. Our meter was finally installed in June of 2007.

As a result, our MADP project was behind by six months. Without the water, the rest of the steps to setting up the nursery couldn't occur, such as, planting the windbreaks, planting the stock plants necessary for future seed and plant material sources, planting the plants for the nursery, and establishing the nursery. With no water on our lot, we couldn't accomplish anything. In an effort to meet our grant proposal objectives before our project contract ended in September of 2007, we ended up establishing our nursery at our residence in Kalae. The big disadvantage is that space is very limited and the price of water is higher than that of MIS.

Since the meter installation, I began paying the acreage assessment fee thinking that we would be installing the water lines during the summer of 2007 but, business picked up with our nursery. Between the months of July and October of 2007 we had the highest sales of potted flowers and herbs since we started our business. By fall, there was rainy weather and we couldn't install the water lines. It's now February 2008 and the weather is more accommodating. We are hoping to install our lines. Wouldn't it have been nice to have been paying MIS fees than County fees for water?

As Hawaiians with the desire to use our homestead for its intended purpose of farming, were unable to do so in the desired time frame because of DOA's "oversight". If we were better represented by the MIS Advisory Board with 2/3's of the seat held by homesteaders, I am sure that my homestead representatives would have not let our situation happen. On another note, through the years, MIS has fallen in disrepair. As a now agriculture producer, a homesteader, and Extension Agent, I believe the appropriated money is necessary to maintain the MIS which provides water to our Hoolohua farming community of which our ohana will be part of very soon.

Kali Mce

2/11/08

To The Senate Committee Water and Hawaiian Affairs:

RE: Testimony in Support of SB 3224 and SB 2247 Relating to Molokai Irrigation System

My name is Daniel Kuhn. I am the Plantation Manager of Coffees of Hawaii, LLC. I have been in the agriculture business on Molokai for over 30 years.

Over the years, I have noticed that the MIS System has never been up to speed with maintenance. For that reason, the system has fallen drastically for the worse. Based on DOA promises to Molokai farmers, they have not lived up to the capabilities of the irrigation system. They have allowed it to fall in almost disrepair. If not for all the constant concern from the farmers and legislative help, the audit would not be happening today.

I also support the Molokai Homestead farmers to have the two-thirds voting on the MIS Advisory Board. For those reasons, I support Senate Bill #3224 and #2247. It is about time for changes to take place.

Mahalo,

Daniel Kuhn
Coffees of Hawaii, LLC
Plantation Manager

testimony

From: Alan Murakami [almurak67@gmail.com]
Sent: Monday, February 11, 2008 5:36 PM
To: testimony
Subject: SB 3224 RELATING TO THE MOLOKAI WATER IRRIGATION SYSTEM
Attachments: 2007 09 04 Kaichi op EA for Ranch lease of MIS.pdf

THE SENATE, THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

DATE: Tuesday, February 12, 2008
TIME: 2:45 PM
PLACE: Conference Room 224

SB 3224 RELATING TO THE MOLOKAI WATER IRRIGATION SYSTEM

I SUPPORT in concept 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.

There are very good reasons to support such a change, most of which relate to what appears to be a basic misunderstanding of the Department of Agriculture to operate the Moloka`i Irrigation System 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.

Background of the 2/3 preference for homesteaders. For years before the actual construction of the system in the 1960's, there was furious 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. 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.

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 ther 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.

Fax Message**LATE**

To: Seargent at Arms office of the Hawaii State Capitol From: R. Foster

Fax No: 800-586-6659

Pages: 1

Phone No:

Date: February 11, 2008

Re: Testimony to **OPPOSE SB3224**

Seargent at Arms, please submit the following testimony to the
COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
and
COMMITTEE ON WATER AND LAND
hearing on February 12, 2008, at 2:45pm in the
Conference Room 224 of the State Capitol

Honorable Committee Members, Vice Chair persons and Chair persons, 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 SB3224. 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 3224, the governing Board's responsibilities and powers are extensive. Will the HIDOA 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 3224 will be a giant step backwards.

Respectfully,



Raymond J. Foster

LATE

**Senate Committee Water and Hawaiian Affairs
Testimony in SUPPORT of SB 3224 and SB 2247
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 by DOA, and its been estimated that we 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 goes 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 see 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.

Recently, things have gone from bad to worse. Up to recently, homesteaders had a say on the selection of their one representative. Like the other seats, the respective organizations would nominate their representative, and the Governor's office would rubber stamp. Instead of allowing input from the homesteaders, the Governor has put a friend of hers in the homesteaders seat on the MIS Users Advisory Board. In the meantime, there are three members of the MIS advisory board working for the seed companies – total is now 4.

Although two of them are homesteaders, the fact remains that they represent the corn companies and were not selected by the homestead farmers. This is not right and will create more tensions between homestead and non-homestead farmers.

Recently, DOA imposed a moratorium on the issuance of water meters, and this was prompted by a water shortage in the MIS due to long-term drought. DOA and the MIS advisory board allowed Monsanto, another corn seed company, access to water over 1200 acres of additional seed corn cropland. The present total use of water from the MIS covers over 2200 acres, and it's believed we're near our maximum in what can be extracted by the MIS.

The question remains, although homesteaders use only 20% of the water from the MIS now, when the homesteaders need the water, who has to cutback on this water? There will be a battle, and it will be political, and it will bring into question jobs being created by the non-homestead farmers. It won't be about who has first rights to the water. The only way we can prevent this from happening is to assure that homesteaders have a say in the operation of the system, and that they occupy 2/3's of seats on the MIS Users Advisory. Hawaiian homesteaders need to decide the future of their water. Mahalo.

GEORGE MOKUAU FARMS
P.O BOX 185 HOOLEHUA, HI 96729 PH: 808-567-6077

LATE

Senate Committee Water and Hawaiian Affairs
Testimony in Support of SB 3224 and SB 2247
Relating to Molokai Irrigation System

Dears Senators,

My name is George Mokuau and I am a Homestead Farmer. I have been farming for over 30 years. I farm sweetpotatoes on Molokai, I am in support of SB 3224 and SB 2247. Throughout my years of farming I have witnessed many changes not for the good of the system or its users. I am convinced that the mismanagement of DOA is solely their fault. Without the constant complaining of many of us and asking for legislative assistance I do not believe that DOA would be conducting and audit. For those reasons alone I feel the need to support these bills in the best interest of the farming community. I am not one to come forward and say much but just neglecting a state of the art facility is heart wrenching to me. Our communication with the DOA as well as the advisory board has fallen on deaf ears. I believe its time for a change.

I also believe that the MIS advisory board needs to consist of 2/ 3 homestead farmers for the sole reason of their 2/3 water rights. My explanation to that is if you were to own 40% shares in any company shouldn't it be that you also own 40 % of the voting rights. Those rights belong to homestead farmers and it should be that way. I ask for your support on these bills of SB 3224 and SB 2247.

Mahalo,


George Mokuau, Homestead Farmer

LATE

**TESTIMONY of
AHUPUA`A O MOLOKA`I
THE SOVEREIGN COUNCIL OF HAWAIIAN HOMELANDS ASSEMBLY
HO`OLEHUA HOMESTEAD AGRICULTURE ASSOCIATION**

**THE SENATE
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**SB2247 and SB3224 – Relating to the Moloka`i Irrigation System
2:45 p.m. Tuesday, February 12, 2008**

The island of Moloka`i was the initial homestead pilot program for the Hawaiian Home Commission of 1920. Our ancestors pioneered the arid land of Molokai, they sacrificed, and they endured hardships for the expansion of Hawaiian Homelands program. Since 1923, the lack of water was critical, the homesteaders prayed for water. In the 1960's the Molokai Irrigation System (MIS) was built with the primary intent to irrigate the agriculture lands in Ho`olehua. It is now 2008, and the waters transmitted through the MIS are still a serious concern to the Ho`olehua homestead farmer. The mandate to secure the 2/3 native water rights §167-C, and the maintenance to operate the MIS has been neglected for years. Originally, the DHHL was to manage the MIS, they surrendered their responsibility to the Department of Land and Natural Resources (DLNR) and then to the Department of Agriculture (DoA), of which both agencies have mismanaged the MIS.

The homestead farmers expect the DoA to do a better job in managing the MIS, if this is not possible, allow the Moloka`i irrigation system water users board the opportunity to operate their agriculture water system.

I support the proposed SB3224, the Moloka`i Irrigation System Water Users Board.

I support the proposed SB2247, the Moloka`i Irrigation System Maintenance; Appropriation (\$)

Humbly submitted by Kammy Purdy
President of the Ahupua`a o Moloka`i (represents 5 Moloka`i homestead associations)
Executive Secretary and Mokuuni President for the SCHHA
Treasurer of the Ho`olehua Homestead Agriculture Assn.