
HOUSE CONCURRENT RESOLUTION

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

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

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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



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

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

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

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

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

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

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

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

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



1 other utilization of the water thereon, thereby allowing
2 construction of a ditch system; and
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4 WHEREAS, this royal lease was issued subject to the
5 condition that there would be no interference with the vested
6 interests in water of land owners in Ke`anae, Wailua-nui, or
7 other parts of East Maui; and
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9 WHEREAS, in 1904, Hawaiian Commercial and Sugar Company,
10 which was Alexander and Baldwin's Maui sugar plantation, while
11 continuing its out-of-watershed diversion of stream flow from
12 East Maui streams, successfully sued to enjoin Wailuku Sugar
13 Company's out-of-watershed stream flow diversions from the
14 Wailuku Stream based upon Hawaiian Commercial and Sugar
15 Company's claim of appurtenant rights connected with its
16 purchase of interests in nearby *kuleana*; and
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18 WHEREAS, the Board of Land and Natural Resources presently
19 leases over 33,000 acres of ceded lands to Alexander and
20 Baldwin's East Maui Irrigation Company, from which it presently
21 diverts an average of 60,000,000,000 gallons of water per year
22 from East Maui streams at one-fifth of a cent per thousand
23 gallons; and
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25 WHEREAS, the First Circuit Court has ruled that any
26 diversion of water cannot injure others with appurtenant,
27 riparian, or traditional and customary native Hawaiian rights to
28 the same water; and
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30 WHEREAS, members of Na Moku Aupuni O Ko`olau Hui, Beatrice
31 Kekahuna, Marjorie Wallett, and other native Hawaiian *kuleana*
32 land owners in East Maui, have appurtenant, riparian and
33 traditional and customary native Hawaiian rights that are
34 violated by Alexander and Baldwin's East Maui Irrigation
35 Company's stream diversions; and
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37 WHEREAS, this deprivation of water rights has resulted in a
38 chronic injury to the residents of Wailua-nui and Ke`anae
39 valleys and has directly impacted their capacity to continue
40 traditional and customary practices, contrary to sound public
41 policy and constitutional protections; and
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1 WHEREAS, the Board of Land and Natural Resources has, since
2 at least May of 2001, failed to act to protect the rights of
3 these residents of East Maui; and
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5 WHEREAS, for the past six years, the Commission on Water
6 Resource Management has failed to act on petitions to amend the
7 interim in-stream flow standards of twenty-seven East Maui
8 streams filed on behalf of these East Maui residents; and
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10 WHEREAS, for the past six months, the Board of Land and
11 Natural Resources has failed to act on a request by these East
12 Maui residents for timely and prompt interim relief; and
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14 WHEREAS, the State's failure to act results in ongoing harm
15 to the superior water rights of these East Maui residents; now,
16 therefore,
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18 BE IT RESOLVED by the House of Representatives of the
19 Twenty-fourth Legislature of the State of Hawaii, Regular
20 Session of 2007, the Senate concurring, that the Board of Land
21 and Natural Resources and the Commission on Water Resource
22 Management are each requested to submit a report to the
23 Legislature not later than twenty days prior to the convening of
24 the Regular Session of 2008, explaining why each agency has not
25 ordered Alexander and Baldwin's East Maui Irrigation Company to:
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27 (1) Immediately and, at a minimum, release a combined
28 total of 5,000,000 gallons of water -- which is
29 calculated at fifty-one acres of taro land requiring
30 100,000 gallons of water per acre per day -- that is
31 diverted from Wailua-nui and Waiokamilo streams and
32 their tributaries, and from the watershed mauka of the
33 *ili* of Kupau, so that it is allowed to flow past its
34 ditch system and into Wailua-nui Valley for taro
35 irrigation;
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37 (2) Immediately release into Honopou Stream, below its
38 Haiku diversion, additional stream flow so that, at
39 the point of the Kekahuna and Walleth properties'
40 diversion from Honopou Stream, if necessary, no less
41 than 600,000 gallons per day may flow into their *auwai*
42 to meet the irrigation water needs of the respective
43 residents and their families without requiring them to



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

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

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

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

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



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1 thereafter, provide a simple, clear, and efficient process for
2 investigating reported violations of these rights, and
3 conducting timely and frequent reviews of any disputes so these
4 water rights issues are promptly resolved; and
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6 BE IT FURTHER RESOLVED that certified copies of this
7 Concurrent Resolution be transmitted to the Chairperson of the
8 Board of Land and Natural Resources and the Chairperson of the
9 Commission on Water Resources Management.
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OFFERED BY: Mel Carroll

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