

## **Know Your History, Know Your Water**

Special Molokai Water Edition – Part II

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*“Uwe ka lani, ola ka honua”, “When the sky weeps, the earth lives.”*

*~ Olelo Noeau*

### **Continued from Part I...**

#### ***Politics in the Transmission of Domestic Water through the Molokai Irrigation System (MIS)***

The Molokai Irrigation System (MIS), one of the state’s irrigation systems, is also being used to transport domestic water from Molokai Ranch’s Well 17 in the Kualapuu Aquifer to West Molokai. Water travels over 20 miles to the western side of the island to the communities of Maunaloa and Kaluakoi.

From a human health and safety standpoint, running domestic water through a surface water open ditch agricultural water system, including a 124-acre reservoir, and is inconsistent with state health and federal clean water laws, and has been going on for more than 30 years. According to a State Marine Biologist, it’s estimated that over 500,000 pounds of tilapia live in this reservoir.

For decades, from the 70’s even into the 90’s, water in Maunaloa town did not meet provisions of the Clean Water Act. Every three months, signs would be posted in Maunaloa town and also sent to residents that “for the last quarter, your drinking water did not meet

standards of the Clean Water Act, including turbidity and high microbiological count.” The State had no way to force Molokai Ranch to comply, since they would threaten to shut down the town, and leave many homeless. This same kind of attitude has prevailed over the last ten years as Molokai Ranch has charged water users over \$7 per thousand gallons for domestic water, both the County and the State had no stick to change the situation.

Originally, Molokai Ranch lands covered over 70,000 acres and today is still the largest landowner on the island with around 50,000 acres. Most of these lands once belonged to the royal family, including Princess Ruth Ke’elikolani, who bequeathed these lands to her cousin, Princess Bernice Pauahi Bishop. The Cooke family, including Amos Starr Cooke and Juliette Montague Cooke oversaw the Royal School, where many of Hawaii’s royalty were educated, and maintained a close relationship with many of them.

The sale of land by Princess Bernice’s husband, businessman Charles Reed Bishop in 1897 was the first sale of Bishop Estate land. In the early 1970’s

the Cooke family struggled to show a profit from their ranching operations ranching and the through the leasing of land for pineapple production to Libby, McNeil, and Libby and also Del Monte, with pineapple operations in Maunaloa and Kualapuu. The closure of the first of two pineapple operations in the mid-1970's signaled the end of payments to support their large land holdings, leaving them to fall back on ranching, which was not enough to keep them in the black.

Seeking another income stream, Molokai Ranch sold a large parcel at Kaluakoi to a resort developer, Louisiana Land and Exploration Company, who envisioned a population of 30,000 residents there.

However, the greatest challenge was finding a way to transport water from their well, designated Well 17 in the Kualapuu Aquifer in Central Molokai to Kaluakoi on the western end of the island. This well was purchased from Del Monte, which was used for their pineapple operations in Kualapuu.

A consultant, Christopher Cobb, was hired by Louisiana Oil and Exploration Company to devise a strategy to transport water to the resort development. His plan called for the transmission of water from Well 17 in Kualapuu, through the Molokai Irrigation System, to Mahana on the western boundary of Hawaiian Home Lands also and at the end of the MIS where it would be pumped to Kaluakoi.

The State Board of Land and Natural Resources (BLNR) was tasked with

making the final decision on the matter under a new Chairman, Christopher Cobb, the same consultant who devised the Kaluakoi water transmission strategy.

Mr. Cobb, along with fellow board members approved the agreement to transport water from Well 17 to Mahana through the MIS. Under the gun to approve the transmission agreement prior to the impending enactment of the Natural Environmental Protection Act (NEPA) that would have added layers to the approval process, BLNR approved the decision just weeks before NEPA took effect.

Hoolehua homesteaders were up in arms that a state irrigation system designed and constructed to support Hawaiian Home Lands rehabilitation efforts would be used to transport water to West Molokai for a resort development. They sued the county, state, federal government, and the resort developer in two separate court cases, losing in both cases.

Under the management of the State Department of Land and Natural Resources, little if any preventive maintenance was performed on the Molokai Irrigation System. It was only after the system broke down or farmers complained incessantly that any action was taken to repair the system.

One example was the clogging of farmer's irrigation systems by tilapia bones and snail shells. Action was taken only after then-Governor Ariyoshi received a letter with fish bones and

snail shell that plans were implemented to repair the system.

On top of the MIS water rate, starting at 8 cents per thousand gallons and rising to 12 cents over a decade later, monthly acreage assessments of \$1.10 per acre of land in farm production were intended to provide a special fund for preventive maintenance. Both DLNR and later DOA continued to collect acreage assessments, but never implemented such a program.

Instead of anticipating the useful life of key pieces of equipment vital to the operation of the system, repairs were only performed when a major breakdown occurred, from short circuits in the electrical system that power pumps in the tunnel and malfunctioning meters at the edge of farms.

On top of this, poor planning in scheduled maintenance and repairs, including the lowering of water to construct cement reservoir berms dropped water to dangerously low levels, jeopardizing farm production and forcing mandatory cutbacks in water use.

The lack of a proactive approach prompted farmers to impose pressure on the DOA. Farmers proposed efficiency strategies to improve the system such as pushing DOA to utilize timers to pump water only during times of the day when electrical rates are lower, such as off-peak hours, since the MIS is the largest user of electricity on the island.

The water transmission agreement between Molokai Ranch and the DOA has been a continuing challenge with perennial non-compliance of the agreement and a lack of enforcement. The Kaluakoi development has created a dependence on a state irrigation system distribution and storage infrastructure to provide them with water when their well system breaks down and is unable to pump water.

Several months of breakdowns taxed the MIS, even when the transmission agreement stipulates that Molokai Ranch will 'put in water first before taking water out'. Several iterations of the agreement slowly increased benefits to Molokai Ranch, while decreasing protections for agricultural use of the MIS.

What the state, through DLNR and now DOA, has failed to adequately assess is the true value of this agreement, and how much it would cost Molokai Ranch to construct their own storage and transmission system to serve West Molokai.

The use of a state irrigation system as water infrastructure for a resort development has always been in question, but since the mid-1970's DLNR had looked at it as an income generator for the agency. DOA took over the system in 1989 as part of a consolidation of agricultural water systems, and continued this same kind of mind set in the transmission agreement.

An important question remains is should a private entity, or a foreign entity for that matter, be allowed to utilize a state irrigation system as a semi-permanent infrastructure to store and transport water for a resort development?

Many important parts of the transmission agreement were amended or not enforced by both DLNR and more recently DOA. These changes extended benefits to Molokai Ranch and decreased oversight and monitoring of the agreement by DOA.

Both DHHL and the homesteaders were not given input into the changes, which in their view, have weakened or jeopardized their rights to the water. These changes included removal of provisions of 'one line in and one line out' and 'no storage of water in the reservoir'.

Both DLNR and DOA failed to enforce the provision of putting in water before taking it out, which Molokai Ranch violated innumerable times. The lack of penalties for breaking the agreement left no 'hammer' in place to prevent or stop violations to the agreement, and this lack of a hammer continues to this day as violations have continued for over 30 years.

Molokai is a small community and you can find out what is going on just by asking others. In the late 1980's, homesteaders were alerted to a breakdown of the pump at Well 17. No diesel fuel was being purchased from the local petroleum company to operate the water pumps.

In questioning the MIS manager about the pump breakdown, he denied the pumps were broken and produced daily pumping records from Well 17 showing pumping amounts. A week later, an attorney for Legal Aid requested pumping records for the same week, and the MIS manager produced a new set of records, this time showing no pumping for the same week.

The two records were compared and exposed the discrepancy. The MIS manager latter admitted to fabricating the pumping records, and giving West End developers free water. This brought into question just how long this practice was going on and how much water was actually given away. These kinds of concerns were brought up in the homesteaders court cases over a decade earlier in an attempt to block the initial transmission agreement, and it became a self-fulfilling prophesy.

Another blatant example of MIS misuse was supplying domestic water to Kaunakakai town over a 25-year period. The County of Maui, looking at ways to serve the needs of Kaunakakai town, approached DLNR to inquire about the possibility of utilizing water from the MIS for domestic water needs of the town.

As part of the agreement to construct the MIS through the federal Bureau of Reclamation, the State was forbidden from selling water for domestic use. The State, through DLNR, decided to give the water to the County for free while the County sold the water to residents, generating \$500,000 in annual revenues from the sales of water.

In one of his last acts as Governor, George Ariyoshi in 1986 approved the construction of a new County well in the Kualapuu Aquifer. To assure they would find water, the well was drilled about 500 yards away from one of the two Hawaiian Homes wells. The pumping of the new county well has continued to interfere with the quality of the Hawaiian Homes water, increasing its salinity content especially during summer months, and will also be a threat to increased water use.

In the 1990's, citing the issue of rising chloride content at the Hawaiian Homes well, the Commission on Water Resource Management requested that the County of Maui vacate their well and construct another well outside of the Kualapuu Aquifer. Although the County has made some progress on paper, calling for construction of a well over five years ago as part of their Water Resources Management Plan, no plans have been implemented nor a well site identified.

### ***A New Regime***

In 1987, Molokai Ranch was purchased by Brierley, a large New Zealand Corporation with assets of over \$10 billion at that time. They attempted to convene a community engagement process to push their agenda, namely enhancing their access to water to increase land values, but the larger community wasn't buying into the idea.

Molokai also looked at the feasibility of agricultural enterprises, such as sheep, dairy, and hog production, but either it

didn't pan out economically or it didn't reach beyond the planning phase. During this time, Brierley was purchased by Guoco, a Malaysian company invested in resorts and casinos.

### ***The Repurchase of Kaluakoi***

In the late 1990's, Molokai Ranch repurchased the Kaluakoi properties from Kukui Molokai subsidiary of Tokyo Kosan, including the closed Kaluakoi Hotel and Golf Course and unsold parcels.

In the process of closing the purchase of Kaluakoi, Molokai Ranch failed to submit an application to the Commission on Water Resource Management for a water allocation before the deadline. To date, they have not received an allocation for the pumping of water from Well 17 in the Kualapuu Aquifer, but they continue to pump water daily in violation of the State Water Code.

### ***Battle Royal***

In the early 2000's, Molokai Ranch initiated a community input process, proposing community concessions in exchange for support and approval to develop millionaire estates at La'au Point. Concessions included the transfer of lands to the community and a land trust. With community activists split on the issue and almost two years of infighting and heated community meetings, the deal fell through as opposition to their plan escalated.

The State Land Use Commission (LUC) meeting on Molokai in 2007 was the final battle ground for the La'au Point





***Kaluakoi on a Nice Day. From top, Ka lae o ka Ilio, Kawakiu, Pohakumauliuli, Kepuhi (site of Kaluakoi Resort and Golf Course), Pu'u o Kaiaka, and Papohaku Beach***

development. Through day-long testimonies, opponents who provided testimony outnumbered supporters 2 to 1. Molokai Ranch, sensing a loss was in the wings, withdrew their application at the eleventh hour of the hearing. One of the key sticking points stopping the project was the increase in water use, which Molokai Ranch downplayed in their LUC deposition.

### ***Three Documents***

Aside from a water allocation or permit from CWRM, two other documents must be secured in order to legally deliver water to West Molokai. These include a transmission agreement between Molokai Ranch and the DOA, and also an Environmental Assessment since the water is crossing state lands (Hawaiian Home Lands). If deemed necessary, the State, through DOA, may ask Molokai Ranch to complete an Environmental Impact Statement.

To date, Molokai Ranch has not secured an agreement to transport water through the MIS from the DOA. Neither has it

secured a water permit from the Commission on Water Resource Management to remove water from Well 17 in the Kualapuu Aquifer, a Special Water Management Area.

Regarding the need for an EIS, in court documents deciding the case between Hawaiian homesteaders and the state in 1981, *Ah Ho vs State of Hawaii*, it concluded that:

*"The rental of space in the MIS would facilitate the development of a large resort complex in a previously unpopulated area, and allow water to be transported from its source to another area, and cause a rise in the salinity of the system's irrigation water. The use of a government pipeline, the implicit commitment of prime natural resources to a particular purpose, perhaps irrevocably, and the substantial social and economic consequences of the governmental approval of the proposal would dictate the preparation of an EIS."*

It's explicit that a full-blown Environmental Impact Statement be conducted, but DOA has not asked for one. The Department of Health Office of Environmental Quality Control (OEQC) has brought this to their attention, but DOA has not responded.

### ***Molokai Ranch Abandoning Molokai?***

In 2008 and 2009, after losing their bid to develop La'au, Molokai Ranch became very vindictive with the community, laying off over 95% of its 100+ employees. In ancient times, if you wanted to punish your opponents after a

fierce battle, you can show your vindictiveness and ‘pillage the village’ by destroying their food, including their coconut trees. Unknowingly, Molokai Ranch cut a bunch of their coconut trees to block access to areas of the Kaluakoi Hotel and Golf Course, and offended the community.



**Kaluakoi on a Bad Day. Soil erosion from Kakaako River entering the ocean near Kaluakoi Resort after a flash flood. All rivers on West Molokai were flowing, a very rare event. Late January 2014**

This action was foretold by previous officials of the company years earlier that Molokai Ranch will morph into a land management company and start selling off viable assets, and laying off most of its work force.

Their coup de grace was an attempt by to abandon an obligation to deliver water to West Molokai. Both the County and State were held hostage, and left with no choice but to allow Molokai Ranch to increase their water fees by 178% for users of their water system in Kualapuu, Maunaloa, and Kaluakoi, many who struggle with fixed incomes, especially in Kualapuu and Maunaloa.

A press release by residents included the following: *In May 2008, Molokai Ranch, citing financial impossibility but providing no financial evidence, suddenly announced the company would terminate its water and sewage utility services at the end of August. In July, The Department of Health said: “The lack of a sustained and reliable source of safe drinking water in West Molokai will create a substantial danger...an imminent peril to the public health and safety.” By threatening to cut off an essential lifeline to the Molokai community, Molokai Ranch created a manmade and calculated crisis in order to avoid financial responsibility.*

*Without conducting a physical or financial audit of the utilities, the PUC bought into the Ranch’s threats, sided against the ratepayer, and claimed it “had no choice” but to raise the rates of Waiola O Molokai, Inc. water utility by an unprecedented 178%. The people of Molokai cannot afford to pay such exorbitant rate increases, and should not be forced to subsidize mismanaged utilities.*

This incident brings Molokai Ranch’s credibility into question as a viable partner in a new transmission agreement with the DOA, and should be raising red flags with many state agencies. If Molokai Ranch walks away from their agreement, the state will be left holding the bag and will now be managing a domestic water system within an agricultural water system.

On top of this, Molokai Ranch formed a special Limited Liability Corporation

(LLC) to manage the water system, Waiola 'O Molokai, as a shield to protect their mother company against litigation and fines. Whether the state can pierce Molokai Ranch's corporate shield in an event the agreement falls through remains to be seen.

Charging Molokai Ranch exorbitant fees or requesting a large bond may only aggravate matters, as they will devise a way of transferring costs to their water users, and has already proposed water rates over \$7 per thousand gallons for its users.

Another major glitch in the state environmental review process calls for DOA to be the reviewing agency for this Environmental Assessment (EA) or if deemed a necessity, an Environment Impact Statement (EIS). If approved, DOA will stand to gain thousands of dollars through the pipeline agreement with Molokai Ranch. What is wrong with this picture? Is the mongoose guarding the hen house? And what are the benefits to Hawaiian Homesteaders, who are supposed to be the main beneficiaries to the MIS?

### ***When is Tomorrow?***

There are many challenges ahead. For one, there's only sufficient water from the Molokai Irrigation System to irrigate about 2500 acres at any given time. In the Hoolehua Hawaiian Homes area alone, there are over 7,800 acres of arable agriculture land, so how do you provide water for all of Hawaiian Home agricultural lots now and in the future?

Right now, homesteaders are using only about 20% of the total water, but have rights to 2/3's or 66% thereof. Due to the lack of sufficient water to support all the present agricultural operations utilizing the MIS, there are ongoing mandatory water restrictions on the use of MIS water for non-homestead water users who must cut back on water use anywhere from 20- 30%, depending on the time of year, and this appears to be a long-term trend with on-going drought conditions.

In the long term, any increase in the use of water by Hawaiian homesteaders will result in a corresponding decrease in water use by non-homesteaders, including the corn seed companies, the Molokai Ag Park, and Molokai Coffee.

Every homestead agricultural water user needs to understand this statement and the ramifications thereof. It's doubtful whether non-homestead farmers will stand by and let that happen. The corn companies will probably come up with innovative strategies on how to occupy Hawaiian Home Lands in order to reap homestead water rights, and *this is already happening!!!*

This is a Hawaiian Homes issue that needs to be clarified when leasing revenue-generating lands. Should lessees of DHHL revenue-generating lands hold the same rights to water from the MIS as homesteaders? DHHL needs to provide more oversight and enforcement on these kinds of agreements because it affects the use of water for homestead farmers.



### ***It Ain't Over Until it's Over***

Although the Hawaiian Homes Act was amended by an agreement between DLNR and the U.S. Department of the Interior Bureau of Reclamation to force homesteaders to pay for construction of the MIS because they construct it to benefit just one ethnic group, there's still the question of legality. The Department of the Interior and the U.S. Government is tasked with upholding the federal Hawaiian Homes Act, not diminishing it.

But there's a silver lining in some of the laws left in place. In a letter dated June 3, 1985 from William M. Tam, then Deputy Attorney General, to BLNR on their request for a clarification of DHHL and homesteader rights to water, Mr. Tam refers first to Hawaii Revised Statutes 174-4:

*"To the extent that the same (i.e. water) may be necessary for time to time for the satisfaction of their water needs, domestic and agricultural, the Hawaiian homes commission shall at all time, upon actual need thereof being shown to the board (BLNR), have a prior right to two-thirds of the water developed for the irrigation and water utilization project by the tunnel development extending to Waikolu valley and ground water developed west of Waikolu Valley..."*

Mr. Tam also quotes Act 224, passed by Hawaii's Territorial Legislature in 1943, which created the Molokai Irrigation System. Section 4 of the Act provided that Homestead lessees have a preference on all water developed in the system. It read as follows: *"The lessees*

*of the Hawaiian Homes commission shall have the right to have the water needs, domestic and agricultural, first satisfied before any water shall become available for sale to any other person or persons, and, in the event that there is no surplus over and above the needs of said lessees, then said lessees shall be entitled to the whole thereof"*

I'm no attorney, but what the last part of this sentence says is that if there's not enough water for homesteaders, then they shall be entitled to the whole thereof. Homesteaders will take all of it, and this 1/3-2/3 stuff goes out the window. When you really look at this interpretation of the law, this is consistent with the Water Code and the original Hawaii Homes Act.

### ***Whose Law?***

There are Department of Agriculture rules and regulations that run counter to provisions of the Hawaiian Homes Act, and these rule have been brought into question on numerous occasions. One example is that only homesteaders with more than two acres of land can access the Molokai Irrigation System, and this law relates to the definition of agricultural land. However, there are homesteaders with less than two acres who grow crops for subsistence, and don't have access to water from the MIS.

DHHL's law is the higher law, and it states that all homesteaders should have access to water. DHHL can also come up with their own rules for the definition of agricultural lands. One

example was attempts by DOA to hold homesteaders raising livestock to an acreage fee covering the entire acreage of their pastures. After pressure from homesteaders, DOA relented and allowed homesteaders livestock producers to utilize MIS water but has not written it into their rules.

DOA rules relating to the management of state irrigation systems have attempted to take a one-size-fits-all approach to irrigation system management, but in the process, is contradicting and overriding the Hawaiian Homes Act. As a result, DOA has shown that they do not understand the true purpose and intent of the Molokai Irrigation System in addressing the water needs of homesteaders.

### ***Enforcement of DHHL Land and Water Rights***

The Department of Hawaiian Home Lands is responsible for enforcement and controlling the use of water on its lands, including homesteads, licenses, general leases, and lands under revocable permit. Since water rights are tied to the land, any illegal use of lands impacts on the use of homestead water. The illegal use of Hawaiian Home Lands has been a problem in the past, and continues to occur on some of its lands.

In the late 1980's a Midwest farmer was illegally subleasing eighteen 35-acre agricultural homesteads in Hoolehua, and homestead farmers were being impacted not only by his marketing practices, but also by lax pest control practices. As a result, two homestead

farmers lost their crops when the non-homestead farmer failed to adequately control melon flies, citing a 'soft market' and abandoning his fields adjacent to the homestead farmer's fields. Under the conditions of the Hawaiian Homes Act, third party agreements are illegal, but were allowed under political pressure in the past. In this situation, DHHL looked the other way.

The issue finally came to a head when one of the impacted homestead farmers approached a nearby farm lot utilized by the non-homestead farmer, removed the farm workers from the tractors at gunpoint and fired into the tractor engines, damaging them. The police intervened and arrested the homesteader.

Outraged homesteaders surrounded the jail in Kaunakakai and threatened police officers, who were outnumbered with no possibility of backup from Maui since the airports were closed and concerned for their safety. The non-homestead farmer refused to press charges, but this issue came to a head when homesteaders sued DHHL for non-enforcement of the Act, first losing in District Court, then appealing and winning the case in the State Supreme Court.

More recently, Monsanto is occupying Hawaiian Home Lands in Mahana. This area was identified in the 1990 DHHL Hoolehua Plan as future DHHL agricultural park lands. Instead, the Hawaiian Homes Commission issued a 20-year license to a homestead farmer, locking out the possibility of using these lands to allow new homestead farmers

to try their hand at farming. Whatever spin is put on the agreement, the fact remains that a party other than the lessee is benefiting from this land, including the transfer of HHL water rights to a third party.

There appears to be a lack of institutional memory in what types of land lease agreement should be allowed in light of past suits to protect against third-party agreements and the lack of implementation of community-driven plans agreed upon by Hawaiian Home Land communities.

These kinds of questionable arrangements weaken laws that are in place, and may even establish precedence in future leasing practices, busting the door open for increased use of Hawaiian Home Lands and water resources by non-homesteaders and non-lessees. The bottom line is that the resources of the Department of Hawaiian Home Lands need to be reserved first for homesteaders.

As it now stands, those occupying DHHL properties, especially those under general lease and revocable receive the same water rights as homesteaders. This is wrong.

### **Recommendations**

The following recommendations to ensure protection of Hawaiian Home Lands first rights to water should be considered:

The management of the Molokai Irrigation System should be transferred back to the Department of Hawaiian

Home Lands (DHHL) where it rightfully belongs and whose primary responsibility it is to uphold the provisions of the Hawaiian Homes Act. DHHL already manages a domestic water system covering much of the same area. Most of the homestead irrigation users are also domestic water users.

By transferring the Molokai Irrigation System to DHHL, efficiencies could be increased by combining both systems under one agency, including billing, data collection, pumping, planning, and management and maintenance of water infrastructure. Since DHHL water rights are tied to the land, it makes sense that DHHL should control water use and delivery to better manage activities on its lands. Presently, in the event of a breakdown in the MIS, the Department of Hawaiian Homes is called in with their heavy equipment to assist DOA, so they're already managing the system in some regard.

There have been challenges in the past related to interpretations of the Act where beneficiaries have had to hold DHHL accountable, and in some extreme cases, challenge interpretations to the Act in court. These actions will continue, but by transferring the Molokai Irrigation System to DHHL, both DHHL and beneficiary accountability can temper management of the MIS to greatly benefit agricultural and subsistence homesteaders.

Management of the system could include more homestead farmer involvement to increase efficiency and

keep costs down by volunteering to assist in maintenance of the reservoir banks, for example.

Concerns by DHHL about taking over management of the MIS center on future breakdowns in the system that they may not be able to afford are legitimate. However, the State of Hawaii is ultimately responsible for execution of the Hawaiian Homes Act and should be held financially responsible for neglect of the system over the decades.

As it now stands, MIS repairs have been performed using DHHL equipment and personnel, including bucket loader and dump truck, and these repairs could not have been completed without it, so in the real sense DHHL is already involved in the maintenance of the MIS. As a transition strategy, this role should be expanded to the point where DHHL manages the system in its totality, including the transfer of personnel if required.

A two-tier water rate should be implemented to better address the main purpose of this system, and this is to encourage the utilization of Hawaiian Home Lands by homesteaders in fulfillment of the Hawaiian Homes Act to rehabilitate Hawaiians.

Also, lessees of Hawaiian Home Lands revenue-generating lands should be held to the same conditions as the 1/3 non-homestead water users in terms of water pricing and mandatory water use cutbacks during water shortages. The idea of two-tier water pricing should also be investigated. The bottom line is that

those on Hawaiian Homes General Lessees and Revocable Permits should not have the same water rights as homesteaders.

### **Future Water**

If you don't use it, you lose it! This is the mantra that DHHL needs to constantly remember. There will always be threats to DHHL water, and one way to approach it is by projecting water needs into the future under different land use scenarios. Only by reserving sufficient water can native Hawaiians occupy future Hawaiian Home Land communities, or even thrive in the present ones.



*Kapuaiwa Coconut Grove with springs along the shore –*

One example of an unutilized resource is Waihanau Valley, identified as a DHHL water source. The system lies in disrepair when it could be utilized by areas without agricultural water, including upper Hoolehua and especially Kalamaula. Possible scenarios for this water include connecting this system to the MIS, while at the same time, connecting those Kalamaula

homesteaders interested in farming to the MIS.

Another option would be to fill water tanks in upper Hoolehua to serve those homesteads above the MIS reservoir where pumping would be required to serve them, including homesteads on Lihipali Avenue.

Kalamaula has agricultural potential, especially in fruit production, due to its high light intensity and relatively dry winters. Due to its predominantly rocky nature, fruit crops are better option over row crops, except to the coastal flats and soil outcroppings. Crops such as mango, figs, citrus, and other warm season fruits would thrive in slopey areas.

If agricultural water is not available, homesteaders will be forced to utilize higher priced domestic water on their agricultural lands, further taxing ground water and this is already happening. A more prudent solution would be to utilize only surface water for agriculture. Benefit-cost analyses will need to be conducted, along with feasibility and competitive advantages of agricultural production on different Hawaiian Home Land areas.

### ***Kanaka Waiwai***

Whatever Hawaiian homesteaders plan for the future, it must involve water, which is why they have to conserve and protect water resources, and be vigilant and prepared when water challenges present themselves. One way is by

knowing the history of the water and your rights as homesteaders.

There have been many challenges to homestead water rights, and in the last twenty years alone, two landmark court cases involved large corporations challenging Hawaiian Homesteader water and gathering rights. I have been involved in both the ***Waiola*** and ***Kukui*** water cases.

After losing both decisions before the Water Commission and contesting the decisions, homesteaders also lost the contested case hearings, appealing the decisions to the State Supreme Court. Ten years passed since the final decision was rendered. In the end, homesteaders prevailed in both decisions, reaffirming their first rights to water and also their gathering rights not only for homesteaders on Molokai, but throughout the state! The second decision, the ***Kukui*** case, was built upon the first and also added onto it.

An important decision by the high court was that the burden of proof lies on applicant, and not the plaintiff. This means that those attempting to take water from DHHL must prove that their takings will not impact on homestead water rights and, coastal and ocean gathering rights, now and in the future.

A high point of the ***Waiola*** contested case was countering the testimony of any oceanography expert for Molokai Ranch who stated that the withdrawal of water from the Kamiloloa Aquifer would not impact on near-shore resources such as limu and fish. This frustrated



homesteaders who knew otherwise and they found a way to counter this testimony through the use of native knowledge.

The next day, the oceanographer was asked by attorneys for the homesteaders to identify limu varieties found along Kalamaula. Of the eight limu varieties presented, he could only identify one of them and his testimony was struck from the records of the contested case hearing.

It was only through the collective efforts and perseverance of homesteaders taking the initiative to protect these water rights along with legal counsel, assistance from the Department of Hawaiian Homes, and also the Office of Hawaiian Affairs that homesteaders prevailed in both cases.

But the threat is always there, and as homesteaders and especially homestead farmers, you need to keep one eye on the *aina* and the other on the *wai*.

Due to climate change, we can never predict from year to year how much water will be available for homesteading. This instability will be an ongoing challenge, especially in low rainfall years, but there are many acres of production to go before we run out of water. And we still may have to fight for this water, again.

The next generation needs to step up to the plate, learn the law, and learn your rights because no one else is going to protect your rights unless you take the

first step. Knowledge is power, and this comes through research and knowing the law. There's a lot of history that must be researched, learned, and understood, and this knowledge needs to become a part of you, and also conveyed to your homestead neighbors as well.



With water, you can be *kanaka waiwai* (rich people), and have an abundance of food and resources. This is not only about food security but also about sovereignty over the future as homesteaders. Part of protecting water rights is by using the water. This is why supporting farming efforts on Hawaiian Homes Lands is so important to assure long-term water rights are secured. If you don't use it, you lose it.

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