Glenn I Teves
P.O. Box 261, Kualapu'u, HI
Email: gtmolokai@gmail.com

November 4, 2013

TO: HHL Water Plan

FROM: Glenn I. Teves, Hoolehua homesteader

Aloha. My name is Glenn Teves, and I'm a homestead farmer in Hoolehua. I've been dealing with DHHL water concerns since 1981. I have identified some of the water history, some of the issues related to water, and also some of the issues related to a water plan.

I understand the history of this water, and I know that everyone wants to get their hands on this water. Without vigilance on our part as homesteaders, and also on the part of DHHL, water rights can be lost. I have been involved in two landmark water cases on Molokai as an expert witness, the Waiola and Kukui cases. Both water cases reaffirmed DHHL first rights to water, but as we know, possession is 9/10's of the law. It also established that those applying for a water permit or designation have to show they will not impact on our water and gathering rights.

Right after enactment of the State Water Code, I looked at different scenarios of water use for HHL on Molokai. If 50% of all Hawaiian Home Lands on Molokai were in agriculture, we would be utilizing somewhere between 20-40 mgd. The sustainable yield of the island of Molokai is around 39 mgd, so we have the potential of using up all the water. The problem is once we come up with how much water we need, the rest is up for grabs. If we underestimate, we're going to be screwed up in the long run. Being nebulous has its benefits.

The present 2.9 mgd DHHL reservation of the Kualapuu aquifer was by accident. DHHL had intended to reserve 1.9 mgd from Kualapuu aquifer. At the CWRM meeting, I told then-HHL Attorney General Keoni Agard to call then-DHHL Chairman Kali Watson to request approval for an additional 1 mgd more. Kali was bothered by this last minute change, but went with it. At that time, the sustainable yield of the Kualapuu aquifer was estimated at 7 mgd. Not too long after this, it was determined that someone did the wrong calculations and the real sustainable yield was only 5 mgd. We were able to reserve over half of this water from the Kualapuu Aquifer. Molokai Ranch opposed the reservation. DHHL also applied for additional water from the aquifer, Molokai Ranch also opposed this request, and CWRM has yet to take action on this request. However, I see this as a moot point. If we take more water than our request, are we breaking the law since we already have a reservation of 2.9mgd?

But all is not well because the County well is interfering with one of the DHHL wells, affecting the salinity of the well. CWRM has asked the county to vacate the Kualapuu aquifer several years ago, and still no action. Laws are one thing, and enforcement of laws are another, and this is a major problem in enforcement of all water laws.

According to the State Water Code, DHHL is supposed to be consulted in any requests for water. It needs to go one step further, and impose their rights upon state and in the case of the Kualapuu aquifer, upon county agencies, and have the power to do so. Another related concern is DHHL doesn't have possession and control over all of their water. Other agencies, such as DOA and DLNR, and in some cases the counties have control over DHHL water coming into homestead lands, and now we have to answer to them. Examples include Keokea on Maui, and Puukapu on the Big Island. This is wrong and needs to be corrected. We should be able to invoke our superior rights to any water request, and even block any entity for receiving water if they don't accommodate our requests for water for our homesteads.

The Molokai Irrigation System (MIS) was created for homesteaders. The original governing body to oversee development and construction of water for the homestead was the Molokai Water Authority, made up entirely of the Hawaiian Homes Commission. From there, everything got fuzzy. Control of the MIS was transferred to DLNR who mismanaged the system, and was caught giving free water to the Kaluakoi resort.

In 1985, DLNR proposed increasing water rates for MIS users because Maui farmers were complaining about the cheap water Molokai farmers were receiving, and pushed for equity. At that time, Molokai farmers were paying between 8 and 12 cents per thousand gallons. Farmers formed a working group and determined that they were paying 140% of the cost of transmission. Still water rates were increased, and by the end of the 1980's, farmers were paying over 200% of the cost of operation.

In 1989, all agricultural water systems in the state were transferred to DOA, including the MIS. These excess payments for water continued, while DOA was using the money generated by the MIS to pay for maintenance of other irrigation systems. By 1998, the MIS was generating a $250,000 profit and this money continued to benefit the other state systems instead. In addition, DOA was receiving annual funds from the State Legislature in the amount of $250,000 to $350,000 annually, and all of this money benefitted the other state systems and not the MIS. An audit by the State, I believe in 2008 determined that the DOA-Agricultural Resource Management division couldn't come up with 3 years of records, and were essentially mismanaging the system.

If DHHL expects to come up with a serious water plan, it needs to involve taking control of the MIS. The transfer of the MIS to DHHL needs to be vigorously pursued. If the need can be shown, we can have all of the water from Waikolu Valley source. In 1943, the Territorial Legislature passed Act 227 (H.B. 249) which created the Molokai Irrigation System. Section 4 of that Act provided that homestead lessees have a preference on all the water developed in the system. It reads*,"The lessees of the Hawaiian Homes Commission shall have their 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 this no surplus over and the above the needs of said lessees, then said lessees shall be entitled to have the whole thereof."* The most proficient way this can occur is if DHHL takes control of the system now.

According to an AG opinion by Mr. William Tam, if DHHL uses all of its allotment from Waikolu Valley, that they would have first rights to utilize the remaining 1/3. This is consistent with DHHL's first rights to

water. This gives DHHL more credence to take control in order to protect against any challenges to these rights in the future.

We also need to look at the Waihanau source and how it can benefit homesteading. There are many scenarios that could work, but in all scenarios, you need to make sure the water benefits only homesteaders. One scenario is to dump the water into the MIS and connect Kalamaula homesteaders and future homesteaders to this source. In this way, they have backup in case something happens to the Waihanau source. Another scenario to transport this water to the Kualapu'u well field, treat it there, and incorporate it into the domestic system. If excess water is sold to non-homestead users, it needs to be priced in a manner that far exceeds the cost of transmission and maintenance of the water system.

Water is inextricably connected to land and vice versa; land without water is useless, especially some of the Hawaiian Home Lands in arid areas. On Hawaiian Home Lands, water rights are connected to the land. If DHHL leases out land for income generation, especially agricultural land on Molokai, this applies as well.

You have situations now where two large corn seed companies are utilizing Hawaiian Home Lands, and they have the potential of utilizing as much water as all the DHHL agricultural homesteads combined. This water is part of DHHL's 2/3's allotment. Lessees of revenue-generating lands should not have the same rights as homesteaders. DHHL has to notify DOA and the MIS to hold lessees of income-generating lands to the same rights as non-homesteaders, and when the non-homesteaders cutback on water, they need to cut back on water as well.

When you don't properly manage your income-generating lands, your water is being used illegally. The subleasing of revocable permits is illegal, and is not new for the Mahana parcel. In the 1990's, Francis and Tom Hill subleased this 280 acre parcel to Larry Jefts, and when this was exposed, the lease agreement was revoked. There's some controversy regarding Monsanto farming on Hawaiian Home Lands in Mahana. No matter what is being stated, Monsanto is planting their corn seed, they're weeding and spraying their corn, and they're harvesting their corn seed. There is no transfer of ownership, so this is subleasing, which is an illegal activity. Everything else is window dressing to create the appearance that someone else is growing the corn. Hundreds of thousands of dollars are changing hands from this illegal lease, and DHHL is getting peanuts from this arrangement. If lessees of income generating lands don't live up to their agreement, they should be evicted from the lands and fined. This is lost revenue for DHHL.

If DHHL doesn't enforce their laws, others benefit from our rights and this is wrong. DHHL needs to monitor their leases, and they need to determine if lessees of income-generating lands are truly conducting what they say their doing. Another important issue is I don't know how DHHL is leasing agricultural land without having someone with expertise in agriculture within the Land Management Division, and this may be one of the reasons these illegal activities are allowed to occur. If you lease lands, you have to monitor these lands, especially when water rights are attached to these lands or you need put a special proviso in the lease that the rights are not attached to revenue-generation lands. Agricultural lands are primarily a resource, and activities conducted on these lands must be done in a

manner consistent with sound resource management to preserve these lands for generations to come. This is all I have, for now. Mahalo for this opportunity to provide testimony on this very important topic.