

HISTORICAL RELATIONSHIP BETWEEN DHHL AND MIS

The Beginning

The HHC Act of 1920, Section 221 (d) read in its original form,

“The commission is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, Government-owned water upon the island of Molokai and Government-owned surplus water/ tributary to the Waimea River upon the island of Kauai, not covered by a water license or covered by a water license issued after the passage of this Act. Any water license issued after the passage of this Act and covering any such Government-owned surplus water shall be deemed subject to the condition, whether or not stipulated therein, that the license shall, upon the demand of the commission, grant to it the right to use, free of all charge, any of the water upon the island of Molokai, and any of the surplus water tributary to the Waimea River upon the island of Kauai, which is covered by the license and which the commission deems necessary for the additional purpose of adequately irrigating any tract.”

As indicated by this Section 221(d), the commission was given the authority to use any Government-owned water on Molokai, free of charge, to adequately irrigate any HHL tract, excluding water already under a license prior to the Act. If a water license was issued subsequent to this Act, the commission retained its right to use water free of charge for irrigating purposes.

Creation and Subsequent Changes to a Molokai Water Authority

In May 1943, the territorial legislature passed Act 227 to establish a Molokai Water Board as a way of addressing the domestic and agricultural water needs of Molokai homesteaders. The Hawaiian Homes Commission served as the Board. The Act specifically gave homestead lessees preference to have their water needs met first before any other person or persons.

In June 1953, the territorial legislature passed Act 245 which established the Hawaii Irrigation Authority (HIA). The HIA substituted for the HHC in its role as the Molokai Water Board, e.g., its powers, duties, and functions as MWB were transferred to HIA.

Significance of Proposed Amendments to HHC Act of 1920 and Passage of Territorial Legislation Act 164

In May 1955, three (3) significant pieces of legislation was enacted, two proposed Congressional measures amending the HHC Act, Section 220 and 221 and one territorial measure, giving two-thirds preference for water from a constructed irrigation system to DHHL:

- 1) Joint Resolution 10 would amend Sec. 220 of HHC Act by adding a new paragraph that would allow for the construction of irrigation projects on

Hawaiian Home lands by the HIA or other agency of the territory of U.S. government.

- 2) Joint Resolution 17 would amend Section 221(d) by deleting reference to the commission's authority to use government-owned water upon Molokai free of charge and adding a new paragraph which stated that any federal funds given as a grant in aid for the construction of an irrigation and water utilization project on Molokai designed to serve HH lands would be considered advance payment by HHC and lessees of HHC of charges to be made to them for the construction of the system and shall be credited against such charges when made.
- 3) Act 164 amended territorial law (Chapter 317 of the Revised Laws of Hawaii 1945) giving Hawaiian Homes Commission and lessees of Hawaiian Homes Commission prior right to two-thirds of the water developed for irrigation and water utilization project by the tunnel development extending to Waikolu Valley and ground water developed west of Waikolu Valley, upon actual need shown to the authority.

The Agriculture standing committee report 469 stated that "the intent of the original Molokai irrigation and water utilization project was to develop and furnish all the water to lessees of Hawaiian Homes Commission lands." It further stated that the purpose of the two-thirds allocation was "to reduce acreage assessments and to make it feasible as a self-sustaining project."

In reviewing the Senate Agriculture standing committee report 466, it states that Section 221 (d) had to be amended in order to allow for charges to be made for water supplied by a costly irrigation system, if built. It states also "Plans for the construction of any irrigation and water utilization project on Molokai, primarily serving the lands of the Hawaiian homes commission have been under consideration for many years."

The above proposed amendments to Sections 220 and 221(d) become Public Law 899 on August 1, 1956.

Preference Clause Maintained

In April 1957, the Hawaii Irrigation Authority (HIA) was "renamed" the Hawaii Water Authority (HWA), expanding its responsibilities to include study and inventory of all water resources.

In July 1961, Chapter 86 of RLH 1955 was amended to have DLNR administer the Molokai Irrigation and Water Utilization Project. The preference clause is included in this section.

Land Exchange Consummated to Secure Federal Funds to Construct Molokai Irrigation Project

In 1961, discussions were in progress between DHHL and DLNR for a possible land exchange. It seems that federal funds were available through the Small Projects Reclamation Act for the construction of an irrigation project on Molokai to serve Hawaiian Homes Commission and HHC Lessees. There was a problem, however, in that the Department of Interior (DOI) indicated that there had to be more “users” of the proposed project than the homestead lessees in order for the project to be eligible for the Small Reclamation Projects Act money. The solution that evolved then was to have a proposed Molokai Small Farm Project to supplement the anticipated HHC and lessee users, e.g., individual family farms raising truck crops on irrigated basis to be sold on the winter market on the West Coast. Adding of more users to the proposed irrigation project was to be accomplished by exchanging some State land on Oahu for agricultural lands on Molokai in the designated service area of the irrigation project. It is also noted that \$1 million of State funds appropriated for the construction of the Molokai Irrigation Project was contingent on the land exchange, so as to assure the securing of the federal money.

Negotiations on land exchange began in April 1961 and continued through January 1962 when both HHC and DLNR’s Board approved the exchange of 1,050 acres of land at Palaau, Molokai (south of the airport) for land of equivalent value at Waianae, Oahu, identified later as approximately 243 acres. The values were \$28,980 and \$28,985 respectively.

The Hawaiian Homes Act was amended to accomplish this agreement. The Department of the Interior, along with State Department of Land and Natural Resources, corroborated to force DHHL to diminish our water rights as a condition to the construction of the MIS. The original Hawaiian Homes Act states that water is available ‘free of charge’, and that ALL water from Waikolu was for the express use of homesteaders. Today, we have prior rights to only 2/3’s of the water originating from Waikolu Valley, and we have to pay for this water.

WHAT IS WRONG WITH THIS PICTURE???