

## Important Water Rights Victory of Native Hawaiians on Molokai

The Hawaii Supreme Court's decision in a Molokai case is being hailed as an important ruling that recognizes and protects the water rights of the Native Hawaiian people.

The decision extended the "public trust" protections that it had previously affirmed in the 2000 Waiahole Ditch Case to the water rights of the Native Hawaiian people and confirmed that the State's Water Commission was obliged to ensure that all its actions protected the rights of Native Hawaiians.

Attorney Jon Van Dyke, who represented the Office of Hawaiian Affairs in the case, said it's another important court ruling that reconfirms Native Hawaiians are in a special category. He noted the court language that said: "We have consistently recognized the heightened duty of care owed to the native Hawaiians."

OHA was one of four intervenors in the case, joining to help protect the water rights of Molokai homesteaders.

"This is not just important decision for Hawaiians on Molokai, but for all Hawaiians," said Colette Machado, OHA trustee representing Molokai.

"We are especially pleased that the state's highest court recognizes Native Hawaiians have a unique status," said Haunani Apoliona, chair of the OHA Board of Trustees.

In the decision (In the Matter of the Contested Case Hearing on Water Use, Well Construction, and Pump Installation Permit Applications, Filed by Wai'ola O Molokai, Inc. and Molokai Ranch, Ltd. (No. 22250)), the Court remanded back to the Water Commission for further proceedings a request that had been filed by the Molokai Ranch to develop a new well in central Molokai, ruling that the Commission's decision had "violated DHHL's reservation rights as guaranteed" by the Hawaii Constitution, the Hawaiian Homes Commission Act, and Hawaii's Water Code.

The Court thus ruled that the Commission had not adequately evaluated whether the new well would interfere with the rights of the Department of Hawaiian Home Lands (DHHL) to develop water sources for its lands on Molokai in the future, and thus that the Commission had "clearly erred" in issuing a water permit to the Molokai Ranch. The Court explained that the "reservation" of 2.905 million gallons a day of water that had previously been granted to DHHL was "an essential mechanism by which to effectuate the State's public trust duty" and was thus "entitled to the full panoply of constitutional protections afforded the other public trust purposes enunciated by this court in Waiahole."

The Court also said that the Commission had "failed adequately to discharge its public trust duty to protect native Hawaiians' traditional and customary gathering rights" by not allowing adequate cross-examination of the Ranch's oceanography expert (Dr. Stephen Dollar) regarding the protection of the subsistence and gathering rights of the Native Hawaiians on Molokai.