From: Howard Green
To: DLNR.BLNR.Testimony
Subject: [EXTERNAL] Wahiawa Dam - April 9 meeting Agenda Item L-3
Date: Tuesday, April 6, 2021 9:58:52 PM

To Board of Land and Natural Resources
State of Hawaii

To the Honorable Chairman and Members of the Board:

I am writing to you in my capacity as manager of Sustainable Hawaii, LLC.

Sustainable Hawaii, LLC is the successor holder of fee title and long time lessor of a 20% portion of the land underlying Wahiawa Reservoir and Dam. Our predecessor in interest was the Galbraith Estate which leased the area to the Helemano Company, Limited in the early 1900's so Helemano could build the dam and reservoir for agricultural water purposes. When that lease expired it was renewed by a new lease as of March 9, 1952 which is still in place, in holdover status, today. Helemano was also owner of the main area under the reservoir and dam. Dole, Inc., is successor of Helemano.

As contemplated, under the original and successor leases, neither the Galbraith Estate nor Sustainable Hawaii has now, or ever has had, any ownership or possession of the Dam and/or Reservoir, or any say in their construction, operation or maintenance. However, Sustainable is a local company, and in 2008 when the Galbraith Estate was ending, Sustainable acquired the Galbraith minority interest in the underlying fee to keep it local, when no one else would. We hoped we could use the position as lessor, to encourage good dam safety for the best interest of the community, and we have done so.

The lease contains covenants that the lessee will operate the dam and reservoir, safely and according to law. However, since passage of the Dam Safety law in 1987 those issues have been in the hands of the Dam Safety Engineers of DLNR.

The term of the 1953 lease has expired, but under its terms, the lease continues in holdover status until terminated by either party, which Sustainable Hawaii could do, every six months with 4 month's notice. Upon termination, the lease requires the dam to be removed and the property to be returned to its prior state.

As you may know, although the dam and reservoir are privately owned and operated for agricultural water purposes, a number of public functions have come to use the reservoir. In the first place, a great deal of the reservoir water is now utilized by farm operations other than those of Dole or its subsidiaries. Secondly, on the South Fork (not owned by Sustainable Hawaii) the City and County has been dumping a bit more than 2 million gallons a day of sewage effluent which it claims meets R-1 water standards, (but which the Department of Health has declined to certify). Thirdly, DLNR has been stocking the reservoir with fish for recreation of local fishermen. And fourth, DLNR has been encouraging Dole to upgrade the dam at a cost of millions of dollars to convert its function from agriculture to flood control to protect downstream residents. Although defending Dole is not our function, we call everyone's attention to the fact that Dole has allowed use of the reservoir for many years for these public functions, without any compensation.

Fining Sustainable Hawaii means DLNR is placing Dole's maintenance and safety

obligations on us, obligations we are in no way financially or otherwise capable of meeting. Since terminating the lease is Sustainable's only real legal option, it is the only way we have of protecting our company. But because of the many public uses and functions, we think terminating the lease may not be in the public interest.

With respect to dam safety issues, after receiving notice of the proposed fine from the dam engineers we did research and learn the following:

In 2018 Dole submitted, at request of DLNR engineers, a 90 page conceptual plan prepared by R.M. Towill Engineering, for upgrading the Dam. (We requested and received a copy last week.) The plan was based on a Predicted Maximum Flood (PMF) calculation, which was itself based on Predicted Maximum Precipitation (PMP) determined under a study done in 1963 (HMR 39), which everyone including DLNR engineers, have acknowledged as outdated for many years. In fact DLNR engineers have, for over a year, been in the process of hiring another mainland engineering company to redo the PMP study.

The Dole plan was given by DLNR to another engineering firm, Gannett Fleming, who in February this year rendered a report that the PMF assumptions in the Towill report, were wrong, citing earlier engineering studies which were also based on the outdated 1963 PMP.

Thus three years after the Dole conceptual study was submitted, it has in the past month been declared unacceptable, and Dole is being fined, and commanded to prepare a new plan and build millions of dollars of improvements, all based on admittedly outdated PMP predictions, even though the new PMP study is in process.

Therefore I respectfully suggest that

(1) Fining Sustainable Hawaii, LLC which has no role related to the dam except to allow our property to be used for the dam and reservoir, is inappropriate and may force us to simply terminate the lease; and

(2) Fining Dole only a month after the engineers have advised Dole of their disagreement with Dole's engineering received 3 years earlier, is premature, especially when the underlying maximum water flows are known to be outdated and are in fact being updated by DLNR, and especially in view of Dole's decades long record of cooperating with multiple public uses of the reservoir.

Respectfully submitted

Sustainable Hawaii, LLC,
by Howard Green

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