

STARN · O'TOOLE · MARCUS & FISHER

A LAW CORPORATION

April 23, 2024

VIA E-MAIL:

Dawn N.S. Chang, Chair
Board of Land and Natural Resources
DLNR Boardroom
Kalanimoku Building
1151 Punchbowl Street, 1st Floor.
Honolulu, HI 96813
blnr.testimony@hawaii.gov

Re: Agenda Item L-1 – Approval of Dole Food Company Inc.’s Schedule for the Removal of Wahiawa Dam (OA-0017), Wahiawa, Oahu, Tax Map Keys, (1) 7-1-012:014, (1) 7-3-013:003, (1) 7-3-012:002, and (1) 7-3-007:001

Dear Chair Chang and Members of the Board:

My name is Bernie Bays, I am an attorney representing Sustainable Hawaii, LLC, a part owner of the Wahiawa Dam and Reservoir.

The Wahiawa Dam and Reservoir are part of the Wahiawa irrigation system, which also includes an extensive ditch system. In 2023, the Legislature enacted Act 218 and found that “[t]he dam is *essential to agriculture* as the water in the reservoir provides irrigation to farmers in Wahiawa, Waialua, and Haleiwa” and that “[t]he reservoir also provides a venue for recreational activities for the surrounding community and the State.”¹ As a result, the Legislature expressly found that:

It is in the interest of the public for the State to acquire the Wahiawa irrigation system and preserve the system for public access and the agriculture industry.²

To achieve this end, the Legislature appropriated funds for the Department of Agriculture, the Department of Land and Natural Resources, and the Agribusiness Development Corporation “to acquire the Wahiawa irrigation system” and “to purchase, repair, and maintain the associated spillway.”³ In the case of Wahiawa Dam and Reservoir, it is my understanding that the State plans to acquire it and maintain it as a public resource through the Agribusiness Development

¹ Act 218, Session Laws of Hawaii 2023, § 2.

² *Id.* (appropriating funds to upgrade the dam’s spillway and authorizing the Department of Agriculture, the Department of Land and Natural Resources, and the Agribusiness Development Corporation to acquire the Wahiawa Irrigation System (WIS), which includes the Wahiawa Dam)

³ *Id.*

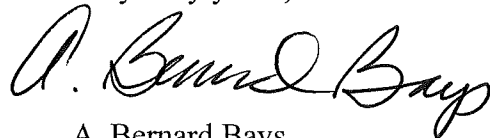
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Corporation. The Engineering Division's staff submittal supports this. Removing the Wahiawa Dam would undermine the Legislature's express intent and local, sustainable agriculture.

I have watched with concern for many years as greatly over estimated rainfall estimates have led the Department of Land and Natural Resources to require very expensive and often unnecessary upgrades to existing dams to be made by the private owners of these dams. These unrealistic requirements have led many owners to decommission and dismantle the dams and the State water resources they have created. This has been done in spite of the fact that many of these dams have worked effectively for over 100 years to provide flood control, irrigation water, and recreational opportunities, including world-class bass fishing. Often, the dam owners who were required to make expensive dam improvements gained little benefit from the irrigation water or the lakes created by these dams. These benefits were enjoyed by others and the public. In my view, these dams and reservoirs are public State resources that should be owned and maintained by the State for flood control, irrigation, and recreation. In the case of the Wahiawa Dam and Reservoir, the Legislature agrees.

The Dam and Reservoir are essential for flood control and to supply irrigation water for the North Shore. This irrigation water is needed in order to help achieve the State's long-term goal of sustainable agriculture. As we now know, water resources like this are also needed to help fight potential wildfires. It is my understanding that the States's due diligence for the acquisition has been or will be completed by mid-summer and is going favorably. I also understand that Dole has agreed to donate its portion of the Dam and Reservoir to the State for no consideration. Sustainable Hawaii has also agreed to convey its part of the Dam and Reservoir to Agribusiness Development Corporation for the amount appropriated for this purpose which is much less than it is worth. For these reasons, I ask the Board to defer the hearing on this matter until October 2024, to give the State time to complete its due diligence and acquisition. Thanks for considering my thoughts on this important matter.

Very truly yours,

A handwritten signature in cursive script that reads "A. Bernard Bays". The signature is written in dark ink and is positioned above the printed name.

A. Bernard Bays