



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of the Hawaii State Aha Moku

Board of Land and Natural Resources

Friday, August 23, 2024

9:00 a.m.

DLNR Boardroom, Kalanimoku Bldg.

AGENDA ITEM: L-1

Agenda Item L-1: Request Approval of Kapala'alaea Reservoir (MA-0094) Dam Safety Permit Application and Authorization for the Chairperson and Department to Issue the Dam Safety Permit No. 88 for Removal with Stipulated Terms and Conditions Pursuant to Hawaii Revised Statutes Chapter 179D and Applicable Chapter 13-90.1, Hawaii Administrative Rules, Haiku, Maui, Hawaii, TMK (2) 2-8-007:001.

Aloha Chairperson Chang and Members of the Board of Land and Natural Resources (BLNR),

On behalf of the Hawaii State Aha Moku (Aha Moku) native Hawaiian generational families connected to the Haiku Ahupua'a, Hamakualoa Moku, Moku O Pi'ilani (Island of Maui), we are **in support of Agenda Item L-1 and ask that BLNR approve this Agenda Item.**

Hawaii State Aha Moku Foundation

The Hawaii State Aha Moku (Aha Moku), via Act 288, SLH 2012 brings the voices of the native Hawaiian generational and lineal descendants forward to the Hawaii State government in issues that impact their traditional and customary practices within natural and cultural resources.

Ka Pa'akai Analysis

The September 11, 2000, Hawai'i Supreme Court decision in *Ka Pa'akai O Ka 'Aina v Land Use Commission* ruled that State agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible. Engineering is obligated to make an assessment, independent of the developer or applicant, of the impacts on customary and traditional practices of native Hawaiians. The independent assessment must include three factors known as the "Ka Pa'akai framework." The framework includes determining:

1. Identify the scope of valued cultural, historical, or natural resources in the petition or impacted area, including the extent to which traditional and customary Native Hawaiian rights are exercised in the petition area.

The Kapala'alaea Dam/Reservoir was built in 1885, and at the time, no historic or culturally significant sites were described. However, water from this source was used for irrigation of sugar and pineapple, watering of livestock and commercial industrial uses. Per generational families of Haiku, the area was used for subsistence agriculture.

2. Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

The restoration of the Papalua Stream which is located downstream of the dam, and the restoration of the Piiloi Stream, which is located upstream of the dam would ensure that future traditional agricultural projects could be restored. The Kapala'alaea Reservoir bisects both streams and is treated as a diversion.

3. Identify feasible actions, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

With the removal of the dam/reservoir, the natural environment will be returned to its pre-dam condition. Also, with the disturbed ground to be re-seeded to allow vegetation to take hold, the erosion protection will be assured.

The Hawaii State Aha Moku supports the recommendation of the Engineering staff and urges the Land Board to accept and approve Agenda Item L-1.

Respectfully yours,

Kalei Luuwai, Po'o

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