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State ended safety inspections before Hawaii dam collapsed

Memo suggests DLNR dropped ball just weeks before Kaloko disaster

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Three months before the fatal collapse of the Kaloko Dam on Kaua'i, the state issued a notice suspending all dam safety inspections and emergency flood responses and later attempted to conceal the suspension, according to documents obtained by The Advertiser.

And while the suspension was in place, state dam safety inspectors did not respond to reports of flooding near the Kaloko Dam a month before the March 14, 2006, disaster, missing a potential chance to identify problems with the dam.

Memos and e-mails issued by state Department of Land and Natural Resources officials paint an unflattering picture of the department's actions leading up to tragedy, which killed seven people and caused millions of dollars in damage.

The memos also could increase the legal exposure for the state, which is being sued along with retired auto dealer Jimmy Pflueger by the relatives of the seven victims.

"The state is basically saying it is abrogating all of its legal duties," said Dennis Binder, a dam safety expert and law professor at Chapman University in Orange, Calif., who reviewed the memos. "That's a hell of a smoking gun."

Budget problems

In a Jan. 26, 2006, internal memo, the DLNR's chief engineer, Eric Hirano, said he was temporarily suspending all dam inspections and emergency responses to floods due to budget constraints and lack of personnel.

A month later, DLNR Chairman Peter Young instructed Hirano to refrain from stating that the inspections have been halted, saying "we need to look at another way of handling this."

"We should not state we are doing nothing, but rather state we will respond to issues and questions related to these items," Young said in his Feb. 14, 2006, e-mail to Hirano.

Young did not rescind Hirano's decision to suspend inspections. And after the memo was issued, DLNR officials did not conduct any dam inspections until the collapse of the Kaloko Dam. That could be taken as an endorsement of Hirano's memo, according to Binder.

By law, the state is supposed to inspect all dams every five years but the Kaloko Dam was not inspected.

Young, who was voted out as DLNR's chairman by the state Senate in 2007, referred questions to the attorney general's office, citing the pending litigation. Young's ouster was partly the result of his handling of the Kaloko disaster.

His replacement, Laura H. Thielen, declined comment as did a spokeswoman from the attorney general's office.

To be sure, Hirano's memo and Young's response came at a time of heightened sensitivity about the state's dam system. In August 2005, Hurricane Katrina caused dozens of levees in New Orleans to fail, resulting in hundreds of deaths.

The Advertiser reported in October 2005 that 22 Hawai'i dams were in urgent need of repair. The story quoted Edwin Matsuda, the engineer in charge of dam safety, as saying the state was fortunate not to have had a major dam failure.

Prior flooding

Because of the suspension of its flood response duties, the state may have missed some vital clues as to the condition of the Kaloko Dam prior to the breach.

On Feb. 27, 2006, DLNR's Hirano said in an e-mail that he received a report from Kaua'i County Public Works officials that a 4-foot high wall of water flowed from the Kaloko Reservoir area downstream to nearby Moloa'a, where it destroyed a small bridge.

Rather than sending out its own inspectors to the site, Hirano took no action, even though his e-mail says he was unsure whether the flood "may or may not be attributable to the Kaloko Dam."

"At this point, (Kaua'i County Public Works) will not be following up further and we'll take a wait and see approach until any news is reported and confirmed that the dam was involved," Hirano said in his e-mail.

"If the dam were to be involved, the most we would do at this point is to conduct an investigation of the situation."

The following month, the Kaloko Dam collapsed during heavy rains, sending an estimated 400 million gallons of water through Kaua'i's North Shore, killing seven people and destroying parts of a state highway and large sections of an ocean reef.

criminal charges

The tragedy has resulted in criminal charges against the 82-year-old Pflueger, who owns the land under the dam. The state believes Pflueger altered a key safety feature for the dam known as a spillway.

The absence of a spillway, which acts as an overflow valve, may have contributed to the dam breaking during a month of heavy rain.

In November, Pflueger was indicted by a Kaua'i grand jury on seven counts of manslaughter and one count of criminal endangering. Pflueger has pleaded not guilty and has denied filling in the spillway.

His attorney, William McCorriston, has argued in the past that the breach of the century-old dam was not due to overtopping and the filling in of a spillway but was likely due to the collapse of the ground beneath the dam.

McCorriston also has denied that Pflueger was responsible for the upkeep and inspection of the dam, saying while Pflueger owns the land beneath the dam, he does not own the dam itself.

Pflueger's deed to the property is subject to a private contract that assigns responsibility for maintenance and inspection of the Kaloko Dam to a private company, called Kilauea Irrigation Co., McCorrison has said.

Defense attorneys may argue that the state is holding Pflueger responsible for inspecting the dam when the state, which is required to monitor dams, dropped the ball.

The documents also could add fuel to arguments by Pflueger's legal team that the state has a conflict of interest in pursuing criminal charges against his client since the state is a party to a civil lawsuit.

McCorrison has argued that the state has a vested interest in pursuing the criminal case against Pflueger since it also is being sued by the families of the victims.

But Binder, the dam safety expert, believes the state's inaction does not absolve Pflueger of any potential criminal or civil liability, even if it increases the state's potential exposure.

Under Hawaii's Dam Safety Act of 1987, the repair and maintenance of a dam remains the responsibility of the owner.

"That duty is not dependent on any action or inaction by the state," said Binder.
