

David Kimo Frankel 5791
1638-A Mikahala Way
Honolulu, HI 96816
(808) 345-5451
davidkimofrankel@gmail.com
Attorney for the Sierra Club

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case Regarding) DLNR File No. CCH-LD-21-01
the Continuation of Revocable Permits (RPs))
for Tax Map Keys (2) 1-1-001:044 & 050;) Sierra Club’s Request for Subpoenas of
(2) 2-9-014:001, 005, 011, 012 & 017; (2) 1-) DLNR Employees to Testify at the
1-002:002 (por.) and (2) 1-2-004:005 & 007) Contested Case Hearing; Draft Subpoena;
for Water Use on the Island of Maui to) Certificate of Service
Alexander & Baldwin, Inc. and East Maui)
Irrigation Company, LLC for the remainder)
of the 2021 RPs, if applicable, and for their)
continuation through the end of 2022)

Sierra Club’s Request for Subpoenas of DLNR Employees to Testify at the Contested Case Hearing

HRS § 171-58(c) authorizes the disposition of water “by permit for temporary use on a month-to-month basis **under those conditions which will best serve the interests of the State** and subject to a maximum term of one year and other restrictions under the law.” *See also* HRS §§ 205A-4, 205A-5, and 205A-2(b)(4)(A), 205A-2(c)(4)(A) and 205A-2(c)(4)(D). The testimony of the DLNR employees identified below is essential to show the conditions upon which such a permit should be authorized. Their knowledge and familiarity with the region, including events that transpired since the trial, are relevant to this proceeding and will guide BLNR in its decisionmaking.

- 1. Scott Fretz**
Division of Forestry and Wildlife
685 Haleakala Highway
Kahului, Hawaii 96732

Dr. Fretz’s testimony is material and relevant. It is the Sierra Club’s understanding that he visited the revocable permit area on July 19, 2021. He should be able to testify as to what he saw. His observations relate to the unused equipment and structure as well as the condition of the forest. Dr. Fretz can testify regarding the threat that alien species pose within the revocable permit area; whether additional staffing and/or funding would be helpful in managing the forest within the revocable permit area; and how additional funding could be used.

2. Ian Hirokawa
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813

Mr. Hirokawa’s testimony is material and relevant. He prepared the staff submittals considered by BLNR, including the November 2020 submittal, as well as the October 22, 2021 Guidance to Appraisers for the Determination of the Upset Rent for Public Auctions for Water Leases for Consumptive Use Purposes Pursuant to Section 171-58, Hawaii Revised Statutes. “In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses.” *Goldberg*, 397 U.S. at 269; *In re Wai’ola O Moloka‘i, Inc.*, 103 Hawai‘i 401, 444, 83 P.3d 664, 706 (2004). Mr. Hirokawa’s testimony should be able to testify regarding: the appropriate rental amount, the new condition regarding waste; the new condition regarding the irrigation upgrade plan and the plan that was submitted; as well as other provisions in the staff submittals.

3. Skippy Hau
Division of Aquatic Resources
130 Mahalani Street
Wailuku, HI 96793

Mr. Hau’s testimony is material and relevant. In late 2020 (after the related trial), DLNR’s Division of Aquatic Resources determined for the first time that ‘O‘opuola,

Nailiilihaele, Kailua, and Ho‘olawa streams—streams from which A&B has been authorized to divert one hundred percent of the baseflow—should be a high priority for stream restoration. Mr. Hau was the primary author of the Division of Aquatic Resources’ analysis. Mr. Hau has spent more time in east Maui streams than any other DLNR employee. He has continued his study of east Maui streams through out 2021. He should be able to testify as to his observations and conclusions regarding flow amounts and diversion structures.

- 4. Kaleo Manuel**
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813

Kaleo Manuel’s testimony is material and relevant. He received the Sierra Club’s September 2021 petition to amend the interim instream flow standard for a dozen east Maui streams. He should be able to testify as to the status of that petition as well as the issue of waste and the system upgrade plan.

- 5. Ayron Strauch**
Kalanimoku Building
1151 Punchbowl St.
Honolulu, HI 96813

Ayron Strauch prepared a new report and testimony to BLNR after the trial, which A&B is relying on. The Sierra Club will cross examine him.

Dated: Honolulu, Hawai‘i November 29, 2021

/s/ David Kimo Frankel
Attorney for the Sierra Club

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of a Contested Case Regarding) DLNR File No. CCH-LD-21-01
the Continuation of Revocable Permits (RPs))
for Tax Map Keys (2) 1-1-001:044 & 050;) Certificate of Service
(2) 2-9-014:001, 005, 011, 012 & 017; (2) 1-)
1-002:002 (por.) and (2) 1-2-004:005 & 007)
for Water Use on the Island of Maui to)
Alexander & Baldwin, Inc. and East Maui)
Irrigation Company, LLC for the remainder)
of the 2021 RPs, if applicable, and for their)
continuation through the end of 2022)

Certificate of Service

Pursuant to Minute Order No.s 1 & 5, a copy of the foregoing is being served via email
today to:

lauren.k.chun@hawaii.gov

melissa.d.goldman@hawaii.gov

dlnr.land@hawaii.gov

ian.c.hirokawa@hawaii.gov

blue.kaanehe@hawaii.gov

suzanne.case@hawaii.gov

Caleb.Rowe@co.maui.hi.us

dschulmeister@cades.com takagi@cades.com Mmomose@cades.com

Dated: Honolulu, Hawai'i November 29, 2021

/s/ David Kimo Frankel
Attorney for the Sierra Club