



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

RECEIVED

2020 NOV 12 AM 8:53

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND
NATURAL RESOURCES
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in three (3) photocopies

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Sierra Club	2. Contact Person Marti Townsend	
3. Address P.O. Box 2577	4. City Honolulu	5. State and ZIP HI 96803
6. Email hawaii.chapter@sierraclub.org	7. Phone (808) 538-6616	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name David Kimo Frankel	10. Firm Name	
11. Address 1638-A Mikahala Way	12. City Honolulu	13. State and ZIP HI 96816
14. Email davidkimofrankel@gmail.com	15. Phone (808) 345-5451	16. Fax

C. SUBJECT MATTER

17. Board Action Being Contested

CONTINUATION OF REVOCABLE PERMITS S-7263 (TAX MAP KEY (2) 1-1-001:044), S-7264 (TAX MAP KEYS (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) AND S-7265 (TAX MAP KEY (2) L-L-002:POR. 002) TO ALEXANDER AND BALDWIN, INC., AND S-7266 (TAX MAP KEYS (2) 1-2-004:005 & 007) TO EAST MAUI IRRIGATION COMPANY, LIMITED, FOR WATER USE ON THE ISLAND OF MAUI

18. Board Action Date

November 13, 2020

19. Item No.

D-8

20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case

21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection

Decades ago, the Hawai'i Supreme Court held that an agency hearing is required where a permit "adversely affects the constitutionally protected rights of other interested persons who have followed the agency's rules governing participation in contested cases." *Pele Def. Fund v. Puna Geothermal Venture*, 77 Hawai'i 64, 68, 881 P.2d 1210, 1214 (1994). Because the Sierra Club's rights to a contested case hearing are constitutionally based, the Hawai'i Supreme Court's decision in *In re Maui Elec. Co.*, 141 Hawai'i 249, 408 P.3d 1 (2017) provides the straight-forward analytical framework to determine whether the BLNR should conduct a contested case hearing.

I. The Sierra Club Seeks to Protect Property Within the Meaning of the Due Process Clause of the State Constitution.

"The legitimate claims of entitlement that constitute property interests are . . . created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law—rules or understanding that secure certain benefits and that support claims of entitlement to those benefits." *Maui Elec.*, 141 Hawai'i at 260, 408 P.3d at 12. The property interests that the Sierra Club seeks to protect are founded upon three bases.

A. The Sierra Club's Members Have the Right to Use Water From Free-Flowing Streams.

Sierra Club members enjoy the right to use water from free-flowing streams. HRS § 7-1 provides "The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple." This right is enjoyed by Sierra Club members who live and own property adjacent to streams in the area covered by the revocable permits as well as members who do not. Sierra Club members have riparian rights and/or appurtenant water rights. These are property rights protected by the due process clause of the State Constitution.

Sierra Club members enjoy the streams that were the subject of the June 20, 2018 Commission on Water Resource Management (CWRM) decision and order, including Hanehoi Stream. They also use and enjoy the 13 streams that were not part of the recent CWRM proceedings. Sierra Club members own property, live next, and enjoy to streams that flow within the area covered by the revocable permits.

The diversion of these streams adversely affects riparian rights and/or appurtenant rights. The diversion of these streams adversely affects the ability of Sierra Club members to use stream water for domestic and gardening purposes, enjoy their natural beauty, observe and gather aquatic life, wade and/or swim.

B. The Sierra Club's Members Have Rights Protected by Article XI §9 of the State Constitution.

The right guaranteed by Article XI § 9 of the Hawai'i State Constitution "is a substantive right" which "is a legitimate entitlement stemming from and shaped by independent sources of state law, and is thus a property interest protected by due process." Maui Elec., 141 Hawai'i at 260-61, 408 P.3d at 12-13. "Thus, where a source of state law — such as article XI, section 9 — grants any party a substantive right to a benefit — such as a clean and healthful environment — that party gains a legitimate entitlement to that benefit as defined by state law, and a property interest protected by due process is created. In other words, the substantive component of article XI, section 9 that we recognized in Ala Loop is a protectable property interest under our precedents. . . . [T]he property interest created by article XI, section 9 is shaped by all state laws relating to environmental quality." Id. at 264, 408 P.3d at 16.

The Sierra Club's members have the right to a clean and healthful environment (including "conservation, protection and enhancement of natural resources") as defined by HRS chapters 171, 343 and 205A – just as the Sierra Club had rights pursuant to HRS chapter 269 in Maui Elec. These rights are adversely affected by any action by the BLNR that fails to include sufficient information and analysis.

1. HRS § 171-58 is a law relating to environmental quality.

HRS § 171-58 is a law relating to environmental quality, including the "conservation, protection and enhancement of natural resources."

First, in determining whether a law is related to environmental quality, the Hawai'i Supreme Court has relied on the legislature's identification of laws related to environmental quality when it enacted of HRS § 607-25. *Cty. of Haw. v. Ala Loop Homeowners*, 123 Hawai'i 391, 410, 235 P.3d 1103, 1122 (2010). Each chapter cited in HRS § 607-25 "implements the guarantee of a clean and healthful environment established by article XI, section 9." Id. See also 1986 Haw. Sess. Laws Act 80, § 1 at 104-105. HRS § 607-25(c) identifies HRS chapter 171.

Second, the legislature specified that all cases arising from title 12 – of which HRS chapter 171 is a part – are subject to the jurisdiction of the environmental court. HRS § 604A-2(a). This legislative determination also demonstrates that this law that governs the use of the state's public trust natural resources is a law relating to environmental quality.

Third, HRS chapter 171 implements Hawai'i State Constitution Art. XI, § 2, which reads in relevant part: "The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be provided by law." This provision was drafted by the framers of the first state constitution in 1950 and went into effect at statehood. The framers were concerned about "the preservation of certain natural resources. . . . Hence, the importance of placing fairly rigid restrictions on the administration of these assets." Committee of the Whole Report No. 22 in 1 Proceedings of the Constitutional Convention of Hawaii of 1950 at 335 (1950). Pursuant to Article XI § 2, the 1962 state legislature codified the laws that govern the administration and management of the state's lands into RLH chapter 103A, which later became HRS chapter 171. See 1963 Supplement to Revised Laws of Hawaii

1955 at 485; Act 32, 1962 Session Laws of Haw. Thus, HRS chapter 171 is a law relating to the preservation of natural resources.

Fourth, HRS § 171-58 relates to the conservation, protection and enhancement of natural resources." HRS § 171-58(c) allows certain uses that do not affect "the volume and quality of water or biota in the stream." HRS § 171-58(e) requires that a lessee "develop and implement a watershed management plan" that prevents "the degradation of surface water and ground water quality"); Senate Stand. Com Rep. 2984, 1990 Senate Journal at 1217.

Finally, in granting holdover approvals to Alexander and Baldwin and East Maui irrigation (collectively "A&B") pursuant to HRS § 171-58(c)(1), BLNR imposed conditions on A&B and EMI. These conditions demonstrate that BLNR's position is that HRS § 171-58(c) relates to environmental quality, including the conservation and protection of natural resources. See Maui Elec., 408 P.3d at 17.

2. HRS chapter 343 is a law relating to environmental quality.

In rendering any decision made pursuant to HRS chapter 171 (which involves the use of state land), the BLNR must comply with HRS chapter 343. Like HRS chapter 171, HRS chapter 343 is referred to in both HRS § 607-25 and 604A-2(a). There can be doubt that its content relates to environmental quality.

The "right to a clean and healthful environment includes the right that explicit consideration be given to" environmental issues in BLNR's decision-making, as provided for in HRS chapter 343 See Maui Elec., 408 P.3d at 17. The Sierra Club's right includes the right that an environmental impact statement be prepared pursuant to HRS chapter 343 before state land is used and millions of gallons of water taken from public streams.

3. HRS chapter 205A is a law relating to environmental quality.

In rendering any decision made pursuant to HRS chapter 171, the BLNR must also comply with HRS chapter 205A. See HRS § 205A-4 and 205A-5(b). The Hawai'i Supreme Court has already definitely ruled that HRS chapter 205A "is a comprehensive State regulatory scheme to protect the environment and resources of our shoreline areas." *Morgan v. Planning Dep't*, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004). HRS chapter 205A is also identified in HRS § 607-25(c), the statute that reflected "the legislature's determination that chapter 205 is an environmental quality law" in *Ala Loop*, 123 Hawai'i at 410, 235 P.3d at 1122.

The "right to a clean and healthful environment includes the right that specific consideration be given to" the objectives and policies of HRS § 205A-2. See *Maui Elec.*, 408 P.3d at 17; HRS § 205A-4 and 205A-5(b). That includes specific consideration of HRS § 205A-2(c)(4)(D) ("Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs").

C. The Sierra Club's Members Have Rights Protected by Article XII § 4 and Article XI §§ 1 and 7 of the State Constitution.

The Sierra Club has the right to ensure that the public trust resources identified in Article XII § 4 and Article XI §§ 1 and 7 of the Hawai'i State Constitution are protected. These constitutional provisions afford members of the public the right to enforce them, see e.g., *Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 140 P.3d 985 (2006), *Pele Def Fund v. Paty*, 73 Haw. 578, 837 P.2d 1247(1992) and *Ching v. Case*, 145 Hawai'i 148, 449 P.3d 1146 (2019). Members of the public are beneficiaries of the trust. As such, their constitutional interests are

adversely affected when the BLNR allows water to be diverted from streams in ways that cause significant harm. Before authorizing diversions, the BLNR must understand how much water is being taken from each stream and what the impacts are to those streams.

II. The BLNR Must Conduct a Contested Case Proceeding.

Given that the Sierra Club has multiple bases for establishing a protectable “property” interest, a contested case hearing is the most appropriate procedure for these rights to be protected. The Hawai‘i Supreme Court has explained that three factors need to be balanced in determining what procedures should be employed (and therefore whether a contested case is the appropriate procedure): “(1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail.” Maui Elec, 141 Hawai‘i at 265, 408 P.3d at 17.

A. The Diversions Adversely Affect the Sierra Club and its Members.

The Sierra Club is a membership organization advocating for the protection of our unique natural environment. Formed in 1968, the Hawai‘i Chapter of the Sierra Club has over 5,000 members throughout the Hawaiian Islands. The Sierra Club’s members are directly affected by the holdover of the revocable permits. They live along and draw water from the streams in the license area for residential and farming purposes. They enjoy the streams in the license area for their recreational and spiritual importance. This includes, but is not limited to, hiking, fishing, swimming, and other recreational uses in and around the streams of the proposed license area.

The Sierra Club’s interests are harmed by these diversions. DLNR’s division of aquatic resources has concluded that the diversions of East Maui streams harm aquatic life. Our members have seen streams run dry for long periods of time while A&B has diverted them. These diversions harm our members ability to use and enjoy free-flowing streams. BLNR has never clarified whether the permits give A&B an exclusive right to occupy the land; i.e. to exclude others. To the extent that the permit allows A&B to exclude Sierra Club members from hiking on state land, their rights are adversely affected.

B. A Contested Hearing is the Best Means to Protect the Public Interest.

The risk of erroneous deprivation of the Sierra Club’s rights are high and there is no better means of ensuring that these rights are protected (short of going to court).

1. Existing BLNR procedures have failed to protect streams.

Existing procedures have not allowed for the protection of 13 streams. A&B and EMI continue to divert millions of gallons of water from free-flowing streams without any substantive review by BLNR. BLNR has failed to address the problems caused by diversion structures on public land. It has failed to take meaningful action to get trash cleaned up. It has failed to ensure that A&B and EMI fulfill their burden. It has turned a blind-eye to the water that is no used. BLNR needs accurate and complete information in order to make an informed decision.

2. A contested case hearing on the holdover provides procedural protections.

A contested case proceeding would allow for a factual record to be developed. "A contested case hearing is similar in many respects to a trial before a judge: the parties have the right to present evidence, testimony is taken under oath, and witnesses are subject to cross-examination. It provides a high level of procedural fairness and protections to ensure that decisions are made based on a factual record that is developed through a rigorous adversarial process." *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai'i 376, 380, 363 P.3d 224, 228 (2015). A contested case hearing provides procedural protections to all parties. A contested case can ensure that a decision is based exclusively on evidence in the record. It precludes ex parte communication. A contested case is an effective means of resolving disputed facts. And it allows for deliberate decisionmaking rather than hastily crafted and vague conditions.

If the Sierra Club is denied a contested case hearing and then sues over BLNR's decision, a trial would likely not take place for more than 18 months --after the term of this permit has expired.

3. The CWRM proceeding did not protect the Sierra Club's interests.

It would be a mistake to assume that the Sierra Club's interests were addressed or protected in the recently concluded CWRM proceedings.

First, the Sierra Club was not a party to the CWRM proceedings, which were initiated in 2001.

Second, many of the streams that Sierra Club members use in the area covered by the revocable permits were not addressed in any way in the CWRM proceeding.

Third, in setting minimum instream flow standards, CWRM did not impose a burden of proof on any of the parties. In contrast, when rendering a decision as to whether allow a private corporation to use public trust resources, the BLNR must impose on A&B the burden to (a) justify the diversions "in light of the purposes protected by the trust." *In re Water Use Permit Applications*, 94 Haw. 97, 9 P.3d 409, 455 (2000) and (b) show the diversions will not injure the rights of others. *Hawaiian Commercial & Sugar Company v. Wailuku Sugar Company*, 15 Haw. 675, 689 (1904). Application of this standard should provide greater protection of our streams.

C. BLNR has Substantial Interests in Conducting a Contested Case.

The BLNR has a substantial interest in making deliberate decisions when it comes to public trust land. "Under public trust principles, the State as trustee has the duty to protect and maintain the trust property and regulate its use. Presumptively, this duty is to be implemented by devoting the land to actual public uses, e.g., recreation. Sale of the property would be permissible only where the sale promotes a valid public purpose." *State by Kobayashi v. Zimring*, 58 Haw. 106, 121, 566 P.2d 725, 735 (1977). See also *Kelly v. 1250 Oceanside Partners*, 111 Hawai'i 205, 231 140 P.3d 985, 1011 (2006) (public trust duty requires agency to "ensure that the prescribed measures are actually being implemented"); *Mauna Kea*, 136 Hawai'i at 414, 363 P.3d at 262 (concurring opinion of J Pollack, joined by Wilson and McKenna) (trustee must "fulfill the State's affirmative constitutional obligations"). The BLNR's decision must be made "with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state." *In Re Water Use Permit Applications*, 94 Hawai'i 97, 143, 9 P.3d 409, 455 (2000). When acting as a trustee, BLNR

"must make its findings reasonably clear. The parties and the court should not be left to guess, with respect to any material question of fact, or to any group of minor matters that may have cumulative significance, the precise finding of the agency. . . Clarity in the agency's decision is all the more essential in a case such as this where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute." Id. at 158-59, 9 P.3d at 469-70 (2000)(citations and internal quotation marks omitted). These values are best assured in the context of a contested case. A contested case hearing could answer questions with testimony given under oath like:

- how much would A&B have to pay for water if water from these parcels was not available to A&B (the avoided cost)?
- how much would it cost A&B to install meters that estimated how much water it was diverting daily from each stream?
- how much water is A&B diverting from each stream?
- how much water is available to A&B from its own land?
- how much water from East Maui has &B actually been used the past three years and how much is predicted to be used this coming year?
- is aquatic life harmed when a stream flows at 64% of median base flows (BFQ50) rather than when the stream is free-flowing?
- how much water taken from east Maui streams is lost due to evaporation and seepage?
- how much garbage – including discarded pipes – remains on the public land that A&B is using?

Please keep in mind that BLNR retains a property interest in the East Maui Irrigation system and can authorize the use of the system to provide water to Maui County for its existing uses.

22. Any Disagreement Petitioner May Have with an Application before the Board

See the Sierra Club's October 15, 2020 letter to Suzanne Case. as well as the written testimony offered for the November 13, 2020 meeting. See the Sierra Club's motion for summary judgment, or in tjhe alternative for a preliminary injunction filed on April 3, 2020.

23. Any Relief Petitioner Seeks or Deems Itself Entitled to

The Sierra Club requests that numerous conditions be imposed if this revocable permit is going to be continued.

24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

The Sierra Club can bring to the BLNR's attention facts, documents and testimony that its staff has not provided to the board. Its cross examination of the applicant's witnesses will reveal that statements it has made lack credibility. Last year, for example, A&B falsely told you that it was using and needed stream water to irrigate 6,500 acres of pasture.

25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Marti Townsend
Petitioner or Representative (Print Name)

M T Townsend
Signature

Nov. 16, 2020
Date

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,) CIVIL NO. 19-1-0019-01 JPC
) (Environmental Court)
)
) Plaintiff,)
)
 vs.) DECLARATION OF ROB WELTMAN
)
)
 BOARD OF LAND AND NATURAL)
 RESOURCES, DEPARTMENT OF LAND)
 AND NATURAL RESOURCES, SUZANNE)
 CASE in her official capacity as Chairperson)
 of the Board of Land and Natural Resources,)
 ALEXANDER AND BALDWIN, INC., and)
 EAST MAUI IRRIGATION, LLC)
)
)
) Defendants.)
)
)

DECLARATION OF ROB WELTMAN

I, Rob Weltman, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I live on, and am a resident of, Maui.
3. I have been a member of the Sierra Club since 1995.
4. I am the chair of the Sierra Club's Maui Group as well as the Maui Group's

Outings Committee.

5. I have also served on the Sierra Club Hawai'i state chapter's executive committee.
6. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth.

7. One of the Sierra Club's purposes is the protection of natural resources, including our streams and native aquatic life.
8. The Sierra Club and its members seek to preserve and enjoy free-flowing streams.
9. Sierra Club members hike along streams that have been or are diverted by A&B pursuant to the continuation of revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007) (“**revocable permits**”).
10. I have hiked to, or along, Makapipi Stream, Hanawī Stream, Kopili‘ula Stream, West Wailuaiki Stream, Wahinepe‘e Stream, Waikamoi Stream, and Honopou Stream.
11. I hike in the East Maui watershed several times a year.
12. On these hikes to and along streams in East Maui, I explore the plant and aquatic life made possible by stream flows, enjoy views of dramatic waterfalls, appreciate the beauty of nature, experience the sounds made by flowing water, dip into the stream to cool off, and bask in nature’s wonder.
13. One of the joys of hiking is getting away from civilization and seeing the world in its natural condition.
14. I have hiked above, below and next to the stream diversions.
15. When the streams are flowing, I revel in watching stream life reinvigorated.
16. I have seen the streams flowing with lots of water and I have seen the streams with only a trickle of water.

17. When the streams lack water, it has saddened me because I come to enjoy a natural experience. The hiking experience is also less interesting when stream flow is diminished by diversions.

18. That experience is diminished when I see man-made blockages along our streams.

19. I have participated in numerous service projects on Maui to get rid of invasive species – but have not been able to do so within the area covered by the revocable permits.

20. I have seen invasive plants crowd out native species in the East Maui watershed covered by the revocable permits.

21. My interests would be adversely affected if the revocable permits are continued for another year without sufficient conditions to protect our natural environment.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Kihei, Hawai'i, January 14, 2019.



Rob Weltman

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,	)	CIVIL NO. 19-1-0019-01 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	DECLARATION OF MEGAN LOOMIS
	)	POWERS
BOARD OF LAND AND NATURAL)	
RESOURCES, DEPARTMENT OF LAND)	
AND NATURAL RESOURCES,)	
SUZANNE CASE in her official capacity as)	
Chairperson of the Board of Land and)	
Natural Resources, ALEXANDER AND)	
BALDWIN, INC., and EAST MAUI)	
IRRIGATION, LLC)	
)	
Defendants.)	

DECLARATION OF MEGAN LOOMIS POWERS

I, Megan Loomis Powers, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I live on, and am a resident of, Maui.
3. I have been a member of the Sierra Club since 2003.
4. I lived next to Ho'olawa Stream for many years.
5. My parents still own land next to Ho'olawa Stream and I enjoy returning there to swim and observe the beauty of the stream.
6. I have also lived next to Honopou Stream and Hanawana Stream.
7. I have played in these three streams from the age of 4 to the age of 54, rescued fish and pollywogs when they were drying out, floated on every imaginable toy, rope-swunged, bathed, lounged, swam a mile for exercise daily with my father for many years. And in my

Junior year in high school at Seabury Hall, I started my day by jumping off the 30-foot waterfall. I know the many faces of these streams through their yearly cycles.

8. I plan to continue visiting and using these streams for the rest of my life and my adult children plan to do the same.

9. Between 1972 and 2016, on Ho'olawa stream, after more than a 1/4 mile of stagnant, stinky, mucky streamwater and debris was cleared out after a big rain event, and when diversions are curbed (1x/yr.) allowing for the natural stream flow, I would witness an event unfold over the next few weeks where life returned to the streams and banks with spring-like fervor to finally settle into a state of thriving balance. It is the most beautiful thing one can ever imagine! Water is life! Life in Balance! But it was always taken away and everything would dry out again and again and again for many years.

10. I have seen the ill effects of diversions on all three of these streams.

11. When these streams have been diverted, the streams are fairly dry, which impacts the streamlife's ability to flourish and allows invasive weed species to take over the banks, it also impacts my ability to enjoy and recreate in them. Also, the dry streambeds prevent seepage which has caused springs to dry out from which we used to gather drinking water. This is very disturbing, heartbreaking and scary to lose our drinking water. I know firsthand, from daily experience, the difference of how BAD it usually is with the total diversion and, how GOOD it can get when allowed to thrive.

12. Before 2016, Ho'olawa stream below the Haiku Ditch diversion was generally pretty dry except after winter storms, or when EMI decided to open the gates, causing unexpected flooding. Since A&B stopped growing sugarcane, it has been flowing in excess of what would be considered "normal stream flow" because water diverted from other streams is

being dumped into Ho‘olawa Stream via an underground tunnel. This has impacted my ability to enjoy the stream because of the danger of getting washed away over the next waterfall. In addition, it has caused a lot of erosion on the banks of the river and root rot which killed a whole grove of trees, not to mention flooding Ho‘olawa Bay with excess silt, adversely impacting the fishery.

13. Allowing diversions to continue, or to increase, adversely affects my enjoyment of these streams.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Haiku, Hawai‘i, *February 25th*, 2019.


MEGAN LOOMIS POWERS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,	)	CIVIL NO. 19-1-0019-01 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	DECLARATION OF MIRANDA CAMP
)	
BOARD OF LAND AND NATURAL)	
RESOURCES, DEPARTMENT OF LAND)	
AND NATURAL RESOURCES,)	
SUZANNE CASE in her official capacity as)	
Chairperson of the Board of Land and)	
Natural Resources, ALEXANDER AND)	
BALDWIN, INC., and EAST MAUI)	
IRRIGATION, LLC)	
)	
Defendants.)	

DECLARATION OF MIRANDA CAMP

I, Miranda Camp, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I have lived on, and have been a resident of, Maui for about 22 years.
3. I have been a member of the Sierra Club for decades.
4. I am on the executive committee of the Sierra Club's Maui Group and am a hike leader.
5. I have led Sierra Club hikes to or along Makapipi Stream, Punaluu Stream, Wailuaiki Stream, Waikamoi Stream, Kōlea Stream, and Wahinepe'e Stream in east Maui.
6. I have also hiked to, or along, Nailiilihaele Stream, Papaaea Stream, Hoalua Stream, Oopuola Stream, Puehu Stream, Hanehoi Stream and Honopou Stream.
7. I hike in the East Maui watershed several times a year.

8. I love hiking along streams with running water. I cannot fully describe how happy it makes me to see streams full of life flowing from mauka to makai. I enjoy seeing the diversity of life in streams and experiencing the natural world.

9. I have hiked above, below and next to the stream diversions.

10. It is far more pleasant to hike along a stream that is flowing than one that is bone dry or just a trickle.

11. While some streams are in better health than they used to be, I am concerned both that existing diversions and an increase in the amount of water diverted will diminish my enjoyment of hiking to and along streams in east Maui.

12. I appreciate seeing native plants and am discouraged by the growth of invasive species.

13. When the streams are diverted, the natural experience is diminished.

14. I have participated in numerous service projects on Maui to get rid of invasive species – but have not been able to do so within the area covered by the revocable permits.

15. I have seen invasive plants crowd out native species in the East Maui watershed covered by the revocable permits.

16. My interests would be adversely affected if the revocable permits are continued for another year without sufficient conditions to protect our natural environment.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Kihei, Hawai'i, February 15 2019.


Miranda Camp

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,	)	CIVIL NO. 19-1-0019-01 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	DECLARATION OF PAUL CARTER
)	
BOARD OF LAND AND NATURAL)	
RESOURCES, DEPARTMENT OF LAND)	
AND NATURAL RESOURCES, SUZANNE)	
CASE in her official capacity as Chairperson)	
of the Board of Land and Natural Resources,)	
ALEXANDER AND BALDWIN, INC., and)	
EAST MAUI IRRIGATION, LLC)	
)	
Defendants.)	
)	

DECLARATION OF PAUL CARTER

I, Paul Carter, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I live on, and am a resident of, Maui – and have been for decades.
3. I have been a member of the Sierra Club for decades.
4. I live very close to Waipio Stream.
5. I walk down to dip into the stream approximately five or six times a year.
6. When the water from the stream is diverted, I cannot dip in the water because there is none.
7. Approximately once a week, I walk to Hoolawa stream to swim in one of the pools there.

8. When the water levels in Hoolawa stream are low, there is too little water in some of the pools to swim in.

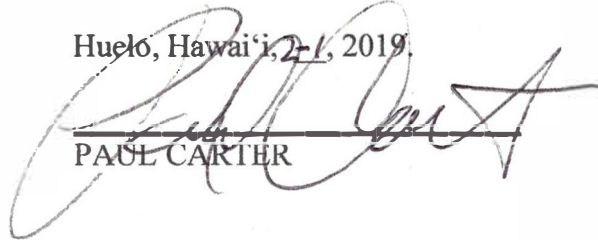
9. I enjoy the beauty and the sounds of a running stream.

10. I plan to continue visiting and using these streams, but my use is affected when too much water is diverted from these streams.

11. Allowing diversions to continue, or to increase, adversely affects my enjoyment of these streams.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Huelo, Hawai'i, 2-1, 2019.



PAUL CARTER

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,) CIVIL NO. 19-1-0019-01 JPC
) (Environmental Court)
Plaintiff,)
vs.) DECLARATION OF NEOLA CAVENY
)
BOARD OF LAND AND NATURAL)
RESOURCES, DEPARTMENT OF LAND)
AND NATURAL RESOURCES,)
SUZANNE CASE in her official capacity as)
Chairperson of the Board of Land and)
Natural Resources, ALEXANDER AND)
BALDWIN, INC., and EAST MAUI)
IRRIGATION, LLC)
)
Defendants.)

DECLARATION OF NEOLA CAVENY

I, Neola Caveny, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I have lived on, and have been a resident of, Maui for 45 years.
3. I have been a member of the Sierra Club since 1998.
4. I live at 445 Huelo Road.
5. I grow food and ornamental plants on my property.
6. I own the parcel TMK (2) 2-9-11-14, which is directly adjacent to Hanehoi Stream.
7. Although I am not a lawyer, it is my understanding that I have both riparian rights and appurtenant rights to use the water from the stream that runs by my property.
8. Hanehoi Stream has not yet been fully restored.

9. If more water were restored to Hanehoi Stream, I would be able to irrigate my crops without worry that I will run out of water from my catchment tank, which is currently the only source of water for my property.

10. A free-flowing Hanehoi Stream is important to me as a source of water for my home and farm; I enjoy the sound of the rushing water; I enjoy looking at the water flowing; I would enjoy seeing native fish in the stream.

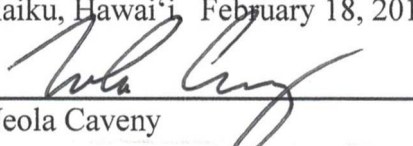
11. A free-flowing Hanehoi Stream increases my enjoyment of my home and enhances the value of my property.

12. While more water is flowing in Hanehoi Stream than in the past, this past summer, the water levels in the stream were very low.

13. My interests would be adversely affected if the revocable permits are continued for another year without conditions that require restoration of natural water flows in Hanehoi Stream by a fixed deadline and without fixing the diversion structures that interfere with the migration of fish upstream and the flow of larvae downstream.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Haiku, Hawai'i, February 18, 2019.



Neola Caveny

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

<p>SIERRA CLUB,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, SUZANNE CASE in her official capacity as Chairperson of the Board of Land and Natural Resources, ALEXANDER AND BALDWIN, INC., and EAST MAUI IRRIGATION, LLC</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL NO. 19-1-0019-01 JPC (Environmental Court)</p> <p>DECLARATION OF LUCIENNE DE NAIE</p>
---	---	--

DECLARATION OF LUCIENNE DE NAIE

I, Lucienne de Naie, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

- 1.The statements below are based upon my personal knowledge.
- 2.I live on, and am a resident of, Maui. And have been so for decades.
- 3.I have been a member of the Sierra Club for decades.
- 4.I live in Huelo not far from Hanehoi and Waipio Iki Streams.
- 5.I have served in various roles in the Sierra Club Hawai'i chapter and the Maui Group, including as a hike leader.
- 6.I have participated in many service trips in which we have worked to get rid of invasive species.
- 7.I have hiked to or along many east Maui streams as a part of Sierra Club outings.

8.I have also hiked to or along many east Maui streams as an individual or with friends (i.e. not part of an official Sierra Club outing).

9.I plan to continue to visit many of the east Maui streams this year and in future years.

10.I have hiked to or along the following streams in east Maui: Honopou, Hoolawa ili'ili, Hoolawa nui, Honokala, Mokupapa, Waipio, Waipioiki/Kapalaea, Puolua, Hanehoi, West Hanehoi, Huelo, Hoalua, Hanawana, Kailua, Nailiilihaele, Puehu, Oopuola, Ka'aiea, Kolea, Waiakamoi, Waihinepe'e, Puohakamoa, Haipuaena, Punalau, Honomanu, Nua'ailua, Piina'au, Waiokamilo, Wailuanui, West Wailua iki, East Wailuaiki, Kopiliula, Waiohue, Paakea, Waiakea, Kapaula, Hanawi and Makapipi.

11.I enjoy observing natural beauty, including free-flowing streams and the native aquatic life that is dependent upon them.

12.Over the past 25 years, I have observed the spread of invasive species throughout the east Maui watershed.

13.My enjoyment of hiking in East Maui has been diminished when I have seen:

- a.debris (such as unused/discarded/obsolete pipes) in or near streams;
- b.diversion structures that interfere with the flow of water and the migration of native aquatic life up and downstream;
- c.reduced flow in streams, making it more difficult (and sometimes impossible) to swim or dip in a stream, and making it more difficult for native aquatic species to survive; and
- d.invasive species taking over native forests.

14.I have recreational, aesthetic, environmental and public trust interests in ensuring that streams are free-flowing and that public lands are properly managed.

15. Allowing the revocable permits to be held over for another year (without appropriate conditions) will harm my interests by:

- a. allowing debris to be left in or next streams because the department of land and natural resources has not attempted to verify the conditions on the ground or take any meaningful action to get A&B and EMI to clean up their mess;
- b. allowing diversion structures to continue to interfere with the migration of native aquatic species on many east Maui streams;
- c. preventing sufficient water from flowing within many streams;
- d. allowing A&B and EMI to divert water from one stream and dump it into another stream;
- e. allowing A&B and EMI to divert more water than they have been diverting over the past three years;
- f. potentially jeopardizing my ability to hike in this area; and
- g. allowing invasive species to continue to spread.

16. My recreational, aesthetic, environmental and public trust interests are harmed by allowing the revocable permits to be held over for another year.

17. I read environmental impact statements (EISs) and reports by government agencies to educate myself and to craft testimony.

18. The lack of information that an EIS would provide has hindered my ability to be fully informed as to the status of east Maui streams.

19. The failure of BLNR to require A&B and EMI to provide relevant data (including what percentage of water they are taking from each stream) makes it more difficult for me to protect the streams that I enjoy.

20.I provided a 91-paragraph declaration to the Commission on Water Resources Management in December 2014. A true and correct copy of it was attached to A&B's motion to dismiss as its Exhibit 43.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Haiku, Hawai'i, February 28 2019.


LUCIENNE DE NAIE