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FIRST CIRCUIT COURT
 STATE OF HAWAII
 FILED

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 NĀ MOKU AUPUNI O KO'OLAU HUI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NĀ MOKU AUPUNI O KO'OLAU HUI,	)	Civil No. 14-1-0918-04 RAN
	)	(Agency Appeal)
Appellant,)	
	)	ORDER REVERSING AND VACATING
vs.	)	APPELLEE BOARD OF LAND AND
	)	NATURAL RESOURCES' ORDER
BOARD OF LAND AND NATURAL	)	DENYING APPELLANT'S AMENDED
RESOURCES, the DEPARTMENT OF	)	MOTION TO RECONVENE CONTESTED
LAND AND NATURAL RESOURCES,	)	CASE PROCEEDINGS
WILLIAM AILA, JR. in his official)	
capacity as Chairperson of the Board of)	
Land and Natural Resources,)	
ALEXANDER & BALDWIN, INC., EAST)	
MAUI IRRIGATION, LTD., COUNTY OF)	
MAUI, DEPARTMENT OF WATER)	
SUPPLY, MAUI TOMORROW, AND)	
HAWAI'I FARM BUREAU)	
FEDERATION,)	
)	
Appellees.)	
)	

**ORDER REVERSING AND VACATING APPELLEE BOARD OF LAND AND
 NATURAL RESOURCES' ORDER DENYING APPELLANT'S
 AMENDED MOTION TO RECONVENE CONTESTED CASE PROCEEDINGS**

On November 14, 2014, the Honorable Rhonda A. Nishimura heard oral argument on the instant appeal by Appellant Nā Moku Aupuni O Ko`olau Hui, filed herein on April 14, 2014. Ashley K. Obrey and Alan T. Murakami appeared for Appellant Nā Moku Aupuni O Ko`olau Hui (Appellant Nā Moku), Linda L.W. Chow appeared for Appellees Board of Land and Natural Resources, Department of Land and Natural Resources, and William Aila, Jr., in his official capacity as Chairperson of the Board of Land and Natural Resources (collectively “Board”), David Schulmeister and Elijah Yip appeared for Alexander & Baldwin, Inc. and East Maui Irrigation, Ltd. (collectively “A&B”), and Caleb P. Rowe and Kristin Tarnstrom appeared for the County of Maui, Department of Water Supply (“County”). The Court, having reviewed Appellant Nā Moku’s Opening Brief, filed herein on August 21, 2014, Appellee Maui Tomorrow Foundation, Inc.’s Joinder to Nā Moku’s Opening Brief, filed herein on August 28, 2014, Appellees Board, A&B, and County’s respective Answering Briefs, filed herein on September 30, 2014, Appellee Maui Tomorrow’s Reply Brief, filed herein on October 10, 2014, Appellant Nā Moku’s Consolidated Reply Brief, filed herein on October 14, 2014, the memoranda attached thereto and the files and records herein, and for good cause shown, hereby finds good cause to grant this appeal.

Appellant Nā Moku brings this appeal to challenge the Board’s decision to deny Appellant Nā Moku’s Amended Motion to Reconvene the Contested Case Proceedings in *In the Matter of the Contested Case Hearing Regarding Water Licenses at Honomanu, Keanae, Nahiku, and Huelo*, Maui, DLNR File No. 01-05-MA, pursuant to HRS § 91-14 and Rule 72 of the Hawai`i Rules of Civil Procedure and Articles XI §§ 1 and 7 and Article XII § 7 of the Constitution of the State of Hawai`i.

This Court REVERSES AND VACATES the Board's preliminary decision to deny Appellant Nā Moku's Amended Motion to Reconvene the Contested Case Proceedings and ORDERS the Board to reconvene the hearing subject to certain conditions. The reconvened proceedings should address and resolve issues for which the Board has sole statutory and constitutional responsibility and that are not duplicative of the issues to be determined by the Commission on Water Resource Management (CWRM) with respect to Appellant Nā Moku's pending petitions to amend interim instream flow standards for 27 East Maui streams. If there are any components of the reconvened proceedings that are independent of the CWRM proceedings, there is no justifiable reason for the Board not to address those components now.

If the parties cannot agree on the scope of the reconvened proceedings due to conflicting views on what constitute the Board's duties which are independent and non-duplicative of the CWRM, this Court reserves jurisdiction to address any order issued by the Board with respect to the scope of the reconvened proceedings. Appellant Nā Moku may contest that preliminary ruling to this Court without resort to filing a new Rule 72 appeal by filing an appropriate post-ruling motion with this Court.

~~Additionally, if members of Appellant Nā Moku are suffering from immediate injury with respect to particular streams, it is up to Appellant Nā Moku to request adjustments to existing diversions from any particular stream where any particular taro farmer needs increased stream flow to farm taro, gather 'ōpae, or maintain any other traditional and customary practice as interim relief from the Board. Appellee A&B has indicated to the Court in oral argument that it is willing to cooperate and possibly make such adjustments.~~

15/RAN

Therefore, this Court reverses and vacates the Board's decision denying Appellant Nā Moku's Amended Motion to Reconvene the Contested Case Proceedings and orders the Board to reconvene the contested case proceedings.

DATED: Honolulu, Hawai'i, DEC 19 2014.

RHONDA A. NISHIMURA



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

LINDA L.W. CHOW
Deputy Attorney General
Attorney for Board of Land and Natural Resources,
the Department of Land and Natural Resources, and
William Aila, Jr. in his official capacity as Chairperson
of the Board of Land and Natural Resources

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NĀ MOKU AUPUNI O KO'OLAU HUI

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

NĀ MOKU AUPUNI O KO'OLAU HUI,	)	Civil No. 14-1-0918-04 RAN
	)	(Agency Appeal)
Appellant,)	
	)	CERTIFICATE OF SERVICE
vs.)	
	)	[RE: ORDER REVERSING AND
BOARD OF LAND AND NATURAL	)	VACATING APPELLEE BOARD OF LAND
RESOURCES, the DEPARTMENT OF	)	AND NATURAL RESOURCES' ORDER
LAND AND NATURAL RESOURCES,	)	DENYING APPELLANT'S AMENDED
WILLIAM AILA, JR. in his official	)	MOTION TO RECONVENE CONTESTED
capacity as Chairperson of the Board of	)	CASE PROCEEDINGS, Filed December 22,
Land and Natural Resources,	)	2014]
ALEXANDER & BALDWIN, INC., EAST)	
MAUI IRRIGATION, LTD., COUNTY OF)	
MAUI, DEPARTMENT OF WATER)	
SUPPLY, MAUI TOMORROW, and)	
HAWAI'I FARM BUREAU)	
FEDERATION,)	
)	
Appellees.)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the ORDER REVERSING AND
VACATING APPELLEE BOARD OF LAND AND NATURAL RESOURCES' ORDER
DENYING APPELLANT'S AMENDED MOTION TO RECONVENE CONTESTED CASE

PROCEEDINGS, Filed December 22, 2014, was served on the following parties at their respective addresses by hand delivery or U.S. Mail, postage pre-paid on January 8, 2015.

By Hand Delivery

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DATED: Honolulu, Hawai'i, January 8, 2015.

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NĀ MOKU AUPUNI O KO'OLAU HUI

Civil No. 19-1-0019-01 (JPC)

Defendant A&B/EMI's Exhibit AB-12

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____