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LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND
NATURAL RESOURCES; and SUZANNE
CASE, in her official capacity as Chairperson
of the Board of Land and Natural Resources

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,

Plaintiff,

vs.

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.

Civil No. 19-1-0019-01 JPC

DEFENDANTS BOARD OF LAND AND
NATURAL RESOURCES;
DEPARTMENT OF LAND AND
NATURAL RESOURCES; AND SUZANNE
CASE'S **RESPONSE TO PLAINTIFF'S
FOURTH REQUEST FOR ADMISSIONS**

No Trial Date Set

**DEFENDANTS BOARD OF LAND AND NATURAL RESOURCES;
DEPARTMENT OF LAND AND NATURAL RESOURCES; AND
SUZANNE CASE'S RESPONSE TO PLAINTIFF'S
FOURTH REQUEST FOR ADMISSIONS**

Defendants Board of Land and Natural Resources, Department of Land and Natural Resources, and Suzanne Case, in her official capacity as Chairperson of the Board of Land and Natural Resources, (collectively "Defendant State"), by and through counsel, pursuant to Rule 36 of the Hawaii Rules of Civil Procedure, responds to Plaintiff's Fourth Request for Admissions, dated June 18, 2019, as follows:

GENERAL OBJECTIONS

The following general objections are continuing in nature and apply to each admission request, and are hereby incorporated into each response provided, as if fully set forth therein, unless expressly waived with regard to a particular admission:

1. Defendant State objects to each request for admission to the extent that it is vague, ambiguous, uncertain, and/or unintelligible, such that Defendant State cannot determine what information is being sought.
2. In general, with respect to Defendant State's responses to Plaintiff's request for admissions, Defendant State objects to all admissions to the extent they seek unrelated information and documents not reasonably calculated to lead to the discovery of admissible evidence. See, Hawaii Rules of Civil Procedure (HRCPP) Rule 26(b)(1).
3. Defendant State objects generally to all admissions, as well as the instructions contained therein that call for information covered by the attorney-client privilege or other applicable privilege, including attorney work product and the governmental deliberative process.
4. Except for explicit facts admitted herein, no general admission of any nature whatsoever are implied or should be inferred from Defendant State's responses to the admissions.

5. Defendant State's response, or qualified response, to admissions is not to be deemed a waiver of its objections, whether made herein as a general objection and limitation, or made in the context of a particular response below, to any such admission.

6. Defendant State objects to each and every request for admission calling for detailed recollections of individuals because such admission are overly broad, unreasonably burdensome, and oppressive and should be more efficiently propounded in a deposition.

7. Defendant State objects to each and every request for admission to the extent that they seek information beyond that permitted by, or otherwise inconsistent with, the HRCPP and/or the Rules of the Circuit Court of the State of Hawai'i.

8. Defendant State objects to each and every request for admission to the extent that they are duplicative and unduly burdensome to the extent that they seek information contained in documents that Plaintiff already has available or in its possession.

9. Without waiving said objections, and subject to other specific objections, a good faith effort response is made.

10. Without waiving these objections and reserving the right to reassert them at or before trial, Defendant State hereby responds to Plaintiff's Third Request for Admissions.

RESPONSES

1. Suzanne Case, DLNR and BLNR do not know how much water was flowing in Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihaele Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries) as of June 15, 1988.

Admit

Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

2. Prior to BLNR's November 9, 2018 decisionmaking to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, Suzanne Case, DLNR and BLNR did not know how much water was flowing in Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihale Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

3. Prior to BLNR's November 9, 2018 decisionmaking to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, Suzanne Case, DLNR and BLNR did not know the base flow of Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihale Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

4. Prior to BLNR's November 9, 2018 decisionmaking to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, Suzanne Case, DLNR and BLNR did not have an estimate of the base flow of Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihale Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

5. Prior to BLNR's November 9, 2018 decisionmaking to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, Suzanne Case, DLNR and BLNR did not ask A&B to provide an estimate of the base flow of Kōlea Stream, Punaluu Stream, Kaaiea Stream, Oopuola Stream (Makanali tributary), Puehu Stream, Nailiilihale Stream, Kailua Stream, Hanahana Stream (Ohanui tributary), Hoalua Stream, Waipio Stream, Mokupapa Stream, and Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

6. The area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, lies within the state conservation district.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

7. More than ninety percent of the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, lies within the state conservation district.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

8. Since November 9, 2018 decisionmaking to holdover revocable permits S-7263, S-7264, S-7265, and S-7266, Suzanne Case, DLNR and BLNR have not monitored or investigated to determine whether any of the water being taken is being used in a reasonable and beneficial manner.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

9. Prior to its November 9, 2018 decisionmaking on the holdover revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR did not know which diversions cause the greatest impediment to the migration of native aquatic species upstream.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

10. Prior to its November 9, 2018 decisionmaking on the holdover revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR did not seek information regarding which diversions cause the greatest impediment to the migration of native aquatic species upstream.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

11. DLNR has not initiated any study, as recommended in paragraph “n” of the June 2018 CWRM order to monitor and determine whether there are biological or ecological differences between fully restored West Wailuaiki Stream and partially restored East Wailuaiki Stream.

 Admit X Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.


DLNR/CWRM sought and received funding from the Legislature in 2019 to initiate an ecological study comparing the H90 restored streams to the fully restored streams with DAR. CWRM and DAR have met multiple times to discuss the focus and purpose of the study, the metrics involved, staff required, logistics of data collection, and funding. The study is moving forward.

12. The lands encompassed by revocable permits S-7263, S-7264, S-72656, and S-7266 are ceded lands.

 X Admit Deny

If not admitted, please specify reasons for objection and set forth in detail the reasons why the defendants cannot truthfully admit the matter.

DATED: Honolulu, Hawaii, July 17, 2019.



AMANDA J. WESTON
Deputy Attorney General
Attorney for Defendants
DEPARTMENT OF LAND AND NATURAL
RESOURCES; BOARD OF LAND AND
NATURAL RESOURCES; AND SUZANNE
CASE