

CLARE E. CONNORS 7936  
Attorney General of Hawai'i

WILLIAM J. WYNHOFF 2558

LINDA L.W. CHOW 4756

AMANDA J. WESTON 7496

Deputy Attorneys General

Department of the Attorney

General, State of Hawai'i

Room 300, Kekuanao'a Building

465 South King Street

Honolulu, Hawai'i 96813

Telephone: (808) 587-2985

Attorneys for 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

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  
FIFTH REQUEST FOR ADMISSIONS**

Trial: May 11, 2020

**DEFENDANTS BOARD OF LAND AND NATURAL RESOURCES;  
DEPARTMENT OF LAND AND NATURAL RESOURCES; AND  
SUZANNE CASE'S RESPONSE TO PLAINTIFF'S  
FIFTH 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 Fifth Request for Admissions, dated January 27, 2020, 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 Fifth Request for Admissions.

### RESPONSES

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

  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.*

2. Prior to BLNR's October 2019 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 Puakea Stream, 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).

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 October 2019 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 Puakea Stream, 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).

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.*

DLNR knows the low flow characteristics of the streams.

4. Prior to BLNR's October 2019 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 Puakea Stream, 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).

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.*

DLNR knows the low flow characteristics for most of the streams.

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 Puakea Stream, 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).

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 Department of Land and Natural Resources' mission statement is "Enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors."

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. Since its October 2019 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.

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.*

DLNR works with the permittees and requires updates to ensure that the conditions of the RPs are being followed.

8. Prior to its October 2019 decisionmaking on the holdover of 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.

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.*

The request is vague and misleading as written and cannot be admitted. Not all streams support all species and not all species naturally live at elevations upstream of any particular diversion so “the greatest impediment to migration” cannot be quantified.

9. Prior to its October 2019 decisionmaking on the holdover of revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR did not know which diversions pose the greatest threat of entrainment of native aquatic species upstream.

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.*

The request is vague and misleading as written and cannot be admitted. Not all streams support all species and not all species naturally live at elevations upstream of any particular diversion so “the greatest impediment to migration” cannot be quantified.

10. Prior to its October 2019 decisionmaking on the holdover of 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.

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.*

The request is vague and misleading as written and cannot be admitted. Not all streams support all species and not all species naturally live at elevations upstream of any particular diversion so “the greatest impediment to migration” cannot be quantified.

11. Prior to its October 2019 decisionmaking on the holdover of revocable permits S-7263, S-7264, S-7265, and S-7266, BLNR did not seek information regarding which diversions cause the greatest threat of entrainment of native aquatic species upstream.

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.*

The request is vague and misleading as written and cannot be admitted. Not all streams support all species and not all species naturally live at elevations upstream of any particular diversion so “the greatest impediment to migration” cannot be quantified.

12. Full diversion (where maximum diversion is capable as was the case during the sugar can cultivation period) of Puakea Stream, 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) results in the loss of 85% of the habitat units on those streams.

       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.*

This request is misleading and cannot be admitted. It is impossible to know the exact percentage of loss. Not all streams support the same amount (or any) habitat for native biota. Some only support a subset of species. Some streams are too small to support any species.

DATED: Honolulu, Hawai‘i, February 14, 2020.

/s/ Amanda J. Weston

AMANDA J. WESTON

Deputy Attorney General

Attorney for 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