

CADES SCHUTTE
A Limited Liability Law Partnership

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ALEXANDER & BALDWIN, INC. and
EAST MAUI IRRIGATION COMPANY, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

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
(Environmental Court)

DEFENDANTS ALEXANDER & BALDWIN,
INC. AND EAST MAUI IRRIGATION
COMPANY, LLC'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR
ANSWERS TO INTERROGATORIES

No Trial Date Set

**DEFENDANTS ALEXANDER & BALDWIN, INC. AND
EAST MAUI IRRIGATION COMPANY, LLC'S RESPONSE TO
PLAINTIFF'S FIRST REQUEST FOR ANSWERS TO INTERROGATORIES**

Defendants Alexander & Baldwin, Inc. ("*A&B*") and East Maui Irrigation Company, LLC ("*EMI*") (collectively "*Defendants*"), by and through their counsel, Cades Schutte LLP, pursuant to Rule 33 of the Hawai'i Rules of Civil Procedure ("*HRCP*") responds to Plaintiff

Sierra Club's ("Plaintiff") First Request for Answers to Interrogatories to Defendants Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC (the "Request"), dated March 19, 2019, as follows:

GENERAL OBJECTIONS

Defendants' specific objections and responses below to the individual requests below are in addition to the general objections and responses set forth in this section. These limitations and objections form a part of the response to each and every request and are set forth herein to avoid the duplication and repetition of restating them for every response. The absence of a reference to a general objection should not be construed as a waiver of the general objection as to a specific request.

1. Defendants' responses to the requests, notwithstanding the objectionable nature of any of the definitions, instructions, or requests, do not constitute (a) a stipulation that the information sought is relevant or admissible, (b) a waiver of the attorney-client privilege, the attorney work-product doctrine or any other privilege or doctrine, (c) a waiver of Defendants' general objections or the objections asserted in response to the specific requests, or (d) an agreement that requests for similar information will be treated in a similar manner
2. Defendants object to the Request as being improperly directed at multiple parties.
3. Defendants object to the Request to the extent that it seeks to impose burdens or obligations greater than imposed by the HRCPP and the Rules of the Circuit Courts of the State of Hawai'i ("RCCH"). Defendants will follow the HRCPP and the RCCH.

4. Defendants object to the Request generally as overly broad and unduly burdensome. Defendants have attempted to reasonably construe and respond in good faith to the Request in a timely fashion.

5. Defendants object to the Request generally to the extent that it seeks information that is privileged or otherwise not subject to discovery, under the attorney-client privilege, the work-product doctrine, or other applicable privilege, and states that privileged information will not be provided.

6. Defendants object to the Request to the extent that the interrogatories purport to require information not within Defendants' custody, possession, or control, or seek information that is not within Defendants' knowledge.

7. Defendants note that discovery and investigation are ongoing. Accordingly, the responses to the Request are given without prejudice to Defendants' right to amend and/or supplement its responses or to produce evidence of any subsequently discovered facts or if Defendants find inadvertent omissions or errors have been made.

8. Defendants reserve the right to supplement, withdraw, amend, correct, or revise these responses before the completion of discovery, as additional analyses are made, research is completed, and contentions are asserted or if Defendants find that errors or omissions have inadvertently been made or if additional or more accurate information becomes available and is required to be provided under Rules 26 and 33 of the HRCP. The responses and objections set forth herein are made without waiver of this right

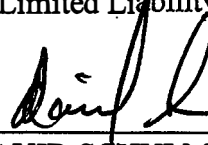
9. The responses attached hereto are each specifically subject to the foregoing objections. All objections made in this response to the Request have been made by Defendants'

counsel and the signature below shall take the place of a signature after each and every objection made.

10. Without waiving these objections, Defendants responds to the Request as follows, incorporating by reference these objections into each and every response.

DATED: Honolulu, Hawaii, May 3, 2019.

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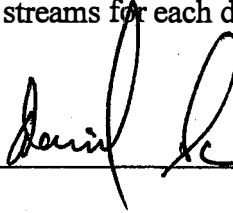
DAVID SCHULMEISTER
TRISHA H. S. T. AKAGI
Attorneys for Defendants
ALEXANDER & BALDWIN, INC. and
EAST MAUI IRRIGATION COMPANY, LLC

INTERROGATORIES

1. How much water was taken daily from each of the following streams in 2018
 - a. Kolea Stream
 - b. Punaluu Stream
 - c. Kaaiea Stream
 - d. Oopuola Stream (Makanali tributary)
 - e. Puehu Stream
 - f. Nailiilihaele Stream
 - g. Kailua Stream
 - h. Hanahana Stream (Ohanui tributary)
 - i. Hoalua Stream
 - j. Waipio Stream
 - k. Mukupapa Stream
 1. Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

Answer:

OBJECTION: Defendants object to Interrogatory No. 1 (including all subparts) as overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. To the extent that the interrogatory seeks information related to the amount of water taken by person(s) other than Defendants, such information is outside the scope of Defendants' knowledge and is not related to the claims and defenses asserted in this litigation. Defendants further object to the interrogatory as vague and ambiguous, particularly the terms "taken" and "daily," which are not defined. Defendants construe the request as seeking the amount of water that Defendants removed from the identified streams for each day in 2018.



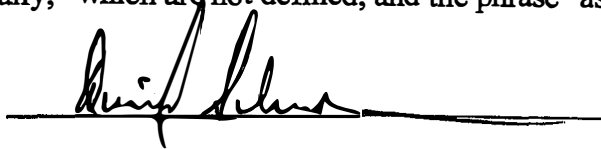
As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that it does not possess data breaking down how much of the surface water diverted by the East Maui Ditch System in 2018 originated from each of these specific streams. The aggregate volume of water diverted in 2018 by Defendants from these streams is, however, less than the aggregate volume of water diverted from all streams in East Maui in 2018 inasmuch as the aggregate volume measured at Honopou Stream includes water diverted from the above listed streams as

well as other streams. For 2018, the aggregate volume of water diverted from East Maui as measured at Honopou was 9,397 million gallons, which translates into 25.75 million gallons per day ("gpd").

2. How much water was taken daily from each of the following streams as of June 15, 1988
 - a. Kolea Stream
 - b. Punaluu Stream
 - c. Kaaiea Stream
 - d. Oopuola Stream (Makanali tributary)
 - e. Puehu Stream
 - f. Nailiilihaele Stream
 - g. Kailua Stream
 - h. Hanahana Stream (Ohanui tributary)
 - i. Hoalua Stream
 - j. Waipio Stream
 - k. Mokupapa Stream
 1. Hoolawa Stream (Hoolawa ili and Hoolawa nui tributaries).

Answer:

OBJECTION: Defendants object to Interrogatory No. 2 (including all subparts) as overly broad, unduly burdensome and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence as the interrogatory is not limited to a reasonable time period. Also, to the extent that the interrogatory seeks information related to the amount of water taken by person(s) other than Defendants, such information is outside the scope of Defendants' knowledge and is not related to the claims and defenses asserted in this litigation. Defendants further object to this interrogatory as vague and ambiguous, particularly the terms "taken" and "daily," which are not defined, and the phrase "as of June 15, 1988."



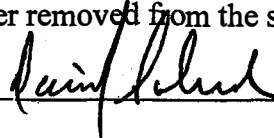
As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that it does not possess data breaking down how much of the surface water diverted by the East Maui Ditch System in 1988 originated

from each of these specific streams. The aggregate volume of water diverted in 1988 by Defendants from these streams is, however, less than the aggregate volume of water diverted from all streams in East Maui in 1988 inasmuch as the aggregate volume measured at Honopou Stream includes water diverted from the above listed streams as well as other streams. For 1988, the aggregate volume of water diverted from East Maui as measured at Honopou was 60,485 million gallons, which translates into 165.26 million gpd.

3. On which streams did the A&B Defendants ever maintain or operate gauges or other devices to measure the amount of water taken from a stream?

Answer:

OBJECTION: Defendants object to Interrogatory No. 3 as overly broad, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the interrogatory seeks information about streams located outside of the areas covered by Revocable Permit Numbers S-7263, S-7264, S-7265, and S-7266 (together "RPs"), as such streams are not the subject of this litigation. The interrogatory is also not limited to a reasonable time period. Defendants further object to the interrogatory as vague and ambiguous, particularly the term "taken," which is not defined. Defendants construe the interrogatory as seeking the streams located in the area covered by the RPs on which Defendants currently maintain or operate a gauge or other device to measure the amount of water removed from the stream.



As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that, to the best of Defendants' current state of knowledge, Defendants have never maintained or operated devices to measure the amount of water taken from any specific stream, as opposed to gauges which measured water flowing in various sections of the East Maui Ditch system, which divert water from more than one stream.

4. On which streams did the A&B Defendants ever maintain or operate gauges or other devices to measure the amount of water flowing in a stream?

Answer:

OBJECTION: Defendants object to Interrogatory No. 4 as overly broad, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence to the extent that the interrogatory seeks information about streams located outside of the areas covered by the RPs, as such streams are not the subject of this

litigation. The interrogatory is also not limited to a reasonable time period. Defendants further object to the interrogatory as vague and ambiguous, particularly the term "taken," which is not defined. Defendants construe the request as seeking the streams located in the area covered by the RPs on which Defendants currently maintain or operate a gauge or other device to measure the amount of water in the stream.

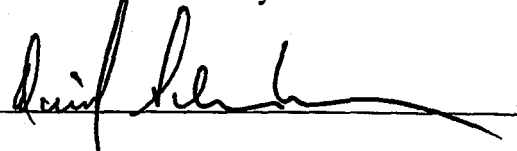


As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that, to the best of Defendants' current state of knowledge, Defendants have never maintained or operated devices to measure the amount of water flowing in any specific stream, as opposed to gauges which measured water flowing in various sections of the East Maui Ditch system, which divert water from more than one stream.

5. How many gallons of water have been diverted daily from Hanehoi stream by the A&B Defendants since July 2018?

Answer:

OBJECTION: Defendants object to Interrogatory No. 5 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the interrogatory as vague and ambiguous, particularly the terms "diverted" and "daily," which are not defined. Defendants construe the interrogatory as seeking the amount of water intentionally removed from Hanehoi Stream by Defendants each day from July 2018 to the present.



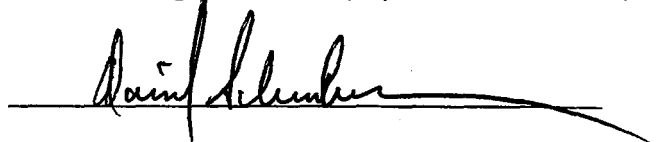
As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that diversion structures exist on Hanehoi Stream which are in the process of being modified in accordance with permits obtained from CWRM, that Defendants have taken steps to allow water to flow over, around, or through the remaining diversions until all of the permitted work is completed, but some water may still unintentionally be diverted as a result of the remaining diversions.

Defendants do not possess data breaking down how much of the surface water diverted by the East Maui Ditch System in 2018 originated from each specific stream, including Hanehoi. For 2018, the aggregate volume of water diverted from East Maui as measured at Honopou was 9,397 million gallons, which translates into 25.75 million gpd. Defendants believe that the average amount of water diverted from Hanehoi stream per day for all of 2018 represents a small, but presently unquantifiable, fraction of this amount.

6. How many gallons of water have been diverted daily from Honopou Stream by the A&B Defendants since July 2018?

Answer:

OBJECTION: Defendants object to Interrogatory No. 5 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the interrogatory as vague and ambiguous, particularly the terms “diverted” and “daily,” which are not defined. Defendants construe the interrogatory as seeking the amount of water intentionally removed from Honopou Stream by Defendants each day from July 2018 to the present.



As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that.

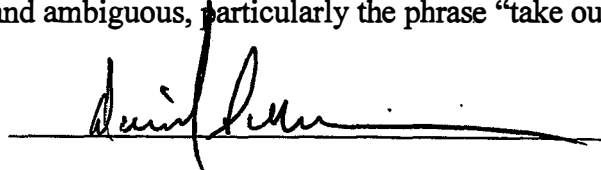
In compliance with the IIFS and the commitment of full restoration of Honopou Stream, EMI hasn't diverted water from Honopou Stream, although there may have been instances where some “leakage” has entered the ditch system.

Defendants do not possess data breaking down how much of the surface water diverted by the East Maui Ditch System in 2018 originated from each specific stream, including Honopou. For 2018, the aggregate volume of water diverted from East Maui as measured at Honopou was 9,397 million gallons, which translates into 25.75 million gpd. Defendants believe that the average amount of water that may have leaked from Honopou stream per day for all of 2018 represents a very small, but presently unquantifiable, fraction of this amount.

7. How many gallons of water did the A&B Defendants take out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2016?

Answer:

OBJECTION: Defendants object to Interrogatory No. 7 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the interrogatory as vague and ambiguous, particularly the phrase “take out of,” which is not defined.



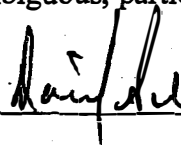
As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that the aggregate volume of water collected by Defendants from streams in East Maui in 2016, which encompasses land both within the

areas covered by the revocable permits as well as lands privately owned by Defendants, as measured at where the East Maui Ditch system crosses Honopou Stream, was 15,879 million gallons, which translates into 43.38 million gpd.

8. How many gallons of water did the A&B Defendants take out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2017?

Answer:

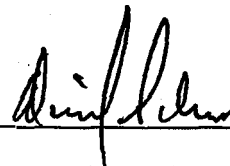
OBJECTION: Defendants object to Interrogatory No. 8 as neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the interrogatory as vague and ambiguous, particularly the phrase "take out of," which is not defined.



As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that the aggregate volume of water collected by Defendants from streams in East Maui in 2017, which encompasses land both within the areas covered by the revocable permits as well as lands privately owned by Defendants, as measured at where the East Maui Ditch system crosses Honopou Stream, was 8,757 million gallons, which translates into 23.99 million gpd.

9. How many gallons of water did the A&B Defendants take out of east Maui streams daily within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266, on average, in 2018?

Answer:

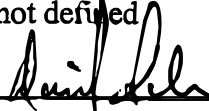


As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that the aggregate volume of water collected by Defendants from streams in East Maui in 2018, which encompasses land both within the areas covered by the revocable permits as well as lands privately owned by Defendants, as measured at where the East Maui Ditch system crosses Honopou Stream, was 9,397 million, which translates into 25.75 million gpd.

10. How much water on average is A&B or EMI planning to take from the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266 in 2019?

Answer:

OBJECTION: Defendants object to Interrogatory No. 10 as vague and ambiguous, particularly the phrase "take from," which is not defined.




As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that the amount of water expected to be collected by Defendants from streams in East Maui in 2019, which encompasses land both within the areas covered by the revocable permits as well as lands privately owned by Defendants, as measured at where the East Maui Ditch system crosses Honopou Stream, is from 30-35 million gpd.

11. From which streams is A&B or EMI diverting water and then transferring that water to other streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266?

Answer:

OBJECTION: Defendants object to Interrogatory No. 11 as vague and ambiguous, particularly the term "transferring," which is not defined. Defendants construe the interrogatory as seeking the streams within the areas encompassed by the RPs that Defendants are currently diverting any amount of water from, even unintentionally, which may have subsequently entered another stream in the areas encompassed by the RPs.



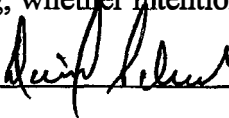
As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that there are certain streams that need to be used to transfer water from one ditch to another. The principal streams where this occurs are Puohokamoa, Haipuaena, Waikamoi and Kopiliula. Additionally, based on the design of some of the intakes, allowing water to either remain in the stream or to be released through a sluice gate can be difficult. There are instances where there is no sluice gate apparatus. Therefore, water may be unintentionally diverted into the ditch. If a radius gate located in the ditch downstream is regulated to a height that doesn't allow the entire diverted amount to flow by, some water will subsequently be passed through the nearest upstream area of relief. This water could then be released down a stream and be

available for diversion at another ditch along the stream, or may flow continue to flow downstream of all of the diversions in the East Maui Ditch system.

12. Into which streams is A&B or EMI transferring or dumping water that originates in other streams within the area encompassed by revocable permits S-7263, S-7264, S-7265, and S-7266?

Answer:

OBJECTION: Defendants object to Interrogatory No. 12 as vague and ambiguous, particularly the term "transferring," which is not defined. Defendants further object to the use of the term "dumping" and any connotations or value judgments associated with the use of such term. Defendants construe the interrogatory as seeking the streams within the areas encompassed by the RPs into which water from another stream within the areas encompassed by the RPs is currently entering, whether intentionally or unintentionally.

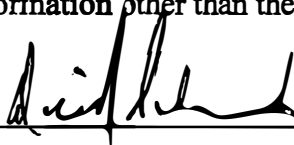


As construed above, and subject to and without waiving these limitations, objections, and general objections, Defendants state that the East Maui Ditch system is operated to minimize to the extent practicable the degree to which water collected into the system is relieved, during high flow conditions, into streams other than the streams from which the water was collected. To the extent that, due to the sudden variability of rainfall conditions, water in excess of the amounts the system is regulated to receive does enter the system and needs to be relieved, this tends to occur at Hoolawa Stream, but can also occur elsewhere depending on weather and flow conditions.

13. Identify all the revocable permits that A&B or EMI has received for Tax Map Key (2) 1-1-001:044, Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017, Tax Map Key (2) 1-1-002:por. 002, and Tax Map Keys (2) 1-2-004:005 & 007 since 1999.

Answer:

OBJECTION: Defendants object to Interrogatory No. 13 as overly broad and neither relevant nor reasonably calculated to the lead to the discovery of admissible evidence to the extent that the interrogatory seeks information other than the RPs that are the subject of this litigation.



Subject to and without waiving the foregoing limitations, objections, and general objections, Defendants state as follows: S-7263, S-7264, S-7265, and S-7266.

14. Under what authority did A&B and EMI continue using state land and diverting water from streams within the areas encompassed by the 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) between the time of Judge Nishimura's January 2016 decision invalidating Revocable Permit No.s 7263, 7264, 7265 and 7266 and BLNR's decision in December 2016 to holdover the revocable permits?

Answer:

OBJECTION: Defendants object to Interrogatory No. 14 as compound and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the interrogatory as vague and ambiguous, particularly the term "authority," which is not defined. Defendants also object to the characterization of the "BLNR's decision in December 2016" as the decision to put the RPs into holdover status was not made in December 2016. Defendants will construe "Judge Nishimura's January 2016 decision invalidating Revocable Permit No.s 7263, 7264, 7265 and 7266" as referring to the January 8, 2016 "Order Granting Plaintiffs' Motion for Partial Summary Judgment," filed October 21, 2015 in Civil No. 15-0650-04 in the Circuit Court of the First Circuit, State of Hawai'i.



Subject to and without waiving the foregoing limitations, objections, and general objections, Defendants state that the legal authority under which Defendants continued to use state land to divert water from streams within the areas encompassed by the RPs during the designated time period was as follows:

- The decisions made by the BLNR in its 2001 Holdover Decision, its 2002 Holdover Decision, and in its 2007 Interim relief Order, copies of which are appended as Exhibits 7, 10 and 15 to Defendants Motion to Dismiss, or, Alternatively, to stay Proceedings filed herein on January 28, 2019.
- The Order Granting Defendant County of Maui, Department of Water Supply's Application for Leave to Take Interlocutory Appeal of the Order Granting Plaintiffs' Motion for Summary Judgment filed October 21, 2015 and Motion for Stay of Proceedings and/or Enforcement of the Order Pending Appeal filed January 19, 2016, entered February 5, 2016; *Carmichael, et al. v. Bd. of Land & Natural Resources, et al.*; Civil No. 15-1-0650-04 (RAN) (Haw. 1st Cir. Ct.).

VERIFICATION

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, Mark A.K. Vaught, being first duly sworn upon oath, depose and say:

That the foregoing answers to the foregoing Interrogatories are true to the best of my knowledge and belief.

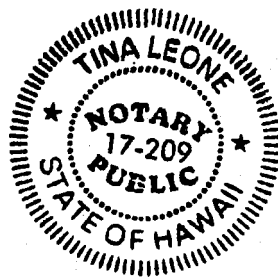
Mark A.K. Vaught

Subscribed and sworn to before me
this 3rd day of May, 2019.

Tina Leone
Notary Public, State of Hawaii

Name Printed: Tina Leone

My commission expires: 06/18/2021



NOTARY CERTIFICATION STATEMENT

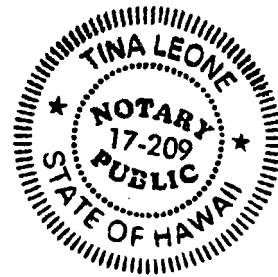
Document Identification or Description: Defendants Alexander & Baldwin, Inc. and East Maui Irrigation Company, LLC's Response to Plaintiff's First Request for Answers to Interrogatories

Doc. Date: May 3, 2019 or Undated at time of notarization.

No. of Pages: 14 Jurisdiction: First Circuit
(in which notarial act is performed)

Tina Leone 03 May 2019
Signature of Notary Date of Notarization and
Certification Statement

Tina Leone
Printed Name of Notary



(Official Stamp or Seal)