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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

SIERRA CLUB,) CIVIL NO. 19-1-0019-01 JPC
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.)
_____)

HRCP 30(b)(6) DEPOSITION OF THE REPRESENTATIVE OF THE
DEFENDANT DEPARTMENT OF LAND AND NATURAL RESOURCES AND
BOARD OF LAND AND NATURAL RESOURCES,
IAN HIROKAWA,

Taken on behalf of Plaintiff Sierra Club at the Offices
of Ralph Rosenberg Court Reporters, Inc., American
Savings Bank, Conference Room 798, 1001 Bishop Street,
Honolulu, Hawai'i 96813, commencing at 11:09 a.m., on
September 6th, 2019, pursuant to Notice.

1 BEFORE: PATRICIA ANN CAMPBELL, CSR 108
2 Certified Shorthand Reporter
3 State of Hawai'i

4
5 APPEARANCES:

6 For Plaintiff Sierra Club:

7 DAVID KIMO FRANKEL, ESQ.
8 Law Office of David Kimo Frankel
9 1638-A Mikahala Way
10 Honolulu, Hawai'i 96816

11

12 For Defendant Board of Land and Natural Resources,
13 Department of Land and Natural Resources, and Suzanne
14 Case in her official capacity as Chairperson of the
15 Board of Land and Natural Resources:

16 AMANDA WESTON, ESQ.
17 Deputy Attorney General
18 Department of the Attorney General
19 State of Hawai'i
20 Kekuanao'a Building, Third Floor
21 465 South King Street
22 Honolulu, Hawai'i 96813

23

24 For Defendants Alexander and Baldwin, Inc., and East
25 Maui Irrigation Company, LLC:

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DAVID SCHULMEISTER, ESQ.
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<u>EXAMINATION BY:</u>	<u>PAGE</u>
Mr. Frankel	5

EXHIBITS FOR IDENTIFICATION

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
1	"Plaintiff's Notice of Taking Deposition Upon Oral Examination of Representative(s) of the Defendant Department of Land and Natural Resources and Board of Land and Natural Resources pursuant to HRCP 30(b)(6)	5

1 (Deposition Exhibit 1 was marked for
2 identification.)

3

4

5 IAN HIROKAWA,
6 called on behalf of Plaintiff Sierra Club, was first
7 duly sworn to tell the truth, the whole truth, and
8 nothing but the truth, and testified as follows:

9

EXAMINATION

10

BY MR. FRANKEL:

11 Q. So can you state your full name for the record?

12 A. Ian Hirokawa.

13 Q. So I want to go over some rules.

14 A. Okay.

15 Q. You need to provide a spoken answer for the
16 court reporter so she can write it down. You can not
17 just nod your head.

18 A. Understood.

19 Q. Okay. Please wait for me to finish my question
20 before you answer, because if we both talk at the same
21 time, it's difficult.

22 A. Okay.

23 Q. If my question is not clear, will you ask me to
24 explain myself?

25 A. Yes.

Q. Have you taken any medication that would affect

1 your ability to answer fully and truthfully this
2 morning?

3 A. I don't think so. Prescription, but I don't
4 think it would affect my ability.

5 Q. Okay. Do you understand that although your
6 attorney may object to a question, you must still answer
7 the questions unless your attorney instructs you not to
8 answer because doing so would violate the
9 attorney-client privilege?

10 A. I understand.

11 Q. Do you understand your testimony is being made
12 under oath?

13 A. Yes.

14 Q. You have an opportunity to review a copy of the
15 transcript of this deposition. Do you want to do so?

16 A. Yes.

17 Q. Okay. Do you understand that you are speaking
18 today on behalf of BLNR and DLNR?

19 A. Understood.

20 Q. Who determined that you would speak on behalf of
21 DLNR and BLNR today?

22 A. The attorney, the Attorney General's Office.

23 Q. Okay. You saw a copy of the Plaintiff's notice
24 of taking this deposition?

25 A. Yes. I believe this is it.

1 Q. Okay, and we have a copy marked Exhibit 1 for
2 the court reporter there. I want to go over which
3 subjects that you have been designated to speak on, so
4 if you look at your copy there, and your attorney and I
5 have talked beforehand, so I just want to confirm for
6 the record the items that you are going to talk on.

7 So page three, I believe, is the information
8 that DLNR and BLNR had as of November 10th, 2018,
9 regarding, and it is topics H and I there at the bottom
10 of the page, one regarding garbage and debris, which is
11 topic H, and topic I regarding reasonable, beneficial
12 use of the water. Are those two topics that you are
13 covering?

14 A. Yes.

15 Q. Okay. And then the next page, topic J, the
16 amount of water Alexander and Baldwin was proposing to
17 divert?

18 A. Yes, I believe, I believe so.

19 Q. Okay, and the next category two, the extent to
20 which DLNR had any information, that information was
21 conveyed to all members of the Board?

22 A. Yes.

23 Q. Okay, and then I believe you are talking about
24 category four of B three; is that right?

25 MS. WESTON: Yes.

1 A. Okay.

2 Q. (By Mr. Frankel) Limiting the amount of water
3 that A&B and EMI can take out of streams; is that right?

4 A. Yes.

5 Q. Okay, and then categories four G through K?

6 MS. WESTON: I'm sorry. G we have to
7 change because that is a DOFAW question.

8 MR. FRANKEL: Okay.

9 MS. WESTON: H through J is correct.

10 Q. (By Mr. Frankel) Okay. H through K? No?

11 A. Oh, I --

12 MS. WESTON: Okay.

13 THE WITNESS: I'm sorry.

14 MS. WESTON: No, I'm sorry. K is a little
15 more complicated, but it is probably going to be DOFAW
16 again. Sorry.

17 MR. FRANKEL: For all three questions or
18 just the invasive species part?

19 MS. WESTON: Well, he is the on-the-ground
20 person.

21 MR. FRANKEL: Okay, okay, so that's fine.
22 So you want K to be DOFAW as well?

23 MS. WESTON: Yes.

24 Q. (By Mr. Frankel) Okay. So you are doing four G
25 -- sorry. Four H through J?

1 MS. WESTON: Yes.

2 A. Yes.

3 Q. (By Mr. Frankel) Okay, and then category six
4 and seven as well?

5 MS. WESTON: Five, six, and seven.

6 MR. FRANKEL: Oh. Okay. That's right,
7 that's right. Sorry.

8 Q. (By Mr. Frankel) Is that right?

9 A. Yes, yes.

10 Q. Okay.

11 A. Sorry.

12 Q. Okay.

13 A. Sorry. Following along.

14 Q. Okay. Now, do you understand what I am
15 referring to when I talk about the revocable permit
16 parcels?

17 A. Are you referring to the license areas?

18 Q. Yes, those four revocable permits --

19 A. Yes.

20 Q. -- that comprise the area, the license --

21 A. Yes.

22 Q. -- area?

23 A. Yes.

24 Q. Okay. So I may refer to them today. Now, what
25 qualifies you to speak on behalf of BLNR and DLNR as to

1 the subject matters you have designated?

2 A. I have prepared the submittals in 2017 and 2018
3 regarding the holdover. I am also working on the long
4 term lease application for Land Division, processing the
5 long term lease application.

6 Q. You're also reviewing the draft E --

7 A. I was --

8 Q. You are also reviewing the draft EIS as well?

9 A. One of multiple staff, yes --

10 Q. Okay.

11 A. -- who will.

12 Q. And what's your current position?

13 A. Special projects coordinator with the Land
14 Division.

15 Q. Do you report to Kevin or Russell?

16 A. Russell is the administrator. Kevin is the
17 assistant. So both.

18 Q. Okay, and how long have you had this position?

19 A. This position? Since September of 2013.

20 Q. And what other positions have you had?

21 A. I was a -- prior to that from 2007 to 2013, I
22 was a project development specialist with the Land
23 Division.

24 Q. Okay, and how did you prepare for today's
25 deposition?

1 A. I reviewed certain background materials, the --
2 the -- your notice, the two submittals, the revocable
3 permits, and the photographs that were provided by or,
4 well, that were emailed to me by Sierra Club, Ms. Tom --
5 Ms. Townsend.

6 Q. And you said two submittals. What are the two
7 submittals that --

8 A. I'm sorry.

9 Q. -- you reviewed?

10 A. The November, 2017, submittal and the November,
11 2018, submittal.

12 Q. Okay, okay, and how many hours would you say you
13 spent preparing for today's deposition?

14 A. Cumulatively, I'd say three to four.

15 Q. Okay, and did you speak with anybody else or
16 anybody?

17 A. My attorney or our attorney.

18 Q. Any other staff?

19 A. Not regarding --

20 I mean, regarding this specific deposition?

21 Q. Yes.

22 A. I mean, I just briefly talked with Ayron this
23 morning but not into any specifics.

24 Q. Okay.

25 A. I just generally went --

1 Q. You didn't talk to anyone with Aquatic Resources
2 or DOFAW?

3 A. No, no, I did not. I --

4 Q. Okay.

5 A. I just received the notice, I think, this
6 weekend, so, I mean, I just didn't have the time to
7 speak to anybody at -- over the course of the week.

8 Q. Okay. Did anyone give you the documents you
9 reviewed, or were they all documents that you have,
10 using your own initiative, decided would be helpful?

11 A. Aside from the notice, yes, I pulled everything.

12 Q. Okay. I want to start by asking you about topic
13 five, which is about the reasonable and beneficial uses.

14 A. Mm-hm.

15 MS. WESTON: You have to say yes.

16 A. Oh, yes. I'm sorry. Yes.

17 Q. (By Mr. Frankel) Can you describe the efforts
18 that DLNR and BLNR have taken in 2019 to ensure that the
19 water that A&B has been taking is actually put to
20 reasonable and beneficial use?

21 A. We have -- well, generally I have, one, spoken
22 with -- regular communication with CWRM staff to ensure
23 that A&B and EMI is in compliance or A&B, EMI, I'm not
24 sure how you want to refer to them, but, you know, the
25 applicant, I would say, or the permittee is in

1 compliance with the amended order, the IIFS order.

2 We've, again, in the process of, you know,
3 reviewing the draft EIS, we just had a meeting with A&B
4 and EMI regarding upcoming -- the upcoming renewal
5 request of the permits and also asked them to provide
6 again status reports on -- on the use of the water is in
7 compliance with the Board's terms of their 2018
8 approval.

9 I have also, I mean, just generally, my
10 understanding is that Mahi Pono has begun planting
11 crops, so we know that that, you know, that that's
12 begun. So I'm trying to think if there's anything.
13 Sorry. I'm trying to think if there's anything else. I
14 think, yeah.

15 Q. Okay.

16 A. And, yes, and also, again, to -- to, you know,
17 continuing that they are, you know, using, as they said
18 for the -- as they said in their last report, you know,
19 using the water for the Kula ag park and supplying the
20 County, the Kula agricultural park and the County of
21 Maui.

22 Q. Okay. So you said you have spoken with staff at
23 CWRM?

24 A. Mm-hm.

25 Q. And is it the Department's belief that CWRM have

1 information as to whether A&B is actually using the
2 water in a reasonable and beneficial manner?

3 A. I simply asked, like I said, my inquiry was more
4 to are they complying with --

5 Q. Okay.

6 A. -- the IIFS and the abandonment --

7 Q. Okay.

8 A. -- permitting, yeah.

9 Q. So my question, and we can talk about that
10 later --

11 A. Okay.

12 Q. -- but my question right now is --

13 A. Okay.

14 Q. -- about the reasonable and beneficial use of
15 water, what has DLNR done to ensure or find out whether
16 A&B is using the water in a reasonable and beneficial --

17 A. Okay.

18 Q. -- manner?

19 A. Well, I would go back to what I said previously,
20 that we have met with them and asked them to provide a
21 status report on the use of the water as, you know, on
22 what -- what has -- with the current for this year, we
23 have asked them to provide that for the Board for the
24 renewal.

25 Q. So you have asked. When did you ask them to

1 provide this information?

2 A. I relayed the requests. I don't remember
3 specifically, but we had a meeting yesterday to sort of
4 discuss the renewal, and that was brought up, but we had
5 brought it up before, but I had brought it up again
6 yesterday, so I can definitely say yesterday we said we
7 need a status report, but we -- we brought it up before
8 then as well.

9 Q. Who was at this meeting yesterday?

10 A. Oh, Meredith Ching, Yvonne Izu, Mark Vaught,
11 Grant Nakama, and counsel for Mahi Pono, Steven Lim. I
12 don't remember the other woman's name.

13 Q. Steven Lim is counsel for Mahi Pono?

14 A. He attended the meeting.

15 Q. Wow.

16 A. I --

17 Q. You got a bunch of law firms. Was anyone from
18 the AG's Office there?

19 A. Linda Chow was. Linda Chow and Cindy Young were
20 present.

21 Q. Okay, and where was that meeting held?

22 A. At the Board room. In the Board room.

23 Q. Okay. So did you, in terms of the reasonable
24 and beneficial use, how specific have you asked them,
25 have you asked A&B to provide you in terms of how they

1 are using the water? Have you asked it on a daily
2 basis, monthly basis, semiannual basis, yearly basis?
3 What kind of --

4 A. I simply asked them to provide a status report
5 that it, again, complies with the Board's requirements,
6 the Board's -- the conditions of the Board, and I would
7 -- it's up to them how to do, you know, sufficiently
8 detail that. I think I would refer -- again, I would
9 refer to the submittal too and how they've done it in
10 the past, but --

11 Q. So have you asked them to break it down in terms
12 of who is getting what water and how they are -- how the
13 water is being used?

14 A. I have not asked for that specificity, no.

15 Q. If A&B is using some of that water for -- some
16 of that water is -- I'm sorry. Let me rephrase this.

17 If some of the water taken from East Maui from
18 the RP area is being used by either a company involved
19 in cement, concrete, or construction work, is that a
20 reasonable and beneficial use of that water from East
21 Maui?

22 A. I would defer that to the Board to make a
23 decision.

24 Q. Okay. Do you know if the water is being used in
25 that matter?

1 A. I'm not at -- I'm not aware of that.

2 Q. Have the questions you have asked A&B and EMI
3 been specific enough to generate that kind of response
4 from them?

5 A. I couldn't say.

6 Q. Okay.

7 A. Again, like I said, I have asked them to provide
8 information that answers, you know, the Board,
9 sufficient to meet the Board's requirements, so.

10 Q. Would it be helpful to the Board to get that, to
11 get information directly from EMI as to how the water is
12 being used specifically on a monthly basis?

13 A. I don't see any issue with providing the Board
14 information. It's up to the Board how they consider it
15 in their decision making.

16 Q. Okay, we will come back to this topic. Let's
17 switch to talking about debris. What information did
18 DLNR or BLNR have as of November 10th, 2018, regarding
19 trash, discarded pipes, and other debris on the
20 revocable permit parcels?

21 A. Well, everything regarding that was put in the
22 submittal, and I guess I would point to the last page of
23 the submittal where A&B addressed that topic. It's --
24 it's there, number four.

25 Q. And what does that say?

1 A. Do you want me to just read it --

2 Q. Sure.

3 A. -- for the record?

4 Q. Sure.

5 A. Okay. Status. We have removed an abandoned
6 tractor along Pi'inaau Road after checking, first
7 checking with the State Division of Forestry and
8 Wildlife. Ownership of the tractor was unknown, but
9 DOFAW had no objection to our removing and disposing of
10 the item.

11 There was little other debris specifically
12 identified, however, existing operating procedures which
13 require the removal of all construction equipment forms
14 and tools when doing maintenance work on the ditch
15 system have been reinforced with EMI crews as well as
16 the removal of any debris they may find during the
17 course of their work.

18 We also urge that if anyone has information
19 about debris in the water shed area, please, let us
20 know, and we will take action to remove the items.

21 Q. So that's something that A&B submitted to you,
22 right?

23 A. Correct.

24 Q. But that's not the only information you had.
25 You had additional information as well?

1 A. Well, the photos were not before November 10th.
2 I received them on the 29th, and I believe they were
3 presented at the Board meeting on the 10th.

4 Q. I see.

5 A. Yeah.

6 Q. I think the Board meeting was on the 9th?

7 A. Oh, I'm sorry. Well, then, it was presented to
8 the Board on the -- on the 9th, I'm sorry, but that --
9 it was -- I hadn't seen anything before the Board
10 meeting.

11 Q. Understood, okay, so, and the Board got that
12 information, and there was testimony --

13 A. Yeah.

14 Q. -- right?

15 A. (Witness nods head up and down.)

16 Q. So it contradicted somewhat what Alexander and
17 Baldwin had provided to you; is that fair to say?

18 A. I -- I don't know if I would consider that --
19 well, from the photos I received, I don't know if I
20 would consider that debris or trash, but I don't think I
21 could answer it affirmatively. Excuse me.

22 Q. So what is your or what's the Department's
23 definition of trash or garbage or debris?

24 A. I mean, I guess what I would -- if I were to see
25 photos of litter, discarded items, I guess an easy

1 example would be like a -- like a drum or something
2 that's really kind of, you know, what you're normally
3 seeing. It looked, from the photos, it looked like
4 parts of the system or things were in use. I couldn't
5 really --

6 Q. So if the pipe is discarded, though, that's
7 debris, garbage, or litter?

8 A. I mean, I guess it could be considered if it's
9 discarded.

10 Q. It's --

11 A. I don't know. I mean, I don't know if, again,
12 too, I don't know if that's -- if what -- what's
13 discarded necessarily just by looking at a photo if it's
14 going to be used for something. I --

15 Q. Has the Department sent anyone out to
16 investigate to inspect to look at any of this stuff?

17 A. My understanding is that Forestry has an
18 on-the-ground presence, DOFAW, Forestry has an
19 on-the-ground presence in that area. Land Division has
20 not sent anybody out.

21 Q. Has Land Division asked DOFAW to follow up on
22 these photographs?

23 A. Not to my recollection, no.

24 Q. Okay. Other than A&B's statement that it was
25 complying with the terms of the permit in terms of

1 cleaning up the debris and the Sierra Club's testimony
2 and photographs, did BLNR have any other information
3 regarding A&B's compliance?

4 A. I would say whatever was presented as testimony
5 at the Board meeting.

6 Q. Okay. Oh, here it is. Sorry. This is out of
7 order. I got messed up because I thought Ayron was
8 going to take one of these questions.

9 Let's go back to reasonable and beneficial uses.
10 What information did BLNR have back at this meeting in
11 November, 2018, regarding whether A&B was making
12 reasonable use of the water?

13 A. The submittal and the status report as an
14 exhibit.

15 Q. So it did not have any information that broke
16 down how the water was being used and by whom?

17 A. I would say that unless it was whatever was
18 included in the CWRM order, I would say, no, it wouldn't
19 -- it wouldn't be included in the submittal, but I would
20 -- the submittal included a link to the CWRM order, so
21 whatever information was in there would be.

22 Q. Yeah.

23 A. Yeah.

24 Q. So it didn't break it down in terms of how much
25 water is being used as by Maui County for domestic uses,

1 how much water Maui County is using for the ag park, how
2 much water is being used for diversified agriculture?

3 A. That's -- that's -- the submittal specifically
4 did not.

5 Q. Okay, and there is no other information given to
6 the Board that would have provided that information?

7 A. Again, unless it was provided in testimony that
8 day, I -- I don't recall if it was, but not -- not to my
9 knowledge.

10 Q. Okay. What information did BLNR have as of
11 November 10th, 2018, regarding how much water A&B was
12 proposing to divert in 2019?

13 A. A&B did not make a specific request for or a
14 request for a specific amount of water. It is noted in
15 the submittal they would -- they would have the ability
16 to take what was needed for reasonable and beneficial
17 use provided they remain in compliance with the IIFS.

18 Q. And, again, you guys did nothing specific, other
19 than your most recent request, you have not done
20 anything specific to find out whether or how it's being
21 used in a reasonable and beneficial manner?

22 A. I mean, outside of our request for their status
23 report, no.

24 Q. Okay, and so there's no --

25 A&B didn't give you a quantity in terms of how

1 much water or even how much more water they wanted to
2 use in 2019?

3 A. Not as a request, no.

4 Q. Okay. Did BLNR and DLNR get any information
5 regarding which streams the water was going to come
6 from?

7 A. Specific streams? I don't -- I don't believe
8 they did. Again, I -- I don't recall what exactly was
9 discussed at the Board meeting, but I don't -- it wasn't
10 something that was given for the submittal, no.

11 Q. Okay. Was the Board given information about
12 impact to stream life from the diversions?

13 A. To the extent it was in the CWRM order, whatever
14 that -- whatever was included in there and, again, in
15 the public testimony.

16 Q. And if the CWRM order did not deal with twelve
17 streams, it would -- no information would have been
18 provided to the Board about the impact of the diversions
19 on those?

20 A. Not -- not through the submittal.

21 Q. Okay.

22 A. Again, I stress that, again, I will say that
23 there's a public testimony component, so information may
24 have been provided at that point at the decision making.

25 Q. Okay. What kind of information was given to the

1 Board about Ho'olawa Stream?

2 A. None with respect to the submittal, again, and
3 whatever was in the -- may have been in the CWRM order,
4 not from staff.

5 Q. How about Hanehoi and --

6 Well, how about Hanehoi Stream?

7 A. No.

8 Q. How about what kind of information was given
9 regarding Honopou Stream to the Board?

10 A. Again, I go -- I defer to if it wasn't in the
11 CWRM, whatever was -- for the -- in terms of the
12 specific impacts on the streams, we defer to the CWRM
13 order which was incor --

14 Q. How about --

15 A. -- porated.

16 Q. Sorry.

17 A. Sorry.

18 Q. How about the restoration status of Hanehoi and
19 Honopou Streams, was the Board informed regarding the
20 status of the diversion structures and the amount of
21 water flowing?

22 A. Sorry. I need to review my... I'm sorry.
23 Hanehoi, and what was the other?

24 Q. Honopou.

25 A. I would refer to the second to the last page,

1 there was a -- to resolve the -- that was addressed to
2 resolve the stream biota to move upstream. I'm sorry.
3 The condition to address the ability of stream biota to
4 move upstream, there was a reference to Honopou Stream.

5 Q. You are talking about, what, A&B's submittal to
6 you folks?

7 A. Right.

8 Q. Okay, but that doesn't tell you the full extent
9 the degree to which the streams were restored or not,
10 does it?

11 A. Well, I don't believe -- I'm not -- it says what
12 it says, I mean, what it would be.

13 Q. So other than this, was the Board informed
14 regarding the status of restoration of those two
15 streams?

16 A. Outside of what may have been presented at the
17 Board meeting and testimony, no.

18 Q. Okay. The same with all the other streams that
19 the CWRM ordered restored, was the Board, other than
20 what's in the submittal and what testimony was provided,
21 there's no -- nothing about the degree to which the
22 streams CWRM ordered to be restored was provided to the
23 Board?

24 A. Well, I believe it had been brought to their
25 attention that A&B were pursuing permits to abandon

1 their diversions, and they were working through it, but
2 in the terms of specific streams, I don't believe so. I
3 -- but I believe that was brought up at the meeting.

4 Q. Was information given to the Board regarding the
5 amount of water A&B was proposing to divert in 2019?

6 A. No, they didn't. I think, as I said earlier,
7 they had not come up with a specific request, and the
8 submittal had allowed or the recommendation was to allow
9 what -- what was -- you know, what was needed for
10 reasonable and beneficial use as long as it complied
11 with the amended IIFS order.

12 Q. How about was any information provided to the
13 Board regarding how much water A&B and EMI had been
14 taking from each stream?

15 A. Not from each stream. They have -- I believe it
16 said generally.

17 Q. Yeah.

18 A. I would point to number six in the status report
19 from -- for -- so for '18, it was approximately 25, 20
20 to 25 million gallons a day for the '17, '18 year.

21 Q. Total, but not for each stream?

22 A. Total, yes.

23 Q. Okay. What kind of information was provided to
24 the Board regarding the extent to which invasive species
25 were spreading in the revocable permit area?

1 A. We did not address invasive species spread in
2 the -- in the revocable permits.

3 Q. Is that a concern of DOFAW'S?

4 A. I would think it is.

5 Q. Okay. Can you describe all the efforts that
6 DLNR and BLNR made prior to November 10th, 2018, to
7 limit the amount of water that A&B and EMI can take out
8 of the twelve streams unaffected by CWRM's order?

9 A. If you refer to the 2017 submittal prior to the
10 -- prior to the amended IIFS order, I believe they had
11 limited it to -- I'm sorry. I'm just going to...

12 Q. Sure.

13 A. Like I said, it was 80, 80 million, that was
14 back in 2016. 80 million gallons a day. Actually, let
15 me double-check that --

16 Q. That was --

17 A. -- before I... yes, they had -- they had imposed
18 a limit of 80 million gallons a day in the 2016 holdover
19 approval.

20 Q. That's the approval given in November, 2016?

21 A. Yes. Yes.

22 Q. I just want to check the date.

23 A. You can --

24 Q. That's right.

25 A. It starts here.

1 Q. Yeah, and that in November, 2017, was that limit
2 still in place, kept in place?

3 A. I'm just -- it doesn't appear that they've
4 changed it, so I believe it was. I'm looking at the
5 additional conditions imposed in November, 2017, and it
6 doesn't appear that that had changed in 2017. Yeah, I
7 believe, I believe, yeah, I believe it is. I'm looking
8 at it, and they didn't change it in their 2017 approval.

9 Q. So looking at the conditions at the end, you
10 have the staff submittal includes recommendations at the
11 end, right?

12 A. Mm-hm.

13 Q. And it has conditions, right, and the
14 recommendations --

15 A. I'm sorry. We are looking at the 2017 submittal
16 or the 2018 submittal?

17 Q. Oh, I'm sorry. So you had it in 2016, you had
18 it in 2017, but in 2018, what happened to that 80
19 million gallon a day limit?

20 A. Oh, it was -- we, basically, changed it to the
21 -- to, again, as I said earlier, to, you know, a
22 reasonable and beneficial amount in compliance with the
23 amended IIFS order rather than a specific number.

24 Q. And you don't know the degree to which the 80
25 million gallon a day limit would have restricted the

1 amount of water taken out of those twelve streams? It
2 could have, I mean, it could conceivably have protected
3 those twelve streams, but it could just as well have
4 protected other streams and not those twelve, right,
5 because of the cumulative total?

6 A. Well, I'm not sure how the -- it is -- you're
7 talking about the allowable draw, basically, the
8 allowable allotment in order to comply, the excess
9 water, basically, to comply with the IIFS, it could be
10 more or less than 80 million; is that what you are
11 asking? I'm sorry.

12 Q. Okay, sure.

13 A. Okay.

14 Q. You just talked about, so my -- let's -- we will
15 go back three steps.

16 A. Okay.

17 Q. I have asked you to describe the efforts that
18 DLNR and BLNR took to limit the amount of water that
19 could be taken out of those twelve streams that are not
20 affected by CWRM's order.

21 A. Mm-hm, mm-hm.

22 Q. So your answer was with regard to the limit, the
23 80 million gallon a day limit --

24 A. Right.

25 Q. -- but that limit is for the total amount of

1 water taken from all the streams in the RP area, and
2 there's, you know, another two dozen streams, so that 80
3 million gallon a day limit doesn't necessarily affect
4 those twelve streams?

5 A. I don't know if I could answer with specific
6 knowledge to that. I guess it's, yeah, it's a -- I
7 think it's correct that it's 80 million for the four
8 license areas. I mean, how it affects each individual
9 stream or how the -- what we will call the new amount,
10 right, based on the IIFS affects individual streams, I
11 -- I couldn't speak to that specifically.

12 Q. Okay. Did BLNR or DLNR take any other steps to
13 limit the amount of water that can be taken out of the
14 twelve streams unaffected by CWRM's order other than
15 that 80 million gallon a day limit that was set for two
16 years?

17 A. Well, it had to be for a reasonable and
18 beneficial use, but not specifically addressing the
19 streams themselves.

20 Q. Okay. And, again, the only way you would know
21 if A&B is actually using the water for reasonable and
22 beneficial purposes is if A&B tells you so?

23 A. Well, I mean, yeah, based on their report.

24 Q. Would you expect them to tell you we are not
25 using it in a reasonable and beneficial manner?

1 A. I expect honesty from any applicant or any party
2 when dealing with them, so I guess I could answer it
3 that way.

4 Q. Have you taken any steps to independently verify
5 whether that's true or not?

6 A. I mean, I've seen the -- I've -- when I -- when
7 I was on Maui, I looked, and I saw the crops being
8 planted and, you know, cultivated. I don't -- beyond
9 that, no.

10 Q. Okay.

11 A. I mean, if you are asking if we audited or
12 something like that, no.

13 Q. Okay. Now, I am going to ask you this question.
14 I have to say I am fairly confused by now as to what you
15 are -- what areas you are covering and what other people
16 are covering.

17 MR. FRANKEL: Amanda, you can let me know
18 if this question is not right.

19 Q. (By Mr. Frankel) So I want to talk to you about
20 invasive species.

21 MS. WESTON: What number are you referring
22 to?

23 MR. FRANKEL: I don't even know anymore.

24 MS. WESTON: Okay. I think you are talking
25 about one G.

1 MR. FRANKEL: Now, I know that he is not
2 dealing with one G.

3 MS. WESTON: Okay, you are correct.

4 MR. FRANKEL: But I think he is dealing
5 with four G?

6 MS. WESTON: No.

7 MR. FRANKEL: I guess he is not dealing
8 with four G anymore?

9 MS. WESTON: Right. That is DOFAW.

10 Q. (By Mr. Frankel) Okay, so skip that. Going
11 back to debris.

12 MS. WESTON: So now you are back on H?

13 MR. FRANKEL: Four H, yes.

14 Q. (By Mr. Frankel) So can you describe all the
15 efforts that BLNR and DLNR made to ensure that A&B and
16 EMI are complying with the condition imposed on the
17 revocable permits in November, 2017, that they clean up
18 their debris starting with the more accessible area and
19 along streams?

20 A. Well, from -- again, we ask for the status
21 reports, and it appears from them that they are making
22 efforts to clean up the debris based on the status
23 reports. For 2019, I have asked that they detail,
24 understanding that it is a concern members of the public
25 have raised, that they detail it, it provide greater

1 detail and documentation to that extent, you know, and
2 so we will see what they provide.

3 Q. Okay. And so prior to November 10th, 2018, was
4 any inspection done to check on debris?

5 A. Not by Land Division, no.

6 Q. What about anybody in Department of Land and
7 Natural Resources?

8 A. Not -- I don't think for necessarily that
9 specific purpose. I think as I mentioned before,
10 Forestry folks are on the -- on the -- on the ground
11 there, and, you know, as it was noted, they did flag
12 this tractor which was removed, so it appears that there
13 is Department involvement there, but not necessarily
14 specific by us to go and check.

15 Q. Okay. And you saw those photographs that the
16 Sierra Club provided to you. Was there any follow-up on
17 those photographs and testimony regarding debris in the
18 area?

19 MS. WESTON: He testified earlier that he
20 couldn't tell if it was debris or not or if stuff was
21 being discarded.

22 A. I mean --

23 MR. SCHULMEISTER: You are talking about
24 followup after November of 2018?

25 MR. FRANKEL: Yes.

1 A. I guess if you're asking did I take these to A&B
2 and say here's an issue, I don't believe I -- I did.

3 Q. (By Mr. Frankel) Or anyone on staff at DLNR?

4 A. I don't -- well, I mean, I -- I don't know. I
5 don't know. I couldn't say for sure.

6 Q. Okay.

7 A. My understanding is that it was incorporated
8 into the contested case petition. Well, the reason it
9 was submitted was to -- to be an addendum to the
10 contested case petition, so --

11 Q. Okay.

12 A. -- it should have been, you know, public at that
13 point.

14 Q. I see.

15 A. Yeah.

16 Q. I know what you are talking about. You're
17 talking about the Sierra Club's petition for the
18 consented case hearing on the RPs?

19 A. Correct, correct.

20 Q. I understand.

21 A. Oh, I should say I have disclosed these photos
22 to Mahi Pono as a part of an information request, so I
23 have -- I have disclosed it to that party.

24 Q. Okay. Can you describe the efforts that BLNR
25 and DLNR took prior to November of 2018 to inspect the

1 area encompassed by the revocable permits and to check
2 on stream alteration and diversion structures?

3 A. Not, I don't believe, for stream alteration
4 diversion structures, again, outside of what Forestry
5 staff may do as a just general management or -- or
6 inspection of the area, no. I would think -- I know
7 CWRM has gone, but I'm not sure if we are including them
8 under the Board in this case.

9 Q. Okay.

10 MS. WESTON: It is DLNR and BLNR, so DLNR.

11 A. Well, I guess Aquatics, Aquatic Resources also,
12 I think, goes into the area, but, yeah, that's -- that
13 would be about it.

14 Q. (By Mr. Frankel) Okay. So I apologize for not
15 being more organized. I want to go back to the
16 reasonable and beneficial use of water. Can you tell me
17 why the Board and the Department haven't sought more
18 information from EMI and A&B regarding how the water is
19 actually used?

20 A. Well, it appeared from the status reports that
21 what they say, it is consistent with the reasonable and
22 beneficial use for agricultural and public, I guess, or
23 the County of -- County service. I -- as to the Board,
24 I can only presume that this was sufficient in their --
25 for their decision making.

1 Q. Would it be that difficult to ask A&B to provide
2 the Board monthly reports regarding precisely how the
3 water is used broken down into discrete categories?

4 A. If the Board would -- if that's what the Board
5 wants in its future decision making, then, they are free
6 to impose that, you know? I would just say for 2019, we
7 probably will be -- given that, you know, that more of
8 it will be used for the irrigation, we'll incorporate a
9 report or requirement in the permit similar to what they
10 provide CWRM, the reporting they provide CWRM.

11 Q. So you understand the CWRM report is a bare
12 bones report that doesn't describe how the water is
13 actually used?

14 A. Well, it's consistent with all the other water
15 permit use.

16 Q. Do you think it -- well, I am asking, actually,
17 is there any logistical barrier for you guys that
18 prevents you from asking more precisely than the Water
19 Commission asks how the water is actually being used and
20 by whom with quantities provided?

21 A. I don't see why there would be.

22 Q. Okay.

23 A. If the Board, again, if the Board decides that,
24 then that's what they decide.

25 MR. FRANKEL: Let's take a two-minute

1 break. I might be done.

2 (Recess taken 11:53 a.m. to 11:57 a.m.)

3 MR. FRANKEL: Back on the record.

4 Q. (By Mr. Frankel) So just in case I did not ask
5 this already, I want to go back to prior to the November
6 10th, 2018, decision --

7 A. Okay.

8 Q. -- the efforts that the Board made to ensure
9 that the water was being used in a reasonable and
10 beneficial manner --

11 A. Okay.

12 Q. -- other than the report letter that A&B
13 submitted to you folks, was there anything else that you
14 did or asked A&B to ensure that the water was being put
15 to reasonable and beneficial use?

16 A. I don't -- I specifically don't recall if I did
17 or not, but I would say probably not. I don't recall.

18 Q. So just so you know, so you are sort of
19 testifying -- not sort of. You are testifying --

20 A. Yeah.

21 Q. -- as a representative of the Department of the
22 Board --

23 A. Right, right.

24 Q. -- so as far as the Department is concerned,
25 there was nothing else? There's no -- no other really

1 periodic reporting requirement or anything like that?

2 A. No, no. I mean, I -- the reason I kind of hedge
3 is that A&B has, you know, and they deal with the
4 Department a lot, there might be conversations that I
5 may not be aware of, but in an official, please, produce
6 a report, no, any kind of formal communication, no.

7 MR. FRANKEL: Okay. All right, I am done.
8 David, you asleep?

9 MR. SCHULMEISTER: I have no questions.

10 MS. WESTON: I have no questions.

11 MR. FRANKEL: Thank you very much.

12 THE REPORTER: Who is buying copies?

13 MS. WESTON: Me.

14 MR. SCHULMEISTER: I want a copy.

15 (Deposition concluded at 11:59 a.m.)
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I, IAN HIROKAWA, hereby certify that I have read the foregoing typewritten pages 1 through 39, inclusive, and corrections, if any, were noted by me, and the same is now a true and correct transcript of my testimony.

DATED: Honolulu, Hawai'i, _____.

IAN HIROKAWA,

Signed before me this _____ day of _____, 2019.

Case: Plaintiff Sierra Club vs. Defendant Board of Land and Natural Resources
Civil No. 19-1-0019-01
Deposition date: September 6th, 2019
Reported by Patricia Ann Campbell, CSR 108

C E R T I F I C A T E

STATE OF HAWAI'I)

) SS.

CITY AND COUNTY OF HONOLULU)

I, PATRICIA ANN CAMPBELL, CSR 108, State of Hawaii'i, do hereby certify:

That on September 6th, 2019, appeared before me IAN HIROKAWA, the witness whose 40 page deposition is contained therein; that prior to being examined he was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii'i State Legislature;

That the deposition was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents to the best of my ability a true and correct transcript of the proceedings had in the foregoing matter;

That pursuant to Rule 30(e) of the Hawaii'i Rules of Civil Procedure, a request for an opportunity to review and makes changes to this transcript was made by the deponent and/or their attorney prior to the completion of the deposition.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 8th day of September, 2019, in Honolulu, Hawaii'i.

Patricia Ann Campbell

PATRICIA ANN CAMPBELL, CSR 108

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DATED: SEP 16 2019

SIGNED: 

C.S.R. 179

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