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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., EAST MAUI)
IRRIGATION, LLC,)
Defendants.)
_____)

HRCP 30(b)(6) DEPOSITION OF
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 8:36 a.m., on
March 6th, 2020, pursuant to Notice.

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

1 APPEARANCES:

2 For Plaintiff Sierra Club:

3 DAVID KIMO FRANKEL, ESQ.

4 Law Office of David Kimo Frankel

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6 Honolulu, Hawai'i 96816

7 For Defendant Board of Land and Natural Resources,

8 Department of Land and Natural Resources, and Suzanne

9 Case in her official capacity as Chairperson of the

10 Board of Land and Natural Resources:

11 AMANDA WESTON, ESQ.

12 Deputy Attorney General

13 Department of the Attorney General

14 State of Hawai'i

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16 465 South King Street

17 Honolulu, Hawai'i 96813

18 For Defendants Alexander and Baldwin, Inc., and East

19 Maui Irrigation Company, LLC:

20 MALLORY MARTIN, ESQ.

21 Cades Schutte, LLP

22 Cades Schutte Building, 12th Floor

23 1000 Bishop Street

24 Honolulu, Hawaii 96813

25

1 APPEARANCES (Continued):

2 Also present:

3 Maxx Phillips

4 Marti Townsend

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	Mr. Frankel	6

EXHIBITS FOR IDENTIFICATION

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Exhibit 1	"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"	25
Exhibit 2	"Defendants Board of Land and Natural Resources; Department of Land and Natural Resources; and Suzanne Case's Amended Responses to Plaintiff's Second Request for Admissions"	26

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EXHIBITS FOR IDENTIFICATION

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
Exhibit 3	"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"	26
Exhibit 4	"Summary of ditch flows at Honopou"	58

1 IAN HIROKAWA,
2 called on behalf of Plaintiff Sierra Club, was first
3 duly sworn to tell the truth, the whole truth, and
4 nothing but the truth, and testified as follows:

5 EXAMINATION

6 BY MR. FRANKEL:

7 Q. Can you state your name for the record?

8 A. Ian Hirokawa.

9 Q. If my questions are not clear, will you ask me
10 to explain myself?

11 A. Yes.

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

14 A. Yes.

15 Q. Do you understand that the answers you give
16 today can be used in court, particularly if you answer
17 differently in court than you do today?

18 A. Yes.

19 Q. Do you understand that you may request a review
20 of the completed transcript of this deposition?

21 A. Yes.

22 Q. Would you like to review the transcript and
23 offer corrections?

24 MS. WESTON: Yes.

25 A. Yes.

1 Q. (By Mr. Frankel) What did you do to prepare for
2 your deposition today?

3 A. I reviewed background materials such as the 2019
4 continuation of the water permits, the submittal for
5 that, the Board submittal, which is inclusive of the
6 2018 submittal and additional information; and I also
7 reviewed the contested case petition filed -- the
8 submittal filed by Sierra Club in 2019; my deposition
9 from -- prior deposition transcript, and the -- I'm not
10 sure what that is. The notice that was sent last year
11 for the original deposition.

12 Q. Okay, great. Let's take a step back. What was
13 your major in college?

14 A. Undergrad was history.

15 Q. Where?

16 A. UH.

17 Q. What year did you graduate?

18 A. 1996.

19 Q. And did you attend any other school after
20 receiving your BA?

21 A. Yes, I went to the University of Iowa.

22 Q. To study what?

23 A. Law.

24 Q. And did you graduate?

25 A. Yes.

1 Q. What year?

2 A. 1999.

3 Q. And, actually, let me back up even further.

4 What high school did you go to?

5 A. Maryknoll High School.

6 Q. Okay, and what did you do after graduating law
7 school in '99?

8 A. I decided I don't want to be a practicing
9 attorney, so I worked, I guess, what we would call
10 temporary jobs for a little while, and I got a job at
11 the Attorney General's Office as kind of a legal
12 assistant there and then went to work for DLNR after
13 that.

14 Q. When you were working as a legal assistant, was
15 it with the Land Transportation Division of the AG's
16 Office?

17 A. Commerce and Economic Development.

18 Q. Okay. How long were you at the AG's Office?

19 A. From 2001 to 2006. I'm sorry. 2001 to 2007.

20 Q. Okay. You never bothered taking the bar?

21 A. No.

22 Q. Okay. You have been at DLNR for thirteen years
23 now?

24 A. Yes, from 2000, almost from 2000, June of 2007
25 to present, so just about.

1 Q. Now, when I talk about the four revocable
2 permits on East Maui, do you understand what I am
3 talking about?

4 A. Yes, flow of the water, yes.

5 Q. And those four RPs allow Alexander and Baldwin
6 and EMI to continue to use the 33,000 acres of public
7 land of East Maui and to divert water from dozens of
8 streams?

9 A. That is my understanding, yes.

10 Q. In 2017, you prepared the staff submittals on
11 the four revocable permits for the uses of approximately
12 33,000 acres of State land on East Maui; is that right?

13 A. Yes, yes.

14 Q. And I should back up. Was that the first year
15 you started working on the RPs in East Maui?

16 A. Yes, 2017, 2017. It was after the 2016
17 approval. I didn't prepare those.

18 Q. Okay, and you prepared the staff submittal in
19 2018 as well?

20 A. Correct, yes.

21 Q. And in 2019?

22 A. Yes.

23 Q. And did you attend the BLNR meetings in both
24 2018 and 2019 at which BLNR approved the continuation of
25 those permits?

1 A. Yes. For East, East Maui, yes.

2 Q. Were the members of the Board provided any other
3 materials prior to the decision making on the RPs other
4 than your staff submittal and testimony from the public?

5 A. I believe in 20 -- well, I guess indirectly,
6 yes, because the 2018 submittal, I believe, had the --
7 had the link to the CWRM, Commission on Water Resource
8 Management, decision and order, contested case, and the
9 2019 submittal contained the link to the environmental
10 impact -- the draft environmental impact statement
11 prepared by A&B and EMI.

12 Q. Okay. So other than your staff submittal with
13 the links that you just discussed and testimony from the
14 public, was any other information or material provided
15 to the Board prior to its decision making?

16 A. I don't believe so.

17 Q. Okay. Did you provide members of the Board any
18 information from the Division of Aquatic Resources?

19 A. No.

20 Q. Have you ever provided members of the Board any
21 of the reports, memoranda, or letters from the Division
22 of Aquatic Resources?

23 A. No.

24 Q. Did you provide the division, the Division of
25 Aquatic Resources, August, 2019, report on Kolea Stream?

1 A. I don't believe so, no.

2 Q. Okay. Did the Sierra Club timely request
3 contested case hearings in 2018 and 2019 orally and in
4 writing regarding A&B's request to continue the permits?

5 MS. WESTON: Objection, calls for a legal
6 conclusion.

7 MS. MARTIN: Join in the objection.

8 Q. (By Mr. Frankel) But you can go ahead and
9 answer despite the objection.

10 MS. WESTON: If you know.

11 A. That is my understanding, I should say, that is
12 my understanding.

13 Q. (By Mr. Frankel) You heard the oral requests in
14 both years, correct?

15 A. I have only heard the 2019 one. When 2018 went
16 to the Board, I was actually out, so I was not at that
17 Board meeting.

18 Q. Okay. You previously said you were at the
19 meeting when the BLNR approved the continuation of the
20 permits?

21 A. Correct. Oh, I'm sorry. I thought you meant
22 the BLNR meeting that determined the contested case.

23 Q. Okay, so let's --

24 A. I'm sorry.

25 Q. So let's back that up. My question is whether

1 you were there when the request was made, not --

2 A. Oh, yes.

3 Q. -- when --

4 A. Yes. I'm sorry.

5 Q. Okay. Were you there when the request, oral
6 request, was made in 2018?

7 A. Yes.

8 Q. Were you there when the oral request was made in
9 2019?

10 A. Yes.

11 Q. Did you see the Sierra Club's requests in
12 writing, requests submitted in 2018?

13 A. Yes.

14 Q. Did you see the Sierra Club's written requests
15 in 2019?

16 A. Yes.

17 Q. And is it your understanding that those requests
18 in 2018 and 2019 were denied?

19 A. Yes.

20 Q. Okay. I have some questions about ten of the
21 streams. Are you aware that the Water Commission
22 ordered restoration for ten of the streams?

23 A. If it is in the order, yes.

24 Q. Which you link to --

25 A. Yes.

1 Q. -- in the staff submittal?

2 A. Yes.

3 Q. Do you know, of those ten streams that the Water
4 Commission ordered to be fully restored, are there still
5 divergent structures remaining that interfere or harm
6 native aquatic species?

7 MS. WESTON: Objection, overly broad,
8 vague.

9 MS. MARTIN: I join in the objection.

10 MS. WESTON: You can answer.

11 A. Okay. I get for the -- to the extent that we're
12 -- we're asking if the diversions remain, my
13 understanding is that not all the work has been
14 completed yet, and they have gotten most of the permits,
15 but not all the work has been completed. As to the last
16 part of that, I won't make any statement as to the last
17 part of your question.

18 Q. (By Mr. Frankel) Okay, so --

19 A. Yeah.

20 Q. Well, I guess --

21 A. The diversions are, my understanding -- sorry.
22 The diversions are still in existence or remaining, they
23 have gotten permits to remove them, but my understanding
24 is the work hasn't been completed yet to remove them.

25 Q. And so of those that are still in place, do you

1 know whether they interfere or harm native aquatic
2 species?

3 MS. WESTON: Objection, overly broad.

4 A. I can't say I know.

5 MS. MARTIN: Sorry. I am just going to
6 join her objection.

7 A. I don't know.

8 Q. (By Mr. Frankel) Okay. Do you know if the
9 Board knows?

10 MS. WESTON: Objection, speculation.

11 MS. MARTIN: Join.

12 A. I can't say one way or the other.

13 Q. (By Mr. Frankel) Did you provide any
14 information to the Board that would suggest whether or
15 not the diversion structures that remain are interfering
16 or harming native aquatic species?

17 A. Well, we provided them the submittal, and we
18 consulted with CWRM as part of the submittal, and CWRM
19 staff was available at the Board meeting.

20 Q. Was anyone from the Division of Aquatic
21 Resources there?

22 A. I don't recall.

23 Q. Okay. So was any effort made to see if the --
24 I'm going to call them, quote, fully restored streams,
25 those ten, have been restored?

1 A. At the -- well, I guess I -- when I consulted
2 with CWRM, it was the status of the compliance with the
3 process, and that's my understanding is they are in
4 compliance working toward it. I didn't -- I don't think
5 I asked that specific question, yeah.

6 Q. So you don't --

7 Well, at that point in October of 2019, you knew
8 that not all the work had been completed on restoring
9 those streams, right?

10 A. Yes.

11 Q. And did the Board impose any deadline for
12 removal of any of those divergent structures?

13 A. Not that I -- not that I recall. I am going to
14 refer to them just to double-check.

15 Q. Sure.

16 A. No, I don't believe they did, yeah.

17 Q. Okay.

18 A. The decision, no.

19 Q. Okay. Has DLNR monitored those ten -- let me
20 take that back.

21 Has the DLNR inspected or monitored the ten
22 streams ordered to be restored by the Water Commission
23 to determine if native stream life can effectively
24 migrate and reproduce with the dam structures in place
25 or if further modifications need to be made?

1 A. I can say that as far as I know, well, I haven't
2 monitored. I'm not sure if -- what -- what CWRM has
3 done at this point.

4 Q. Okay. In 2019, the Board imposed a new
5 condition requiring quarterly updates on stream
6 restoration efforts?

7 A. Mm-hm.

8 Q. Can you give a yes or no?

9 A. Oh, I'm sorry. Yes, yes. Sorry. Yes.

10 Q. What prompted you to incorporate this new
11 condition in the staff submittal?

12 A. After the previous deposition, we had staff, I
13 believe, AGs, myself, had met with representatives of
14 the Sierra Club to discuss their concerns, and I think,
15 you know, as it was -- the concerns were written in an
16 email which is in the submittal, and we wanted to see
17 about addressing as many as, you know, were appropriate,
18 so that was why we -- and, you know, just we felt that
19 that was the reason that we were -- it was raised, so.

20 Q. Is it fair to say that you thought there was
21 some basis to the concerns raised by the Sierra Club in
22 this lawsuit?

23 MS. WESTON: Objection, overly vague.

24 MS. MARTIN: Join.

25 A. I guess I would say we wanted the information

1 one way or the other, rather than making a judgment
2 about what is credible or --

3 Q. (By Mr. Frankel) So why did you not ask for
4 that information a year before in 2018?

5 A. I think at that time, I didn't have as clear of
6 an understanding about what the concerns were, so, you
7 know, I think meeting and discussing this provided some
8 clarity as to, you know, again, what the issues were,
9 and we wanted to find -- you know, get more information
10 about it.

11 Q. And more information helps make a better
12 decision?

13 A. Well, one hopes. It's kind of a relative
14 question, you know, but that's the -- more, more
15 informed, I should say, a more informed decision, right.

16 Q. Okay, okay. Are you aware that there are
17 twelve, actually, thirteen East Maui streams that were
18 not part of the Water Commission's 2018 order?

19 A. Yes.

20 Q. BLNR has allowed A&B and EMI to take water from
21 those thirteen streams pursuant to the revocable
22 permits, right?

23 A. Yes.

24 Q. And in its decision, BLNR imposed no limit as to
25 how much water can be taken from any of these thirteen

1 streams, right?

2 A. Well, not like the -- my understanding from 2019
3 and from the approval is that they instituted an overall
4 limit. How it gets apportioned by the streams, I'm --
5 I'm -- yeah, not specific to those streams, but overall,
6 so there is a limit, but, yeah, not with respect to
7 those specific streams, no.

8 Q. So with respect to those thirteen streams,
9 there's no specific limit in terms of how much water can
10 be taken out?

11 A. I guess my understanding is that it's the --
12 they're still governed by the -- the default IFS,
13 whatever that is. If it's everything, it's everything,
14 so there is that, but, yeah, I mean, beyond that, I
15 don't know, yeah, no, no limit.

16 Q. Did BLNR impose any conditions to ensure that a
17 minimum amount of water flowed in any of those thirteen
18 streams?

19 A. I -- well, I'm sorry. Well, I guess I would
20 point to three and four in the -- the approval. You
21 know, they approved the -- they provided amendments to
22 the approval from the staff submittal, and they did
23 reference the fourteen streams. I -- I don't see a
24 clear limit, but they did address, I'm not sure exactly
25 what, you know, but they did address.

1 Q. Can you elaborate, what did they --

2 A. Oh, okay, I'm sorry. I'm sorry.

3 Q. What did they do?

4 A. Okay. Can I just read? Read? Okay.

5 MS. WESTON: Can you tell us what you are
6 reading?

7 A. Okay. I am reading, so this is our -- our
8 minutes or notes from the decision from October 11th,
9 2019. The Board approved amendments with respect to the
10 continuation of the four EMI RPs, and with respect to
11 the fourteen streams without the IFS, two things, and
12 one I will -- I'll read both of them.

13 For the fourteen streams in the revocable permit
14 area that have not had intermittent in-stream flow
15 standards set, permittees shall continue to clean up and
16 remove debris from the permit areas, and staff shall
17 inspect and report every three months on the progress of
18 the cleanup. For purposes of cleanup, debris shall not
19 include any structures and equipment currently used for
20 water diversions.

21 The second one is staff is to inspect the State
22 lands around the fourteen streams and report on whether
23 those lands could be developed for agricultural uses,
24 including the viability of agricultural land or water
25 uses.

1 Q. (By Mr. Frankel) Okay. Yeah, okay.

2 A. That -- that's the decision.

3 Q. Understood. Nothing there about the minimum
4 amount of water?

5 A. Beyond that, no.

6 Q. Did BLNR impose any condition to protect native
7 aquatic species that live in any of the thirteen
8 streams?

9 A. Not -- not specifically that I understand.

10 Q. Did BLNR impose any condition to ensure
11 recreational uses of these thirteen streams?

12 A. Not specifically.

13 Q. The Board of Land and Natural Resources and the
14 Department of Land and Natural Resources are landlords;
15 is that right?

16 A. Yeah, I -- yes.

17 Q. BLNR could have imposed conditions to protect
18 these thirteen streams?

19 A. I presume the Board could have imposed whatever
20 conditions they saw fit.

21 Q. But it did not do so?

22 A. As far as I know, no.

23 MS. WESTON: Objection, vague and
24 ambiguous.

25 MS. MARTIN: Join.

1 Q. (By Mr. Frankel) You saw Alexander and
2 Baldwin's draft EIS for the lease of the 33,000 acres of
3 State land and diversion of streams before the Board's
4 October, 2019, decision, right?

5 A. It was published. I can't recall if by that
6 point we had finished our review, but it was published,
7 and we were at least in the process of reviewing it at
8 the time.

9 Q. Okay. Are you aware that Alexander and
10 Baldwin's consultant concluded that the diversion of
11 water from these thirteen streams reduces habitat units
12 on those streams from 588,000 square meters to 88,386
13 square meters, a reduction of 85 percent?

14 A. Well, I can not recall that specific fact in the
15 EIS.

16 Q. Do you recall the Sierra Club talking about it
17 in its testimony to the Board?

18 A. Not -- no. I mean, I don't recall.

19 Q. Okay. I want to talk to you about diversion
20 structures. What deadline did the Board of Land and
21 Natural Resources set for alteration or removal of any
22 of the diversion structures within the revocable permit
23 area?

24 A. Okay, hold on. I don't -- I don't recall. My
25 understanding is that they didn't set a specific

1 deadline, other than that Alexander and Baldwin and EMI
2 must be in compliance with the CWRM order.

3 Q. Okay, and you are not aware if the CWRM order
4 includes any deadlines for alteration of divergent
5 structures?

6 A. Not -- my understanding, my understanding is
7 that it's not a specific deadline. It's completing the
8 process.

9 Q. Okay. Before making its decision in 2019, did
10 DLNR or BLNR have any information regarding which
11 divergent structures create mosquito breeding habitat?

12 A. Aside from the concerns presented by the --
13 well, I guess speaking for myself and the staff I have
14 talked to, we have only understood what was in the
15 Sierra Club's concerns. I don't know. I can't recall
16 at this point if you -- you may have referenced a
17 specific one. I don't remember at this time, but.

18 Q. Okay. Other than that, you don't know if the
19 Board or the Department had information regarding
20 specific divergent structures creating mosquito breeding
21 habitat?

22 A. Yeah, I'm not -- I'm not -- I don't know.

23 Q. Okay, and there was no information about any of
24 those structures within the staff submittal?

25 A. Specifically, no.

1 Q. Okay. How about which ones mar the natural
2 beauty of the area?

3 A. I guess that's a pretty -- I didn't include
4 that. I guess that's a pretty subjective, but, no, we
5 didn't include that.

6 Q. Well, let's talk about that subjectivity for a
7 little bit. You understand that the government has in
8 many instances recognized and protected specific areas
9 because of their natural beauty?

10 A. Yes.

11 Q. Okay. Despite the subjectivity that beauty
12 calls for?

13 A. Yes, yes, yes.

14 Q. Okay. Did the Board or the Department have any
15 information regarding which specific diversion
16 structures threaten the safety of recreational users of
17 public land?

18 A. I don't believe so, not specifically.

19 Q. Okay. What about which ones adversely affect
20 native aquatic species?

21 A. Again, beyond what was in the findings of the
22 CWRM, if -- or, no, there wasn't reincorporated into the
23 submittal.

24 Q. Okay.

25 A. I mean, again, I qualify this as to what I

1 understand was presented. I don't remember every --
2 what people testified to at the Board meeting. I mean,
3 these issues may have been raised by various
4 individuals, so I -- again, I don't have that specific
5 recollection of what other parties raised at the
6 meeting.

7 Q. Do you think it would be useful if the Board had
8 some sort of document or study that looked at these
9 issues in terms of which diversion structures are
10 causing problems so that they could make an informed
11 decision?

12 MS. WESTON: Objection, vague and
13 ambiguous.

14 MS. MARTIN: Join.

15 A. I guess I would just generally say that more
16 information is generally -- I mean, I'm not -- I guess
17 having more information.

18 Q. (By Mr. Frankel) And if Alexander and Baldwin
19 conducted that study, that wouldn't require a lot of
20 DLNR's resources to ensure that that kind of study was
21 done, right?

22 A. If they conducted it, yeah. I mean, we
23 wouldn't. I mean, yeah, if it was done by them, yeah.
24 Yes.

25 Q. Okay. I want to -- I don't know if you have

1 seen this.

2 MR. FRANKEL: Let me mark this Exhibit 1.

3 (Deposition Exhibit 1 was marked for
4 identification.)

5 Q. (By Mr. Frankel) If you could turn to
6 paragraph ten, which is on page six. Actually, let me
7 back up. I am assuming you haven't ever seen this
8 document before?

9 A. Not -- yeah, I don't believe I have.

10 Q. And it's signed on the last page by the counsel
11 who is sitting next to you.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes.

15 Q. Okay. So looking at paragraph ten, let me read
16 it, and you tell me if I have read that correctly.
17 Prior to its October, 2019, decision making on the
18 holdover of revocable permits -- I'm not going to read
19 them all -- BLNR didn't seek information regarding which
20 diversions cause the greatest impediment to the
21 migration of native aquatic species upstream.

22 Do you see that?

23 A. Mm-hm.

24 Q. So I want you to compare that answer now to,
25 let's go to -- actually, what I wanted you -- let me

1 back up.

2 I want you to read paragraphs eight, nine, ten,
3 and eleven to yourself while I pass out the next
4 exhibit.

5 A. Okay.

6 MR. FRANKEL: So the next exhibit is 2, and
7 now we will pass out 3.

8 (Deposition Exhibits 2 and 3 were marked
9 for identification.)

10 Q. (By Mr. Frankel) So let's look at Exhibit 2 and
11 Exhibit 1 at the same time.

12 A. Okay.

13 Q. If you get Exhibit 2 there, and you turn to
14 paragraph twenty-six on page ten, do you see paragraph
15 twenty-six?

16 A. Yes. Prior to the November 9th, 2018, decision
17 making, Board did not seek information regarding which
18 diversion caused the greatest threat of entrainment,
19 that's that one that you're referring to?

20 Q. Yes.

21 A. Okay.

22 Q. If we compare that to Exhibit 1, paragraph
23 eleven, which is on page six?

24 A. Okay.

25 Q. I believe the questions asks for, essentially,

1 the same information, although the year is different?

2 A. Mm-hm.

3 Q. So in 2018, the Board is asserting it did not
4 seek information regarding which diversion structures
5 caused the greatest threat of entrainment of native
6 aquatic species, but a year later, the Board denies that
7 information, so my question to you is do you know if
8 anything happened within that, those eleven months, for
9 the Board to change its position, or what?

10 MS. WESTON: Objection. The question is
11 vague and ambiguous.

12 MS. MARTIN: Join the objection, form.

13 MS. WESTON: Mr. Hirokawa didn't answer
14 these, and, plus, you are leaving out the fact that the
15 same objections were made to the request to admit.

16 MR. FRANKEL: Thank you.

17 Q. (By Mr. Frankel) So now, Ian, did you provide
18 the Board information in 2019 that was not provided to
19 it in 2018 regarding entrainment of native aquatic
20 species?

21 A. Well, without -- I guess I am just merely
22 speculating as to what the Board did or didn't know.
23 The only difference, as I understand it, is the draft
24 EIS was published in the intervening time.

25 Q. Okay. Does that document itemize which

1 diversion structures caused the greatest threat?

2 A. I don't recall. I haven't reviewed the EIS in a
3 while, so I can't recall specifically.

4 Q. And is there anything in your staff submittal or
5 are you aware of anything else that was provided to the
6 Board that would allow them to provide a completely
7 different answer in 2019 to this request than it did in
8 2018?

9 MS. WESTON: Objection, speculation, vague,
10 and ambiguous.

11 MS. MARTIN: Join in the objection and
12 form.

13 A. I don't -- I don't recall.

14 Q. (By Mr. Frankel) Okay. Let's look at Exhibit 3
15 at the same time as we are looking at Exhibit 1. If we
16 look at Exhibit 3, paragraph ten on page six, so in
17 2018, this admits without any objection that the Board
18 did not seek information regarding which diversions
19 caused the greatest impediment to the migration of
20 native aquatic species upstream.

21 So it's admitted; do you see that?

22 A. Mm-hm.

23 Q. Now, if we go to the recent admissions regarding
24 2019?

25 MS. WESTON: Exhibit 1?

1 MR. FRANKEL: Exhibit 1, thank you, Amanda.

2 Q. (By Mr. Frankel) And we go to...

3 MS. WESTON: 10?

4 Q. (By Mr. Frankel) Paragraph eight on page five.
5 Do you see that the Board has given a completely
6 different answer eleven months later?

7 A. I see in the prior one they admitted, and the
8 most recent one, they checked denied, so.

9 Q. And they are different years, so you can give
10 different answers in different years, right?

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

12 Q. So did the Board have any different information?
13 Well, let me take it back.

14 Did you provide any different information in
15 2019 that would allow the Board to know which diversion
16 structures are causing the greatest impediment to the
17 migration of native aquatic species upstream?

18 A. Other than what we provided in the submittal,
19 again, including the link to the draft EIS, that was --
20 that was what we provided. I don't know what the Board
21 may have or members of the Board may have sought other
22 than that.

23 Q. And just to be clear, there are no objections
24 itemized in either of these two responses that we are
25 comparing in paragraph ten of Exhibit 3 from 2000 --

1 reflected in 2018's decision and paragraph eight in
2 Exhibit 1?

3 MS. WESTON: Well, that's not true. It's
4 at the top of page six.

5 MS. MARTIN: And there's also general, the
6 general objections.

7 MS. WESTON: Yes.

8 MR. FRANKEL: Okay.

9 Q. (By Mr. Frankel) All right. Okay, and did you
10 and your staff submission highlight any particular facts
11 from the draft EIS to the Board?

12 A. No.

13 Q. All right. Let's switch topics. I want to talk
14 about alternatives. Did the DLNR or BLNR ask how much
15 water is available from alternative sources, well, I
16 should say ask the applicant?

17 A. At the meeting, I don't -- I don't recall.

18 Q. How about prior to the meeting?

19 A. Not that I can recall.

20 Q. Okay. Did DLNR or BLNR ask A&B or EMI to rely
21 on other sources of water before or in conjunction with
22 the use of East Maui stream water?

23 A. Not directly. We recommended that the amount of
24 water be capped, right, or limited, and if they -- they
25 needed more, they could either -- you know, if that

1 would be including that, you know, that would -- if they
2 needed more, that they would have to either come back to
3 the Board or seek the alternative. It's kind of
4 inherent. I -- I see it as inherent in what we had
5 recommended.

6 Q. Well --

7 A. If not -- if not -- if not sufficient for their
8 needs, right, we recommended a cap, so.

9 Q. So but if, let's say, 45 million gallons a day
10 was sufficient for their needs for 2020, the Board did
11 not require them to use any ground water or any of the
12 water west of Honopou Stream?

13 A. That is my understanding, yes.

14 Q. Okay. So there's no need --

15 The applicants or Mahi Pono do not need to pump
16 any ground water?

17 MS. WESTON: Objection, vague, ambiguous,
18 speculation.

19 MS. MARTIN: Objection. form.

20 A. I would defer to Mahi Pono to clarify what their
21 needs.

22 Q. (By Mr. Frankel) But the Board did not require
23 them to do so?

24 A. No, not -- not directly.

25 Q. Okay. Let's talk about reasonable and

1 beneficial uses. Did the Department of Land and Natural
2 Resources ever determine that the use of water for
3 concrete and restrooms was a reasonable and beneficial
4 use of East Maui stream water?

5 A. I don't recall them making any kind of specific
6 determination.

7 Q. Okay. Has the Board or the Department taken any
8 steps to stop water from East Maui streams from being
9 used for restrooms, concrete batching, and other
10 industrial uses?

11 A. Well, they're -- I think they're -- you know, we
12 have -- we have stated what the water can be used for,
13 and we have -- I mean, I don't -- to stop something?
14 No.

15 Q. Okay.

16 A. I mean, sorry, it's a difficult question to
17 answer, but, you know, it's required to be used under a
18 certain way and a purpose, and then that's what we
19 expect.

20 Q. Does that include using East Maui stream waters
21 for flushing toilets, do you know?

22 A. I mean, just -- I couldn't say generally to that
23 -- yes or no to that question in a general sense like
24 that in a general communication. I think we need more
25 specific information.

1 Q. What kind of specific information do you need?

2 A. I mean, if -- if it's part of, you know, an
3 agricultural operation, I think that would be something
4 the Board needs to consider, I mean, or like it's --
5 what -- what it's being, you know, what -- where -- you
6 know, what are the toilets being used for, and what
7 specifically are we --

8 Q. I'm not sure how many uses there are for a
9 toilet, but --

10 A. No, I'm not -- not the toilet, but I'm saying is
11 where are these toilets is what I'm saying. I mean, I
12 think that's something for the Board to consider, not as
13 staff, but the Board can consider it.

14 Q. Has the Board considered that issue? Does it
15 know --

16 MS. WESTON: Objection, speculation.

17 MS. MARTIN: Join the objection.

18 Q. (By Mr. Frankel) Do you know where the
19 bathrooms are?

20 A. Not specifically, no. I mean, me, no.

21 Q. Have you asked whether there are --

22 Well, do you know that East Maui stream water is
23 being used for restrooms?

24 A. I can't say I know, no. I mean, we're -- we're
25 awaiting the report that's supposed to delineate more

1 specifically the uses that the Board approved, and we
2 will see when -- when we get it, we will see what it
3 says.

4 Q. Has Amanda not provided you folks a copy of the
5 information that's to come from Alexander and Baldwin
6 that discloses that they are using that water for
7 restrooms?

8 A. Are we talking about what had the useage
9 numbers?

10 Q. Yes.

11 A. I have seen it, I have seen it.

12 Q. Okay.

13 A. I have seen -- I've seen that, yes.

14 Q. Okay.

15 MS. WESTON: And we are aware that it is
16 for County use too.

17 MR. FRANKEL: Fair, fair enough,

18 Q. (By Mr. Frankel) You understand that we are
19 talking about the specific use of a particular entity
20 that is using it for its restrooms, which is not a
21 domestic use?

22 A. Mm-hm, mm-hm.

23 Q. Have you followed up on that to get more
24 information about where that is and why it is being used
25 that way?

1 MS. MARTIN: Objection as to form.

2 A. I have not followed up.

3 Q. (By Mr. Frankel) Has anyone from DLNR, as far
4 as you know?

5 MS. WESTON: Objection, speculation.

6 MS. MARTIN: Join.

7 A. Yeah, I don't -- I don't know.

8 Q. (By Mr. Frankel) Okay. What about for the
9 concrete?

10 A. I don't know.

11 Q. Okay. Let's look at Exhibit 1 again, paragraph
12 seven on page five. So this asks since October, 2019,
13 decision making to hold over the revocable permits,
14 Suzanne Case, DLNR, and BLNR have not monitored or
15 investigated to determine whether any of the water being
16 taken is being used in a reasonable and beneficial
17 manner, and that request for admission is denied.

18 Do you see that?

19 A. Mm-hm.

20 Q. So what monitoring or investigations have been
21 done?

22 A. Well, the Board required a more in-depth
23 reporting on a quarterly basis. You know, my
24 understanding is that, you know, we expect to see a
25 report, we are nearing the end of the first quarter, and

1 depending on what the report says, we will follow up
2 accordingly.

3 Q. So other than that report, there has been no
4 monitoring or investigating?

5 MS. WESTON: Objection, vague and
6 ambiguous, speculation. And, remember, Ian is just with
7 Land Division. You have got DOFAW and DAR --

8 MR. FRANKEL: I understand.

9 MS. WESTON: -- and, you know, others,
10 CWRM.

11 MR. FRANKEL: I understand.

12 MS. WESTON: Okay.

13 MR. FRANKEL: Thank you.

14 MS. MARTIN: Join in the objection as to
15 form.

16 A. I mean, I can't answer for the other divisions.

17 Q. (By Mr. Frankel) When do you expect to get that
18 quarterly report?

19 A. I would expect it soon after the quarter ends.

20 Q. How soon?

21 A. Hopefully, within, what is it, March? So next
22 month sometime? Because, I mean, it has the -- I think
23 they are required to provide, you know, all their
24 amounts and stuff, so we need to close out, or they
25 would need to close out the month and provide us

1 information, so I think, you know, allowing for a
2 reasonable time, so I would assume sometime in April.

3 Q. Well, have you given them a specific date by
4 which you would like the quarterly report?

5 A. No. No, I'm hoping we will see it fairly, like
6 I said --

7 Q. Yeah.

8 A. -- a fairly reasonable time. If we don't, then,
9 you know, if we don't see a report, then we will have to
10 follow up.

11 Q. So in terms of have you given yourself, have you
12 put up something in your calendar in terms of at a
13 certain point, you are going to follow up?

14 A. Okay.

15 Q. Or would it be a good idea to email those guys
16 and say, hey, we would like a quarterly report by X day
17 like by April 15th?

18 A. Well, I haven't emailed them specific -- I
19 haven't contacted them regarding it, so, I mean, again,
20 I expect it soon after, and if -- if it isn't, we'll --
21 we will follow up.

22 Q. Okay, and you haven't defined how soon that
23 would be?

24 A. Not to a specific date, no.

25 Q. And you don't think it would be a good idea to

1 ask them?

2 MS. MARTIN: I object, asked and answered.

3 MS. WESTON: And argumentative.

4 Q. (By Mr. Frankel) Go ahead.

5 A. No. I mean...

6 MS. WESTON: It's a quarterly report.

7 THE WITNESS: Yeah.

8 MS. WESTON: It's not due yet.

9 THE WITNESS: Yeah.

10 MR. FRANKEL: Shhhh.

11 A. No, I mean, yeah, I mean, I -- we didn't set
12 specific deadlines, that's what I consider, but, again,
13 you know, I think we are looking at what is a reasonable
14 time to put it together, so, sure, not June, obviously,
15 but, you know, within an expedient, like I said, within
16 the month of April, I would hope sooner than later, I
17 hope, but I think that's a reasonable time, the month of
18 April, hopefully, sooner than later.

19 Q. (By Mr. Frankel) All right. In October, 2019,
20 did you provide information to the Board as to how many
21 acres Mahi Pono intended to cultivate in 2020?

22 A. I don't believe I have that figure in my -- in
23 my -- in the staff submittal. I recall it being
24 discussed at the meeting, but it doesn't look like it
25 was included.

1 Q. Was any information provided in writing to the
2 Board regarding --

3 A. No.

4 Q. -- how many acres Mahi Pono intended to
5 cultivate?

6 A. I'm not -- I don't recall if it was included in
7 any written testimony. I can't recall if Mahi Pono
8 submitted and had put it in there. I'm sorry. I'm just
9 looking at the status report. I was just referring to
10 the status report that A&B provided, and I didn't see
11 anything, so, but, what I am saying is it might have
12 been provided in written complaint at the meetings.

13 Q. Okay.

14 A. I'm not -- I don't recall at this time.

15 Q. Was any information provided to the Board
16 regarding how many gallons of water per acre Mahi Pono
17 needed to irrigate its crops in 2020?

18 A. Not in the submittal.

19 Q. Are you aware of an agreement that Mahi Pono
20 entered into that limits the amount of water they can
21 use from Na Wai 'Eha to 3,000 gallons per acre?

22 A. I mean, I'm generally aware of the issue, not
23 the agreement.

24 Q. So are you aware that an agreement was reached?

25 A. No, not specifically.

1 Q. Okay.

2 A. No. I'm sorry.

3 Q. Okay.

4 A. I mean, I understand their issue was Na Wai
5 'Eha, but not any specific agreement.

6 Q. All right. In 2018 and most of 2019, the Board
7 and the Department had not asked Alexander and Baldwin
8 and Mahi Pono to specify how the water had been used,
9 right?

10 A. No, as far as I know, the Board didn't do any
11 interim.

12 Q. But the Board asked for more detailed
13 information at its October, 2019, meeting, right?

14 A. Yes.

15 Q. Based on your staff submittal?

16 A. Yes.

17 Q. What prompted you to ask for this detailed
18 information in 2019, but not earlier?

19 A. It was just raised again in our -- in the
20 meeting with Sierra Club, they had raised it, and I
21 think we had seen the -- how the uses were broken down
22 in what you referred to earlier, that -- that
23 information, so I felt it was reasonable to say, well,
24 it can be reported, you know, to the Board that way and
25 not on more than just an annual basis, so to allow for a

1 little bit more, you know, in terms of the frequency,
2 more frequent reporting and oversight.

3 Q. So the Board, well, you and the Board thought it
4 was a good idea to ask for the information that the
5 Sierra Club had been seeking to get?

6 A. Sure, yes. Yes, yes.

7 Q. Okay. You understand that the Water
8 Commission's 2018 decision allows A&B and EMI to take a
9 lot of water from a lot of streams?

10 MS. MARTIN: Objection.

11 MS. WESTON: Objection, overly broad and
12 vague.

13 MS. MARTIN: Objection, form.

14 A. I understand that the IFS is set, and they --
15 you know, the excess, whatever that is, can -- is
16 possible to be diverted.

17 Q. (By Mr. Frankel) And do you realize that for
18 more than a dozen streams, those streams would have less
19 than the minimum flow necessary to provide suitable
20 habitat conditions for recruitment, growth, and
21 reproduction of native stream animals?

22 MS. WESTON: Objection, overly vague,
23 ambiguous. Objection to the form of the question.

24 MS. MARTIN: Join in the objection.

25 A. I guess if you're referring to the twelve

1 streams that are not part of the order, I understand
2 that there are those twelve -- I forgot what number we
3 said --

4 Q. (By Mr. Frankel) Thirteen.

5 A. -- twelve or thirteen that weren't part of the
6 order, I understand that.

7 Q. What about those streams that the Water
8 Commission established in-stream flow standard of 20
9 percent of the base flow, do you realize that for those
10 streams, the Water Commission that has decided that that
11 amount of water is less than the minimum flow necessary
12 to provide suitable habitat conditions for recruitment,
13 growth, and reproduction of native stream animals?

14 A. I -- I can't -- I can't say I know that as a
15 fact. I mean, I -- what -- what you're saying, I don't
16 -- I don't know that, I guess.

17 Q. Was that kind of information provided to the
18 Board?

19 A. I'm not sure what was brought up, if that was
20 brought up during the hearing, during the Board meeting,
21 I'm not sure if that was raised by anybody.

22 MS. WESTON: Are you quoting from the CWRM
23 decision?

24 MR. FRANKEL: Thank you for your question.
25 I'm not going to respond to that, Amanda.

1 Q. (By Mr. Frankel) Do you think it would be
2 important for the Board to know that the authorization
3 in the form that it was done in 2019 allows for so much
4 water to be taken from more than a dozen streams than is
5 necessary for the minimum flow necessary to provide
6 suitable habitat conditions for recruitment, growth, and
7 reproduction of native stream animals?

8 MS. WESTON: I don't understand your
9 question.

10 MS. MARTIN: Objection as to form.

11 A. I'm not -- are we talking about the twelve
12 streams that are not part of the order or --

13 Q. (By Mr. Frankel) So --

14 A. -- what's a part of -- I'm sorry. I'm a little
15 confused.

16 Q. That's fair. I am talking about both the
17 thirteen streams and those streams that have an
18 in-stream flow standard of 20 percent of base level.

19 A. Okay.

20 Q. So that's two. There's more than a dozen of
21 them.

22 A. Okay.

23 Q. So my question is if the Water Commission
24 decision says that that amount of water is insufficient
25 to provide suitable habitat conditions for recruitment,

1 growth, and reproduction of native stream animals,
2 should that fact have been brought to the attention of
3 the Board?

4 MS. MARTIN: Same objection.

5 MS. WESTON: Join.

6 A. I mean, they were provided with the decision in
7 the 2018 decision, so that's -- I guess, that's what I
8 -- how I would answer that.

9 Q. (By Mr. Frankel) And it's a long decision,
10 right? It's over 200 pages?

11 A. Yes. Yeah. Yes.

12 Q. And the Board depends on its staff to present
13 salient facts to it, right?

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

15 Q. Do you think that might be important information
16 the Board should know about so that it can effectively
17 balance the interests?

18 A. I think, I mean, I don't -- I don't -- I don't
19 know. I don't know. I mean, I'm -- we presented the
20 report. We had -- we consulted with CWRM. I mean, I'm
21 just viewing back on how we, you know, consult with them
22 on the recommendations and the right -- you know, the
23 information presented in our submittal and the
24 recommendations made, and they're available to -- at the
25 -- you know, I make sure that they're available at the

1 meeting to answer any questions.

2 Q. Well, okay. Let me put it this way. Assuming
3 this item comes before the Board next year or in a few
4 months, do you think that kind of information is
5 something that should go in the staff submittal so the
6 Board understands that the impact of their decision is
7 to allow those thirteen streams and the other streams
8 that have a 20 percent base flow requirement, that those
9 streams are not going to provide suitable habitat
10 conditions for native stream animals, should they know
11 that?

12 MS. WESTON: Objection, asked and answered,
13 and form of the question.

14 MS. MARTIN: Join in that.

15 A. I think if -- if it's an issue that, again, if,
16 you know, Sierra Club wants to raise that issue, I
17 would, and much like we did the last time, I would, we
18 would -- you know, we can raise it and, you know, note
19 that the Sierra Club has raised this issue, so I'm --
20 I'm not opposed to putting it in there, no, no.

21 Q. (By Mr. Frankel) Okay.

22 A. Yeah.

23 Q. What justification did the Board provide for
24 allowing less water to remain in streams than is needed
25 to provide suitable habitat for native stream animals?

1 A. I think, generally, my understanding is that the
2 Board defers to the findings of the Water Commission,
3 CWRM, the Water Commission, and whatever their findings
4 are, it's what they authorize as the IFS, and so the
5 Board will -- my understanding is that the Board will
6 defer to that.

7 Q. So that Board is not exercising independent
8 judgment on this. It's deferring to what the Water
9 Commission has decided?

10 MS. WESTON: Objection, form of the
11 question.

12 MS. MARTIN: Join.

13 MS. WESTON: Vague and ambiguous.

14 A. I wouldn't -- not -- I don't know what -- again,
15 I can't make to the subjective, you know, the
16 individual, what they're thinking of, but, again, they
17 -- I wouldn't say that it's just -- they have -- you
18 know, they take testimony and hear, you know, allow the
19 public to testify on this matter, and they've
20 incorporated with, you know, requirements in the permits
21 that don't necessarily, you know, involve strictly Water
22 Commission issues, so I wouldn't say it's a strict --
23 that's my -- I understand it to be a strict difference.

24 MS. WESTON: I'm sorry. Can we take a
25 break --

1 MR. FRANKEL: Not quite.

2 MS. WESTON: -- when you get --

3 MR. FRANKEL: Not quite.

4 MS. WESTON: -- to a logical --

5 MR. FRANKEL: Not quite. We are not there.

6 Q. (By Mr. Frankel) The Board did not articulate
7 a justification, as far as you know, as to allowing less
8 water in those streams than is necessary to provide a
9 suitable habitat, did it?

10 A. I don't recall that being part of the
11 discussion.

12 Q. Okay. In October, 2019, what information did
13 the Board have as to whether there was enough water
14 flowing in each stream in East Maui to ensure that
15 populations of native aquatic species within them had
16 not been adversely affected?

17 MS. WESTON: Objection, overly broad,
18 vague, and ambiguous.

19 MS. MARTIN: Join the objection.

20 A. I can only speak to what I provided, which was,
21 again, the submittal including the order and the draft
22 EIS. Wait. You're -- I'm sorry. We're talking about
23 October, '19?

24 Q. (By Mr. Frankel) Right, right.

25 A. Oh, yeah --

1 Q. Yeah.

2 A. -- and the draft EIS.

3 Q. Yeah.

4 A. Yeah.

5 MR. FRANKEL: All right. Amanda would like
6 to take a break. We will go off the record.

7 MS. WESTON: Thank you.

8 (Recess taken 9:36 a.m. to 9:43 a.m.)

9 MR. FRANKEL: Back on the record.

10 Q. (By Mr. Frankel) Did DLNR or BLNR ask A&B or
11 EMI for any evidence that its diversions were not
12 causing any adverse impacts to any streams, stream life,
13 or recreational uses?

14 A. I don't believe that was directly -- I don't
15 recall that being directly asked at the meeting. I
16 guess I'm trying to say it's -- not inherent. That's
17 not the right word, but it sort of with -- I think
18 assumed that the information provided in the decision
19 and draft EIS would address those issues, but I don't
20 recall them directly asking them at the meeting about
21 that.

22 Q. And what about before the meeting, did anyone at
23 DLNR or BLNR ask A&B to provide that kind of
24 information?

25 A. I mean, outside of the meetings, I -- I -- as

1 far as I know, I'm not aware of that, but I can't recall
2 what was discussed at the prior Board meetings, I guess,
3 if that was ever brought up. It may have been, but I
4 don't recall at this point.

5 Q. When you say prior, you mean 2016 --

6 A. '16, '17, '18, yeah, yeah. Sorry. I didn't
7 mean to interrupt you, but yes.

8 Q. Did A&B or EMI submit any evidence to BLNR that
9 its diversions would not harm the streams, stream life,
10 or recreational uses?

11 A. Outside of what we -- we've discussed, I don't
12 -- I don't believe so.

13 Q. And when you say outside of what we have
14 discussed, you are talking about the draft EIS and the
15 Water Commission decision?

16 A. Yes.

17 Q. Did DLNR or BLNR ask A&B and EMI to demonstrate
18 the absence of practicable mitigating measures?

19 MS. MARTIN: Objection to form.

20 MS. WESTON: Join.

21 A. Not to my knowledge.

22 Q. (By Mr. Frankel) Did BLNR or DLNR ever ask A&B
23 and EMI which streams the additional water that would be
24 diverted in 2020 is going to come from?

25 A. I'm sorry. Can you repeat the question?

1 Q. Sure. Did DLNR or BLNR ever ask A&B and EMI
2 which streams the additional water that would be
3 diverted in 2020 is going to come from?

4 A. I'm sorry. Can you clarify what you mean
5 additional?

6 Q. Sure.

7 A. I'm sorry.

8 Q. Well, is it your understanding that the proposal
9 was to divert more water in 2020 than had been diverted
10 in 2019?

11 A. Oh, yes, yes, yes, because I recall that they
12 had said something about they were going to cultivate, I
13 think, potato crops, that's my recollection, yes.

14 Q. And so did DLNR or BLNR ever ask which streams
15 the additional water would be diverted from in 2020?

16 A. I don't recall they asked about the specific
17 streams, if that's what -- if that's what you're asking.

18 Q. Do you think that that additional information
19 would be helpful to the Board's decision making?

20 MS. WESTON: Objection, vague and
21 ambiguous.

22 MS. MARTIN: Join.

23 A. Yeah, I don't know. I don't know. I defer to
24 the -- I defer to the Board members on that one.

25 Q. (By Mr. Frankel) Okay. Let's talk trash. In

1 2017, BLNR required that A&B and EMI begin cleanup of
2 trash in the revocable permit area?

3 A. Mm-hm. Yes, yes. I'm sorry. Yes.

4 Q. And in 2018, A&B informed DLNR that other than
5 one tractor, there was little other debris specifically
6 identified. Might be the last page of the 2018
7 submittal, the very last page.

8 A. 2018 submittal.

9 Q. Go to the very last page of the submittal.

10 A. Okay. We are talking about the status update
11 report, A&B needs to, number four, A&B needs to clear up
12 the debris starting with more excess, okay, that's what
13 you're referring to, okay.

14 Q. And do you see where they say there is little
15 other debris specifically identified other than one old
16 tractor?

17 A. Okay, we have removed an abandoned tractor. I'm
18 reading aloud. Okay, I'm going to -- you're referring
19 to the sentence that begins, there was little other
20 debris specifically identified. However, existing
21 operating procedures which require the removal of all
22 construction equipment, forms, and tools when doing
23 maintenance work on the ditch system have been
24 reinforced with EMI crews. That's the statement?

25 Q. Yes.

1 A. Okay.

2 Q. And when it says other debris, I assume other is
3 referring to the tractor, right?

4 A. I'm -- I'm not sure. I mean, I see they removed
5 the tractor, as you said, and all construction
6 equipment. I'm not sure exactly about the other debris.
7 I'm not sure. I'm not sure if that means the tractor.
8 I'm sorry.

9 MS. WESTON: Are you talking about the
10 little other debris? I don't read that as being a
11 tractor.

12 Q. (By Mr. Frankel) So the first two sentences of
13 the paragraph --

14 A. Yes.

15 Q. -- refer to a tractor.

16 A. Right.

17 Q. No other debris is talked about, correct?

18 A. Right.

19 Q. So when it says there was little other debris,
20 it's other than the tractor, correct?

21 A. Mm-hm.

22 Q. Okay. So --

23 MS. WESTON: You have to say yes.

24 A. Yes. Sorry. Yes.

25 Q. (By Mr. Frankel) Thank you, and you relied upon

1 this statement from Alexander and Baldwin, right?

2 A. Yes.

3 Q. Okay. So in 2018, the Board and the Department
4 thought that Alexander and Baldwin was doing a good job
5 of getting rid of debris in and around streams, right?

6 MS. WESTON: Objection, speculation.

7 MS. MARTIN: Objection, join in the
8 objection.

9 A. I can only presume that the Board found it
10 sufficient to continue to approve the -- at that point
11 it was holdover, approved the holdover, so it was
12 sufficient.

13 Q. (By Mr. Frankel) Now, this past year, A&B
14 reported that EMI has recovered several hundred feet of
15 old pipe, several old wooden gates, and remnant pieces
16 of steel and concrete. EMI has also removed two large
17 tractors that were abandoned in the field many decades
18 ago.

19 Does that sound familiar?

20 A. Yes, I'm trying to remember which. I'm try to
21 see which. Oh, number eight on the status report.

22 Q. So in 2019, they found a lot of trash, didn't
23 they?

24 A. Well, they found, looks like they found
25 additional from what they had before.

1 Q. So you think it's likely that those several
2 hundred feet of old pipe, old wooden gates, remnant
3 piece of steel and concrete and tractors were there back
4 in 2018?

5 MS. WESTON: Objection, calls for
6 speculation.

7 MS. MARTIN: Join.

8 A. Yeah, I -- I don't know.

9 Q. (By Mr. Frankel) Well, it doesn't call for that
10 much speculation, right, because it refers to those
11 large tractors being abandoned in the field many decades
12 ago?

13 A. Well, it -- it...

14 MS. MARTIN: Lacks personal knowledge.

15 A. Yeah, it's possible. Again, I can't personally
16 verify that one way or the other.

17 Q. (By Mr. Frankel) So in retrospect, seeing what
18 Alexander and Baldwin submitted, do you think Alexander
19 and Baldwin is complying with BLNR's condition back in
20 2018?

21 MS. MARTIN: Objection, form.

22 MS. WESTON: Join.

23 A. I wouldn't say that this is necessarily
24 confirmation of noncompliance.

25 Q. (By Mr. Frankel) Really?

1 A. I mean, they are cleaning up.

2 Q. I am asking about 2018, though. Does it suggest
3 to you that they had done a good job in 2018 in cleaning
4 up the debris?

5 A. I understand -- okay. My understanding, and,
6 again, I'm not in the field all the time nor have I
7 walked the entire lane, the ditch system, is that if
8 they see debris or they encounter debris, they take
9 steps to remove it, and I don't know if this was
10 something they knew about. I -- I don't know for sure,
11 I mean, you know, when they found them, if they were
12 abandoned, I don't know where they were exactly or how
13 they found them.

14 If, let's say, they didn't find them in 2018 and
15 only uncovered them recently, I -- like I said, I don't
16 -- that's why I'm saying I don't think it's confirmation
17 that they're not in compliance. I think...

18 Q. Do you --

19 A. I mean, we could -- you know, I think we would
20 need more, to make that determination, we would need a
21 little more information on that.

22 Q. Do you think maybe the Sierra Club's lawsuit is
23 a factor in the fact that A&B is actually cleaning up
24 more debris now than it was doing in 2018?

25 MS. WESTON: Objection, calls for

1 speculation.

2 MS. MARTIN: Join the objection.

3 A. I think that's an answer for somebody from A&B
4 to answer, EMI to answer.

5 Q. (By Mr. Frankel) Has anyone from DLNR gone out
6 in 2019 or '20 to specifically look at whether there is
7 still trash in and around the streams?

8 A. Not -- not yet. When the Board did, you know,
9 mandate us, so we plan to go once, you know, once we get
10 the report and we see what the update is, doing the
11 report is going to update on the trash cleanup, and
12 we'll go take a look at that.

13 Q. Will you coordinate that visit with the Division
14 of Aquatic Resources and the staff from the Water
15 Commission so that you folks can look at a bunch of
16 issues at the same time?

17 A. We -- we could. I mean, I'm not -- yeah. It's
18 not just solely limited. I'd probably include Forestry
19 as well.

20 Q. Sure.

21 A. Because they're the -- I mean, they're the land
22 manager. Those are actual Forestry lands, so.

23 Q. Okay. Are you familiar with the Carmichael
24 decision by the Intermediate Court of Appeals?

25 A. Generally, generally.

1 Q. Okay. Are you --

2 A. I haven't reviewed it for this depo, so I'm not
3 privy to the -- I mean, I don't recall the details, but
4 generally.

5 Q. Are you familiar with the Circuit Court's
6 decision by Judge Nishimura that invalidated revocable
7 permits back in the beginning of 2016?

8 A. I have read it. I haven't looked at it in a
9 while, but I have read it.

10 Q. So you understand that back in January of 2016,
11 the revocable permits were invalidated by the court?

12 A. That's my understanding, yes.

13 Q. Now, in February, March, April, and May of 2016,
14 after the permits were invalidated, Alexander and
15 Baldwin continued to divert tens of millions of gallons
16 of water daily from East Maui. Is that a fact that you
17 are aware of?

18 MS. MARTIN: I am going to object as to the
19 form of the question.

20 MS. WESTON: Join.

21 A. I mean, I -- my understanding is that they have
22 not discontinued or stopped diverting since, well, since
23 before, but, yeah, since that time, that's my
24 understanding.

25 Q. (By Mr. Frankel) Okay. I want to give you this

1 exhibit, which I guess we will call 4.

2 (Deposition Exhibit 4 was marked for
3 identification.)

4 Q. (By Mr. Frankel) So I got this from your
5 counsel, Amanda Weston. Do you understand what this
6 document is?

7 A. Yeah, it looks to be the amount of water
8 diverted, to put it simply, the amount of water
9 diverted.

10 Q. And is it the kind of information that the Board
11 or the Department would get routinely so it knows how
12 much water is coming out of East Maui?

13 A. Well, it was -- I believe it was reported to
14 CWRM, and, you know, we -- we included the numbers. I
15 -- I mean, I can't recall what we included in the
16 submittals back then, but, yeah, I believe it was
17 reported to CWRM. The permits themselves until this
18 last year never actually had a reporting requirement.
19 That's why we instituted it, because most other
20 permittees do report, so we felt that, you know, we
21 would -- this would be appropriate, so.

22 Q. Have you seen this kind of information before?

23 A. I don't recall seeing this specific, this
24 specific document before. I have -- I have inquired
25 about what the use numbers are with CWRM in the past,

1 but I don't recall seeing this.

2 Q. Okay, but is this information in here consistent
3 with the kind of information you have gotten from the
4 Water Commission?

5 A. Well, I -- I believe so, looking at the -- when
6 we -- you know, when we worked on what was the cap, I
7 referred to, you know, the breakdowns, and it looks to
8 be consistent. The numbers look to be consistent for
9 the same time period.

10 Q. Okay, great. How often have you met with
11 representatives of Alexander and Baldwin or EMI?

12 A. I'd say since in the past three years, I've been
13 working on this maybe -- I'd say less than ten. Not
14 very often.

15 Q. Well, let's go backwards in time starting from
16 now. Have you met with them this year in 2020?

17 A. Not yet, no.

18 Q. How about in 2019?

19 A. I know we met at least once. That was to
20 discuss what we were going to -- you know, in a general
21 sense what we were going to include in the submittal. I
22 can't remember if -- how many meetings with -- I mean,
23 it's hard because I've had conversations with their
24 attorney at the time, you know, multiple conversations,
25 but not necessarily meetings like with A&B staff.

1 I know I did at least one site visit when --
2 with CWRM, so that's two, and that was, I believe, in
3 2019 when we did that. So at least, at least two, maybe
4 three times with -- I'm talking with, you know, a
5 representative like staff of Alexander and Baldwin and
6 EMI.

7 Q. Okay. So let's stick with 2019 for now, and you
8 said that you met with this attorney. Meet or phone
9 call or --

10 A. Phone call.

11 Q. Okay. So when you say attorney, what attorney?

12 A. Yvonne Izu.

13 Q. Okay. How many times have you talked to Yvonne
14 Izu in 2019 on the phone?

15 A. Maybe, I'd say, ten. I mean, it -- I want to
16 qualify that. It's difficult because she represents
17 other water applicants, and it's not necessarily we
18 restrict the call solely to the -- you know, we
19 sometimes talk on the call maybe more than one or just
20 one, so it's hard for me to recall exactly how many
21 times we discussed EMI, so.

22 Q. So, you know, well, is DLNR's attorney on those
23 phone calls as well when you talk to Yvonne, or are you
24 just dealing directly with her?

25 A. In the meetings that we -- they've been -- I

1 believe they've been present. On the phone sometimes,
2 you know, she will call me, or I'll return their call,
3 and, yeah, I don't get the AGs at that time too. It's
4 just a call between the two of us.

5 Q. So what can you -- so in 2019, did you actually,
6 other than --

7 Okay. My understanding is you had a big
8 meeting, we talked about it at the last deposition with
9 Yvonne and Linda Chow and I think Julie China and --

10 A. I think Cindy Young, I'm sorry, Cindy Young.

11 Q. Cindy Young and Steve Lim, so other than that
12 meeting, were there other meetings you had, physical
13 meetings, where Yvonne Izu was present to talk about
14 East Maui water?

15 A. I believe she was present at our -- the meeting
16 that we had with the Sierra Club. I don't recall if we
17 had any other face-to-face meetings other than those. I
18 don't -- I don't recall any at this time.

19 Q. Okay. So let's talk, then, about the maybe ten
20 phone calls. What kind of topics and issues did you and
21 Yvonne talk about with respect to East Maui streams or
22 East Maui water?

23 A. I believe the majority of our conversations,
24 just generally, were when are we going to see the draft
25 EIS up until the time it was published, so, because that

1 was a priority for us.

2 Q. Sure. Did you talk to her about the contents of
3 the draft after you saw it?

4 A. No, no.

5 Q. Did the Department submit comments on the draft
6 EIS?

7 A. Yes. I don't believe it was necessarily from
8 the whole Department individual divisions. Like Land
9 Division did submit comments. I can't recall. I'm sure
10 Forestry did as well. I'm not exactly sure of who else.

11 Q. And who wrote the comments for Land Division?

12 A. Our staff planner.

13 Q. Who's that?

14 A. Lauren Yasaka.

15 Q. Did you participate in the drafting?

16 A. We discussed, yeah, we discussed the comments.
17 I was, you know, approving of what she wrote, and I
18 didn't say draft -- I think I may have gave some
19 feedback, but I didn't redraft it. I mean, I deferred
20 to her on how to -- how to word it, so.

21 Q. Okay. So let's go back to the meetings with
22 Yvonne Izu, your phone calls, you focused on when the
23 draft EIS was coming out. In the big meeting you
24 discussed, what were the issues you folks discussed at
25 that meeting?

1 A. I recall that we wanted to discuss, I think,
2 issues that we feel that we wanted to address in the
3 upcoming submittal, generally, so I think, you know,
4 capping the use of water was one, reducing the license
5 area was another, was another issue, and we also let
6 them know that -- and I think we discussed in the
7 submittal saying that, you know, we would have potential
8 -- we would potentially seek use of some of the diverted
9 water for State projects, so those were the -- those
10 were the three major ones. I can't recall if we
11 discussed anything, but those were the three big issues.

12 Q. Tell me about the conversation about the cap.

13 A. I think, just generally, I didn't give a number
14 at the time. I think just generally we said, okay, we
15 would look at instituting a cap on the amount of water
16 that could be -- you know, not just whatever the IFS
17 allows, we would look at a smaller number.

18 Q. And what was their response?

19 A. I don't -- I don't remember having any strong
20 response.

21 Q. Did they suggest any number?

22 A. I don't think so.

23 Q. Were you --

24 A. I don't -- I don't believe they did.

25 Q. Were you surprised when at the Board meeting

1 itself they asked for 45 million gallons a day instead
2 of the 35 that you had suggested?

3 A. I don't know if I'd call it surprise, but, I
4 mean, I -- we didn't -- the 35 million was not a number
5 we -- we discussed with them.

6 Q. Okay.

7 A. I mean, we looked internally at the prior useage
8 and came up with a number, and my thinking was we'll
9 present that number to the Board, and if -- if they, you
10 know, feel that it's insufficient, they can ask the
11 Board for more.

12 Q. Okay. Let's go back. Let's go now to 2018.
13 How many meetings would you say you had with A&B or its
14 representatives that year?

15 A. I would say not many. Maybe one, two? I -- I
16 -- I'm trying to recall if we had actually met before
17 the status, you know, they issued the status report just
18 to -- I can't recall if we did or not, but I would think
19 that, yeah, not more than maybe one or two, so.

20 Q. And what about 2017?

21 A. I can't recall. It's -- I can't imagine there
22 would be too many, but I can't recall specifically.

23 Q. And who generally calls these meetings? Do you
24 ask them to meet, or are they calling you asking for a
25 meeting?

1 A. I think the most recent one, we might have
2 reached out to them because we were going to make, you
3 know, recommendations in the submittal that were kind of
4 different from years past. I think it's been both,
5 both.

6 Q. Okay. Now, the meeting that you had with a
7 number of representatives from Alexander and Baldwin,
8 this was at the larger meeting, was anyone from the
9 Sierra Club invited to that meeting?

10 A. No. Oh? No, no.

11 Q. Was anyone from Na Moku invited to that meeting?

12 A. No.

13 Q. Have you ever asked to meet with Na Moku?

14 A. No.

15 Q. Have you ever asked to meet with the residents
16 of East Maui to discuss the four revocable permits or
17 the condition upon which they should be issued?

18 A. I have never asked.

19 Q. Do you know if anyone from DLNR has asked?

20 A. I don't know.

21 Q. How about the Sierra Club, have you ever asked
22 to meet with the Sierra Club to discuss the revocable
23 permits or the conditions upon which they should be --

24 A. No, no.

25 MS. WESTON: This is outside of the Board

1 meetings where public testimony is invited and Sierra
2 Club testifies?

3 MR. FRANKEL: Is that an objection, Amanda?

4 MS. WESTON: Just making -- just
5 clarifying.

6 Q. (By Mr. Frankel) Okay. Why was a
7 representative --

8 So you did have a meeting with the Sierra Club
9 this year?

10 A. Mm-hm.

11 Q. And that was a meeting --

12 A. Well, last year, right?

13 Q. Sorry.

14 A. Yeah.

15 Q. Getting my years --

16 A. Yeah.

17 Q. Let me rephrase the question. You did have a
18 meeting with the Sierra Club prior to the October, 2019,
19 decision?

20 A. Mm-hm. Yes, yes. I'm sorry. Yes.

21 Q. Why was a representative of Alexander and
22 Baldwin allowed to sit in on that meeting with the
23 Sierra Club?

24 A. I -- I don't know. I did not -- I don't think I
25 really scheduled it. I -- I mean, I defer to the

1 Attorney General's Office to work, so I'm not -- I can't
2 say. I don't know. I don't know why.

3 Q. So --

4 A. I mean, I would just say, they are the
5 applicant, so.

6 Q. Do you think the applicant has greater rights
7 than the public?

8 A. Not rights, necessarily --

9 Q. Okay.

10 A. -- but just to understand what's going on, I
11 think transparent, you know?

12 Q. Well, let's explore that for a bit. I want you
13 to really think about this. Do you think it's
14 appropriate to give a greater voice to an applicant of
15 water than to members of the public who depend on that
16 water as well?

17 A. No.

18 Q. Okay. So does it make sense to you that
19 Alexander and Baldwin has met with you without the
20 Sierra Club being present, but when the Sierra Club has
21 met with you, Alexander and Baldwin's attorney was
22 allowed to be present?

23 MS. WESTON: Objection. Let me just object
24 to this line of questioning as argumentative and outside
25 of the relevant subject matter.

1 MS. MARTIN: I would join in the objection.

2 A. Sorry. Can you -- do I think it's appropriate
3 that? I'm sorry. Can you repeat it? Do you think it's
4 appropriate that what?

5 Q. (By Mr. Frankel) That a representative of
6 Alexander and Baldwin is allowed to sit in on a meeting
7 that you had with the Sierra Club while the Sierra Club
8 was excluded from the meeting you had with Alexander and
9 Baldwin?

10 MS. WESTON: Same objections.

11 MS. MARTIN: Join.

12 A. I can't say I have an opinion on that.

13 Q. (By Mr. Frankel) Do you think it would make
14 sense for you folks in preparation of your staff
15 submittal to meet with the people that are affected by
16 the diversions including Na Moku, residents of East
17 Maui, and the Sierra Club?

18 MS. WESTON: Same objection.

19 MS. MARTIN: Join.

20 A. I have -- I guess I can -- what I say to that is
21 I'm willing to meet with all interested parties. I
22 mean, I -- there's a lot of potential -- you know,
23 there's a very broad sort of universe there of potential
24 people to meet with, but I have never -- I have always
25 been open to meeting with somebody that wants to meet.

1 Q. (By Mr. Frankel) Okay, great, great.

2 A. And, you know, I have gone up to talk to the
3 Kula Community Association about this issue with the
4 leases, same with the Maui, the Board of Water Supply,
5 so, you know, I'm willing to meet with anybody.

6 Q. How heavily do you rely on information that you
7 receive from Alexander and Baldwin and EMI?

8 MS. WESTON: Objection, vague and
9 ambiguous. When you say you, are you talking about
10 DLNR, BLNR, or Ian?

11 MR. FRANKEL: I am asking Ian.

12 MS. MARTIN: I'm going to object as to the
13 form.

14 A. I guess I'm -- I'm not clear as to the extent of
15 what you are saying as reliance. I mean, I don't -- I
16 always try to, you know, vet whatever is sent, you know,
17 by the applicants. You know, we review it internally,
18 and I don't take anything at face value, necessarily.

19 Q. (By Mr. Frankel) Do you think the information
20 that you get from Alexander and Baldwin is more credible
21 or reliable than information you may get from other
22 divisions within the Department of Land and Natural
23 Resources?

24 A. More credible? No.

25 Q. Do you think the information you get from other

1 divisions within the Department of Land and Natural
2 Resources is more credible than you receive from
3 Alexander and Baldwin?

4 MS. WESTON: Objection, vague and
5 ambiguous.

6 MS. MARTIN: Join in the objection.

7 A. I put greater reliance on agency and DLNR and
8 its divisions.

9 Q. (By Mr. Frankel) Would that include the
10 Division of Aquatic Resources?

11 A. I -- yeah, I mean, I haven't -- I mean, I'm sure
12 I treat them with the same level of -- you know, defer
13 to them at the same level. But can I clarify a little
14 bit? Ultimately, you know, we ultimately all defer to
15 the Chair and the Board, so it's not just, you know?
16 That's the structure, so.

17 Q. Do you have --

18 Do you place more faith, reliance, and
19 credibility on information you get from Alexander and
20 Baldwin's applicant than you do on members of the
21 public?

22 MS. WESTON: Objection, vague and
23 ambiguous.

24 MS. MARTIN: Join.

25 A. From a general perspective, no. I mean, I guess

1 that's a very broad question, and I can't say that as a
2 broadly no. I would have to look at each, whatever the
3 specific issue is, and listen to both sides and try to,
4 you know, make a determination.

5 MR. FRANKEL: We are going to take two
6 minutes off the record.

7 (Recess taken at 10:18 a.m. to 10:20 a.m.)

8 MR. FRANKEL: Back on the record. We are
9 done, unless you folks have questions.

10 MS. MARTIN: No questions.

11 MS. WESTON: No questions. We will review
12 and sign. Thank you.

13 THE COURT REPORTER: Are you getting
14 copies?

15 MS. WESTON: Yes.

16 MS. MARTIN: Yes.

17 (Deposition concluded at 10:21 a.m.)
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1 I, IAN HIROKAWA, hereby certify that I have
2 read the foregoing typewritten pages 1 through 72,
3 inclusive, and corrections, if any, were noted by me,
4 and the same is now a true and correct transcript of my
5 testimony.

6 DATED: Honolulu, Hawai'i, _____.

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IAN HIROKAWA,

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13 Signed before me this _____

14 day of _____, 2020.

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21 Case: Plaintiff Sierra Club vs. Defendant Board of Land
22 and Natural Resources

23 Civil No. 19-1-0019-01

24 Deposition date: March 6th, 2020

25 Reported by Patricia Ann Campbell, CSR 108

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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 March 6th, 2020, appeared before me IAN HIROKAWA, the witness whose 73 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 27th day of March, 2020, in Honolulu, Hawaii'i.

PATRICIA ANN CAMPBELL, CSR 108
Certified Shorthand Reporter
State of Hawaii'i

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