

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

SIERRA CLUB,

Plaintiff,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES, DEPARTMENT OF LAND  
AND NATURAL RESOURCES, SUZANNE  
CASE, in her official capacity as Chairperson  
of the Board of Land and Natural Resources,  
ALEXANDER AND BALDWIN, INC., EAST  
MAUI IRRIGATION, LLC, COUNTY OF  
MAUI, MAHI PONO, LLC, and MAHI PONO  
HOLDINGS, LLC,

Defendants.

CIVIL NO. 19-1-0019-01 JPC  
(Environmental Court)

DECLARATION OF MEREDITH J. CHING

**DECLARATION OF MEREDITH J. CHING**

I, MEREDITH J. CHING, hereby declare as follows:

1. I am the Executive Vice President, External Affairs for Defendant Alexander & Baldwin, Inc. ("**A&B**"). I make this Declaration based on personal knowledge, and I am competent to testify to the matters set forth in this Declaration.

**Education and Experience**

2. I was born and raised in Hawaii. My formal post-high school education includes obtaining a BS in Civil Engineering from Stanford University in 1978 and an MBA from the University of California, Los Angeles in 1980

3. I first started with A&B in 1982 as Executive Assistant, Corporate Natural Resources, responsible for land and water use matters relevant to the company's operations and assets. I was promoted to Vice-President, Natural Resources in 1988. In 1991, the government

relations duties for the company and its various subsidiaries were added to my responsibilities and I was made Vice President, Natural Resources and Government Affairs. In 1992, I was made Vice President of Government and Community Relations, adding community relations duties (media relations, corporate communications, corporate charitable giving program, community outreach programs) to my existing responsibilities. In 2007, I was promoted to Senior Vice President and in 2018 to Executive Vice President, with the department name changed to External Affairs.

4. I have been involved in the planning and management of water related issues for A&B, including issues related to the East Maui Irrigation Ditch System (the “*Ditch System*”) since approximately 1982, and my involvement has continued to the present.

5. From January 1, 2002 to June 30, 2009, I also served as a member of the State of Hawaii’s Commission on Water Resource Management.

#### **2001 Request for Sale of Water Lease**

6. Exhibit 6 is a true and correct copy of the May 14, 2001 letter request sent by A&B and its then 100% owned subsidiary, East Maui Irrigation Company, Limited (“*EMF*”), to the State Board of Land and Natural Resources (“*BLNR*”) for the sale of a lease (Water License) at public auction of the government owned lands described therein. This request (the “*Lease Application*”) related to the same government owned lands that were the subject of the four revocable Permits (“*RPs*”) issued on July 1, 2000. Exhibits 1 through 4 are true and correct copies of the four RPs.

7. A&B made the Lease Application in an effort to mitigate the uncertainty regarding the duration of A&B’s ability to continue to import surface water via the Ditch System, which is an integrated system of diversions, tunnels, ditches, flumes and reservoirs that

is located in part on government lands and in part on lands privately owned by EMI. At the time, the imported surface water from the Ditch System was relied upon by Hawaiian Commercial and Sugar Company (“*HC&S*”), the division of A&B that operated the HC&S sugar plantation on approximately 36,000 acres in central Maui and employed approximately 1000 Maui residents, and A&B was facing the need to make large, riskier investment decisions in an effort to diversify its sugar operations to better position HC&S for a long-term future. The history of the Ditch System, the RP’s, the Lease Application, and HC&S’s reliance upon water imported from the Ditch System are aptly summarized in Exhibit 15, which is a copy of the BLNR’s March 23, 2007 Findings of Fact, Conclusions of Law and Decision and Order in DLNR File No. 01-05-MA (the “*2007 BLNR Decision and Order*”), and Exhibit 9, which is a copy of CWRM’s June 20, 2018 Findings of Fact, Conclusions of Law and Decision and Order in CWRM CCH-MA13-01, setting amended Interim Instream Flow Standards (the “*June 20, 2018 IIFS Decision*”) in response to 27 petitions (the “*IIFS Petitions*”) filed on May 24, 2001 to amend the IIFS for designated streams in East Maui within the Ditch System. The selection of which streams in East Maui to petition for an IIFS amendment was made by NHLC.

8. With regard to the preparation of an Environmental Impact Statement (“*EIS*”), the Lease Application provided as follows:

All bidders shall prepare and file with the Office of Environmental Quality Commission an Environmental Impact Statement with respect to the proposed use. Disposition of the cost of the EIS shall be determined at a future date.

When A&B submitted the Lease Application, A&B stated that it was prepared to proceed with the preparation of an EIS pursuant to Haw. Rev. Stat. Chapter 343 in order to minimize challenges and expedite the process of issuing a long term lease. A&B knew that the cost of preparing an EIS would be substantial, given the size of the Ditch System and the related

watershed and the sensitive environmental and economic issues that would need to be addressed. A&B told the Board at that time that the EIS was estimated to cost \$2 million. A&B also knew that BLNR did not have the funding to perform an EIS itself.

9. The Lease Application was considered by BLNR at its meeting held on May 24, 2001. Exhibit 8 is a letter sent by the Native Hawaiian Legal Corporation (“NHLC”) on behalf of a group of Native Hawaiian residents of East Maui to BLNR on May 23, 2001 asserting that the long-term lease required the preparation of an environmental assessment and environmental impact statement and, on page 3, further objecting to the Lease Application’s proposed term that all bidders must prepare an EIS. According to NHLC:

[T]he disclosure documents required by Chapter 343 *must be prepared by the Board itself*, not by individual bidders as the May 14, 2001 letter from Alexander & Baldwin, Inc. to the board proposes. (Emphasis added; footnote omitted).

**BLNR Contested Case No. 01-05-MA**

10. On May 25, 2001, BLNR granted NHLC’s request for a contested case hearing (“*CCH*”), being BLNR Docket No. 01-05-MA (the “*Lease CCH*”), and put the RP’s into holdover status.

11. Exhibit 58 is a copy of a letter dated May 25, 2001 sent by Isaac Davis Hall, as counsel for Maui Tomorrow Foundation (“*MT*”), also requesting a CCH. Two of the Sierra Club members who have claimed injuries and have been involved in the filing and support of this action, Lucienne Da Naie and Neola Caveny, were actively involved on behalf of MT in MT’s request for and participation in the Lease CCH. MT also asserted, on page 2 of the letter, that “[i]t is the Board, however, and *not the bidders* which must prepare this EIS.” (Emphasis added).

12. Exhibit 11 is a true and correct copy of the BLNR's January 24, 2003 Findings of Fact, Conclusions of Law and Order which ruled that the Lease Application was exempt from Chapter 343.

13. Exhibit 12 is a true and correct copy of Circuit Judge Hifo's October 10, 2003 order which reversed the BNLR's exemption determination.

**All Parties agree that the EIS must await Resolution of the IIFS Petitions**

14. On page 2 of the BLNR's March 23, 2007 Findings of Fact, Conclusions of Law and Decision and Order (Exhibit 15), the Board stated:

All parties now concede that an EA (and potentially an environmental impact statement ("EIS")) must be prepared, amended IIFS must be determined and that *this process is likely to take years*. (Emphasis added).

15. None of the parties to the Lease CCH objected to this characterization or appealed. Everyone agreed because they apparently recognized the impracticability of evaluating the environmental and economic impacts of the requested long term lease while it remained unknown what amount of water would be required by CWRM to be left in the streams that were the subject of the pending IIFS Petitions and, thus, the amount of water that could be allowed to be diverted under a long-term lease.

16. In addition to the fact that none of the parties to the Lease CCH appealed this determination, no petitions for the amendment of the IIFS for any additional streams diverted by the Ditch System were filed by any of the parties to the Lease CCH, or by anyone else.

**CWRM makes IIFS Determinations in 2008, 2010, and 2018**

17. Due to the considerable amount of time and resources that it would take to simultaneously make IIFS determinations in response to all 27 of the IIFS Petitions, CWRM, based on input from NHLC identified eight priority streams to be addressed first, and CWRM

made IIFS determination for those eight streams on September 24, 2008. A&B and EMI actively supplied extensive written information to CWRM staff and participated in numerous formal and informal meetings in support of the 2008 IIFS Determination. No one appealed this determination.

18. CWRM then took up the remaining nineteen IIFS Petitions. Again, A&B and EMI supplied extensive documentation and other information to CWRM staff and participated in numerous formal and informal meetings. On May 25, 2010, CWRM decided the remaining 19 IIFS Petitions. NHLC requested a contested case, however, which CWRM denied. NHLC then appealed this denial and, on November 30, 2012, the Intermediate Court of Appeals reversed and remanded this decision to CWRM to hold a CCH. Ultimately, CWRM decided to hold a CCH on not just the 19 IIFS determinations that had been appealed, but on all 27. The foregoing events and dates are all summarized in the “Procedural History” section of the June 20, 2018 IIFS Decision (Exhibit 9).

19. The June 20, 2018 IIFS Decision was the culmination of many years of work by many parties including CWRM staff, DLNR staff, numerous consultants retained by CWRM and by the parties, and by A&B and EMI. The fact that no parties appealed was of great importance because the IIFS determinations made in this decision, and the biological, agronomic, and economic analyses were all long awaited and of critical relevance to the EIS that had been ordered to be prepared by BLNR in the Lease CCH.

20. Not only was this decision not appealed, it was described by NHLC in statements made to the media as “a huge triumph,” and an “unprecedented ruling.” (Exhibit 59).

### **NHLC's Change of Position on the timing of the EIS**

21. Earlier, while CWRM was still working on resolving the IIFS Petitions, NHLC had changed its position on the timing of the preparation of the EIS in relation to the resolution of the IIFS Petitions. Exhibit 17 is a copy of NHLC's January 13, 2014 letter to BLNR in which it demanded that the EIS process proceed without further delay notwithstanding the absence of a final determination by CWRM of the IIFS Petitions. Despite this demand, however, NHLC did not withdraw its objection to the EIS being prepared by A&B or EMI.

22. On May 8, 2015, during a hearing in the Lease CCH, NHLC finally withdrew its objection to the EIS being prepared by A&B and agreed to enter into discussions with A&B regarding the possible phasing of work that could be done by A&B on the EIS pending a final determination of the IIFS Petitions.

23. Exhibit 59 is a copy of the BLNR's subsequent order, dated April 14, 2016, in which the Board stated:

Within sixty (60) days of this order A&B must provide to the Board a scope of work for the preparation of an environmental assessment or an environmental impact statement. The scope of work should distinguish those portions that can be undertaken prior to CWRM's final decision on the petitions to amend IIFS in east Maui from those that require a decision from the CWRM prior to completion.

24. Exhibit 60 is a copy of A&B's June 9, 2016 submission of a proposed scope of services for preparation of an EIS which, as directed by BLNR, distinguished work that could be done before a final IIFS determination versus work that needed to be deferred until after final IIFS determination.

25. Exhibit 61 is a copy of the BLNR's July 8, 2016 Order directing A&B to proceed in accordance with the scope proposed in its June 9, 2016 submission.

### The Scope, Cost, Magnitude and Status of the EIS

26. A&B has been working on the EIS since its initial scoping was approved, on July 8, 2016, and has devoted considerable employee time and expense to this undertaking – the magnitude of which is quite large given the size of the Ditch System, the watershed lands involved, and the number of consultants of various professional disciplines that have been required to perform studies, all which work has needed to be scheduled, supervised and coordinated.

27. Exhibit 62 is a graphical EIS Activity Timeline which depicts the period from 2016 when the process commenced, through 2019. Importantly, CWRM’s IIFS Decision was issued on June 20, 2018, which resulted in the work that had been deferred until then to be commenced.

28. Exhibit 63 is a Projected Timeline for the completion of the EIS Process.

29. The prime consultant retained by A&B to perform the EIS is Wilson Okamoto Corporation (“*Wilson Okamoto*”). In addition to Wilson Okamoto, the following sub-consultants in the below listed areas of expertise have been involved in the data collection, surveys, studies and analyses being performed and prepared for the EIS:

<b>Subconsultant</b>	<b>Expertise</b>
Akinaka & Associates, Ltd.	Hydrology
Cultural Surveys Hawaii, Inc.	Cultural Impact Assessment; Archaeological Review and Field Inspection
Sea Engineering, Inc.	Stream and Ocean Chemistry
Marine Research Consultants, Inc.	Stream and Ocean Chemistry
Earthplan, Inc.	Social Impact Assessment
Mason Architects, Inc.	Historical Structure Assessment
Munekiyo & Hiraga, Inc.	Economic and Fiscal Impact Assessment
Plasch Econ Pacific, Inc.	Agricultural and Related Economic Assessment



SWCA Environmental Consultants	Terrestrial Flora and Fauna Assessment
Trutta Environmental Solutions, LLC	Environmental Impact of Stream Diversions

30. The estimated total cost of the EIS through completion is in excess of \$2.5 million.

**The Impracticability of Performing an EIS type of Analysis for a one year RP**

31. As should be apparent from the above description of the cost and effort required to define the scope, engage the necessary consultants, schedule and coordinate their work and finalize the EIS in connection with the Lease Application, it would have been utterly impracticable for BLNR to perform a similar scope of information gathering for the one year extension of the RP's granted by BLNR in November of 2018 that is the subject of this action.

I declare, certify, and state under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, August 29, 2019.

  
 MEREDITH J. CHING

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