

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
2 STATE OF HAWAII

3	_____)	
4	SIERRA CLUB,)	
	Plaintiff,)	
5)	
	vs.)	Civil No.
6)	19-1-0019
	BOARD OF LAND AND NATURAL)	
7	RESOURCES, et al.,)	
)	
8	Defendants.)	
9	_____)	

10 TRANSCRIPT OF PROCEEDINGS

11 before the Honorable Jeffrey P. Crabtree, Judge, Sixth
12 Division, presiding, on August 4, 2020.
A.M. Session.

13 JURY-WAIVED TRIAL.
14

15 APPEARANCES:

16	DAVID KIMO FRANKEL, ESQ.	For the Plaintiff
17	WILLIAM J. WYNHOFF, ESQ.	For DLNR, BLNR, and
	LAUREN K. CHUN, ESQ.	Suzanne Case
18	MELISSA D. GOLDMAN, ESQ.	
	Deputies Attorney General	
19	DAVID SCHULMEISTER, ESQ.	For Alexander &
20	TRISHA H.S.T. Akagi, ESQ.	Baldwin, Inc. and East
		Maui Irrigation
21		Company, LLC

22
23
24 REPORTED BY
Sharon Hulihee, RPR, CSR 306
Official Court Reporter
25 State of Hawaii

INDEX

PLAINTIFF'S WITNESS:

Page

IAN HIROKAWA,	
Direct examination by Mr. Frankel.....	8
Cross examination by Ms. Akagi.....	90
Cross examination by Mr. Rowe.....	103

EXHIBITS

IN EVIDENCE

S-21	6
SC-108	46

1 August 4, 2020.

2 AM Session.

3 THE BAILIFF: Circuit Court of the First
4 Circuit is now in session. Calling case number one on the
5 calendar, Civil number 19-1-0019 Sierra Club versus Board
6 of Land & Natural Resources, jury-waived trial. Counsel,
7 appearances please, starting with the plaintiff.

8 And don't forget to unmute yourselves.

9 MR. FRANKEL: Good morning, your honor.
10 David Frankel for the Sierra Club. Appearing with me
11 virtually today is Marti Townsend, the Sierra Club of
12 Hawaii Chapter's director.

13 THE COURT: Okay. Good morning.

14 THE BAILIFF: And Alexander & Baldwin?

15 MR. SCHULMEISTER: David Schulmeister for
16 Alexander & Baldwin and East Maui Irrigation Company, and
17 also Trisha Akagi.

18 THE COURT: Thank you. Good morning.

19 THE BAILIFF: And State of Hawaii.

20 MS. GOLDMAN: Thank you. Melissa Goldman,
21 Bill Wynhoff, and Lauren Chun for the State. And Suzanne
22 Case is also present observing today.

23 THE COURT: Who --

24 MR. WYNHOFF: As is our witness, Ian
25 Hirokawa.

1 THE COURT: Who is the person observing, I'm
2 sorry?

3 MS. GOLDMAN: This is Ian Hirokawa.

4 THE COURT: Right. I mean the person
5 observing.

6 MS. GOLDMAN: Oh.

7 THE WITNESS: Hirokawa.

8 MR. WYNHOFF: Suzanne Case.

9 MS. GOLDMAN: Suzanne Case.

10 THE COURT: Oh. Got it. Of course. Sorry,
11 I didn't hear.

12 MS. GOLDMAN: No problem. Just adjusting the
13 microphone. Thank you.

14 THE COURT: All right. And County?

15 MR. ROWE: Good morning, your honor. Deputy
16 Corporation Counsel Caleb Rowe on behalf of the County of
17 Maui.

18 THE COURT: All right. Good morning. And
19 again we have several people listening in. I think
20 they're all from Native Hawaiian Legal Corp.?

21 THE BAILIFF: Yes.

22 THE COURT: All right. We have Summer Sylva,
23 Li'ula Kotaki, and Vince Raboteau. Mr. Schulmeister?

24 MR. SCHULMEISTER: Your honor, I just wanted
25 to add that Meredith Ching is also -- she's sitting here

1 in our conference room, for Alexander & Baldwin.

2 THE COURT: All right. Thank you. Welcome
3 to her as well.

4 All right. So one housekeeping matter. The
5 -- you know, we have all lived here long enough that we
6 know a lot of Hawaiian names but we don't know all
7 Hawaiian names, and when I went back through my notes last
8 night trying to differentiate between the various species,
9 my notes were basically worthless. So, to try and
10 improve, and I know the court reporter has a glossary and
11 was able to reconstruct, I think, the transcript last
12 night but to try to make that whole process a little
13 better, I'm asking everybody the first time that you use
14 an uncommon Hawaiian name, please spell it. That'll just
15 help us nail down the right spelling the first time the
16 word is used and that'll make life easier, I think.

17 All right. Any other housekeeping issues
18 that anybody wants to raise before we get started?

19 MR. FRANKEL: Yes, your honor. I believe I
20 -- I omitted or neglected to include an exhibit that I was
21 supposed to say was stipulated into evidence yesterday and
22 that is Exhibit S-21.

23 THE COURT: All right. Does everyone agree
24 that that one is stipulated in? For the record please say
25 one way or the other.

1 MR. SCHULMEISTER: Agreed.

2 THE COURT: Thank you, Mr. Schulmeister.

3 Ms. Goldman?

4 MR. ROWE: County of Maui agrees.

5 THE COURT: Maui agrees.

6 MS. GOLDMAN: The State also agrees, your

7 honor.

8 THE COURT: All right. So S-21 is received

9 by stipulation. All right. Anything else?

10 (Exhibit S-21 was received
11 in evidence.)

12

13 MR. SCHULMEISTER: Yes. One thing. During
14 the testimony of Mr. Hirokawa Ms. Akagi is going to be
15 handling that and I was wondering if it would be okay if I
16 went off camera while -- for his testimony.

17 THE COURT: Are you in the same room?

18 MR. SCHULMEISTER: I'm in the same room, yes.

19 THE COURT: All right. I'll just --

20 MR. SCHULMEISTER: I'll just be off camera.

21 THE COURT: All right. I'll just expect that
22 -- I don't want to insult you by even saying this, but I'm
23 going to say it anyway. You don't get to make any kind of
24 hand signals or eye signals or anything else. Understood?

25 MR. SCHULMEISTER: Of course. Mr. Hirokawa

1 is not in the same room with me.

2 THE COURT: There you go. That's easier.

3 Thank you. All right. Anything --

4 MR. WYNHOFF: Your honor, this is Bill
5 Wynhoff and I'm also off camera and I appreciate that the
6 court reminded me of that, very fair, and of course I'll
7 observe that.

8 THE COURT: All right. Fair enough.

9 MR. WYNHOFF: Thank you.

10 THE COURT: All right. So we're ready to go.
11 Sounds like it. All right. Let's swear in Mr. Hirokawa.

12 THE CLERK: Mr. Hirokawa, you don't need to
13 stand. If you can just raise your right hand and I will
14 do the oath.

15 (The clerk administered the witness oath.)

16 THE CLERK: If so, please respond by saying
17 "I do."

18 THE COURT: We didn't hear that.

19 THE WITNESS: I do.

20 THE COURT: Now I can hear you clearly.

21 Thank you.

22 All right.

23 THE CLERK: Thank you.

24 THE COURT: Go ahead.

25

1 IAN HIROKAWA,
2 called as a witness by the Plaintiff,
3 having been first duly sworn, was
4 examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. FRANKEL:

8 Q. Mr. Hirokawa, you work at the Department of
9 Land & Natural Resources?

10 A. Yes.

11 Q. And you've worked there since 2007?

12 A. Yes.

13 Q. You're the special projects coordinator for
14 DLNR's Land Division?

15 A. Yes.

16 Q. I want to ask you about the four revocable
17 permits for approximately 33,000 acres of state land in
18 East Maui. Do you know what I'm talking about?

19 A. Yes.

20 Q. You attended the 2018 meeting when the Board
21 of Land & Natural Resources approved the continuation of
22 the revocable permits?

23 A. Yes.

24 Q. You also attended a 2019 meeting when the
25 Board of Land & Natural Resources approved the

1 continuation of the revocable permits?

2 A. Yes.

3 Q. You prepared a staff submittal in 2017?

4 A. Yes. I --

5 THE COURT: Mr. Frankel, could you -- could
6 you clarify what you mean by "staff submittal"? That's
7 pretty general.

8 THE WITNESS: Oh. (Inaudible) --

9 THE REPORTER: Sorry. What was the answer?

10 MR. FRANKEL: Okay. So the Board of Land &
11 Natural Resources --

12 THE REPORTER: Excuse me. Can I get the
13 answer again?

14 THE COURT: Time out. We have a question
15 from our court reporter. Hold on.

16 THE REPORTER: I'm sorry. I couldn't hear
17 the last answer from --

18 THE COURT: She could not hear the last
19 statement from Mr. Hirokawa so please repeat.

20 THE WITNESS: So (indiscernible) --

21 THE COURT: Now that --

22 THE REPORTER: I can't hear that either.

23 THE COURT: It didn't get muted till you
24 started talking. So now that you're unmuted, go ahead and
25 say it one last time.

1 THE WITNESS: Okay. I'm sorry. Can you
2 repeat the question, sir?

3 THE COURT: Go ahead.

4 BY MR. FRANKEL:

5 Q. I'm a little concerned 'cause it seems as
6 there's a little conversation going on between the
7 attorneys and Mr. Hirokawa which I don't think is
8 appropriate but I will back up. The Board of Land &
9 Natural Resources generally meets every about twice a
10 month; is that correct?

11 A. Yes.

12 Q. And each agenda item for the Board the staff
13 prepares what's called a submittal, is that correct?

14 A. Yes.

15 Q. And we'll take a look at the submittals in a
16 little while but in general these staff submittals include
17 the staff's comments on the agenda item and a
18 recommendation; is that right?

19 A. Yes.

20 Q. Melissa, I don't -- maybe you can move the
21 microphone a little closer. There seems to be like a
22 pause or a break up between the time he talks and I'm not
23 quite sure what's going on there.

24 MS. GOLDMAN: Okay. Let's try this. Sorry
25 about that, you guys.

1 BY MR. FRANKEL:

2 Q. Thank you.

3 So you prepared the staff submittal in 2017?

4 A. Yes.

5 Q. And you prepared the staff submittal in 2018?

6 A. Yes.

7 Q. And you prepared the staff submittal in 2019?

8 A. Yes.

9 Q. You've been working on Alexander & Baldwin's
10 application for a long-term lease of these lands and
11 waters?

12 A. Yes.

13 Q. And you've taken a look at the Draft EIS for
14 the long-term lease?

15 A. Yes.

16 Q. The revocable permits were first issued in
17 the year 2000?

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

19 Q. Okay. Why don't we take a look at Exhibit
20 J-1.

21 MS. GOLDMAN: You want to go to the joint
22 exhibit. Sorry. Yeah. That one.

23 THE WITNESS: Oh, okay.

24 Okay. J-1.

25 BY MR. FRANKEL:

1 Q. And do you recognize this as being one of the
2 four revocable permits?

3 A. Yes.

4 Q. And if you could go to the -- page 8 of the
5 revocable permit of that -- of that J-1. It's PDF 8 or
6 the Bates stamp 8 or the number 8. Do you see that?

7 THE COURT: Starts -- it starts "in witness"
8 at the top of the page?

9 MR. FRANKEL: Correct.

10 MS. GOLDMAN: Sorry. It's a very sensitive
11 touch pad. It went out of the --

12 MR. WYNHOFF: If you have a problem with it,
13 we can swap out.

14 MS. GOLDMAN: Sorry.

15 THE COURT: Go ahead.

16 BY MR. FRANKEL:

17 Q. So you're at the eighth page of Exhibit J-1?

18 A. Yes. "In witness whereof."

19 Q. And do you see on the left-hand side it says
20 approved by the Board of Land & Natural Resources as
21 meeting held on May 26, 2000?

22 A. Yes.

23 Q. Now this and the other three revocable
24 permits are the ones that the Board has been -- you wrote
25 the staff submittal about continuing in 2017, '18 and '19;

1 is that correct?

2 A. Yes.

3 Q. And I'm not going to go through the other
4 revocable permits. But -- so for over a decade the Board
5 of Land & Natural Resources has been approving the
6 continuation of these revocable permits annually, right?

7 A. Yes.

8 Q. And the Board approved the continuation of
9 the revocable permits in 2017?

10 A. Yes.

11 Q. 2018?

12 A. Yes.

13 Q. And 2019?

14 A. Yes.

15 Q. I want to ask you about the materials that
16 were provided to the Board of Land & Natural Resources
17 before its decision making in 2018. Okay. Not this past
18 year but two years ago. You wrote and provided the staff
19 submittal to the board, correct?

20 A. Yes.

21 Q. And why don't you take -- why don't we take a
22 quick look at Exhibit J-16. Is everybody there?

23 THE COURT: I'm not quite there yet, sorry.

24 MR. FRANKEL: Okay.

25 THE COURT: Okay.

1 BY MR. FRANKEL:

2 Q. And, Mr. Hirokawa, are you -- are you there?

3 A. Yes.

4 Q. Now, Exhibit J-16, that's the --

5 MS. GOLDMAN: I'm sorry. I'm so sorry to
6 interrupt you, Mr. Frankel. I'm not there yet. I'm
7 having a technical difficulty.

8 MR. FRANKEL: No problem. No problem.

9 MS. GOLDMAN: Okay. Thank you. We're good
10 now.

11 BY MR. FRANKEL:

12 Q. Thank you. So, Mr. Hirokawa, Exhibit J-16,
13 that's what we call your staff submittal; is that right?

14 A. Yes.

15 Q. And that -- that's -- that's what you
16 provided to the Board of Land & Natural Resources prior to
17 its meeting, right?

18 A. Yes.

19 Q. Now, on page 4 of the staff submittal you
20 provided a link to the Water Commission's decision, is
21 that right? And I'll direct you sort of --

22 A. No.

23 Q. -- towards the -- near the bottom.

24 A. Yes.

25 Q. And your staff submittal included a copy of

1 A&B's request that the revocable permits be extended for
2 yet another year; is that right? If you look at page 19
3 of your staff submittal --

4 A. Yes. Yeah, I see it, yes.

5 Q. Okay. Now, the Board of Land & Natural
6 Resources also received testimony from the public, right?

7 A. Yes.

8 Q. And that included testimony from the Sierra
9 Club?

10 A. I -- I would defer to the minutes.

11 Q. Okay. That's fair. 'Cause it wouldn't have
12 been in your staff submittal because it -- it would -- if
13 it was submitted after you provided the staff submittal to
14 the Board it wouldn't be in your staff submittal, right?

15 A. Correct.

16 Q. And your staff submittal, I -- the staff
17 submittal is given to board members generally
18 approximately six days, a week or so, before the Board
19 meeting, right?

20 A. I'm not sure exactly the length.

21 Q. Okay. Is it provided the day of the Board
22 meeting or before the Board meeting?

23 A. Oh, prior to the Board meeting.

24 Q. A few days?

25 A. I -- I believe it's about a week.

1 Q. Okay. Okay. Other than your staff
2 submittal, the link to the Water Commission's decision and
3 testimony from the public, which includes both Sierra Club
4 and Alexander & Baldwin, was any other information or
5 material provided to the Board prior to its decision
6 making in November 2018?

7 A. Could you repeat the question please?

8 Q. Sure. Other than your staff submittal --

9 A. Um-hum.

10 Q. -- the link to the Water Commission's
11 decision and testimony from the public, which includes the
12 Sierra Club and Alexander & Baldwin, was any other
13 information or material provided to the Board prior to its
14 decision making in November 2018?

15 MS. AKAGI: I'm going to object. Calls for
16 speculation.

17 THE COURT: You can answer. You mean
18 provided by --

19 THE WITNESS: I'm not sure.

20 THE COURT: I'm sorry to interrupt. You mean
21 provided by him, right?

22 BY MR. FRANKEL:

23 Q. I don't think he would have provided the
24 Sierra Club's testimony so no. I'm -- I'm asking the
25 information he knows that was provided to the Board.

1 A. Oh. Then --

2 THE COURT: Okay. So it's information that
3 you know about, Mr. Hirokawa. Go ahead.

4 THE WITNESS: I don't know. I don't know
5 what exactly was provided.

6 BY MR. FRANKEL:

7 Q. Okay. Do you recall -- you know what a
8 deposition is, correct?

9 A. Yes.

10 Q. And you've been deposed in this case twice,
11 correct?

12 A. Yes, yes.

13 Q. And do you recall being asked this question
14 in your deposition?

15 A. Not -- not specifically.

16 Q. Okay. But, you know, we'll get -- we'll get
17 to it after we go through 2019. 'Cause we'll get back to
18 that. Now, soon after the November 2018 meeting the
19 Sierra Club filed a petition for a contested case hearing.
20 You remember that?

21 A. Yes.

22 Q. And that's Exhibit J-17. Take a look at
23 that.

24 A. Okay.

25 Q. And the Board was provided that contested

1 case hearing petition, correct?

2 A. Yes.

3 Q. And the Board discussed that petition at its
4 December 2018 meeting, didn't it?

5 A. I -- I believe so, yes.

6 Q. All right. So now I want to ask you about
7 material provided to the Board in October 2019, the past
8 DLNR meeting. For that meeting you also provided a staff
9 submittal and that's Exhibit J-21. Let's take a look at
10 that. Is that the staff submittal you provided to the
11 Board in October 2019?

12 A. Yes, it is.

13 Q. And in that staff submittal you provided a
14 link to Alexander & Baldwin's Draft EIS, right?

15 A. Yes.

16 Q. That's on page 4 of the submittal?

17 A. Yes.

18 Q. Okay. All right. And of course the Board of
19 Land & Natural Resources also received testimony from the
20 public, right?

21 A. Yes.

22 Q. Including from the Sierra Club?

23 A. Yes.

24 Q. And if we take a look at Exhibit 27, that's
25 plaintiff's Exhibit 27, it's not a joint exhibit so you

1 have to go to a different folder.

2 THE COURT: Okay. For the record, that's
3 already been stipulated into evidence.

4 MR. FRANKEL: Correct. I believe all the
5 exhibits we've been referring to so far today have been.

6 MS. GOLDMAN: Which number, Mr. Frankel?

7 MR. FRANKEL: Exhibit 27. Sierra Club
8 Exhibit 27.

9 MS. GOLDMAN: Thank you. We've got it.
10 Thank you. Sorry. Just got my paper copy.

11 BY MR. FRANKEL:

12 Q. So -- and that's a copy of the Sierra Club's
13 testimony to the Board for October 2019, right?

14 A. Yes, I believe so, yes.

15 Q. And the Board was also given a copy of Mahi
16 Pono's testimony. Let's take a look at Exhibit J-26.

17 MS. GOLDMAN: Joint exhibit.

18 THE WITNESS: Oh, joint. Sorry.

19 BY MR. FRANKEL:

20 Q. Sorry.

21 A. Okay.

22 Q. So that -- that was Mahi Pono's testimony
23 provided to the Board of Land & Natural Resources,
24 correct?

25 A. Yes. Believe so, yes.

1 Q. And like the Sierra Club's testimony, Mahi
2 Pono's testimony was submitted after the time your staff
3 submittal was prepared so neither of those were included
4 in your staff submittal but they were both given to the
5 Board?

6 A. Yes.

7 Q. All right. Now, looking at 2018 and 2019
8 combined, those two years --

9 A. Um-hum.

10 Q. -- other than your staff submittal, the link
11 to the Draft EIS; the link to the Water Commission's
12 decision; the Sierra Club's request for a contested case
13 hearing in 2018; the testimony of the Sierra Club; the
14 testimony of Mahi Pono; the testimony from members of the
15 public, was any other information or material provided to
16 the Board prior to its decision making?

17 MS. GOLDMAN: I'm going to object. Calls for
18 speculation.

19 THE COURT: If you know, you may answer.

20 THE WITNESS: I -- I don't know.

21 BY MR. FRANKEL:

22 Q. Okay. What I -- we talked about the fact
23 that you were previously deposed twice. I want to direct
24 your attention to the second deposition and it can be
25 found at the Sierra Club's Exhibit 121.

1 A. 2020 deposition?

2 Q. The one in 2020, correct. Not 2019, but
3 2020.

4 A. Okay.

5 Q. So if you turn to page 10 of that.

6 A. Um-hum.

7 Q. The question that's asked to you is:

8 "So other than your staff submittal with the
9 links that you just discussed and testimony from the
10 public, was any other information or material provided to
11 the Board prior to its decision making?"

12 And your answer to that question was: "I
13 don't believe so."

14 Is that right?

15 A. Yeah, yeah, yes.

16 MS. GOLDMAN: Well --

17 BY MR. FRANKEL:

18 Q. All right. Thank you.

19 MS. GOLDMAN: I do object at this time, your
20 honor. I believe that we are going through the deposition
21 of Mr. Hirokawa as a 30(b)(6) witness and today he is
22 testifying in his personal capacity and not as a 30(b)(6)
23 witness.

24 THE COURT: All right. Well, your objection

25 --

1 MS. GOLDMAN: And I just wanted it --

2 THE COURT: I mean, your objection is noted
3 but I still think it's reasonable use of the deposition so
4 I'm going to allow it. But I didn't get the exhibit
5 number, Mr. Frankel. What was that? For the second depo.

6 MR. FRANKEL: 121. It's Sierra Club Exhibit
7 121.

8 THE COURT: Got it. Thank you.

9 MR. FRANKEL: And that was page 10 of that.

10 THE COURT: Thank you. Go ahead.

11 BY MR. FRANKEL:

12 Q. All right. Let's move on. Mr. Hirokawa, if
13 I talk about the 13 streams that the 2018 Water Commission
14 order did not address, do you know -- do you know what I'm
15 talking about?

16 A. Yes.

17 Q. Now the Sierra Club highlighted these 13
18 streams in its written testimony, right?

19 A. I -- I believe so.

20 Q. And that's at the October 2019 meeting on the
21 revocable permits?

22 A. Yes.

23 Q. All right. And A&B's consultant recognized
24 the harm caused by the diversions on these 13 streams?

25 MS. GOLDMAN: Your honor, I would say that

1 calls for speculation as well since it's not in his
2 personal capacity.

3 THE COURT: Overruled.

4 THE WITNESS: I don't -- I don't recall.

5 BY MR. FRANKEL:

6 Q. All right. Why don't we take a look at the
7 document referenced in your staff submittal which is the
8 Draft EIS which is the Joint Exhibit 20, J-20.

9 A. Okay.

10 Q. And let's turn to page 629 of that document.
11 Are you there yet?

12 A. The first word is "Stream, in contrast"?

13 Q. Yes, yes.

14 A. Okay, okay.

15 Q. So I want you to go down to the paragraph
16 with the heading Non-IIIFS Streams. Do you see that?

17 A. Yes.

18 Q. Okay. And it's a little tough but if you go
19 down about, I don't know, eight lines or so, in the middle
20 of the paragraph there, it says "Under" -- starts with
21 "Under the Natural Flow Scenario." Do you see where that
22 is?

23 A. Yes.

24 Q. Okay. It says, "Under the Natural Flow
25 Scenario, over 588,000 square meters of habitat units were

1 predicted" --

2 THE COURT: Hold on, Mr. Frankel. Hold on.
3 This happens all the time. When people start reading they
4 start speeding up. You gotta slow it down. All right.
5 Thank you.

6 MR. FRANKEL: Yeah. Thank you.

7 THE COURT: All right. Go ahead.

8 BY MR. FRANKEL:

9 Q. "Under the Natural Flow Scenario, over
10 588,000 square meters of habitat units were predicted for
11 the native amphidromous species, while under the Full
12 Diversion Scenario, 88,386 habitat units were predicted to
13 occur. Thus, under the Full Diversion Scenario only 15
14 percent of the habitat units remain in this group of
15 streams." The --

16 MS. GOLDMAN: Your honor, this would call for
17 expertise that is outside the witness's area of knowledge.

18 THE COURT: Well, so far all we have is a
19 quote.

20 MS. GOLDMAN: I'm sorry. I'm sorry. I
21 should clarify. For the substance of the -- or for the
22 truth of the substance of the statement --

23 THE REPORTER: I'm sorry.

24 THE COURT: Ms. Goldman, your audio is way
25 worse than yesterday. We need that sorted out. We're

1 having a hard time on our end.

2 MS. GOLDMAN: Okay. Thank you, your honor.
3 Adjusting the volume.

4 THE COURT: Well, now I see both you and Mr.
5 Hirokawa without masks sitting pretty close to each other
6 so that gives me a little bit of concern. Is there a way
7 we can -- I mean, I'm not going to legislate that but I'd
8 hate to order you to do something that might put you in a
9 position that's going to compromise your health. So is
10 there a way we can solve the problem?

11 MS. GOLDMAN: Your honor, with respect, we
12 are in a very small conference room and it -- this is how
13 it's going to be for trial. We are unable to put more
14 distance between people. Because of our tax situation we
15 do not have enough headsets to avoid the feedback from
16 audio, in order to have multiple people on the feed in the
17 same room, so that's why we're using the one camera.

18 THE COURT: Okay. Well, it's much better
19 now. But I might circle back with you on this later
20 during a break or something but please continue for now.
21 Go ahead.

22 MS. GOLDMAN: Okay.

23 THE COURT: So there's a quote. I don't
24 think there's a question yet but you can lodge any
25 objection you have after the question.

1 Go ahead, Mr. Frankel.

2 BY MR. FRANKEL:

3 Q. Thank you. Let me just finish the quote.

4 "The loss of habitat was both from loss of
5 instream habitat due to water diversion and to passage and
6 entrainment issues at each diversion."

7 Did I read that correctly?

8 A. Yes.

9 Q. And that's a conclusion that is in a study
10 within the draft environmental impact statement, correct?

11 A. Yes.

12 Q. And that was provided to the Board of Land &
13 Natural Resources?

14 A. Yes.

15 Q. Okay. Now, the Board of Land and Natural
16 Resources has allowed Alexander & Baldwin and EMI to take
17 water from these 13 streams pursuant to the revocable
18 permits, correct?

19 A. Yeah. Yes.

20 Q. And the Board imposed no condition requiring
21 a minimum amount of water in any of these 13 streams?

22 A. I -- I don't believe so. I don't believe so.

23 Q. Alexander & Baldwin can drain these 13
24 streams dry?

25 MS. AKAGI: Objection. Calls for

1 speculation.

2 THE COURT: You may answer.

3 THE WITNESS: I -- I don't know.

4 BY MR. FRANKEL:

5 Q. Did the Board of Land & Natural Resources
6 impose any condition to protect native aquatic species
7 that live in any of the 13 streams?

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

9 Q. Okay. Let's take a look again at your
10 deposition transcript which is Sierra Club's Exhibit 121.

11 A. Um-hum.

12 Q. Are you there yet?

13 A. Yes.

14 Q. Okay. So this is page 20. And starting on
15 line 6 there, you're asked: "Did BLNR impose any
16 condition to protect native aquatic species that live in
17 any of the 13 streams?"

18 And your answer then was: "Not -- not
19 specifically that I understand."

20 Is that correct?

21 A. Yes.

22 Q. Okay. Did the Board of Land & Natural
23 Resources impose any condition to ensure recreational uses
24 of these 13 streams?

25 A. Just defer to my deposition.

1 Q. Well, rather than -- can you give me an
2 answer please?

3 A. I don't believe so.

4 Q. All right. Okay. Now, the staff submittal
5 suggested that if further protection was needed for these
6 13 streams the Sierra Club should file a petition with the
7 Water Commission; is that right?

8 A. I'm sorry. Can you repeat that?

9 Q. Sure. The staff submittal you prepared
10 suggested that if further protection was needed for these
11 13 streams the Sierra Club should file a petition with the
12 Water Commission.

13 MS. GOLDMAN: Objection. Vague as to which
14 staff submittal.

15 MR. WYNHOFF: Your honor, I'm here and in --
16 I know it's not my thing but may I -- may I -- may I shut
17 down the computer so the witness isn't looking at the
18 document while he answers these questions. Mr. Frankel,
19 is that what you want, try not to page through the exhibit
20 as witnesses do?

21 MR. FRANKEL: I'm sorry. I had moved on
22 from that, from the deposition. I'm asking a different
23 question so --

24 MR. WYNHOFF: I know that. So we all know
25 that's a natural reaction. I'm sorry, your honor.

1 THE COURT: Okay. Time out. We talked about
2 this before trial. We're supposed to find out which mode
3 the witness was comfortable with. I thought we all
4 decided on digital so I prefer to do that. But if the
5 witness really wants to do paper, that's okay too. I want
6 the witness to be able to, you know, understand and see
7 what's going on.

8 All right. So now the question was different
9 though from his depo. The question was about whether the
10 Sierra Club -- whether it was suggested to the Sierra Club
11 that they should file with the Water Commission if they
12 wanted increased protections. Mr. Hirokawa, please
13 answer.

14 THE WITNESS: I would just defer to what's in
15 the submittal. I don't -- I don't recall.

16 BY MR. FRANKEL:

17 Q. All right. Well, let's look at the staff
18 submittal, Exhibit J-21. That's Joint Exhibit 21.

19 A. Okay.

20 Q. If you go to page 7 of that staff submittal.
21 The first -- the first full paragraph there, you see where
22 it says, "If the Sierra Club," you see that?

23 A. Yes. Yes.

24 Q. And it says, "If the Sierra Club believes
25 that the 12 streams" --

1 THE COURT: Slow down.

2 BY MR. FRANKEL:

3 Q. Oh, I apologize. "If the Sierra Club
4 believes that the 12 streams that were not included in the
5 CWRM order warrant further protection that the appropriate
6 action would be to file a petition to amend the IIFS for
7 those streams."

8 So that's what -- that's what the staff
9 submittal suggested, correct?

10 A. Yes.

11 Q. Now, as far as you know, has the Department
12 of Land & Natural Resources filed a petition to amend the
13 instream flow standards for the 13 streams?

14 A. I -- I don't know.

15 Q. Has the Board of Land & Natural Resources
16 filed a petition to amend the instream flow standards for
17 these 13 streams?

18 A. I -- I don't know.

19 MS. AKAGI: Calls for speculation.

20 THE COURT: He may answer. I mean, he works
21 there.

22 THE WITNESS: Yeah, I -- I don't know.

23 BY MR. FRANKEL:

24 Q. Did the Board of Land & Natural Resources
25 articulate a justification for leaving less water in these

1 13 streams and other connectivity streams that is
2 necessary for native species to grow and reproduce?

3 MS. AKAGI: Objection. Assumes facts not in
4 evidence.

5 THE COURT: You may answer.

6 THE WITNESS: Other streams? I would just
7 defer to the minutes, the Board -- the Board meeting
8 minutes.

9 BY MR. FRANKEL:

10 Q. Okay. Well, let us look at your deposition
11 testimony again which is Sierra Club's Exhibit 121.

12 A. Okay.

13 Q. And go to page 47 of Exhibit 121.

14 A. Okay.

15 Q. You see it says you're asked: "The Board did
16 not articulate a justification, as far as you know, as to
17 allowing less water in these streams than is necessary to
18 provide a suitable habitat, did it?"

19 And you answered: "I don't recall that being
20 part of the discussion."

21 Is that right?

22 A. Yes. Yes, that's correct.

23 MR. FRANKEL: All right. Okay. Before I
24 move on to the next subject, your honor, this is -- this
25 may be an impolite question but I feel like the attorneys

1 who are objecting and participating, their video should be
2 on. Is that an unreasonable --

3 MS. GOLDMAN: We only have one video camera
4 so we can do that if you prefer.

5 MR. FRANKEL: I'm not -- this is not about
6 you. I -- Trisha is not visible and she's been piping up
7 some objections and I'm hoping -- it seemed reasonable to
8 me --

9 THE COURT: I can see her. I can see her so
10 maybe try your gallery view if you're not already in it.

11 MR. FRANKEL: I'm in it. I'm getting the
12 yellow triangle so maybe it's my commuter that's slow.
13 That may be the problem.

14 THE COURT: I've been able to see Ms. Akagi
15 all morning so it's not like she's not there.

16 MR. FRANKEL: Okay. It must be our system
17 'cause I don't see either Suzanne Case or Trisha Akagi and
18 this yellow triangle. I can deal with that.

19 THE COURT: Okay. We've been going 45
20 minutes so this seems like a good time for a break. Let's
21 stretch our legs for ten minutes. We'll see you back at
22 five minutes of. Thank you. We're in recess.

23 (A recess was taken.)

24 THE COURT: All right. We're back on record.
25 No need to regive appearances. Everyone's here who was

1 here before.

2 One housekeeping item. Some -- some of us on
3 this end are having difficulty distinguishing between Ms.
4 Goldman and Ms. Akagi and so we actually have some of the
5 objections wrong, you know, who they came from. So we're
6 going to go back and listen to the audio to make sure we
7 straighten that out. But to prevent that problem going
8 forward, I'm going to ask Ms. Goldman and Ms. Akagi to say
9 your name before you raise an objection, all right, just
10 to make it easier for everybody on this end.

11 I don't know what it is.

12 MS. AKAGI: Yes, your honor.

13 THE COURT: I don't know why it's not a
14 problem with anyone else but there's something about your
15 two voices that's not super easy to distinguish.

16 All right. Go ahead, Mr. Frankel.

17 BY MR. FRANKEL:

18 Q. Thank you. I want to turn your attention to
19 the total amount of water taken from the East Maui
20 streams, Mr. Hirokawa. So in 2016 the Board of Land &
21 Natural Resources limited the total amount of water that
22 A&B and EMI could take from East Maui to 80 million
23 gallons, right?

24 A. I don't recall specifically. I'd defer to
25 the minutes on that one.

1 Q. All right. So let's take a look at Exhibit
2 J-12, at 12. That's Joint Exhibit 12.

3 A. Okay.

4 Q. Are -- are you there?

5 A. Yes.

6 Q. Okay. At page 12 that's where the -- the
7 Board makes its motion and do you see there item number 6,
8 a maximum of 80 million gallons per day mgd on average
9 shall be permitted for diversions to Central Maui. See
10 that?

11 A. Yeah, yes.

12 Q. Okay. So that cap was there in 2016. Now,
13 in 2018 Alexander & Baldwin and East Maui Irrigation were
14 diverting about 25 million gallons a day, right?

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

16 Q. Oh. It's going to be a struggle then. Okay.
17 Let's go to Exhibit J-16, Joint Exhibit 16.

18 You there?

19 A. Yes.

20 Q. Okay. This is the staff submittal you
21 prepared, right?

22 A. Yes.

23 Q. And towards the end of the staff submittal,
24 page 25, is information that Alexander & Baldwin provided
25 to you. And on this page it says that --

- 1 A. Oh, yeah.
- 2 Q. -- they're taking approximately 20 to 25
3 million gallons a day; do you see that?
- 4 A. You're referring to number 6?
- 5 Q. Sure. Or -- or number 3, or number 4, sure.
- 6 A. Oh, okay. Yes, yeah, yes.
- 7 Q. Now, at that meeting in November 2018 the
8 Board of Land & Natural Resources removed that 80 million
9 gallon a day cap, correct?
- 10 A. I --
- 11 Q. I didn't catch your answer.
- 12 A. Oh. Yes.
- 13 Q. Okay. Now, in 2019 you recommended limiting
14 the amount of water Alexander & Baldwin could take in
15 2020, right?
- 16 A. Yes.
- 17 Q. Your recommendation was to limit it to 35
18 million gallons a day, correct?
- 19 A. Yes.
- 20 Q. You wrote that the farm plan does not
21 currently justify the use of a greater amount of water,
22 correct?
- 23 A. I'd defer to the submittal.
- 24 Q. All right. Well, let's look at that. I
25 think this is at -- let's see where that is.

1 MS. GOLDMAN: Sorry. He's getting locked out
2 of the computer. Sorry. I can fix that on the next
3 break.

4 BY MR. FRANKEL:

5 Q. So we're going to go to a different exhibit
6 now. It's Exhibit J-21.

7 MR. WYNHOFF: Hold on.

8 MS. GOLDMAN: Sorry. It's still not on.

9 MR. WYNHOFF: Hold on.

10 MS. GOLDMAN: Sorry.

11 MR. WYNHOFF: Hold on, hold on.

12 BY MR. FRANKEL:

13 Q. So, for -- at Exhibit J-21, can you turn to
14 page 6 of that staff submittal, and you go to the second
15 full paragraph which is towards the bottom of the page.
16 It's the paragraph that begins with the word
17 "Additionally." You -- you begin staff submittal by
18 saying, "Additionally, the Board is recommended to impose"
19 --

20 THE COURT: Slow down.

21 BY MR. FRANKEL:

22 Q. Sorry. "To impose a limit on the amount of
23 water that may be diverted through the revocable permits
24 not to exceed an average of 35 million gallons per day."
25 Right?

1 A. Yes.

2 Q. And later on toward the bottom of that same
3 paragraph, you say, "The farm plan does not currently
4 justify the use of a greater amount of water."

5 A. Yes.

6 Q. Okay. But the Board of Land & Natural
7 Resources disagreed with your recommendation?

8 A. Yes.

9 Q. It set the limit at 45 million gallons a day?

10 A. I'd defer to the minutes on that one.

11 Q. Ian, you don't remember?

12 THE COURT: Mr. -- Mr. -- Mr. -- yeah, Mr.
13 Frankel, no.

14 BY MR. FRANKEL:

15 Q. All right. Let's go to Exhibit S-50. That's
16 the DLNR's Exhibit S-50.

17 THE COURT: And for the record, that one's
18 already stipulated in.

19 THE WITNESS: Under the State's exhibits?

20 BY MR. FRANKEL:

21 Q. Correct. These are the minutes, correct?

22 A. Yes.

23 Q. You turn to page 9 of those minutes, S-50, at
24 page 9. You see where Mr. Yuen makes the motion?

25 A. Yes, yes.

1 Q. And his amendment is to increase the cap to
2 45 million gallons a day?

3 A. Yes.

4 Q. All right. That's how much water Mahi Pono
5 wanted, correct?

6 A. Yes.

7 Q. And that's about 66 percent more water than
8 had been diverted in 2019, correct?

9 A. As far as I can tell. I'd defer to my math
10 on that. As far as I can tell, yes.

11 Q. All right. It's actually about 75 percent
12 more water than the 25 million gallons a day that were
13 diverted in 2018?

14 A. Yes.

15 Q. Right?

16 A. Yes.

17 Q. Did Alexander & Baldwin and EMI ever tell
18 DLNR or the Board of Land & Natural Resources which
19 specific streams the increase in diverted water would come
20 from?

21 MS. GOLDMAN: Objection, your honor. That
22 calls for speculation. This witness is testifying in his
23 personal capacity.

24 THE COURT: He may answer.

25 THE WITNESS: I -- I don't recall what was

1 said at the meeting.

2 THE COURT: And that was Ms. -- that was Ms.
3 Goldman, right?

4 MS. GOLDMAN: Apologize.

5 THE COURT: All right.

6 MS. GOLDMAN: Yes.

7 BY MR. FRANKEL:

8 Q. Did -- you prepared the staff submittal?

9 A. Hm.

10 Q. You had meetings over the years with
11 Alexander & Baldwin staff, haven't you?

12 A. Yes.

13 Q. Did -- in any of those meetings or at the
14 Board meeting did they ever tell you what specific streams
15 the increase in diversions would come from?

16 A. They never told me.

17 Q. And did they ever tell the Board in a public
18 meeting that you attended?

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

20 Q. Did Alexander & Baldwin ever disclose to you
21 how much the increased diversions would come -- how much
22 of the increased diversion would come from these 13
23 streams?

24 A. To me, no.

25 Q. And do you recall them ever disclosing that

1 information to the Board as to how much the increased
2 diversion would come from these 13 streams?

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

4 Q. All right. Let's turn our focus to the
5 diversion structures on public land. Does the Department
6 of Land & Natural Resources know which diversion
7 structures posed the greatest threat to native aquatic
8 species?

9 A. I don't know.

10 Q. Does the Department of Land & Natural
11 Resources know which diversion structures facilitate
12 mosquito breeding the most?

13 MS. GOLDMAN: Your honor, I would object to
14 the form of the question. The witness is repeatedly being
15 asked what the DLNR knew. So if he could be questioned on
16 his personal capacity.

17 THE COURT: Is that Ms. Goldman again?

18 MS. GOLDMAN: Yes. I'll remember next time.

19 THE COURT: Thank you. I know it's
20 difficult. We're just going to work our way through it
21 but thank you for trying.

22 MS. GOLDMAN: Thank you.

23 THE COURT: All right. So the objection is
24 -- hang on, let me read it. Mr. Frankel, I'm going to ask
25 you to rephrase and try to make the record clearer on

1 whether you're asking him from his personal perspective or
2 as a 30(b)(6) designee, if you can.

3 BY MR. FRANKEL:

4 Q. Sure. So, Mr. Hirokawa, do you know what a
5 30(b)(6) designation is?

6 A. I'm unclear.

7 Q. You went to law school, correct?

8 A. Yes.

9 Q. And do you recall receiving a deposition
10 notice for a 30(b)(6) witness?

11 A. I -- I don't remember. I recall the
12 deposition notice.

13 Q. You do recall it?

14 A. Yeah.

15 Q. Why don't we take a look at it. It is Sierra
16 Club's Exhibit 108.

17 MR. WYNHOFF: So, your honor, I have a
18 comment on this. And this is not necessarily just the --
19 this isn't just this witness. I think --

20 THE COURT: Well, time out. Mr. Wynhoff,
21 time out. I don't want a long speaking objection with the
22 witness there.

23 MR. WYNHOFF: Yes.

24 THE COURT: Okay.

25 MR. WYNHOFF: Then can we have the witness

1 excused, your honor?

2 THE COURT: All right. If there's something
3 -- do you really need to argue this now? Yes. Okay. Go
4 ahead.

5 MR. WYNHOFF: All right.

6 THE COURT: Mr. Hirokawa, please step
7 outside. Thank you.

8 THE WITNESS: Yes, sir.

9 THE COURT: Thank you.

10 MR. WYNHOFF: So, your honor, a 30(b)(6)
11 witness is a deposition technique to take depositions and
12 find out information from the State in general. I get it
13 that we have a 30 -- we have a 30(b)(6) witness but he's
14 not -- it's not a trial technique. Mr. Frankel did not
15 name Mr. Hirokawa as a 30(b)(6) trial witness. If he had
16 done so, we would have objected to that because that's not
17 the way -- you don't -- that's not what a 30(b)(6) witness
18 is. And so Mr. Hirokawa did not prepare to testify as a
19 30(b)(6) witness. You know, I've already -- I get it that
20 he testified to that and we already objected to bringing
21 him in. That way, that's fine, he's going to do it. But
22 Mr. Hirokawa is not prepared to answer on behalf of the
23 State today. He came -- we didn't prepare him for that.
24 He came prepared to answer to his own personal knowledge
25 and that's what he's prepared to do.

1 THE COURT: I understand your position. Mr.
2 Frankel will ask whatever questions he wants and he'll get
3 -- if he gets thirty "I-don't-knows" in a row, then he'll
4 have to go to plan B, but maybe the witness does know so
5 I'm not going to stop Mr. Frankel from asking these
6 questions. I'm just trying to --

7 MR. FRANKEL: I'm not --

8 THE COURT: I'm just trying --

9 MR. FRANKEL: I'm not asking.

10 THE COURT: I know. I'm just trying to clear
11 this up so that if Mr. Frankel is asking questions from
12 the 30(b)(6) depo he can be impeached.

13 MR. WYNHOFF: And your honor has already
14 ruled on that and that's fine. I think it would have been
15 more appropriate for Mr. Frankel to have designated a
16 30(b)(6) testimony but that's fine. I get it. It's not
17 really that big of a deal under the circumstances.

18 THE COURT: Okay.

19 MR. WYNHOFF: But now he's -- you know, now
20 -- this is just argumentative, did you go to law school,
21 do you know what a 30(b)(6) deposition is. I just think
22 we should lay the ground work. I'm just telling you and
23 Mr. Frankel in advance that we did not prepare him to come
24 and testify on behalf of the State. He knows what he
25 personally knows. Thank you, your honor.

1 THE COURT: Understood.

2 MR. FRANKEL: So I have a secondary issue,
3 your honor. This -- this witness is Ms. Goldman's
4 witness. I don't think it's appropriate for Mr. Wynhoff
5 to interject. There should be one attorney dealing with
6 one witness and I think Ms. Goldman has done a great job.
7 She's skilled. There's no reason for Mr. Wynhoff --

8 THE COURT: You can do that much more
9 succinctly. That's granted. We don't tag team. I mean,
10 I didn't see a problem with this because it's just a legal
11 discussion with the witness out of the room but during the
12 examination of the witness it's Ms. Goldman only.

13 MR. WYNHOFF: I agree 100 percent, your
14 honor. And I also agree with Mr. Frankel, thank you.
15 She's done a great job, David. Appreciate the compliment.
16 Well deserved.

17 THE COURT: All right. Ready to go?

18 MS. GOLDMAN: Shall I bring the witness back
19 in?

20 THE COURT: That was Ms. Goldman speaking, I
21 believe. Yes, bring the witness back in.

22 (A pause.)

23 THE COURT: This is the new normal,
24 everybody.

25 MR. WYNHOFF: Thank you, your honor.

1 MS. GOLDMAN: This is Ms. Goldman again. I'm
2 just going to zoom in. Are you all able to see the
3 witness okay?

4 THE COURT: I can see fine. Thank you.

5 MS. GOLDMAN: Okay.

6 THE COURT: All right. Mr. Frankel, please
7 go ahead.

8 BY MR. FRANKEL:

9 Q. So if you could take a look at Sierra Club's
10 Exhibit 108. Do you recognize this, Mr. Hirokawa?

11 THE COURT: Well, hold on.

12 THE WITNESS: Yeah.

13 THE COURT: Hold on. I don't have 108 handy.
14 My exhibits end at 79. What exhibit --

15 MR. FRANKEL: We're at Sierra Club exhibit --

16 THE COURT: There it is. I got it. I got my
17 windows mixed up. I was looking at the State's list. All
18 right. What's the number again?

19 MR. FRANKEL: 108.

20 THE COURT: Okay. Got it. Sorry. Go ahead.

21 BY MR. FRANKEL:

22 Q. And what is this document, Mr. Hirokawa?

23 A. Plaintiff's Notice of Taking Deposition Upon
24 Oral Examination of Representative of DLNR and the BLNR.

25 Q. You've seen this before, correct?

1 A. I believe -- yeah, I believe so, yes.

2 MR. FRANKEL: Your honor, we'd like to -- I'd
3 like to move Exhibit 108 into evidence.

4 MS. GOLDMAN: Your honor, I --

5 THE COURT: Any objection?

6 MS. GOLDMAN: This is Ms. Goldman speaking,
7 your honor. I would object as the 30(b)(6) designation
8 was not -- objection is withdrawn.

9 THE COURT: All right. Thank you. Any other
10 objection? Court's inclined to allow it.

11 MS. AKAGI: This is Trisha Akagi. I --

12 THE COURT: I'm sorry. Go ahead, Ms. Akagi.

13 MS. AKAGI: I'm going to object on relevance
14 grounds.

15 THE COURT: All right. That's overruled.
16 This is a file stamped copy of a document filed in this
17 case. Seems to be what it purports to be. The court will
18 allow it. S-108 is admitted over objection.

19 (Exhibit SC-108 was
20 received in evidence.)

21 MR. FRANKEL: Thank you, your honor.

22 (Court reporter addressed the court.)

23 THE COURT: We have to take a brief break for
24 a hardware swap out here in the courtroom.

25 (A recess was taken.)

1 THE COURT: All right. Looks like everyone's
2 ready to go.

3 All right. So, let's see, we just had
4 Exhibit S-108, the 30(b)(6) notice in evidence. Mr.
5 Frankel, please go ahead.

6 MR. FRANKEL: Just to clarify that, it's not
7 S-108. It's plaintiff's 108 --

8 THE COURT: Sorry.

9 MR. FRANKEL: -- that was received.

10 THE COURT: You're right. And SC -- I mean
11 for Sierra Club. S is State. You're correct. Thank you.

12 BY MR. FRANKEL:

13 Q. All right. So let's see if we can focus on
14 the diversion structures on public land in East Maui.
15 Before its decision making in 2018, 2019, did the Board or
16 the Department know which diversion structures posed the
17 greatest threat of -- to native aquatic species?

18 A. I don't know.

19 Q. Did the Board or the Department know which
20 diversion structures facilitate mosquito breeding the
21 most?

22 A. I don't know.

23 Q. Did the Board or the Department know which
24 diversion structures mar natural beauty?

25 A. I don't know.

1 Q. All right. So now let's look at your
2 deposition testimony which is found in the Sierra Club's
3 Exhibit 121.

4 A. Okay.

5 Q. Now if you look at page 22 of Exhibit 121 --
6 are you there?

7 A. 22, yes.

8 Q. So starting on line 9:

9 Question: Okay. Before making its decision
10 in 2019, did DLNR or BLNR have any information regarding
11 which" -- says "divergent structures" rather than
12 "diversion structures" -- "create mosquito breeding
13 habitat?"

14 Do you see that question?

15 A. Yes.

16 Q. And you answered?

17 MS. GOLDMAN: Objection, your honor. I would
18 -- I would object to reading of the 30(b)(6) deposition.
19 This is a transcript as he was not --

20 THE COURT: I'm sorry. Your voice trailed
21 off on that last part. Say again.

22 MS. GOLDMAN: This is Ms. Goldman. As he was
23 testifying as a 30(b)(6) during the deposition and he is
24 testifying today in his personal capacity. I'm making my
25 objection for the record, your honor.

1 THE COURT: Understood. Overruled.

2 BY MR. FRANKEL:

3 Q. Mr. Hirokawa.

4 A. Um-hum.

5 Q. Your answer was: "Aside from the concerns
6 presented by the -- well, I guess speaking for myself and
7 the staff I talked to, we have only understood what was in
8 the Sierra Club's concerns. I don't know. I can't recall
9 at this point if you -- you may have referenced a specific
10 one. I don't remember at this time."

11 You see that?

12 A. Yes.

13 Q. Okay. And then you were asked: "Okay.
14 Other than that, you don't know if the Board or the
15 Department had information regarding specific divergent
16 structures creating mosquito breeding habitat?"

17 See that?

18 A. Yes.

19 Q. And you said: "Yeah, I'm not -- I'm not -- I
20 don't know."

21 A. Yes.

22 Q. And then the question was asked: "Okay, and
23 there was no information about any of those structures
24 within the staff submittal?"

25 Right?

1 A. Yes.

2 Q. And you said: "Specifically, no."

3 A. That's correct.

4 Q. All right. And then on the next page, page
5 23 you were asked: "Okay. How about which ones mar
6 natural beauty of the area?"

7 And you answered: "I guess that's pretty --
8 I didn't include that. I guess that's pretty subjective,
9 but, no, we didn't include that.

10 Is that right?

11 A. Yes.

12 Q. Okay. And then going down the page a bit to
13 line 19, you were asked: "Okay. What about which ones
14 adversely affect native aquatic species?"

15 And you answered: "Again, beyond what was in
16 the findings of the CWRM, if for -- no, there wasn't
17 reincorporated into the submittal."

18 Is that right?

19 A. Yes.

20 Q. Okay. Now, there was some information that
21 the staff submittal provided because you had a link in
22 your staff submittal to the Draft EIS, right?

23 A. Yes.

24 Q. So let's look at what the Draft EIS said. On
25 -- which is Exhibit J-20, Joint Exhibit 20.

1 A. Okay.

2 Q. And if you go to page 627 of this document.

3 A. Okay.

4 Q. The first, second, third paragraph, the
5 paragraph that begins with the word, "As we all," see
6 that?

7 A. Yes.

8 Q. The last sentence of that paragraph reads,
9 "Any action or modification of the diversion to decrease
10 entrainment would increase the total restored habitat
11 units without any additional water release to the stream."

12 Do you see that?

13 A. Yes.

14 Q. And then let's turn to the next page, two
15 pages later, 629.

16 A. Okay.

17 Q. And this -- the -- I want to turn your
18 attention to the bottom heading, the one that's titled
19 Non-IIFS Streams. See that?

20 A. Yes.

21 Q. That's those 13 streams. And, again, this is
22 in the middle of the paragraph, a little challenging to
23 find, but it's on the line that has the 15 percent in it.
24 You go to the sentence in that line, you see it where it
25 says, "The loss of habitat was both from loss of instream

1 habitat to water diversion and to passage and entrainment
2 issues at each diversion." See that?

3 A. Yes.

4 Q. Okay. And so this link with this information
5 was provided to the Board members, right?

6 A. Yes.

7 Q. Now, did the Board of Land & Natural
8 Resources set any deadline for the alteration or removal
9 of any of the diversion structures within the revocable
10 permit area?

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

12 Q. Okay. So the Board voted to allow Alexander
13 & Baldwin to increase the amount of water it was taking
14 from East Maui, right?

15 A. I'm sorry? Can you rephrase that, clarify
16 that?

17 Q. The board voted to allow Alexander & Baldwin/
18 East Maui Irrigation to increase the amount of water being
19 taken from East Maui in 2019?

20 MS. GOLDMAN: I'd object, your honor. I
21 believe it's overly broad. Are you, you know, asking him
22 ever --

23 THE COURT: No speaking objections please.
24 Just make your objection. Please rephrase -- hold on.
25 Please rephrase, Mr. Frankel.

1 BY MR. FRANKEL:

2 Q. Sure. So we had discussed earlier that
3 Alexander & Baldwin had been taking approximately, in
4 2019, a diversion of approximately 27 million gallons a
5 day, correct?

6 A. Yes.

7 Q. And the Board was going -- the Board's vote
8 was to allow Alexander & Baldwin to increase the amount of
9 water it was going to divert in the next year, this year
10 2020, from the 27 million gallons up to 45 million
11 gallons, correct?

12 A. Yes.

13 Q. Okay. And they did that, the Board did that
14 without setting a deadline for altering any diversion
15 structure, right?

16 A. Yes.

17 Q. And it did that without requiring the
18 alteration of any diversion structure, right?

19 A. Yes.

20 Q. And they did that without imposing any
21 conditions to protect native aquatic species from the
22 adverse impacts caused by diversion structures, right?

23 A. Yeah, I'd defer to the minutes for that
24 particular question.

25 Q. Okay. And it voted to allow it to increase

1 without requiring mitigation measures to mitigate the harm
2 caused by diversion structures on public land?

3 A. I would just defer to the minutes.

4 Q. Okay. All right. We'll leave it at that.

5 As far as you know, has Alexander & Baldwin
6 provided the Department of Land & Natural Resources a
7 systematic analysis of each stream modification within the
8 revocable permit area to evaluate whether they block
9 migration?

10 A. I don't know.

11 Q. As far as you know, has Alexander & Baldwin
12 provided the Department of Land & Natural Resources with a
13 systematic analysis of each stream modification within the
14 revocable permit area to evaluate whether they entrain
15 larvae?

16 A. I don't know.

17 Q. How about a systematic analysis about whether
18 they harm native species?

19 A. I don't know.

20 Q. Did Alexander & Baldwin submit any evidence
21 to the Board of Land & Natural Resources prior to its
22 decision making in either 2018 or 2019 that its diversions
23 were not causing any adverse impacts to any streams,
24 streamline recreational use?

25 A. I -- I would defer to the submittal --

1 Q. Okay.

2 A. -- which incorporates.

3 Q. Okay. Did DLNR ask for any evidence that
4 increased diversions would not cause any adverse impact to
5 any streams, streamline recreational uses?

6 A. I don't know.

7 Q. Is there anyone at DLNR who'd know better
8 than you about whether that information was asked before
9 the Board meeting?

10 A. No, I don't know.

11 Q. Did Alexander & Baldwin disclose which
12 streams increased diversions would come from and what the
13 harm will be to those specific streams?

14 A. I don't know.

15 Q. You know, my video and audio is diminishing
16 up, I'll fix it at lunch hopefully, but could you repeat
17 your answer? I don't think I got it.

18 A. I don't know.

19 MS. GOLDMAN: Your honor, I would --

20 THE COURT: Ms. Goldman.

21 MS. GOLDMAN: Excuse me. This is Ms.

22 Goldman. I'd like to make a standing objection to the
23 speculative nature of these questions.

24 THE COURT: No speaking objections. I don't
25 view running objections. You're just going to have to

1 make your record, sorry.

2 MS. GOLDMAN: Okay.

3 THE COURT: Go ahead, Mr. Frankel.

4 BY MR. FRANKEL:

5 Q. Did you or anyone at DLNR ask A&B or EMI
6 which streams increased diversion will come from, what the
7 harm will be to those streams?

8 MS. GOLDMAN: Objection. Calls for
9 speculation. This is Ms. Goldman.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: I specifically did not ask.

12 BY MR. FRANKEL:

13 Q. All right. Let's talk about the information
14 provided by the applicant before BLNR's decision making in
15 2018. Okay. Not 2019. I want to focus on 2018 for now,
16 all right? Can you take a look --

17 A. Okay.

18 Q. -- at Exhibit 111. Sierra Club's Exhibit
19 111.

20 A. Is it the First Amended Response to
21 Plaintiff's Second Request?

22 Q. Yeah.

23 A. Okay.

24 Q. If you could turn to, I believe, I believe
25 this is in evidence, your honor.

1 THE COURT: Well, time out. I'm not sure of
2 that at all. Oh, yeah. 111, correct. That was
3 stipulated in yesterday. Got it.

4 BY MR. FRANKEL:

5 Q. Yeah. So on the fifth page, page 5 of the
6 interrogatory asks: How was the water that was taken out
7 of the area encompassed by Revocable Permits S7263, S7264,
8 S7265, and S7266 used for each month in 2017 and 2018 --
9 sorry, 2018, 2019, parenthetical, including for each
10 month, how much water was delivered to whom, for what
11 purpose was the water used that was delivered, and how
12 much water is estimated to have been lost to seepage? Do
13 you see that?

14 A. Yeah, yes.

15 Q. Did I read that correctly?

16 A. I -- yes.

17 Q. Now, had you or the Board of Land & Natural
18 Resources asked A&B or EMI for this information before the
19 Board made its decision in 2018?

20 A. I did not. I don't -- did not ask.

21 Q. Did the Board ask?

22 MS. GOLDMAN: Objection. Calls for
23 speculation.

24 THE COURT: You may answer.

25 THE WITNESS: I -- I don't recall.

1 BY MR. FRANKEL:

2 Q. Is any of this information to answer this
3 interrogatory in your staff submittal in 2018?

4 A. I -- I would just defer to the submittal.

5 Q. And as far as you -- as far as you recall --
6 as far as you recall, sitting here today, you recall any
7 of that information being in your staff submittal?

8 A. For 2019.

9 Q. 2018, for the year 2019 so it's the Board
10 meeting in 2018.

11 A. Oh. Okay. Yeah, not that I -- I -- I don't
12 believe so. I don't know.

13 Q. Thank you. And before the Board decision
14 making in 2018, did Alexander & Baldwin or EMI disclose
15 how the water that has been diverted from East Maui
16 streams had actually been used?

17 A. I -- I don't recall. I don't know.

18 Q. Did Alexander & Baldwin tell you how much
19 water it would be taking out of East Maui for 2019? Again
20 we're talking about the 2018 decision. So prior to that
21 decision did they tell you how much water they'd be taking
22 out of East Maui for 2019?

23 A. I don't believe so.

24 Q. Did they tell you in 2018 how much water
25 would be needed for farming in 2019?

1 A. I don't recall.

2 Q. And if they had, that's the kind of
3 information you would have put in the staff submittal,
4 right?

5 A. I -- yeah, I probably would put it in.

6 Q. Okay. Did anyone at DLNR or BLNR ever ask
7 prior to the decision making in 2018 how much water would
8 actually be needed for farming in 2019?

9 A. I -- I don't know.

10 Q. Did Alexander & Baldwin or EMI disclose how
11 much water was needed for each crop per acre for 2019?

12 A. Not that I recall.

13 Q. Did you or anyone at DLNR ask how much water
14 was needed for each crop for 2019?

15 A. I did not ask.

16 Q. Did A&B or EMI disclose how much water was
17 needed for each crop in total for 2019?

18 A. I don't believe so.

19 Q. Did you or anyone at DLNR ask how much water
20 would be needed for each crop in total for 2019?

21 A. I -- I did not ask.

22 Q. Let's -- you're the one responsible for the
23 staff submittal, correct?

24 A. I prepared the submittal, yes.

25 Q. All right. Now, I want to switch gears a

1 little bit and talk about A&B and Mahi Pono's request in
2 October 2019 for the year 2020, okay? That's the most
3 recent decision.

4 A. Okay.

5 Q. Okay. So in 2019 you finally got some
6 information about how many acres were being farmed and for
7 what crops, right?

8 A. Yes.

9 Q. And why don't we turn to the Joint Exhibit
10 21, Exhibit J-21. This is your staff submittal, right?

11 A. Yes.

12 Q. And let's turn to page 96 of your staff
13 submittal. Are you there?

14 THE COURT: What page again?

15 MR. WYNHOFF: What page, your honor? What
16 page, your honor?

17 MR. FRANKEL: Page 96.

18 THE COURT: Thank you.

19 MR. WYNHOFF: Thank you.

20 THE WITNESS: With the heading East Maui
21 Water Permits?

22 BY MR. FRANKEL:

23 Q. That's right. This is information that
24 Alexander & Baldwin provided to you that you included in
25 your staff submittal, right?

1 A. Yes.

2 Q. And if you look at the, I guess it'd be the
3 third paragraph or the second italicized paragraph, it
4 starts with "The current needs for East Maui streams
5 averages approximately 27 million gallons." Do you see
6 that?

7 A. Yes.

8 Q. And it goes on and it says -- explains how
9 the water's being used. And then towards the end of that
10 paragraph it says, "These agricultural uses included over
11 500 acres of sweet potato, 60 acres of white potato, 40
12 acres of citrus." Do you see that?

13 A. Yes.

14 Q. Okay. Now, you had never been given this
15 level of detailed information about how much farming was
16 taking place in the Central Maui plains before, had you?

17 MS. GOLDMAN: Objection, your honor. Overly
18 broad.

19 THE COURT: Overruled.

20 THE WITNESS: Yeah, I don't -- I don't
21 believe so.

22 BY MR. FRANKEL:

23 Q. All right. Now, let's focus in on the 600
24 acres, the 500 sweet potato, 60 of regular -- white and
25 red potatoes and 40 of citrus, that all adds up to 600

1 acres, right?

2 A. Wait. 500 sweet potato, 60 red and white
3 potato and 40 citrus. Yes, 600.

4 Q. Okay. So did anyone tell BLNR how much water
5 these 600 acres of crops required?

6 A. I -- I don't know.

7 Q. Okay. Did you calculate how much water these
8 600 acres of crops require?

9 A. I did not.

10 Q. Now, did anyone tell BLNR how much water 500
11 acres of sorghum grass requires?

12 A. I don't know.

13 Q. You were at the Board meeting, you don't
14 recall that coming up?

15 A. Yeah, I -- I don't -- I don't specifically
16 recall if that was discussed with the Board.

17 Q. Did you calculate how much water 500 acres of
18 sorghum grass requires?

19 A. No.

20 Q. Did A&B or Mahi Pono disclose how many
21 gallons of water the crops that had already been planted
22 in Central Maui use daily on average?

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

24 Q. Did BLNR know how much water was needed for
25 each plant, for each planted crop per acre on average?

1 A. I -- I don't know what the Board knew.

2 Q. Was that information provided to the Board in
3 your staff submittal or in any testimony?

4 A. I don't --

5 MS. GOLDMAN: Objection, your honor.
6 Compound question.

7 THE COURT: It's okay. He can answer as is.

8 THE WITNESS: I -- I don't believe it was in
9 the submittal. I don't recall if it was provided
10 otherwise.

11 BY MR. FRANKEL:

12 Q. Was any information provided to the Board as
13 far as you know as to how much water was needed in total
14 for each crop?

15 A. I -- I don't know.

16 Q. Okay. Did DLNR ever determine how many
17 gallons per acre per day is a reasonable amount of water
18 to be used for diversified agriculture in Central Maui?

19 A. I did not make such a determination.

20 Q. Did the Board make such a determination?

21 A. I would defer to its decision.

22 Q. You were there though. Did you hear the
23 Board make a determination about how much water per acre
24 per day is a reasonable amount of water to be used for
25 diversified agriculture in Central Maui?

1 A. I don't -- I don't recall specifically.

2 Q. All right. Let's now focus on alternative
3 sources of water which could be used instead of water from
4 East Maui streams. Did A&B or EMI or Mahi Pono disclose
5 or agree to which the crops that were being planted or
6 were already growing are salt tolerant?

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

8 Q. Sure. You know, it might help, Melissa, if
9 you closed off the computer right now 'cause I'm not
10 referring to any exhibit. It seems like he's looking at
11 an exhibit. So -- thank you.

12 So did Alexander & Baldwin or East Maui
13 Irrigation or Mahi Pono disclose or agree to which the
14 crops that were going to be planted or already growing are
15 salt tolerant?

16 A. I don't know.

17 Q. Do you recall that ever being disclosed?

18 A. Not to my recollection. Not to my
19 recollection, excuse me.

20 Q. Did you ever ask?

21 A. I -- I don't recall asking, no.

22 Q. And did any of the members of the Board ask
23 at the Board meeting that you recall?

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

25 Q. Did you or anyone at DLNR ask about the salt

1 tolerance of the crop -- crops growing, proposed to be
2 grown?

3 A. I -- I did not ask.

4 Q. Okay. Did you or anyone at DLNR ask for
5 evidence that the ground water would be too brackish for
6 any of the proposed crops?

7 A. I did not ask.

8 Q. And do you recall anyone else asking?

9 A. No. I don't recall. Or I don't know.

10 Q. Do you recall anyone, any member of the Board
11 asking?

12 A. I don't recall.

13 Q. Did Alexander & Baldwin or EMI or Mahi Pono
14 disclose why it would be impractical to use alternative
15 sources of water instead of or in conjunction with water
16 from East Maui streams?

17 A. I don't recall if that was discussed.

18 Q. If they had disclosed it, would you have
19 included that information in your staff submittal?

20 A. I -- I don't know.

21 Q. Do you think that information is important
22 and relevant that should be provided to members of the
23 Board of Land & Natural Resources?

24 A. I -- I don't know.

25 Q. Did the Board of Land & Natural Resources

1 require that Alexander & Baldwin and EMI use alternative
2 sources of water?

3 A. Well, I would defer to their decision but I
4 don't -- I don't believe so.

5 Q. And did the Board ask why Alexander & Baldwin
6 and EMI could not use alternative sources of water?

7 A. I don't recall.

8 Q. Let's look at Mahi Pono's claims. Now Mahi
9 Pono claimed it would need more than 16.5 million gallons
10 of water for farming in the first quarter of this year,
11 right?

12 A. I mean -- okay, if -- I don't know if that's
13 what they asked -- I don't --

14 Q. That's fine. Let's look at Exhibit J-26
15 which is the Joint Exhibit 26.

16 MS. GOLDMAN: Excuse me. Give him a hand.
17 Ms. Goldman.

18 THE WITNESS: Thank you. Sorry. The exhibit
19 number was?

20 THE COURT: J-26.

21 BY MR. FRANKEL:

22 Q. J-26.

23 A. The testimony is a quarter of the passage of
24 item D-1?

25 THE COURT: Yes.

1 MR. FRANKEL: Yes.

2 THE COURT: It had a color logo with Mahi
3 Pono at the top.

4 THE WITNESS: Yeah. I have it. Yes.

5 BY MR. FRANKEL:

6 Q. So let's go to page 2 of that document.

7 A. Um-hum.

8 Q. And there's a little, I'll call it a table.
9 And you see on the left side of the table for year 2020
10 there's Quarter 1, Quarter 2, you see that?

11 A. Yes.

12 Q. And there's different columns. One column is
13 Mahi Pono Diversified Agriculture; you see that?

14 A. Yes.

15 Q. And for Quarter 1 they said they would need
16 16.53 million gallons a day in that -- in the first
17 quarter of 2020, right?

18 A. Yes.

19 Q. And they also predicted or projected that the
20 Kula Agricultural Park would need 1.5 million gallons a
21 day?

22 A. I -- I see that, yes.

23 Q. And so if we add those two figures up in
24 terms of agriculture, that's 18 million gallons a day,
25 just a bit over 18 million gallons a day for farming,

1 right?

2 A. Yes.

3 Q. Now, you received a report from Mahi Pono in
4 terms of how much water they actually used in 2020. Let's
5 look at exhibit, Joint Exhibit 27, J-27. And you might
6 want to have both of these up on the screen at the same
7 time. That might help a little bit if there's enough room
8 on your screen.

9 A. I don't know how to separate the two panes.

10 Q. If it's not technologically possible we can
11 deal with it.

12 MS. GOLDMAN: It is. It's just -- it's --
13 it'll just take a second.

14 So it's J-26 and J-27, correct?

15 MR. FRANKEL: Correct.

16 MS. GOLDMAN: Okay. It's pulling it up right
17 now.

18 THE WITNESS: Yeah.

19 MS. GOLDMAN: You can see them side by side.

20 THE WITNESS: Okay. Thank you.

21 MS. GOLDMAN: Okay.

22 BY MR. FRANKEL:

23 Q. So Exhibit J-27 which is already in evidence,
24 this is the first quarterly report for 2020 that was
25 provided to you by East Maui Irrigation and Alexander &

1 Baldwin, right?

2 A. Yes.

3 Q. And if we could turn to -- there's, if you
4 could look at the page number at the bottom, so page 8,
5 even though it says page 6 of 8, this is Bates stamped
6 page 8. Are you there?

7 A. Yes.

8 Q. And if you look at a column -- there's a
9 table on the top of page 8 and there's a column labelled
10 Diversified Agriculture. Do you see that? The fifth
11 column.

12 MS. GOLDMAN: He should be --

13 THE WITNESS: Yeah. I want to just flip --
14 oh, yes, yes. Okay. I see it.

15 BY MR. FRANKEL:

16 Q. And the quarterly average, which is the
17 bottom row of the table there, the quarterly average for
18 diversified agriculture is 2.5 million gallons. Do you
19 see that?

20 A. Yes.

21 Q. And if you -- next, the column just next to
22 it to the left is for the ag part that we talked about
23 before and that's .38 million gallons, right?

24 A. Yes.

25 Q. So if you add those two up, that's less than

1 3 million gallons?

2 A. Yes.

3 Q. So they estimated for the first quarter that
4 they were going to use just over 18 million gallons a day
5 for farming but they wound up using less than 3 million
6 gallons a day, right?

7 A. Yes. Looks like it, yes.

8 Q. Their estimate was off by a factor of about
9 six times, right?

10 A. Yes.

11 Q. All right. Their estimates are not very
12 reliable, are they?

13 MS. GOLDMAN: Objection, your honor.
14 Argumentative.

15 THE COURT: Sustained.

16 MS. GOLDMAN: Ms. Goldman.

17 THE COURT: Sustained.

18 BY MR. FRANKEL:

19 Q. Now, looking back at Exhibit J-26, has
20 A&B or Mahi Pono disclosed the specific end use of the
21 amorphous task that's labelled reservoir/fire protection/
22 hydroelectric/seepage/evaporation?

23 A. I would defer you to their quarterly report.

24 Q. Okay. But you were provided this quarterly
25 report from them, and I'm asking you, have they disclosed

1 to you how -- what the end use of this water in this
2 column is?

3 A. Well, like I said, I didn't look at the
4 report. I believe there's something in there.

5 Q. Well, where does the water go after it goes
6 through a hydroelectric plant?

7 A. I don't know.

8 Q. Does it disappear?

9 A. I -- I don't think so. I don't know.

10 Q. All right. Where does the water -- where
11 does the water in the reservoirs go?

12 A. I don't know.

13 Q. Well, let's look -- let's go back and look at
14 -- well, in -- so, again, on Exhibit J-26 Mahi Pono
15 claimed that 7.6 million gallons of water would be used in
16 this amorphous category in the first quarter of 2020 for
17 reservoir/fire protection/hydroelectric/seepage and
18 evaporation. See that?

19 A. Yes.

20 Q. Now if we turn to Exhibit J-27, which is
21 their quarterly report of what they actually did, was this
22 -- there's actually two left columns, if you look at the
23 furthest column to the right which is titled
24 reservoir/fire protection/evaporation/dust
25 control/hydroelectric, they have 16.44 million gallons;

1 right?

2 A. Yes.

3 Q. But then if you also look at the second
4 column, it's designated, I guess it's the third column
5 technically, system losses, 22 percent as cited in CWRM/
6 DLNR; you see that?

7 A. Yes.

8 Q. And the quarterly average is 6.31?

9 A. Yes.

10 Q. So if you added the 6.31 in this category,
11 along with the 16.44 in the last column category, that
12 gives you about 22 million gallons?

13 A. Yes.

14 Q. But if we look back at Exhibit J-26 it
15 proposed that it would have 7.67 million gallons in this
16 category?

17 A. Yes.

18 Q. So there's about three times more water being
19 used for system losses and evaporation, seepage,
20 reservoir, fire protection, dust control, hydroelectric,
21 than they claimed they were going to use, right?

22 A. Yes.

23 Q. How much East Maui water is used daily on
24 average for dust control?

25 A. I don't know.

1 Q. Has DLNR ever asked?

2 A. I don't know. I never asked.

3 Q. So DLNR doesn't know with specificity how all
4 the water that's being removed from East Maui streams is
5 actually being used in the end, does it?

6 A. I don't know.

7 Q. All right.

8 THE COURT: We're -- Mr. Frankel, if you want
9 to finish up in that area, that's fine, but otherwise we
10 should be taking a break pretty soon.

11 MR. FRANKEL: Okay. I have two more
12 questions in this area, then that would be a good time for
13 a break, if that's all right.

14 THE COURT: That's fine.

15 BY MR. FRANKEL:

16 Q. Okay. Other than receiving DLNR status
17 reports, DLNR has not done anything specific to determine
18 whether the water is being used reasonably and
19 beneficially, has it?

20 MS. GOLDMAN: Objection, your honor. Calls
21 for speculation.

22 THE COURT: You may answer.

23 THE WITNESS: Yeah, I don't know.

24 MR. FRANKEL: You know, I'm going to have to
25 go to deposition which is going to take a little bit

1 longer, your honor, so maybe we should take a break.

2 THE COURT: All right. That's fine. We'll
3 take a recess now. 10 minutes. So we'll see you all at
4 11:15. Thank you. We're in recess.

5 (A recess was taken.)

6 THE COURT: All right. We're back on record.
7 Counsel present. Witness is present. Mr. Frankel, go
8 ahead.

9 BY MR. FRANKEL:

10 Q. Thank you, your honor.

11 So, Mr. Hirokawa, other than receiving
12 A&B status reports DLNR has not done anything specific to
13 determine whether the water is being used reasonably and
14 beneficially, has it?

15 A. I'm -- I don't know.

16 Q. All right. Let's turn to Sierra Club's
17 Exhibit 120 which is your deposition testimony. And if
18 you could turn to page 22 of this exhibit.

19 A. Wait. I'm sorry. What was the -- the item
20 number? Sierra Club --

21 Q. Sierra Club 120.

22 A. 120. Excuse me. Okay. And --

23 Q. So page 22 of this exhibit.

24 A. Okay.

25 Q. Line 18. The question is: "And, again, you

1 guys did nothing specific other than your most recent
2 request, you have not done anything specific to find out
3 whether or how it's being used in a reasonable and
4 beneficial manner?"

5 And your answer was: "I mean, outside of a
6 request for a status report, no."

7 A. Um-hum.

8 Q. Is that right?

9 A. Yes, yeah. Yes.

10 Q. And let's turn to page 30 of this transcript,
11 same document. So page 30, line 20.

12 Question's asked: "And, again, the only way
13 you would know if A&B is actually using the water for
14 reasonable and beneficial purposes is if A&B tells you so,
15 right?"

16 That's the question.

17 A. Yes, yes, I see it.

18 Q. And your answer is: "Well, I mean, yeah,
19 based on the report."

20 A. Yes.

21 Q. Okay. So the only way DLNR would know if
22 A&B is actually using the water for reasonable and
23 beneficial purposes is if A&B tells DLNR?

24 A. Oh, sorry. That would apply to myself, yes.

25 Q. If somebody reminded you that. But you were

1 testifying as a --

2 THE COURT: Hold it. Hold on, Mr. Frankel.
3 Out of line. Don't go there. You're not helping
4 yourself.

5 MR. FRANKEL: All right. All right.

6 THE COURT: I can hear. If there's something
7 going on, I can hear it.

8 BY MR. FRANKEL:

9 Q. Okay. All right. Let's move on.

10 I want to ask you about the meetings you had
11 related to these permits. Before the Board of Land &
12 Natural Resources meeting in 2019 you had a meeting with
13 Alexander & Baldwin and Mahi Pono, right?

14 A. Yes.

15 Q. To discuss the renewal and the staff
16 submittal?

17 A. Yes.

18 Q. Na Moku was not invited to that meeting, was
19 it?

20 A. I did not invite them.

21 Q. And the Sierra Club was not invited to that
22 meeting?

23 A. I did not invite the Sierra Club.

24 Q. You met privately with Alexander & Baldwin?

25 A. Not just myself but, yes, we met with

1 Alexander & Baldwin.

2 Q. And you only informed the Sierra Club about
3 this private meeting when it came up in your deposition?

4 A. I believe so, yes.

5 Q. And when the Sierra Club asked for a similar
6 meeting Alexander & Baldwin's attorney was invited to
7 attend?

8 A. They were there.

9 Q. All right. I want to ask you about the
10 contested case hearing requests. In both 2018 and 2019
11 the Sierra Club orally requested a contested case on the
12 request to continue the revocable permits, right?

13 A. Yes.

14 Q. And the Board of Land & Natural Resources
15 denied both those requests, right?

16 A. Yes.

17 Q. Let's talk trash. In November 2017 the Board
18 of Land & Natural Resources approved the continuation of
19 the revocable permits on the condition that A&B needs to
20 clean up their debris, starting with more accessible areas
21 and along stream, right?

22 A. Yes.

23 Q. In 2018 A&B told DLNR that besides an
24 abandoned tractor it removed there was little other debris
25 in the area, right?

1 A. Yeah. I'd defer to that report. I -- I
2 recall something similar, yes.

3 Q. And you relied on Alexander & Baldwin's
4 representation?

5 A. Well, we presented it to the Board.

6 Q. Well, you relied -- you assumed -- you relied
7 and assumed that they were telling you the truth?

8 MS. GOLDMAN: Objection, your honor. Asked
9 and answered.

10 THE COURT: Overruled.

11 MS. GOLDMAN: Ms. Goldman.

12 THE COURT: Overruled. The question is did
13 you assume?

14 THE WITNESS: Can you repeat the question?

15 THE COURT: The question is did you assume
16 they were telling you the truth?

17 THE WITNESS: I -- I don't know if I assumed
18 it. I mean, the --

19 BY MR. FRANKEL:

20 Q. Did you -- did you attempt to investigate and
21 verify whether their statement was true?

22 A. No, I did not. I did not.

23 Q. Do you know if anyone from DLNR did?

24 A. I don't know.

25 Q. Right. We'll get to that. The next year

1 Alexander & Baldwin told DLNR that it had recovered
2 several hundred feet of old pipe, several old wooden
3 gates, and remnants of steel and concrete, right?

4 A. Yeah. I'd defer to the report but that's my
5 recollection.

6 Q. So in 2018 A&B claimed that there was little
7 debris left on the land, but a year later it had found and
8 recovered several hundred feet of old pipe, right?

9 A. Yes.

10 Q. Have you looked at A&B's most recent
11 quarterly report?

12 A. Which -- which one are you referring to?

13 Q. The most recent one that you have received.
14 Have you looked at that one?

15 A. I have not had a chance to review it.

16 Q. You haven't even looked at it -- so you tell
17 me you haven't looked at it at all?

18 A. I -- I looked at it when I first came in. I
19 didn't review it in depth. I mean, I couldn't speak to
20 it. I don't recall.

21 Q. Okay. Did you see the photographs in it?

22 A. I believe there were photographs but I don't
23 -- again, I didn't look at it in depth so --.

24 Q. Do you recall seeing photographs of trash?

25 A. I -- you know, I -- I can't say that I do.

1 Q. Okay. Now prior to the Board's November 2018
2 meeting no one at DLNR inspected for debris, did they?

3 A. I don't know.

4 Q. All right. Well, let's look at your prior
5 deposition testimony which is Exhibit 120.

6 MS. GOLDMAN: Do you have it? Okay.

7 Ms. Goldman, your honor. Logging the witness
8 back into the computer.

9 THE COURT: All right. Thank you. There.

10 MS. GOLDMAN: There you go.

11 THE WITNESS: Okay. Exhibit 120?

12 BY MR. FRANKEL:

13 Q. Correct.

14 A. Okay.

15 Q. And if you could turn to page 33.

16 A. Okay.

17 Q. On line 3 you see the question: "Okay. And
18 so prior to November 10, 2018, was any inspection done to
19 check on debris?"

20 A. Yeah.

21 Q. Your answer is: "Not by Land Division, no."

22 A. Yes.

23 Q. The follow-up question is: "What about
24 anybody in -- in Department of Land & Natural Resources?"

25 And you see your answer, your answer is:

1 "Not -- I don't think for necessarily that specific
2 purpose. I think as mentioned before, forestry folks are
3 on the -- on the -- on the ground there. And, you know,
4 as it was noted, they did flag this tractor which was
5 removed so it appears there is Department involvement
6 there but not necessarily specific by a -- to go and
7 check."

8 All right?

9 A. Um-hum.

10 Q. Okay. Now, in 2018, the Sierra Club provided
11 photographs of trash by East Maui streams; do you remember
12 that?

13 A. I remember you provided photos.

14 THE COURT: Spell. Which stream?

15 MR. FRANKEL: I -- there's no stream
16 identified, your honor. I just said streams. East Maui
17 streams I said.

18 THE COURT: Okay. Thank you.

19 BY MR. FRANKEL:

20 Q. And before decision making the Board of Land
21 & Natural Resources, the Department of Land & Natural
22 Resources took no action to verify the truth of the claims
23 presented in the photographs and the testimony that the
24 Sierra Club presented?

25 A. I -- I can't speak to what the Board

1 considered.

2 Q. All right. Well, how about if we look at --
3 well, so do you recall the Board attempting to take any
4 action to verify the truth of the material presented to
5 it?

6 A. I specifically -- I specifically don't recall
7 what -- if they did or not.

8 Q. All right. Let's -- if you could take a look
9 at Sierra Club's Exhibit 105 which is in evidence. And
10 you -- you understand that --

11 A. D -- DLNR's third -- our response to third
12 -- plaintiff's third request for admissions; is that
13 correct?

14 Q. Yes. That's right.

15 A. Okay.

16 Q. And so if we go down to paragraph 3 there,
17 the question is asked, the admission propounded is -- in
18 paragraph 3: As of December 2018 Suzanne Case, DLNR, and
19 BLNR had taken no action to verify the truth of the claims
20 presented in photographs and testimony that had been
21 provided to the BLNR and DLNR in 2018 regarding debris as
22 that term is used on page 13 of November 9th, 2017
23 minutes, within the area encompassed by the revocable
24 permits. And they're all listed there. You see that?

25 A. Yes.

1 Q. And the answer is for the BLNR defendants
2 they admit.

3 A. Yeah, I see it.

4 Q. Okay. So DLNR did not follow up on those
5 photographs, correct?

6 A. Like I said, I -- I did not and I don't -- I
7 did not.

8 Q. And the BLNR --

9 A. When I deferred -- when I deferred to the
10 answer that is provided in the admission.

11 Q. Okay. And the Board of Land & Natural
12 Resource defendants have taken no enforcement action of
13 any kind to ensure that A&B cleans up the mess left in and
14 around East Maui streams, has it? Have they?

15 A. I -- I don't know. I don't believe the Board
16 has.

17 Q. Has the Department?

18 A. I can -- I have not.

19 Q. And you would know, wouldn't you, in your
20 position?

21 A. Well, I -- I don't -- I don't know. I mean,
22 I hope.

23 Q. Okay. So the Board of Land & Natural
24 Resources has allowed Alexander & Baldwin to increase the
25 amount of water it has been diverting from East Maui

1 streams without limiting the amount of water that could be
2 taken from the 13 streams, right?

3 A. I'm sorry. Oh. No, no, I'm sorry. Was that
4 -- are you asking me that question? As far as I
5 understand.

6 Q. And without explaining why more than a dozen
7 streams should have less water flowing than necessary for
8 native stream animals to grow and reproduce?

9 MS. GOLDMAN: Objection, your honor. This
10 assumes facts not in evidence.

11 THE COURT: Overruled. You may answer.

12 THE WITNESS: I -- I don't understand. Can
13 you repeat the question? I didn't quite understand the
14 question.

15 BY MR. FRANKEL:

16 Q. Board of Land & Natural Resources -- the
17 Board of Land & Natural Resources has allowed A&B to
18 increase the amount -- I should say allowed A&B and EMI to
19 increase the amount of water taken from East Maui streams
20 without an explanation as to why more than a dozen streams
21 should have less water flowing in them than necessary for
22 native stream animals to grow and reproduce?

23 MS. GOLDMAN: Objection, your honor. Same
24 objection. Ms. Goldman for the State.

25 THE COURT: Overruled.

1 THE WITNESS: I -- I don't know.

2 BY MR. FRANKEL:

3 Q. Okay. And it's allowed the increase of the
4 amount of water diverted without assessing the impact of
5 the diversion structures systematically, right?

6 A. I -- I don't know.

7 Q. And it's allowed the increase without
8 imposing a deadline on the removal of any of the diversion
9 structures on public land that harm native aquatic
10 species, facilitate mosquito breeding, and mar natural
11 beauty?

12 MS. GOLDMAN: Objection, your honor. Form of
13 the question.

14 THE COURT: Overruled.

15 THE WITNESS: I -- I don't know.

16 BY MR. FRANKEL:

17 Q. Well, you know. You've already testified
18 they didn't impose a deadline, did they?

19 A. Oh, yeah, they didn't impose a deadline but
20 --

21 Q. Okay. So the Board has allowed A&B and EMI
22 to increase the amount of water diverted from East Maui
23 without determining how much water was actually necessary
24 for farming?

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

1 Q. Sure. The Board of Land & Natural Resources
2 has allowed A&B and EMI to increase the amount of water
3 taken from East Maui without determining how much water
4 was actually necessary for farming?

5 A. I would just defer to their decision on that.

6 Q. Well, in their decision -- you were there for
7 their decision. Did the Board make a determination as to
8 how much water was actually necessary for farming?

9 A. I don't recall specifically.

10 Q. Right. BLNR has allowed A&B to increase the
11 amount of water --

12 THE REPORTER: I'm sorry. Can you start
13 over?

14 THE COURT: Time out. Mr. Frankel, sorry,
15 time out. Okay, sorry. We had a hiccup on this end. You
16 need to start your question over again please.

17 BY MR. FRANKEL:

18 Q. Okay. So the Board of Land & Natural
19 Resources has allowed Alexander & Baldwin and EMI to
20 increase the amount of water diverted from East Maui
21 streams without asking A&B to use water from alternative
22 sources before or in conjunction with the use of water
23 taken from Maui streams?

24 MS. GOLDMAN: I'm renewing the objection.
25 Ms. Goldman for the State. Compound question. And again

1 assumes facts not in evidence.

2 THE COURT: Sustained. You need to break
3 that one down, Mr. Frankel.

4 BY MR. FRANKEL:

5 Q. Okay. The Board of Land & Natural Resources
6 did not ask A&B to use water from alternative sources,
7 correct?

8 A. Yes.

9 Q. And --

10 A. Not specifically, yes.

11 Q. And it allowed A&B to increase the amount of
12 water diverted to A&B/EMI without asking about the
13 alternative water sources, correct?

14 A. Again, I don't recall what was asked about it
15 at the meeting.

16 Q. Okay. The Board has allowed A&B to increase
17 the amount of water diverted, A&B/EMI, to increase the
18 amount of water diverted without figuring out how much
19 water was being wasted?

20 A. Can you repeat the question please?

21 Q. The Board of Land & Natural Resources allowed
22 A&B and EMI to increase the amount of water diverted from
23 East Maui streams without determining how much water was
24 being wasted?

25 MS. GOLDMAN: Objection, your honor.

1 Argumentative. Assumes facts not in evidence as far as
2 the question is involved. Ms. Goldman for the State.

3 THE COURT: Overruled. You may answer, sir.

4 THE WITNESS: Well, they increased the
5 amount. I can't say what they --

6 BY MR. FRANKEL:

7 Q. Did the Board make a determination as to how
8 much water was being wasted?

9 A. They did not make a specific -- I don't
10 believe they made a specific finding as to what was waste.

11 Q. And did they make a determination as to how
12 much of the water taken from East Maui streams could be
13 wasted?

14 MS. GOLDMAN: Objection, your honor. Asked
15 and answered.

16 THE COURT: I don't understand the question.
17 What do you mean could be wasted?

18 BY MR. FRANKEL:

19 Q. In the future. How much -- sorry, that's
20 fair. How much water A&B/EMI could waste or -- perhaps a
21 better term is system losses. How much water the system
22 could lose in -- in the forthcoming year.

23 THE COURT: Okay. That -- in writing that
24 question is a mess, sorry. So you need to try again.

25 BY MR. FRANKEL:

1 Q. All right. So did the Board -- I'm going to
2 break it up into different parts. First part. Did the
3 Board make a determination as to how much water could be
4 wasted in 2020?

5 A. No. Or I don't believe so.

6 Q. Did the Board make a determination as to how
7 much water would be appropriate for the system to lose
8 through seepage and evaporation for 2020?

9 A. I don't believe they did.

10 Q. Did -- when the Board voted to allow for an
11 increase in the amount of water diverted, it did so
12 without investigating whether trash continues to litter
13 public land, didn't it?

14 A. Sorry, can you repeat that question again?
15 By the Board --

16 Q. When the Board allowed an increase in the
17 amount of water diverted from East Maui streams --

18 A. Um-hum.

19 Q. -- it did so without investigating to
20 determine whether trash continues to litter public land?

21 A. I couldn't say specifically they had the
22 information as to the trash and the submittal.

23 Q. But -- and there was no independent
24 investigation by the staff that was provided to the Board
25 in terms of an investigation being done, correct?

1 MS. GOLDMAN: Objection, your honor. Calls
2 for speculation.

3 THE COURT: And who was that again?

4 MS. GOLDMAN: Ms. Goldman for the State.
5 Thank you, your honor.

6 THE COURT: Thank you. Overruled.

7 THE WITNESS: Yeah. We did not -- we did not
8 independently investigate. We did not independently
9 investigate.

10 MR. FRANKEL: Thank you, your honor. No
11 further questions.

12 THE COURT: All right. Thank you. All
13 right. We have about 20 minutes before the lunch break.
14 Who's going first? I think you said you were going to
15 exhaust --

16 MS. GOLDMAN: Your honor, I believe the
17 defendants have decided to retain the same order for the
18 witness questioning so Trisha Akagi will be up.

19 THE COURT: All right. Ms. Akagi, you ready
20 to go?

21 MS. AKAGI: I am, your honor.

22 THE COURT: All right. Please go ahead.

23

24 CROSS EXAMINATION

25 BY MS. AKAGI:

1 Q. Good morning, Mr. Hirokawa. My name is
2 Trisha Akagi and I represent Alexander & Baldwin and East
3 Maui Irrigation or EMI. Just to clarify, you were not a
4 member of the Board of Land & Natural Resources, correct?

5 A. Correct.

6 Q. So you did not make any of the decisions that
7 are the subject of this litigation, correct?

8 A. Correct.

9 Q. Okay. Mr. Frankel was asking you earlier
10 about information provided to the Board about alternative
11 water sources. Do you recall that?

12 A. Yeah, I recall -- yeah, yes.

13 Q. Okay. I'm going to ask you to take a look at
14 -- sorry -- Exhibit J-16.

15 A. Okay.

16 Q. If you could just let me know when you have
17 the document in front of you.

18 A. That's the 2018 submittal?

19 Q. That's correct. Do you have it in front of
20 you?

21 A. Yes.

22 Q. And I just want to confirm that on page 4 in
23 the submittal there is a link to the Water Commission's
24 June 2018 decision and order. Correct?

25 A. Correct.

1 Q. Okay. I'm going to ask you to now take a
2 look at Exhibit J-14. And if you could let me know when
3 you have the exhibit open in front of you.

4 A. I have it open. This is an order from CWRM.

5 Q. Yes, that's correct. I'm going to ask you to
6 turn to page 217, and I'm looking at the Bates stamp
7 number, so it's the number on the bottom right corner of
8 the page. And if you could let me know when you've gotten
9 to that page.

10 A. That's page 194 of the document, right?

11 Q. That's correct.

12 A. Okay.

13 Q. I just want to make sure that everyone else
14 got to that page.

15 THE COURT: I'm there. Thank you.

16 BY MS. AKAGI:

17 Q. And I'm looking at the bottom of the page.
18 You'll see a header that starts with the letter C and it
19 says Alternate Sources. Do you see that?

20 A. Yes.

21 Q. Okay. And then under that there's another
22 header which has a lower case I that says Ground Water.
23 Do you see that?

24 A. Yes.

25 Q. Okay. I'm going to ask you to turn the page.

1 And there's a number of paragraphs. If you can -- can you
2 see all of those paragraphs on the next page?

3 A. Yes.

4 Q. And I'm going to ask you to continue turning
5 to page 221. And, again, that's the Bates stamp number on
6 the bottom right-hand corner of the page.

7 A. That's page 198 of the order.

8 Q. Yes, that's correct.

9 A. Okay, yes.

10 Q. In about the middle area of the page there's
11 another header. It's a little Romanette ii.

12 A. Yes.

13 Q. It says Additional Reservoirs.

14 A. Yes.

15 Q. Okay. I'm going to ask you to continue
16 turning the page to page 223. Again, that's Bates stamp
17 223. It's the bottom right-hand side of the page.

18 A. Okay.

19 Q. And there's --- towards the end of the page
20 there's another heading, little Romanette three iii, it
21 says Recycled Wastewater. Do you see that?

22 A. Yes.

23 Q. Then I'm going to ask you to continue turning
24 the page to page 228. Again, it's Bates stamp number 228
25 on the bottom right corner of the page.

- 1 A. Okay.
- 2 Q. And there towards the end of the page there's
- 3 another heading, little Romanette iv, Maui Land & Pine.
- 4 A. Yes.
- 5 Q. Do you see that?
- 6 A. Yes.
- 7 Q. So all of this information in the paragraphs
- 8 from page 217 to 228 was information that was made
- 9 available to the Board before its 2018 decision, correct?
- 10 A. Correct.
- 11 Q. Okay. I'm going to ask you to turn to page
- 12 272 of the same exhibit.
- 13 A. On page 249 of the order, right, the
- 14 document?
- 15 Q. Yes, that's correct.
- 16 A. Okay.
- 17 Q. And I'm going to ask you to look towards the
- 18 bottom of the page. There is a heading that starts with a
- 19 C, says Alternative Sources. Do you see that?
- 20 A. Yes.
- 21 Q. And beneath that there's another heading,
- 22 little Romanette i says Ground Water. Do you see that?
- 23 A. Yes, yes.
- 24 Q. Okay. And I'm going to ask you to look at
- 25 the next page, Bates stamp 273.

1 A. Okay. Okay.

2 Q. Towards the bottom of the page there is
3 another heading, little Romanette two that says Additional
4 Reservoirs. Do you see that?

5 A. Yes.

6 Q. And I'm going to ask you to turn the page one
7 more time to 274.

8 A. Okay.

9 Q. Towards the upper portion of the page there's
10 another heading that says little Romanette iii, Recycled
11 Wastewater. Do you see that?

12 A. Yes.

13 Q. And then below that there's another heading,
14 little Romanette four that says Maui Land & Pine. Do you
15 see that as well?

16 A. Yes.

17 Q. Okay. So all of the information, starting
18 from page 272 to page 274, was information that was
19 available to the Board before it made its decision in
20 2018, correct?

21 A. Yes, correct.

22 Q. Okay. I'm going to ask you to take a look at
23 Exhibit J-20.

24 A. The Draft EIS?

25 Q. Yeah. So if you could let me know when you

1 have that document in front of you. I'm sorry. I'm going
2 to back up before that. I'm going to ask you to look at
3 J-21.

4 A. Oh, sorry, okay. Okay.

5 Q. And this is the staff submittal that was
6 prepared for the Board's October 11th, 2019 meeting,
7 correct?

8 A. Yes.

9 Q. I'm going to ask you to look at page 4 of the
10 document.

11 A. Okay.

12 Q. And I just want to confirm that you had
13 included a link to the Draft EIS in this --

14 A. Yes.

15 Q. -- submittal, correct?

16 A. Correct, yes.

17 Q. Okay. Thank you. If we could take a look at
18 Exhibit J-20 now. And if you could let me know when you
19 have the exhibit in front of you.

20 A. I have it. I have it.

21 Q. Okay. I'm going to ask you to turn to page
22 84, so this is Bates stamp number 84, so it's the numbers
23 located on the bottom right-hand side of the -- bottom
24 right-hand corner of the page.

25 A. We -- starting section three, alternative,

1 that's the -- the number three alternatives on the top
2 left, that's the first page?

3 Q. Yes, that's correct.

4 A. Okay.

5 Q. I'm going to ask you to look towards the
6 bottom of that page and it's the heading 3.1.1 Water
7 Sources Alternatives. Do you see that?

8 A. Yes.

9 Q. Okay. And I'm going to ask you to continue
10 scrolling through the document to the next page which is
11 page -- Bates stamp 85.

12 A. Okay.

13 Q. There's another heading towards the upper
14 portion of the page that says 3.1.1.1 Ground Water
15 Alternative.

16 A. Yes.

17 Q. See that? Okay. And then I'm going to ask
18 you to continue scrolling to the next page which is Bates
19 stamp 86.

20 A. Okay.

21 Q. And I'm looking towards the upper portion of
22 the page there's a heading 3.1.1.2 Reclaimed Water. Do
23 you see that?

24 A. Yes.

25 Q. Okay. And then I'm going to ask you to

1 continue scrolling to the next page.

2 A. Okay.

3 Q. And it's page Bates stamp 87 and then towards
4 the bottom it looks like there's a new section starting
5 3.1.2 Aqueduct Ownership. Do you see that?

6 A. Yes.

7 Q. Okay. So the information that we looked at
8 starting on page 84 all the way to page 87 is information
9 that was provided to the Board prior to its 2019 meeting,
10 correct?

11 A. Correct.

12 Q. Okay. Now, Mr. Frankel had also asked you
13 about information that was provided to the Board about the
14 removal or modification of the diversion structures; do
15 you recall that?

16 A. Yes.

17 Q. Okay. So I'm going to ask you to take a look
18 at Exhibit J-14 again.

19 A. Okay. Okay.

20 Q. If you could let me -- do you have it in
21 front of you?

22 A. Yeah, yes.

23 Q. Okay. And I'm going to ask you to turn to
24 Bates stamp page 19.

25 A. Okay.

1 Q. And I want you to look at the last paragraph
2 on the page and we are looking at the third sentence. So
3 it's towards the second half of the second line and it
4 starts with "While our order." Do you see that?

5 A. "While our order specifically identifies,"
6 that --

7 Q. That's right.

8 A. Okay. I'm there. I'm there.

9 Q. Okay. So it says, and I'm going to quote,
10 "While our order specifically identifies the desired
11 stream flow expected, we recognize that a universal remedy
12 to modify or remove diversions is not practical. At this
13 time the Commission's overall guidance is to not remove
14 diversion structures if modification can achieve desired
15 results."

16 Did I read that correctly?

17 A. Yes.

18 Q. So this was information that was available to
19 the Board prior to making its 2018 decision, correct?

20 A. Correct.

21 Q. Okay. I'm going to ask you to turn to Bates
22 stamp page 292 of the same exhibit.

23 A. Okay.

24 Q. And I would like to -- you to take a look at
25 the paragraph that starts right underneath the table. So

1 it's paragraph i. Do you see that?

2 A. Yes.

3 Q. So paragraph i states, and I'm going to
4 quote, "It is intended that diversion structures only need
5 to be modified to the degree necessary to accomplish the
6 amended IIFS and to allow for passage of stream biota, if
7 needed."

8 Did I read that correctly?

9 A. Yes.

10 Q. And this information was available to the
11 Board prior to the June -- prior to it making the 2018
12 decision, correct?

13 A. Yes.

14 Q. I'm also going to direct you to the following
15 two paragraphs, so paragraphs j and paragraph k.

16 A. Okay.

17 Q. I'm not going to read them, but this
18 information was also available to the Board prior to its
19 2018 decision, correct?

20 A. Correct.

21 Q. Okay. I'm going to ask you to turn to
22 Exhibit J-21.

23 A. Okay.

24 Q. And if you could look at page 3.

25 A. Okay.

1 Q. And I would like to direct you to footnote 1
2 at the bottom of the page.

3 A. Yes.

4 Q. Do you see it?

5 A. Yes.

6 Q. Okay. So the footnote says: "CWRM issued
7 orders addressing diversion modifications and abandonment
8 dated February 19, 2019 and August 29, 2019 for Category 2
9 and 3 diversions respectively. CWRM will issue future
10 decisions to address Category 1 and 4 diversions."

11 Did I read that correctly?

12 A. Yes.

13 Q. So this information was provided to the Board
14 prior to its 2019 meeting, correct?

15 A. Yes.

16 Q. I'm going to ask you to look at page 96 of
17 the same document. And, I'm sorry, that's Bates stamp 96
18 so it's the numbers in the bottom right corner of the
19 page.

20 A. Okay.

21 Q. Okay. And at the top there is a heading
22 number 3?

23 A. Yes.

24 Q. And it looks like there are a number of
25 paragraphs in response to that heading number 3 that

1 continue on to the following page which is Bates stamp 97;
2 is that correct?

3 A. Yes.

4 Q. And this was also information that was
5 available to the Board prior to it making its 2019
6 decision, right?

7 A. Correct.

8 Q. Now you had testified earlier that if there
9 is public testimony that is provided at the Board meeting
10 that information is not included in the staff submittal
11 that you prepare for that meeting, correct?

12 A. Yes.

13 Q. So just because information is not in your
14 staff submittal doesn't mean that information regarding
15 that same issue was not provided in public testimony at
16 the meeting, correct?

17 A. Yes.

18 MS. AKAGI: I have no further questions, your
19 honor.

20 THE COURT: All right. Thank you. It's just
21 a couple minutes before 12:00 so I don't think we're going
22 to finish Mr. Hirokawa before lunch. So let's go ahead
23 and start our break now. I think, unless -- I don't know,
24 Mr. -- who is going to go next? Mr. Rowe, I think? Do
25 you have any questions?

1 MR. ROWE: I do, your honor, but they're not
2 going to take very long. It should take less than five
3 minutes but it's fine after lunch break. It might not
4 even take five minutes however.

5 THE COURT: Hang on one sec.

6 (A pause.)

7 THE COURT: All right. Go ahead. Let's see
8 if we can finish your questions before lunch. But, you
9 know, if you can't, don't worry about it.

10

11

CROSS EXAMINATION

12 BY MR. ROWE:

13 Q. Okay. And just so the State knows, I will be
14 asking for Joint Exhibit 16 and Joint Exhibit 21 to be
15 available.

16 So with regards to the November 9th, 2018
17 staff submittal, was there reference made to the usage by
18 the County of Maui of water delivered by the EMI system?

19 MS. GOLDMAN: I should direct you.

20 THE WITNESS: I'm sorry. What -- I'm sorry.
21 Could you repeat the question?

22 BY MR. ROWE:

23 Q. Right. In that do you remember in the 2018
24 staff submittal you made reference to the domestic needs
25 of the County of Maui?

1 A. I believe I did. I believe the submittal
2 did.

3 Q. Okay. May I draw your attention to Joint
4 Exhibit 16?

5 A. Sorry. We have to unlock the computer.
6 Okay.

7 Q. Could you please go to exhibit, or, sorry, to
8 page 5 of that exhibit on the bottom of the page.

9 A. Okay. Page 5 on the bottom of the page?

10 Q. Yeah.

11 A. Okay.

12 Q. So the -- the -- I guess the last full
13 paragraph, yeah, the last full sentence says, "Given the
14 short term, one-year holdover period, staff acknowledges a
15 need to ensure the continued operation of the ditch system
16 to provide water for the County of Maui to deliver its
17 residents, at a minimum."

18 Is that correct?

19 A. Yes.

20 Q. So information of the needs of the County was
21 before the Board per your staff submittal?

22 A. Yes.

23 Q. Okay. I now like to -- well, with regard to
24 the 2019 staff submittal, do you know if you also made
25 reference to the needs of the County of Maui in that

- 1 submittal?
- 2 A. I -- I believe I did.
- 3 Q. Okay. Can I ask you to please look at
- 4 Exhibit J-21.
- 5 A. One second please. Okay.
- 6 Q. I'm going to ask you to again go to page 5 in
- 7 the second full paragraph.
- 8 A. The one that says "Staff also noted" -- I'm
- 9 sorry.
- 10 Q. Yes, that paragraph.
- 11 A. Okay, okay.
- 12 Q. So it makes reference there to County of Maui
- 13 Department of Water Supply for municipal purposes,
- 14 including domestic use. It also says, the next sentence
- 15 says, "The water will be used to serve both public trust
- 16 uses of water and public purposes."
- 17 A. Yes.
- 18 Q. What did you mean when you referenced the use
- 19 of the water to serve public trust purposes?
- 20 A. Well, like domestic use.
- 21 Q. By the County of Maui?
- 22 A. I'm sorry. Yes, yes. I'm sorry, yes.
- 23 Q. Okay. And then could I ask you to go to page
- 24 7.
- 25 A. Okay.

1 Q. And you see that there are conditions,
2 particularly there's -- at the bottom of page 7 there's
3 one for 1.a.

4 A. Oh, I'm sorry. I'm on the wrong page.
5 Excuse me. 1.a., yes.

6 Q. Okay. And that asks the permittee to provide
7 reports of the monthly amount of water delivered to the
8 County of Maui Department of Water Supply and the County
9 of Maui Kula Agricultural Park?

10 A. Yes.

11 Q. And to your knowledge has the permittee been
12 complying with the condition?

13 A. That's my understanding.

14 Q. Okay.

15 A. Providing water to the County. Sorry.

16 MR. ROWE: I have nothing further, your
17 honor.

18 THE COURT: All right. Thank you. We'll
19 take our lunch break now. Hang on one minute. Figure out
20 exactly what time we're coming back.

21 Okay. One o'clock, right, everybody? Okay.
22 All right. We are in recess. Thank you. Let's go off
23 the record.

24 (Off the record discussion.)

25 (The luncheon recess was taken.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(AM Session concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU)
_____)

I, Sharon Hulihee, RPR, CSR 306, an Official Court Reporter for the First Circuit Court, State of Hawaii, hereby certify that the foregoing comprises a full, true and correct transcription of my stenographic notes taken in the above-entitled cause.

Dated this 4th day of August, 2020.

OFFICIAL COURT REPORTER

/s/Sharon Hulihee
SHARON HULIHEE, RPR, CSR 306

(A recess was taken.)

Official Court Reporters
First Circuit Court
State of Hawaii