

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

SIERRA CLUB,	)		CIVIL NO. 1CC 19-1-000019
	)		
Plaintiff,	)		
	)		
vs.	)		
	)		
BOARD OF LAND AND NATURAL	)		
RESOURCES, et al.,	)		
	)		
Defendants.	)		

TRANSCRIPT OF PROCEEDINGS

had before the HONORABLE JEFFREY P. CRABTREE, Sixth  
Division, Judge presiding, on Thursday, August 6, 2020.

FURTHER JURY-WAIVED TRIAL (A.M. SESSION)

APPEARANCES:

DAVID K. FRANKEL, ESQ.		For Plaintiff Sierra Club
WILLIAM J. WYNHOFF, ESQ.		For Defendants Board of Land and Natural Resources, Department of Land and Natural Resources, and Suzanne Case
MELISSA D. GOLDMAN, ESQ.		
DAVID SCHULMEISTER, ESQ.		For Defendants Alexander and Baldwin, Inc., and East Maui Irrigation, LLC
TRISHA H.S.T. AKAGI, ESQ.		
CALEB P. ROWE, ESQ.		For Defendant County of Maui

REPORTED BY:  
Sandra M. N. You, CSR 406, RPR  
Official Court Reporter  
State of Hawaii

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FOR THE PLAINTIFF:

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1 THURSDAY, AUGUST 6, 2020 A.M. SESSION

2 THE LAW CLERK: The Circuit Court of the First  
3 Circuit is now in session.

4 Calling Case Number 1, Civil Number 19-1-0019,  
5 Sierra Club versus Board of Land and Natural Resources,  
6 jury-waived trial.

7 Counsel, appearances, please, starting with  
8 plaintiff.

9 MR. FRANKEL: Good morning, Your Honor. David  
10 Frankel with the Sierra Club here virtually with Marti  
11 Townsend, the Sierra Club's director of the Hawaii chapter.

12 THE COURT: Good morning.

13 THE LAW CLERK: Alexander & Baldwin?

14 MR. SCHULMEISTER: David Schulmeister and Trisha  
15 Akagi for Alexander & Baldwin/East Maui Irrigation Company.

16 THE COURT: Good morning.

17 THE LAW CLERK: And the State of Hawaii?

18 MR. WYNHOFF: Good morning, Your Honor. Melissa  
19 Goldman and Bill Wynhoff are in the room together. Suzanne  
20 Case is our party witness. Lauren Chun has not yet joined  
21 us, Your Honor. She is on -- actually on another --  
22 another hearing with a different judge, but probably will  
23 come in later. And good morning.

24 THE COURT: And good morning.

25 THE LAW CLERK: And County of Maui?

1 MR. ROWE: Good morning, Your Honor. Deputy  
2 Corporation Counsel Caleb Rowe on behalf of the County of  
3 Maui. And in the conference room with me, I have my  
4 secretary, Candace Stahl, who's going to be helping me with  
5 exhibits.

6 THE COURT: Thank you, everybody.

7 Ready to go? Mr. Frankel, are you ready to call  
8 the witness?

9 MR. FRANKEL: Yes. She's just outside waiting,  
10 so, yes.

11 THE COURT: Mr. Schulmeister, I see your hand  
12 up. Go ahead.

13 MR. SCHULMEISTER: Yes. There is an issue that  
14 I wanted to ask you, permission to -- follow-up issue that  
15 I want to take up. And that is, in -- earlier, one of our  
16 motions in limine had involved a question of -- and it was  
17 a request to take judicial notice of various documents that  
18 were exhibits in the Commission on Water Resource  
19 Management hearing that led to the decision and order on  
20 the interim instream flow standards. It's stipulated into  
21 evidence as Exhibit J-14.

22 Now, the actual decision refers to two exhibits  
23 as being attached, and one of those exhibits has been  
24 stipulated into evidence by the -- by all the parties. But  
25 the other one, which is AB-1, which is a map of the East

1 Maui --

2 COURT REPORTER: East Maui what? I'm sorry.

3 East Maui what?

4 MR. SCHULMEISTER: -- (indiscernible) --

5 COURT REPORTER: Excuse me. Excuse me.

6 THE COURT: Hold it.

7 Yeah.

8 COURT REPORTER: "AB-1, which is a map of the  
9 East Maui" what? I'm sorry.

10 THE COURT: Did you hear that?

11 MR. SCHULMEISTER: No, I did not hear that.

12 THE COURT: Okay. It's the court reporter. She  
13 could not make out what you said after it's "a map of the  
14 East Maui" -- blank.

15 MR. SCHULMEISTER: Ditch system.

16 THE COURT: Thank you. Go ahead.

17 MR. SCHULMEISTER: Okay. So this is -- so we  
18 would like the Court to take up the issue of whether or not  
19 it will take judicial notice of this map and receive it in  
20 evidence.

21 THE COURT: Okay. Well, I'll be glad to do  
22 that, but not on the fly right here, right now. It's the  
23 first time I've heard of this. It would be helpful if you  
24 can give us advance notice when you're going to make a  
25 request like that.

1 Is there any particular --

2 MR. SCHULMEISTER: (Indiscernible.)

3 THE COURT: Is there any particular urgency --

4 MR. SCHULMEISTER: (Indiscernible.)

5 THE COURT: -- of doing it this morning as  
6 opposed to some other point?

7 MR. SCHULMEISTER: It doesn't have to be this  
8 morning, but it was the subject of a motion in limine that  
9 was briefed at -- that the Court took under -- deferred  
10 ruling on.

11 THE COURT: I understand that. I'm not  
12 disputing that whatsoever. I'm just saying right here,  
13 right now, I'm not prepared to think about it or make a  
14 decision. I need to review it again and look at my notes.  
15 So --

16 MR. SCHULMEISTER: (Indiscernible.)

17 THE COURT: -- I'll try to take --

18 MR. SCHULMEISTER: (Indiscernible.)

19 THE COURT: I'll try to take a look at that  
20 later. But feel free to remind me again in case I forget.

21 MR. SCHULMEISTER: Okay. And then I --  
22 Ms. Akagi will be handling the first few witnesses.

23 THE COURT: Okay.

24 MR. SCHULMEISTER: So I'm planning to basically  
25 go off camera and allow her leading -- taking the lead --

1 THE COURT: All right.

2 MR. SCHULMEISTER: -- at this point.

3 THE COURT: Thank you.

4 MR. WYNHOFF: And, Your Honor, just so the Court  
5 knows, I will be -- Bill Wynhoff -- will be questioning or  
6 defending or whatever with respect to Miranda Camp there,  
7 and just to let you know -- Mr. Frankel and the Court  
8 knows.

9 THE COURT: All right. Thank you.

10 All right. Anything else before we start?

11 MR. FRANKEL: Well, I may as well say two  
12 things, Your Honor.

13 First, we have -- the specific issue of that map  
14 has really not been extensively briefed. It was part of  
15 dozens and dozens and dozens of exhibits that Alexander  
16 talked about in its motion, so we'll have a lot to say  
17 about that when it comes up.

18 And the second issue, I suppose is a preemptory  
19 apology, that it is going to be challenging for me to refer  
20 to these -- these witnesses today, with Mr. and Ms. and  
21 their last name. I will do my best. But I -- I can see  
22 myself not doing that. So I apologize in advance if that  
23 happens.

24 THE COURT: Okay. I'm not quite sure what you  
25 mean by that. But we'll just take it a step at a time and

1 do the best we can.

2 Yes, Mr. Rowe, you have your hand up. Go ahead.

3 MR. ROWE: Yes. I have the Sierra Club witness  
4 Miranda Camp here in my conference room with me, just  
5 letting you know. She just stepped in.

6 THE COURT: Thank you.

7 Welcome.

8 All right. Is that it for now?

9 All right. Let's go ahead and call the witness,  
10 and we'll swear her in.

11 THE CLERK: The witness may not stand, but if  
12 she could just raise her right hand, that would be fine.

13 MIRANDA CAMP,  
14 called as a witness by and on behalf of the Plaintiff,  
15 having been first duly sworn, was examined and testified as  
16 follows:

17 THE COURT: Ms. Camp, please state your full  
18 name and then spell your name for our court reporter.

19 THE WITNESS: Miranda Stephens Camp. And that's  
20 M-i-r-a-n-d-a. Stephens is S-t-e-p-h-e-n-s. And Camp is  
21 C-a-m-p.

22 THE COURT: Thank you very much.

23 Mr. Frankel, go ahead.

24 ///

25 ///



DIRECT EXAMINATION

BY MR. FRANKEL:

Q. Ms. Camp, where do you live?

A. I live in Kihei, Maui.

Q. And how long have you lived on Maui?

A. I've been on Maui for 23 years.

Q. Are you a member of the Sierra Club?

A. Yes.

Q. How long have you been a member of the Sierra Club?

A. For about 30 years or so.

Q. Do you recall back in 2001 whether you attended a meeting of the Board of Land and Natural Resources at which it discussed the issuance of revocable permits to A&B and EMI to take water from streams in East Maui?

A. I do remember a long time ago being at a meeting like that, yes.

Q. And who did you testify on behalf of?

A. The Sierra Club.

Q. Okay. Are you a member of Maui Tomorrow?

A. No.

Q. Have you ever been a member of Maui Tomorrow?

A. No. I know of them, but I don't think I've ever been a member.

Q. Are you or have you ever been a member of Na

1 Moku?

2 A. No.

3 Q. What role do you currently serve in the Sierra  
4 Club?

5 A. I'm cochair, and I also lead (indiscernible).

6 COURT REPORTER: Lead hikes?

7 THE COURT: Hold on. Timeout.

8 Cochair and leads what?

9 THE WITNESS: Hikes. I lead (indiscernible).

10 THE COURT: Hikes?

11 THE WITNESS: Yeah, h-i-k-e-s, hikes.

12 THE COURT: All right. Thank you.

13 THE WITNESS: I'm a hike leader.

14 THE COURT: I think we're having a little  
15 difficulty on this end because Ms. Camp's voice is -- I  
16 don't know if it's -- I don't know. It's just not  
17 projecting well for some reason. Can we do something with  
18 the microphone, maybe? Could you --

19 MR. ROWE: (Indiscernible.)

20 THE WITNESS: Can I take off the mask? That  
21 might help.

22 THE COURT: Well, I don't know. I don't want to  
23 give you advice on that. That's a personal preference kind  
24 of thing. I want everybody to be safe. I'll say that.

25 Say a couple of things, Ms. Camp.

1 THE WITNESS: Can you hear me better?

2 THE COURT: Yes, that's better. Thank you.

3 Q. (BY MR. FRANKEL) So going back, when you said  
4 you're cochair, that's of what entity of the Sierra Club?

5 A. Oh, the Maui Group.

6 Q. All right. And so what does a Sierra Club hike  
7 leader do?

8 A. We take people on hikes. You know, I'll do  
9 maybe 34 hikes in a quarter. Myself, maybe less. But  
10 we're just leading people on hikes to enjoy nature.

11 Q. And what kind of hikes does the Sierra Club  
12 offer in East Maui?

13 A. Most of our hikes in East Maui are along  
14 streams. Those are very popular hikes.

15 Q. And have you led -- have you led hikes -- Sierra  
16 Club hikes in East Maui?

17 A. Yes. That -- those are my favorite.

18 Q. What streams have you led hikes to in East Maui?  
19 And I'm going to ask you -- this can be a little  
20 challenging. But when it comes to the Hawaiian names of  
21 streams, if you -- to the best you can, if you could spell  
22 each one as you come across it.

23 A. Okay. For one thing, I can never remember all  
24 the names of the streams. We have like -- they are  
25 difficult. But I will name some that I can remember.

1 Waikamoi, which is W-a-i-k-a-m-o-i; Wahine (indiscernible),  
2 which is W-a-h-i-n-e and then (indiscernible)-e-e. Let's  
3 see.

4 THE COURT: I'm sorry. We didn't get that. I  
5 couldn't even -- I couldn't tell whether it's a P or a T or  
6 a C or --

7 THE WITNESS: Those are hard. Wahine Pe'e is  
8 with a P. The last word is with a P, as in "Paul," and e,  
9 'okina, e.

10 THE COURT: Okay. Thank you.

11 THE WITNESS: There's others.

12 Q. (BY MR. FRANKEL) You know, to help the Court  
13 out here, maybe if we can look at --

14 Caleb, if you help out here.

15 -- Joint Exhibit 14, which is in evidence, J-14?

16 THE COURT: I've got it.

17 I don't know if the witness has it, though.

18 MR. FRANKEL: Yeah, it doesn't look like it.

19 THE COURT: There we are. Thank you.

20 So the record should show that J-14 has been  
21 placed in front of the witness, or at least it appears to  
22 be J-14.

23 Q. (BY MR. FRANKEL) And if you could turn to page  
24 40. There are big numbers on the right-hand bottom of the  
25 page. There's other numbers too. But if you can look at

1 the big numbers at the bottom right-hand corner, I want you  
2 to go to the 40th page.

3 THE COURT: If the witness could tell us what  
4 number that corresponds to those streams, then we can just  
5 give the court reporter a copy of this page.

6 THE WITNESS: Okay. That would be better. Yes.  
7 (Indiscernible) --

8 THE COURT: I'm sorry. You're really breaking  
9 up quite badly right now. We need to fix this or it's  
10 going to be very painful for the next couple of hours.

11 THE WITNESS: Okay. 18 (Punalau) is what I  
12 said, 1-8.

13 Q. (BY MR. FRANKEL) And that's on to page 41;  
14 right? You've gone to the next page?

15 A. Yes. Yes, I'm on 41. Sorry. Okay. So 1  
16 (Makapipi), 2 (Hanawi), 8 (East Wailuaiki), 12  
17 (Waiokamilo), 15 (Pi'ina'au), then 18 (Punalau) I mentioned  
18 earlier, 21 (Wahinepe'e), 22 (Waikamoi), 23 (Kolea). I  
19 think that's the main ones I've led Sierra Club hikes on.  
20 I don't see (indiscernible). I guess that it's  
21 (indiscernible). I don't see that one.

22 THE COURT: I don't understand what you're  
23 saying. It's just not working right now. I'm sorry.

24 THE WITNESS: (Indiscernible.)

25 THE COURT: I don't know. Is that the same

1 microphone we had before, Mr. Rowe? Because when we did a  
2 test, it seemed clear. I wonder what the difference is.

3 THE WITNESS: I don't know. Is it my voice?  
4 (indiscernible) works.

5 THE COURT: I can't say. One of the problems we  
6 often have, Ms. Camp -- it has nothing to do with you -- is  
7 it's just if people move around and they're changing their  
8 distance from the microphone. That can cause problems. So  
9 I guess just try really hard to stay in one place. I know  
10 that's not easy, but do your best. And we'll just have  
11 to --

12 THE WITNESS: Okay. Do -- do I need to start  
13 over with my numbers?

14 THE COURT: No. I'll read them into the record  
15 and ask you to confirm. Looking at pages 40 and 41, on  
16 Exhibit J-14, I understood you to say you visited and done  
17 hikes -- or is it yourself hikes or you've led hikes on  
18 these ones that you've numbered?

19 THE WITNESS: I've led hikes.

20 THE COURT: All right. So you've led hikes to  
21 the streams that are numbered 1 (Makapipi), 2 (Hanawi), 8  
22 (East Wailuaiki), 12 (Waiokamilo), 15 (Pi'ina'au), 18  
23 (Punalau), and 21 (Wahinepe'e), 22 (Waikamoi), and 23  
24 (Kolea). Is that -- did I get that accurately?

25 THE WITNESS: Yes. I just saw 28

1 (Nailiilihaele) to add.

2 THE COURT: So add 28.

3 So the Court will give a copy of those two pages  
4 to the court reporter, and the court reporter can put in  
5 the spelling of the streams in those paragraphs.

6 Go ahead.

7 MR. FRANKEL: Thank you.

8 Q. (BY MR. FRANKEL) And we'll try to do the same  
9 approach for other streams you've hiked to which were not  
10 hikes that you were leading.

11 Again looking at Exhibit J-14, if you could just  
12 identify the numbers that are different from numbers you've  
13 already given for hikes that you have had that you weren't  
14 leading the hike?

15 A. Okay. I mean, it definitely -- some streams I  
16 don't know the name of. I know -- I don't see it yet. 36  
17 (Honopou). Let's see. I think -- I think mainly 36.  
18 (Indiscernible), but I'm not really (indiscernible) can't  
19 remember the name of.

20 THE COURT: We didn't hear that.

21 THE WITNESS: (Indiscernible) --

22 THE COURT: We didn't hear that last --

23 THE WITNESS: -- Twin Falls -- okay. I don't --  
24 there's other streams that I don't really know the names.

25 THE COURT: Whatever you just did, that was

1 clear. So keep doing more of that.

2 THE WITNESS: Okay. I was really close.

3 THE COURT: Okay. Great. It's trial and error,  
4 but we'll get it.

5 Q. (BY MR. FRANKEL) Ms. Camp, I think you said the  
6 stream by Twin Falls; is that right?

7 A. Yes.

8 Q. Okay. Great.

9 Now, how often would you say you hiked in East  
10 Maui?

11 A. I try to hike in East Maui twice a month on  
12 average.

13 Q. And why do you enjoy hiking to and along  
14 streams?

15 A. I guess it makes me happy. I don't know. I'm a  
16 water person, and I feel so happy and wonderful when I'm  
17 in, you know, a lush environment along the streams and  
18 seeing native plants and all the water, hearing the water,  
19 feeling the water. It's just -- it's something I have to  
20 do, you know. It feeds my soul.

21 Q. Can you tell me about 'o'opu you've seen in East  
22 Maui streams?

23 A. I have seen some 'o'opu, but not -- it's very  
24 rare. It's very rare that I see 'o'opu anymore, I mean I  
25 guess really ever, because a lot of the streams, they're



1 dry before they get down to the ocean. So -- but I do see  
2 'o'opu sometimes.

3 Q. Have you seen the East Maui Irrigation Company's  
4 diversion structures on streams in East Maui?

5 A. Yes, definitely.

6 Q. Can you describe what the stream looks like  
7 above the diversion structure?

8 A. It looks lush. There's more native plants when  
9 there's water flowing, and it's just really enjoyable to be  
10 in that environment where there's plenty of water.

11 Q. And what does it look like below the diversion  
12 structure?

13 A. I don't like hiking (indiscernible) --

14 THE COURT: Timeout. Ms. Camp, timeout.

15 THE WITNESS: Yes.

16 THE COURT: Timeout. That all got garbled after  
17 "I don't like hiking," maybe because you were speeding up a  
18 little. Try to talk a little bit slower.

19 THE WITNESS: Okay. Below the diversion  
20 structures, it's kind of depressing to me, because there's  
21 a lot more invasive plants, and obviously it's not -- it  
22 just doesn't feel like there's a life. There are plants,  
23 but it just doesn't feel as good, being there with very  
24 little to no water in the streambed.

25 Q. (BY MR. FRANKEL) How has your hiking experience

1 been affected by the diversion of water from East Maui  
2 streams?

3 A. Well, like I said, I don't enjoy hiking after a  
4 diversion. It's much more enjoyable to hike above the  
5 diversion, but there's so many, sometimes it's hard to get  
6 high enough to where there's good stream flow.

7 Q. How have the condition -- how have the  
8 conditions of the streams changed since 2017, when the  
9 sugar plantation shut down?

10 A. I definitely noticed more (indiscernible) --

11 COURT REPORTER: More what?

12 THE COURT: More what?

13 THE WITNESS: -- (indiscernible) --

14 THE COURT: Timeout. Ms. Camp.

15 THE WITNESS: Yes.

16 THE COURT: You definitely noticed more what?  
17 Start over from there.

18 THE WITNESS: More -- additional water in some  
19 streams sometimes. I wasn't sure what to attribute that  
20 to. But some streams, I've noticed, seem to have a little  
21 more water. So it's, you know, harder to go rock hopping  
22 along the streams, but it's nice.

23 Q. (BY MR. FRANKEL) And what about -- so have all  
24 the streams -- do all the streams that you hike on have  
25 more water now since -- well, since 2017, than prior to

1 that?

2 A. Well, it -- it -- they have -- not all the  
3 streams and not all the time. So I don't know if -- you  
4 know, I don't know whether it -- is it rainfall? Is it  
5 because they're putting more water in? You know, I'm not  
6 sure which streams that, you know, are being diverted and  
7 what's diverted. I just know that I have noticed that  
8 there was a little more flow on some streams. I didn't  
9 necessarily make a note of it, which streams have more flow  
10 on what days, because I just go to enjoy myself and don't  
11 really think about it when I'm there.

12 Q. Is water still diverted from any of the streams  
13 you hike to or along today?

14 A. Yes. Yeah, there's -- some of the streams seem  
15 the same as they did before.

16 Q. And how would your experience be affected if  
17 more water was diverted from the streams as compared --  
18 more water was diverted than the current levels of  
19 diversion, if more water diversion in -- in the future?

20 THE COURT: You've got to start over with that  
21 one, Mr. Frankel.

22 Q. (BY MR. FRANKEL) How would your experiences be  
23 affected if more water were to be diverted from these  
24 streams?

25 MR. WYNHOFF: Objection. Calls for speculation.

1 THE COURT: You may answer.

2 THE WITNESS: Okay. I -- I enjoy water in the  
3 streams, so if there's less water, I -- I would definitely  
4 enjoy it less. I definitely like to see more water in the  
5 streams. It's just more enjoyable. It sounds better.  
6 The -- the forest looks better.

7 MR. FRANKEL: Thank you, Your Honor. No further  
8 questions.

9 THE COURT: All right. Cross-examination.  
10 We're going in the same order as before. So I think that  
11 would be -- Ms. Akagi goes first.

12 MS. AKAGI: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. AKAGI:

15 Q. Good morning, Ms. Camp. My name is Trisha  
16 Akagi, and I represent Alexander & Baldwin and East Maui  
17 Irrigation.

18 Can you hear me okay?

19 A. I can.

20 Q. Okay. If at any time you can't hear me or you  
21 don't understand what I'm saying, please let me know.

22 A. I will.

23 Q. So Mr. Frankel had asked you earlier if you're a  
24 member of the Maui Tomorrow organization.

25 Do you recall that?

1 A. Yes.

2 Q. And you said that you've never been a member;  
3 right?

4 A. I know the group, and I know people in it. I  
5 don't recall actually paying for membership.

6 Q. Okay. Would you consider yourself to be a  
7 supporter of Maui Tomorrow?

8 A. No, not really. Mainly I just donate to the  
9 Sierra Club and -- as I recall.

10 Q. Okay. You're aware that the Commission on Water  
11 Resource Management held a contested case hearing regarding  
12 petitions to amend interim instream flow standards for  
13 certain East Maui streams; correct?

14 A. Yes.

15 Q. You had submitted a written declaration in that  
16 contested case proceeding; correct?

17 A. Yes.

18 Q. And you submitted that written declaration as a  
19 member of the Sierra Club and a supporter of Maui Tomorrow;  
20 correct?

21 A. I -- I'm happy what Maui Tomorrow does. I just  
22 don't remember being a member. So that could be correct,  
23 yes.

24 Q. Okay. So Mr. Frankel had also asked you about  
25 what these streams look like above diversion structures

1 that you had observed.

2 What streams were you describing?

3 A. When I said I'm really -- I have a really bad  
4 memory with the streams, you know, which diversions are on  
5 which stream. I'm just hiking. And I mean, you know,  
6 because of COVID, we weren't able to go past Twin Falls for  
7 a very long time now, since the beginning of the year. So  
8 some of those hikes were before this year. And so my  
9 memory is not great on which hikes were which.

10 Q. Okay. And so the time frame that you're  
11 describing, is that this year -- is it a couple of years  
12 ago? Could you give us a time reference?

13 A. Anytime before this year. We haven't been able  
14 to lead Sierra Club hikes since COVID happened. So I  
15 haven't led any hikes. I've just gone over to enjoy some  
16 hikes now and then, but when I -- when I was able to get  
17 beyond Twin Falls. But I haven't led a lot of those hikes  
18 that I named obviously anytime this year.

19 Q. Okay. So your observations are from 2019 or  
20 earlier?

21 A. Yes.

22 Q. And are these observations that you made after  
23 sugar cultivation stopped?

24 A. Yes. After 2017, is that it?

25 Q. Around there, yes.

1 A. Yes.

2 Q. But you're not -- I'm sorry. I'm going to back  
3 up a little bit.

4 When you go hiking, how is the weather usually?

5 A. I try to hike when it's not raining, but it  
6 doesn't mean that it hadn't rained previously before I get  
7 there. I do get caught in some light rain sometimes.

8 Q. But it's fair to say that you're not going  
9 hiking during rainstorms; correct?

10 A. Correct.

11 Q. It's generally you try to plan your hikes around  
12 sunny or better weather?

13 A. Yes, I try.

14 Q. So you had testified that your hiking experience  
15 is affected when the streams are diverted; is that correct?

16 A. Correct.

17 Q. But it depends on how much -- how much the  
18 streams are being diverted; correct?

19 A. I would say that's fair. I mean, that is  
20 very -- that's very vague. But -- but, yeah, I mean, as  
21 long as there's water -- more water, the better.

22 Q. Okay. So your experience is not diminished  
23 simply because the stream is diverted, but that the stream  
24 is being diverted to the point where it starts to run dry;  
25 correct?

1           A.     Yes, or very little water.  If it's dry,  
2 definitely it's not as nice an experience, and even if it's  
3 really low, very low water.  But if it runs and looks like  
4 a stream, you know, feels like a stream, it feels like the  
5 forest feels health, then that's a better experience.

6           Q.     Okay.  And you don't know at what level of  
7 diversions it would cause the streams to start to run dry;  
8 correct?

9           A.     I don't know, but I've definitely seen it.

10          Q.     So is it your testimony that your hiking  
11 experience is being affected by the current stream  
12 diversions?

13          A.     Not on all streams.  But on -- on some streams,  
14 it seems like there's still a little amount, but on some  
15 streams, it seems like the water has been a little bit, you  
16 know, better level.

17          Q.     Okay.  So for some streams, the current  
18 diversions are not currently affecting your hiking  
19 experience?

20          A.     Yeah.  If there's diversions on those streams,  
21 then -- and they're still flowing, then it's -- it's still  
22 a nice experience.

23          Q.     But there are --

24          A.     (Indiscernible) --

25          Q.     I'm sorry.



1           A.     As long as it's not too much water that they're  
2 taking out.

3           Q.     Okay. So there are some streams, though, that  
4 are -- you know, if you were to hike along those streams  
5 now with the current diversions, your hiking experience is  
6 being affected; is that correct?

7           A.     Yes.

8           Q.     Okay. So if the current amount of water being  
9 diverted continues, then that diminished hiking experience  
10 that you're having will also continue; correct?

11          A.     Correct.

12          Q.     But, again, you don't know how much water is  
13 currently being diverted; right?

14          A.     No, not from each stream. I don't have any  
15 idea.

16          Q.     Are you aware that the Sierra Club is asking the  
17 Court to limit the amount of water that can be diverted by  
18 EMI to 25 million gallons per day?

19          A.     I think I read that.

20          Q.     So if the Court were to limit the amount of  
21 water that can be diverted to 30 million gallons of water  
22 per day, instead of the 25 that the Sierra Club has asked  
23 for, how would that increase in 5 million gallons of water  
24 per day affect your hiking experience?

25          A.     I don't really know until I can witness it.

1 Q. Okay. Did you testify at the November 9th,  
2 2018, Board of Land and Natural Resources meeting regarding  
3 the subject revocable permits?

4 A. I did a declaration for this. I was -- I don't  
5 know how long ago that was. A year ago or so?

6 Q. Okay. But did you --

7 A. (Indiscernible.)

8 Q. I'm sorry. Were you done?

9 A. Is that the meeting? I'm really bad with dates.  
10 So . . .

11 Q. On November 9th, 2018, there was a Board of Land  
12 and Natural Resources meeting held on Oahu. I think you  
13 might remember if you flew to Oahu to testify at that  
14 meeting.

15 A. No, I did not do that.

16 Q. Okay. There was also a Board of Land and  
17 Natural Resources meeting on October 11th, 2019, regarding  
18 the revocable permits, and that was also on Oahu.

19 Did you appear at that meeting to testify?

20 A. No.

21 Q. Do you recall if you submitted written testimony  
22 to the Board of Land and Natural Resources regarding the  
23 revocable permits prior to its November 9th, 2018, meeting?

24 A. I don't recall.

25 Q. Okay. Do you recall if you submitted written

1 testimony to the Board of Land and Natural Resources  
2 regarding the subject revocable permits prior to its  
3 October 11th, 2019, meeting?

4 A. I don't think so. I just remember being in  
5 person in Maui.

6 MS. AKAGI: Okay. I don't have any further  
7 questions, Your Honor.

8 THE COURT: Thank you.

9 I think we're -- I forget the order. We're  
10 going to Mr. Rowe first and then the State last. I think  
11 that's what we did the other time; right?

12 All right. Mr. Rowe, any --

13 MR. ROWE: Yes --

14 THE COURT: -- questions?

15 MR. ROWE: -- (indiscernible).

16 THE COURT: I'm sorry. We didn't hear that.  
17 Feel free to keep your mask on. I think we'll still be  
18 able to hear you.

19 MR. ROWE: I don't have any questions for this  
20 witness, Your Honor.

21 THE COURT: All right. Got that one. Thank  
22 you.

23 Mr. Wynhoff, you said it was going to be you,  
24 not Ms. Goldman; right? All right. Your turn.

25 MR. WYNHOFF: Okay. Sure. Thank you.

CROSS-EXAMINATION

BY MR. WYNHOFF:

Q. Good morning, Ms. Camp.

A. Good morning.

Q. Ms. Camp, you're aware, are you not, that the water being diverted is being used, in part, for domestic water use by your fellow citizens on Maui? You know that; right?

A. That some of the water being diverted is being used for --

Q. (Indiscernible) --

A. -- (indiscernible) -- I'm sorry? Can you repeat?

Q. Sure I can.

You know that some of the water being diverted is being used for domestic water use by your fellow citizens on Maui; right?

A. Yes.

Q. And you know that some of the water being diverted is being used to grow crops in Central Maui; right?

A. It was being used for sugar cane, yes.

Q. Did you know that it's (indiscernible) --

THE COURT: Timeout. Sorry. Mr. Wynhoff, we got about half of your sentence. And somehow your voice

1 changed. So please restate.

2 MR. WYNHOFF: Oh, thank you, Your Honor.

3 Q. (BY MR. WYNHOFF) So, Ms. Camp, you know that  
4 some of the water is being used now to water crops in  
5 Central Maui; right?

6 A. I do see that they are growing some crops in  
7 Central Maui, yes.

8 Q. And some people might think that domestic water  
9 use by thousands of the citizens of Maui is important.  
10 Don't you agree that that's possible?

11 MR. FRANKEL: Objection, Your Honor.  
12 Speculation. Foundation.

13 THE COURT: I'll allow it.

14 THE WITNESS: Okay. So I answer?

15 THE COURT: Yes, please.

16 THE WITNESS: So he asked if I agree that water  
17 for domestic use is important?

18 THE COURT: Well, he --

19 MR. WYNHOFF: Yes, let's say that. Let's say  
20 that, Your Honor. Then I will avoid the objection.

21 THE COURT: Go ahead.

22 MR. WYNHOFF: Thank you, Your Honor.

23 THE WITNESS: I'm sorry. I -- I'm unclear what  
24 I'm answering right now.

25 THE COURT: I'm glad you said that.

1 Q. (BY MR. WYNHOFF) The question, Ms. Camp --

2 THE COURT: Mr. Wynhoff, I'm sorry. This is  
3 getting very awkward, but we'll get through it.

4 So, Ms. Camp, first of all, thank you very much  
5 for saying that. That's really important that witnesses  
6 speak up and, you know, be proactive. So thank you.

7 Mr. Wynhoff, please restate your question.

8 MR. WYNHOFF: Thank you, Your Honor. And, Your  
9 Honor and Ms. Camp, I know it's awkward, that sometimes we  
10 all seem to be speaking at the same time. And I apologize  
11 for that. Thank you, Your Honor. And I will rephrase it.

12 Q. (BY MR. WYNHOFF) Ms. Camp, let me just ask you  
13 this way: Do you agree that using water for thou --  
14 domestic use by thousands of your fellow citizens on Maui  
15 is important?

16 A. Yes, we need water.

17 Q. Do you agree that using water to grow crops in  
18 Central Maui is important?

19 A. Yes.

20 MR. WYNHOFF: Thank you, Your Honor. No further  
21 questions.

22 THE COURT: All right. Thank you.

23 Back to you, Mr. Frankel.

24 Oh, wait, actually, we've been going about 45  
25 minutes. So if you have any significant questioning at

1 all, let's take a break first.

2 MR. FRANKEL: Your Honor, I don't think it's  
3 going to take more than two minutes.

4 THE COURT: All right. Go ahead.

5 REDIRECT EXAMINATION

6 BY MR. FRANKEL:

7 Q. Ms. Camp, you were asked about your -- you  
8 talked about not leading any Sierra Club hikes in the COVID  
9 era of this year.

10 But have you hiked in or along East Maui streams  
11 yourself this year in this post -- in this COVID era?

12 A. Yes, I have. I have not been beyond  
13 (indiscernible) --

14 COURT REPORTER: Beyond what?

15 THE WITNESS: -- (indiscernible).

16 THE COURT: Hold on.

17 COURT REPORTER: "I have not been beyond" what?

18 THE WITNESS: Ke'anae Peninsula.

19 THE COURT: Ke'anae Peninsula.

20 Okay. Thank you. Go ahead.

21 MR. FRANKEL: You need that spelled?

22 THE COURT: Yes, please.

23 THE WITNESS: K-e-a-n-a-e, I think.

24 Q. (BY MR. FRANKEL) Now, Ms. Camp, Ms. Akagi asked  
25 you about the 5 -- an additional 5 million gallons that

1 might be taken from the East Maui's lands.

2 If all that water was taken from one stream or  
3 just two streams that you hike along, is that an impact  
4 that would -- would that affect your hiking experience?

5 A. Yes. That's why that was hard to answer,  
6 because it was not very clear, 5 million gallons taken from  
7 how many streams. Yes, if it was one or two streams, it  
8 would seem like a lot.

9 MR. FRANKEL: Thank you, Your Honor. No further  
10 questions.

11 THE COURT: Thank you.

12 Ms. Akagi, back to you.

13 MS. AKAGI: Just one question, Your Honor.

14 RECROSS-EXAMINATION

15 BY MS. AKAGI:

16 Q. Ms. Camp, so along those lines, if the  
17 additional water was taken from streams that you don't  
18 visit, you wouldn't individually be impacted at all;  
19 correct?

20 A. No, if I don't visit them, I would not  
21 individually be impacted.

22 MS. AKAGI: Thank you.

23 No further questions, Your Honor.

24 THE COURT: Mr. Rowe?

25 MR. ROWE: No further questions, Your Honor.



1 THE COURT: Thank you.

2 Mr. Wynhoff?

3 RE CROSS-EXAMINATION

4 BY MR. WYNHOFF:

5 Q. Ms. Camp, are you aware that the Commission on  
6 Water Resource Management specifically decided that it  
7 would be better to take all of the water from one stream,  
8 rather than spread it out amongst different streams?

9 A. I am not aware of that.

10 MR. WYNHOFF: Thank you, Your Honor.

11 THE COURT: Back to you, Mr. Frankel.

12 MR. FRANKEL: No further questions, Your Honor.

13 THE COURT: All right. Mr. Rowe?

14 I'm sorry. Ms. Akagi, you get to go first. Do  
15 you have any follow-up?

16 MS. AKAGI: No further questions, Your Honor.

17 THE COURT: All right. Mr. Rowe?

18 MR. ROWE: Nothing further.

19 THE COURT: That's -- you're pau, right,  
20 Mr. Wynhoff?

21 MR. WYNHOFF: Yes, Your Honor. Thank you.

22 THE COURT: Thank you very much for your  
23 testimony. You are concluded, and you are excused.

24 MR. FRANKEL: Your Honor, is it all right if --  
25 I guess we're going to take a break. But can the County

1 bring Megan Powers in while we're on break so we're all  
2 ready to go when we come back?

3 THE COURT: Well, if they're all comfortable  
4 being together in that room, it's fine with me. But if  
5 they'd rather preserve distancing, that's their call.

6 MR. FRANKEL: Okay.

7 MR. ROWE: Yes. Ms. (indiscernible) -- I'm not  
8 sure if she's here. (Indiscernible) here.

9 COURT REPORTER: Mr. Rowe, I can't understand  
10 what you're saying.

11 THE COURT: This is housekeeping. Can we go off  
12 record? All right. We're going off record.

13 And we'll take a -- we're going to take a break  
14 until 10:00, instead of just ten minutes.

15 (A discussion was held off the record.)

16 (A recess was taken.)

17 THE COURT: We are back on record.

18 Next witness, please.

19 All counsel are present.

20 MR. FRANKEL: May Megan Powers be sworn in?

21 THE COURT: Yes.

22 THE CLERK: If you can have the witness raise  
23 her right hand. She does not need to stand, just raise her  
24 right hand.

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MEGAN POWERS,  
called as a witness by and on behalf of the Plaintiff,  
having been first duly sworn, was examined and testified as  
follows:

THE COURT: Ms. Powers, please state your full  
name and then spell it for our court reporter. Thank you.

THE WITNESS: Megan (indiscernible) --

COURT REPORTER: What --

THE WITNESS: -- Powers. That's spelled  
M-e-g-a-n L-e-s-l-i-e L-o-o-m-i-s P-o-w-e-r-s.

THE COURT: Thank you. Now, just FYI, we had  
some problems with the prior witness, and one of the things  
that seemed to help is that if you can keep your head  
relatively still. The goal is to kind of keep the distance  
between you and the microphone the same, instead of it  
changing too much, and try to stay as close to the  
microphone as you can while being comfortable, instead of  
leaning back or what have you. All right?

THE WITNESS: Okay.

THE COURT: Thank you.

Mr. Frankel, go ahead.

DIRECT EXAMINATION

BY MR. FRANKEL:

Q. And, Ms. Powers, in your testimony as well, if  
you come across -- if you're going to mention a Hawaiian

1 name, please spell it and enunciate it slowly. That will  
2 help the court reporter. All right?

3 A. Okay. Can you hear me?

4 Q. (Nods head.)

5 Are you a member of the Sierra Club?

6 A. Yes.

7 Q. How long have you been a member of the Sierra  
8 Club?

9 A. At least a decade, maybe more.

10 Q. Where do you live?

11 A. I live in Haiku currently.

12 Q. And that's on the island of?

13 A. Haiku is on the island of Maui, and it is the  
14 North Shore of Maui.

15 Q. Okay. And how long have you lived on Maui?

16 A. I've lived on Maui since 1970, so I guess that's  
17 50 years now. I spent seven years on Kauai, from '73 to  
18 '80, when my mother was a cofounder of Island School there,  
19 but I came back every summer and spring break. I always  
20 felt like Maui was my home. And I came back in 1980 to  
21 finish high school at Seabury Hall and graduated there.

22 Q. And so where on Maui did you grow up?

23 A. I grew up out in (indiscernible).

24 COURT REPORTER: Hurelo (phonetic)?

25 THE WITNESS: My family has property that

1 borders three different streams. And at different times in  
2 the -- in those years, I lived alongside those different  
3 streams.

4 THE COURT: Could you --

5 THE WITNESS: (Indiscernible.)

6 THE COURT: -- please spell -- I think you said  
7 Palehu?

8 THE WITNESS: No. I didn't say -- oh, I said  
9 Huelo.

10 THE COURT: Please spell.

11 THE WITNESS: You spell Huelo H-u-e-l-o.

12 THE COURT: Thank you.

13 Q. (BY MR. FRANKEL) And now, slowly and with lots  
14 of spellings, can you identify the streams that you lived  
15 next to, growing up?

16 A. Yes. From 1970 to 1973, I lived alongside  
17 Hanawana Stream. That's spelled H-a-n-a-w-a-n-a, one word.  
18 And then in '73, my father concluded the purchase of our  
19 property in Huelo, alongside a stream called Hoolawa. That  
20 is spelled H-o-o-l-a-w-a. And that is really the place  
21 that I call home. And really -- pardon me for getting  
22 teared up. So I basically lived there until about 12 years  
23 ago and -- along Hoolawa Stream.

24 The property that we have along Honopou Stream,  
25 which is spelled H-o-n-o-p-o-u, is conservation land, but

1 we would go up there and spend a week or two exploring and  
2 frolicking in nature along this beautiful piece of property  
3 that has the stream running by it. In those days, that  
4 stream was usually also dry except after rain events. Now,  
5 thank goodness, that is one of the restored streams or  
6 mostly restored, Honopou, H-o-n-o-p-o-u.

7 So there's my story. Those are the places that  
8 I've lived alongside the streams.

9 Q. Can you describe -- growing up near Hoolawa  
10 Stream, can you describe the stream and the area where you  
11 grew up?

12 A. Yes. So our property has about 350 feet of --  
13 that borders along the streambed. And all along the edge  
14 of our property, the stream was dry, and the stream was dry  
15 from basically our property all the way up to the bridge at  
16 the old Hana Highway on a road that is now called Ulalena  
17 Loop, U-l-a-l-e-n-a Loop. So it's the old Hana Highway.

18 And there's a bridge there. And at that bridge  
19 is an EMI diversion. And from that point, they always took  
20 all of the water, and so the streambed was dry for about a  
21 quarter mile through our property.

22 And then at the edge of our property, there was  
23 a big waterfall, about 30 feet tall and 30 feet wide, solid  
24 basalt cliff that went down to a pool that we called Kings'  
25 Pool that's about the size of an Olympic swimming pool.

1 And in that pool, there are springs that keep water flowing  
2 there year-round, although it varies with the seasons and  
3 the amount of rainfall. But from there to the sea, the  
4 river flows. I would say, on average, between 5 to 10  
5 gallons per minute is what we've measured flowing into the  
6 next pool, what we call Queens' Pool.

7 And so that is the overview of the area of the  
8 stream that I had the most interaction with, growing up.

9 Q. Can you describe for the Court, in the area  
10 below the waterfall what kinds of things you would do in  
11 that area, growing up?

12 A. It was the good life. Let me tell you. I am so  
13 blessed that those springs flowed and that we had the  
14 opportunity to experience a living stream. And so we would  
15 jump off the waterfall, which was thrilling. Even though  
16 you've done it before, it was always a momentous occasion  
17 to do it again.

18 I would swim in that pool. It's about the size  
19 of an Olympic swimming pool. And my father would do laps,  
20 about a mile every day. There were times when that's how  
21 much we swam. I really learned how to swim and snorkel  
22 there and how to free dive. I spent a lot of time with my  
23 mask and snorkel exploring the pool and exploring the  
24 shoreline and getting to know the different aspects of the  
25 pool, the different territories where different stream

1 animals liked to live.

2 There was a section that had all these big  
3 basalt columns that had fallen off the cliff. And that's  
4 where the 'o'opu nakea likes to live. They would all be  
5 spread out on these big columns. And there were other  
6 places that were where crawdads likes to live.

7 COURT REPORTER: Crawdads?

8 THE WITNESS: (Indiscernible) --

9 THE COURT: Timeout. Timeout. We think you  
10 said, where crawdads like to live; is that correct?

11 THE WITNESS: Yes. I don't know their proper  
12 names.

13 COURT REPORTER: And -- I'm sorry.

14 THE COURT: We have another question coming.  
15 Stand by.

16 COURT REPORTER: The 'o'opu nokea (phonetic)  
17 like to live?

18 THE COURT: We think you used the phrase 'o'opu  
19 nokea; is that correct?

20 THE WITNESS: 'O'opu nakea. It's spelled  
21 o-o-p-u, new word, n-a-k-e-a. Those are the light-brown  
22 kind of 'o'opu.

23 THE COURT: Good to go. Thank you.

24 THE WITNESS: So we -- I swam. I snorkeled. I  
25 learned how to dive. We had a rope swing tied to one of



1 the trees. Copying the big kids, I learned how to do flips  
2 and all kinds of fun things off the rope swings.

3 Let's see. There was -- there's a huge cave  
4 that you can fit a school bus in at the far end of the  
5 pool. And so that just made the whole experience more  
6 exotic. We'd spend time in the cave.

7 And there was -- there were three springs down  
8 there. One spring bubbled out of the back of the cave, and  
9 we used to collect drinking water there. And about 30  
10 years ago, it dried up. There's two other springs that I'm  
11 aware of that are basically under a ledge behind what would  
12 be a waterfall if water was flowing over the waterfall.  
13 But at least 85 percent of the time, EMI took the water,  
14 and so it was a big dry cliff.

15 But there's a ledge at the base of that where  
16 springwater would, one, drip out of the -- the top of the  
17 ledge out of the rock, where we put in a little piece of  
18 gutter, and we collected our drinking water there. We had  
19 it tested, and it was good, pure water. And there was  
20 another place at the surface water of the pool where water  
21 gushed out of the rock, and that was one of the main  
22 sources of water that kept the stream alive down to the  
23 sea.

24 Q. (BY MR. FRANKEL) Okay. Now, Ms. Powers, can  
25 you describe the area above what you call the waterfall?

1 What was that area like, growing up?

2 A. So that area -- we call that the upper pools,  
3 the part that bordered our property. And it was dry most  
4 of the time because EMI took all of the water. And so  
5 there would be -- except during rain events when there  
6 would be a big storm and EMI had more water than they  
7 needed, it would either overflow their diversions or they  
8 would open the gate to release water. But other than that,  
9 it was -- there would be a period of perhaps three weeks  
10 after a rain event where you can enjoy those pools and  
11 where the stream life was -- was coming back to life.

12 And then the water wouldn't come, and the water  
13 wouldn't come, and the water wouldn't come. And it just  
14 got drier and drier. And the small pools would dry up, and  
15 they'd become stagnant, and mosquitoes would start to  
16 thrive. And one of my things, as a little kid who loved  
17 animals, is I would go down to those upper pools and rescue  
18 fish and polliwogs and put them into the larger pools that  
19 weren't drying out as fast.

20 There was -- we had this special experience  
21 because Stephen Cabral, who worked for EMI, he knew that,  
22 you know, a stream at least needed at least once a year to  
23 get flushed out or something. So there was --  
24 consistently, when Stephen was in charge of managing the  
25 gates of the diversions, he would allow the stream to flow

1 uninterrupted about six weeks out of the year. That's  
2 just -- never more than six weeks. Sometimes it was four.

3 But during that time, we would -- and it wasn't  
4 a huge rain event. It wasn't like a storm that was just  
5 flushing everything out and turbine. It was a natural  
6 stream flow. And it was amazing to experience that. It  
7 was -- it was -- it would make your heart sing. And you  
8 would get so elated because you witnessed the stream come  
9 back to life.

10 You witnessed the ferns and the mosses  
11 rebounding and unfurling their bright green leaves. And  
12 you witnessed the life in the stream darting around in the  
13 fresh, bubbly, oxygenated water. And you could just -- and  
14 you could see life return. And the plants that -- that  
15 grow along a healthy streambed would start to revive along  
16 the edges.

17 And that was in stark contrast to the other 85  
18 percent of the year when it would just get drier and drier  
19 and plain grass would start to take over and other kind of  
20 invasive weed plants that can handle more of a dry  
21 environment. And that's when the mosquitoes would thrive  
22 in the ponds, and it would get sticky.

23 So I had the experience of that contrast. And I  
24 know how good it can get, and I know how bad it can get,  
25 from my experience living along that section of Hoolawa

1 Stream.

2 Q. Ms. Powers, can you describe to us why a  
3 free-flowing stream is important to you?

4 A. It means water is life, you know, wai ola. It  
5 means we depend on these living waters.

6 I -- I was so fortunate to grow up in nature, to  
7 be immersed in the elements and the natural cycles of  
8 nature and of life. And, you know, I -- I -- I'm made of  
9 that. You know, actually, the bones and the flesh in my  
10 body are made from the food that we grew and the water that  
11 we drank from that area. So I really have a visceral  
12 connection to how water is life, in a serious way.

13 And -- and so the value of a -- of a running  
14 stream is -- it is part of how the whole world works, you  
15 know, the water -- the hydrology cycle that we know about,  
16 with evaporation and clouds and rain and -- and the whole  
17 life cycle of plants and animals that rely on that. And  
18 we're just part of that web of life. We're a strand.

19 And we've been consistently -- especially with  
20 mismanagement of the watershed by EMI and A&B, we've been  
21 tearing holes in this web of life that we all depend on.  
22 And I know that from a very visceral sense.

23 And, you know, a lot of people didn't experience  
24 that, and they've never been there, and they don't know  
25 what that's like. I know what that's like. That's why I

1 get teared up when I talk about it. It's like -- it's just  
2 not my eyes. It's like every cell in my body knows what it  
3 is to have water that sustains life and to not have it.  
4 And I'm not only concerned about the streams that I live  
5 on, but all the streams. So -- there.

6 Q. All right. Ms. Powers, can you describe what  
7 happened to Hoolawa Stream after A&B stopped growing sugar?

8 A. Yes. That was a radical swing to the opposite  
9 extreme. You know, we've had -- you know, there was my  
10 time there, but then I know that there was a hundred-plus  
11 years before I got there of the stream being dry.

12 And then we swung into what I would describe as  
13 the equivalent of a 50-year flood that lasted two years.  
14 And I've experienced big floods out there. I've  
15 experienced the flood that shows up about every 10 years  
16 that's huge and an even bigger one that shows up about  
17 every 30 years, and then the massive one that shows up  
18 about every 50 years and so this massive rain events  
19 that -- that converge.

20 And so after A&B stopped farming and they  
21 stopped needing the water in the central valley, they still  
22 had the diversions, and they needed to dump the water.  
23 They needed to get rid of it before it arrived at the  
24 central valley in their ditches. And the diversions at  
25 Hoolawa Stream are some of those last gates that allow them

1 to release that water downstream and not -- you know, not  
2 arrive to the central valley.

3 So they opened the gate at -- at the bridge, the  
4 old Hana Highway bridge along Ulalena Loop. That was  
5 opened. And there was a lot of water flowing down the  
6 valley, because -- I don't know. Maybe that -- they  
7 didn't -- so they were releasing it down the valley.

8 And you'd stand there at the bridge and look at  
9 it and go, okay, that's -- that's a lot of water,  
10 but it's -- it's clear, and it's a nice -- it's a big,  
11 healthy stream flow. But then you'd get down to where our  
12 property is next to the river, and the stream flow is,  
13 like, four times that volume. And it was like, whoa, okay,  
14 what's going on?

15 Well, I knew what's going on because I'd spent  
16 time exploring the valley, and I knew about this other  
17 diversion that had a huge blowoff valve or blowoff tunnel.  
18 So there's this -- Haiku Ditch is an underground tunnel  
19 that passes underneath Ulalena Loop road.

20 And the diversion at the old Hana Highway bridge  
21 dumps water about 15 feet underground down to that tunnel.  
22 And that tunnel flows eastward -- I mean, westward. That  
23 tunnel is gathering water from all these streams in East  
24 Maui and delivering it to the central valley.

25 Well, when they don't want that to happen,

1 there's this other diversion where they can drop this huge  
2 gate in the tunnel underground and block the water from  
3 going to the central valley, and it overflows and heads out  
4 what's called a blowoff tunnel. That -- there's a -- we  
5 have a picture of that. It's about -- oh, gosh, at least  
6 15 feet tall and 10 feet wide.

7 And so I went exploring in, like, probably early  
8 2017 when the 50-year flood had just continued, and it was  
9 sunny weather, and it's like, wait a minute, this doesn't  
10 line up. Why is there so much water? And that blowoff  
11 valve was -- or tunnel was just an amazing, huge torrent of  
12 water flowing into Hoolawa Stream.

13 And so that's what explains the difference in  
14 flow at the bridge and the difference in flow coming down  
15 past our property.

16 THE COURT: Excuse me. Excuse me.

17 Ms. Goldman, you had your hand up?

18 MS. GOLDMAN: Thank you, Your Honor.

19 The State would object to this unresponsive  
20 answer, the lack of foundation for the technical knowledge  
21 that she has been discussing, and we would move to  
22 (indiscernible).

23 COURT REPORTER: "We would" what? Strike the  
24 answer?

25 THE COURT: Move to strike.

1 THE WITNESS: I didn't hear what  
2 (indiscernible).

3 THE COURT: So, Mr. Frankel, go ahead. I mean,  
4 one of the problems, obviously, it's a very, very long  
5 narrative answer. It would help if you break the questions  
6 down a little more succinctly. But go ahead and give your  
7 response to Ms. Goldman's objection.

8 MR. FRANKEL: I believe she both provided an  
9 answer to the question and provided her foundation  
10 answering the question.

11 I don't know. I don't want -- I don't want to  
12 be accused of coaching the witness here. So I can give  
13 you -- I can break down the answer she gave that  
14 demonstrates each component of that.

15 THE COURT: Okay.

16 MS. GOLDMAN: Your Honor, the objection -- oh.

17 THE COURT: Go ahead, Ms. Goldman.

18 MS. GOLDMAN: The objection is to foundation  
19 regarding the technical aspect of the ditch that was just  
20 discussed, how many feet below the ground, certain ditches  
21 conveying water, et cetera. I don't believe that the  
22 witness has established that technical knowledge.

23 THE COURT: Okay. Well, I understand the  
24 objection. I think I'm just going to take the answer as  
25 her understanding of these things. I'm not going to accept



1 it as some kind of an expert engineering opinion. And  
2 we'll just move forward.

3 But, Mr. Frankel, do what you can, and please  
4 break up the examination a little more. It will help  
5 everyone, I think.

6 MR. FRANKEL: Thank you, Your Honor.

7 THE COURT: Ms. Powers, just so you know -- and  
8 please don't take this as a criticism. It's not meant that  
9 way. In court, we don't have what you would call normal  
10 conversations. We have very brief questions and usually  
11 very brief answers. So try to just really focus in on the  
12 specific question that's being asked and answer only that  
13 question and then just wait for the next question.

14 Believe me, Mr. Frankel will ask you all the  
15 questions that he wants, to get your story out. So rely on  
16 him, instead of trying to tell the whole story yourself.  
17 And it will go easier from a legal perspective that way.  
18 Okay?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Thanks very much.  
21 Go ahead.

22 Q. (BY MR. FRANKEL) So, Ms. Powers, wait until I  
23 ask you a question. I know you have a lot to say, but you  
24 will have to answer my question. So if you could help us  
25 out a little bit here.

1           When you were younger and in your explorations  
2 above Hoolawa Stream, can you tell us about that, for lack  
3 of a better word, structure you encountered with the latter  
4 near the blowoff tunnel?

5           A.     Yes.

6           Q.     So can you just --

7           A.     I -- I've been into the blowoff tunnel. I've  
8 hiked all the way up the blowoff tunnel and into the ditch  
9 underground and walked all the way back and climbed out  
10 where the water is diverted at the bridge and flows down  
11 into the tunnel.

12           I've slid down the chute where the water is  
13 diverted at the bridge and walked along in the tunnel and  
14 climbed up on the apparatus that controls the big gate that  
15 closes off the tunnel, and I've walked out the blowoff  
16 tunnel.

17           Q.     All right. And what is the current status of  
18 the dumping of water through the blowoff tunnel at Hoolawa?

19           A.     There is no water currently being dumped down  
20 the blowoff tunnel. It was only during that period, '16 to  
21 '18.

22           Q.     And just to be clear, the water that is -- that  
23 was coming out of the blowoff -- the blowout tunnel was  
24 coming from where? Where was that water coming from?

25           A.     That water was coming from the Haiku Ditch, and

1 it was water collected from other streams in East Maui.

2 Q. Thank you.

3 Ms. Powers, do you plan to continue visiting  
4 Hoolawa, Honopou, and Hanawana Streams in the future?

5 A. Yes.

6 Q. And how would your experiences be affected if  
7 more water was diverted from Hoolawa, Honopou, and Hanawana  
8 Streams?

9 A. They would be negatively affected. It's sad and  
10 heartbreaking to see these streams dry up and the stream  
11 life die. It impacts my ability to enjoy both the beauty  
12 and -- and recreate in the water there.

13 Q. Okay. I want to switch gears here.

14 Who is Mark Vaught? Do you remember who he is?

15 A. Yes. I know he had a high position at EMI. He  
16 may have even been like the manager or the VP. And I know  
17 that now he works at Mahi Pono. I'm not sure of his title.

18 Q. And did he accompany you on a site visit to the  
19 tributaries of Hoolawa Stream in February of this year?

20 A. Yes.

21 Q. Okay. So we're going to go through some  
22 exhibits now. So heads up to the County.

23 I'd like you to first take a look at Sierra  
24 Club's Exhibit 50, 5-0.

25 MR. FRANKEL: And this is in evidence, Your

1 Honor.

2 THE COURT: Correct.

3 THE WITNESS: Okay.

4 Q. (BY MR. FRANKEL) Do you remember where this  
5 photo was taken?

6 A. Yes. That was Hoolawa li'i li'i, the easterly  
7 tributary of Hoolawa Stream.

8 Q. And what happened to the water that was flowing  
9 in the stream that day?

10 A. It was all being taken into that great  
11 structure.

12 Q. All right. Let's now take a look at Exhibit 51,  
13 which is also in evidence.

14 A. Okay.

15 Q. And, again, how much of the water is being taken  
16 out of the stream?

17 A. All of it.

18 Q. All right. And where is all the water going?

19 A. All that water is going into a diversion that  
20 delivers it to the Wailoa Ditch.

21 Q. All right. Please take a look at Exhibit 52.

22 THE COURT: 52 is also in evidence.

23 MR. FRANKEL: Right.

24 Q. (BY MR. FRANKEL) How would you describe the  
25 streambed below the diversion on Hoolawa li'i li'i stream?

1           A.     Dry.  There is obviously no water flowing  
2 downstream.

3           Q.     All right.  And let's take a look at Exhibit 53,  
4 which is also in evidence.

5                     Are you there?

6           A.     Yes.  Okay.

7           Q.     And on that day in February, did you see dry  
8 streambeds and stagnant pools and other streams you visited  
9 similar to this in February of this year?

10          A.     Yes.

11          Q.     All right.  And let's go to Exhibit 54, which is  
12 also in evidence.

13          A.     Okay.

14          Q.     And do you know what stream or tributary this  
15 was?

16          A.     Yes.  This is Hoolawa nui tributary.

17                     COURT REPORTER:  "Hoolawa" what?

18                     THE COURT:  Hold on.  That was Hoolawa nui,  
19 n-u-i?

20                     THE WITNESS:  Yes.

21                     THE COURT:  Thank you.  Go ahead.

22          Q.     (BY MR. FRANKEL)  And can you tell me the areas  
23 shown in this photograph, Exhibit 50, 51, 52, 53, and 54,  
24 where are they in relationship to where you grew up?

25          A.     Those are all upstream in the same river valley.

1 Those streams feed into the stream that I lived on.

2 Q. Thank you.

3 A. Live on.

4 Q. Have you seen abandoned pipes and other debris  
5 in or along East Maui streams?

6 A. Yes.

7 Q. Let's -- was it a -- how much did you see? Was  
8 that a rare occurrence?

9 A. Frequent -- frequently around where there's  
10 diversion structures constructed, there's remnants of old  
11 diversions that got old and broke down or that were  
12 remodeled, and so there's remnants of old diversion  
13 structures that don't need to be there. And then, also,  
14 there are often leftover construction materials that are in  
15 a pile, decaying. So that's what I've witnessed.

16 Q. So I'd like you to now take a look at an exhibit  
17 that's not in evidence yet, and that's Exhibit 56.

18 A. Okay.

19 Q. Do you recognize this photograph?

20 A. Yes.

21 Q. And is that you in it?

22 A. Yes.

23 Q. And are you able to recall which stream this is,  
24 this is at?

25 A. This is at Hoolawa nui tributary.

1 Q. So is this photograph a true and accurate  
2 depiction of the pipe you saw on Hoolawa nui Stream that  
3 day, February of this year?

4 A. Yes.

5 MR. FRANKEL: Your Honor, I offer Exhibit 56  
6 into evidence.

7 THE COURT: Any objection to Exhibit 56?  
8 I'll start with --

9 MS. AKAGI: No objection, Your Honor.

10 THE COURT: I'll start with Ms. Akagi.

11 MS. AKAGI: No objection, Your Honor.

12 THE COURT: All right. Thank you.

13 Ms. Goldman?

14 MS. GOLDMAN: No objection from the State.

15 THE COURT: Thank you.

16 Mr. Rowe?

17 MR. ROWE: No objection, Your Honor.

18 THE COURT: All right. Thank you.

19 Plaintiff's 56 is received. No objection.

20 (Plaintiff's Exhibit 56 was received in  
21 evidence.)

22 Q. (BY MR. FRANKEL) Ms. Loomis, is this pipe  
23 useable?

24 A. Not anymore.

25 Q. And there's an expression. One man's trash is

1 another man's treasure.

2 Is it at all conceivable to you that this old  
3 pipe here is anyone's treasure?

4 A. No. In fact, to me, it's an accident waiting to  
5 happen, which is concerning.

6 MR. FRANKEL: Thank you, Your Honor. I have no  
7 further questions for this witness.

8 THE COURT: All right. Thank you.

9 So, Ms. Akagi, you're next.

10 MS. AKAGI: Thank you, Your Honor.

11 THE COURT: We've got about five minutes before  
12 we're going to take our break, just FYI.

13 MS. AKAGI: Okay. Thank you, Your Honor.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MS. AKAGI:

17 Q. Good morning, Ms. Powers. My name is Trisha  
18 Akagi. And I am representing Alexander & Baldwin and East  
19 Maui Irrigation Company.

20 Can you hear me okay?

21 A. Yes. Good morning.

22 Q. Good morning.

23 If at any time you have difficulty hearing or  
24 understanding me, please let me know. Okay?

25 A. (Nods head.)



1 Q. I'm going to ask you a question about Exhibit  
2 56, which was the photograph that we were just talking  
3 about.

4 Do you still have that in front of you?

5 A. Yes.

6 Q. The pipe that is displayed in the picture, are  
7 you aware if that pipe is owned by EMI?

8 A. I'm not aware that it's owned by EMI. But it is  
9 about a foot or two away from the other part of the  
10 diversion structure. And my experience of exploring the  
11 watershed is that EMI -- anytime there was a tiny little  
12 trickle or spring coming from anywhere that wasn't directly  
13 flowing into the river, they would install a pipe and  
14 gather that water and bring it to the river. And this, to  
15 me, is an example of a pipe like that, that is now  
16 decrepit.

17 Q. But you have no personal knowledge that this  
18 pipe belongs to EMI; correct?

19 A. Correct.

20 Q. Okay. I want to go back to earlier in your  
21 testimony when you were describing Hoolawa Stream. I think  
22 you were talking about the streambed that bordered your  
23 family's property, and there was a dry streambed that ran  
24 from the property up to the bridge near Ulalena Loop.

25 Do you recall that?

1 A. Yes.

2 Q. Could you give me a time frame of when that was  
3 that you were describing?

4 A. We started going to that property, although we  
5 didn't own it yet, in 1970. And that section of the  
6 streambed was dry at least 85 percent of the year from 1970  
7 to 2015.

8 Q. Okay. So the conditions that you were  
9 describing are prior to 2016?

10 A. Correct.

11 Q. And so you're not describing conditions after  
12 2016?

13 A. Correct.

14 Q. Okay. So you had also described earlier a  
15 waterfall near your family's property and the pool that  
16 flowed into -- I think you called it Kings' Pool.

17 So the time frame that you were describing  
18 there, was that also prior to 2016?

19 A. Yes. That was 1970 to 2015. Well, to present.

20 Q. Okay. So those conditions are -- the conditions  
21 you were describing still currently exist?

22 A. Currently, because the gate structure at the  
23 Ulalena Loop bridge, the old Hana Highway diversion  
24 structure, that structure is broken. And so the gate had  
25 to be removed because it was dangerous, because the ratchet

1 pipe that goes up to the gear mechanism that allows the EMI  
2 guy to service the gate and open it up and down, that all  
3 rusted and became basically decrepit and dangerous. A few  
4 years ago, they removed that.

5 And so since then, stream flow that flows down  
6 the valley has been flowing past our property, and that is  
7 basically since -- oh, I think they removed that around  
8 2017 or 2018.

9 Q. Okay.

10 A. It's -- yeah, it's been open since the big  
11 flood, so basically since 2016, that gate had to open --

12 Q. Okay. And so --

13 A. -- and be removed.

14 Q. -- you were also earlier in testimony describing  
15 the upper pools, which was the area above the waterfall  
16 near your family's property.

17 Do you recall that?

18 A. Yes.

19 Q. And the conditions that you were describing, was  
20 that also prior to 2016?

21 A. Yes.

22 Q. Okay.

23 THE COURT: So it's time for our break. We'll  
24 break until 11 o'clock. We will see you then. We're in  
25 recess.

1 (A recess was taken.)

2 THE COURT: We are back on record.

3 All right. Let's proceed.

4 MS. AKAGI: Thank you, Your Honor.

5 Q. (BY MS. AKAGI) Ms. Powers, do you work for East  
6 Maui Irrigation Company?

7 A. No.

8 Q. Have you ever worked for East Maui Irrigation  
9 Company?

10 A. No.

11 Q. Are you an engineer?

12 A. No.

13 Q. Do you have any engineering degrees?

14 A. No. I'm just a practical person. I'm very  
15 mechanical. I build things. I design things. I know how  
16 things work.

17 THE COURT: Ms. Powers, excuse me. I think  
18 Ms. Akagi is being polite to you. But my job is to control  
19 the interrogation. So I'm going to instruct you, just  
20 answer the question and then wait for the next question.  
21 All right?

22 THE WITNESS: (Nods head.)

23 THE COURT: Clear?

24 THE WITNESS: (Nods head.) Yes.

25 THE COURT: Okay. Thank you.

1                   Go ahead, Ms. Akagi.

2                   MS. AKAGI: Thank you, Your Honor.

3           Q.       (BY MS. AKAGI) Ms. Powers, are you familiar  
4 with the organization Maui Tomorrow Foundation?

5           A.       Yes.

6           Q.       Are you a member of Maui Tomorrow?

7           A.       No.

8           Q.       Have you ever been a member of Maui Tomorrow?

9           A.       Maui Tomorrow is not a membership organization.

10          Q.       Understood.

11                    Would you consider yourself a supporter of Maui  
12 Tomorrow?

13          A.       Yeah.

14          Q.       Have you ever filed a petition with the  
15 Commission for Water Resource Management to amend interim  
16 instream flow standards for any East Maui streams?

17          A.       The only thing I've been a part of is this  
18 lawsuit.

19          Q.       So is that a "no"?

20          A.       I guess that's a "no."

21          Q.       Did you testify at the November 9th, 2018, Board  
22 of Land and Natural Resources meeting regarding the subject  
23 revocable permits?

24          A.       Was that a meeting at the Maui County Council  
25 chambers question?

1 Q. No. It was held on Oahu.

2 A. No.

3 Q. Did you testify at the October 11th, 2019, Board  
4 of Land and Natural Resources meeting regarding the subject  
5 revocable permits? And if it helps you, that meeting was  
6 also on Oahu.

7 A. No.

8 Q. Did you submit written testimony to the Board of  
9 Land and Natural Resources prior to its November 9th, 2018,  
10 meeting regarding the subject revocable permits?

11 A. No.

12 Q. Did you submit written testimony to the Board of  
13 Land and Natural Resources prior to its October 11th, 2019,  
14 meeting regarding the subject revocable permits?

15 A. No.

16 Q. So is it your testimony that you are currently  
17 being harmed by the current diversion of water in East  
18 Maui?

19 A. Yes.

20 Q. So if the current amount of water being diverted  
21 continues, your harm that you testified to will also  
22 continue; correct?

23 A. Yes.

24 MS. AKAGI: Thank you.

25 No further questions, Your Honor.

1 THE COURT: All right. Ms. Goldman, you're up.

2 MS. GOLDMAN: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. GOLDMAN:

5 Q. Hi, Ms. Powers. My name is Melissa Goldman.  
6 I'm here representing the State today.

7 Can you hear me all right?

8 A. Yes.

9 Q. Please tell me if at any point you are unable to  
10 hear me, and I'll try and adjust.

11 So I'd like to talk first about Hoolawa and some  
12 of your experience there. Earlier you were talking about  
13 there being (indiscernible) to water being put back into  
14 the stream; right?

15 A. Yes. Although the sound -- the microphone just  
16 went out when you said that, garbled a little bit. So  
17 could you please repeat?

18 Q. Okay. You observed that there have been  
19 consequences to water being put back into the stream;  
20 right?

21 A. There were consequences when an excessive amount  
22 of water was put back into the stream.

23 Q. Okay. Thank you for clarifying.

24 You also discussed sometimes there are good  
25 consequences, like the biola (phonetic) coming back when

1 water is restored to a stream; right?

2 A. Yes.

3 Q. And you, in fact, have personally observed that  
4 before; right?

5 A. Yes, many times.

6 Q. Okay. And you were also, as you just alluded  
7 to, you also agree that putting water back into the stream  
8 can be a negative consequence on a downstream environment?

9 A. If you're putting in the amount that is  
10 equivalent as a 50-year flood continuously for an extended  
11 period of time, yes. There's a difference between a big  
12 rain event and the water -- the river rushing for a week or  
13 two and the river rushing for two years straight.

14 Q. I understand. Thank you, Ms. Powers.

15 So you would agree with me that putting the  
16 water back in should probably be studied before you do it;  
17 right?

18 A. No.

19 Q. You don't think that putting water back into a  
20 stream, any effects of that should be considered before  
21 doing it?

22 A. I don't think that you need to do a study before  
23 you put water back into the stream. I believe --

24 Q. Thank you.

25 A. -- you need to restore, case closed. And --



1 Q. Okay.

2 A. -- then do your study.

3 Q. I understand. Pardon me for interrupting.

4 Thank you.

5 All right. Moving on to -- you spoke a little  
6 bit about mosquitoes and how the water -- stagnant water, I  
7 guess, breeds mosquitoes.

8 Can you just explain a little more? What  
9 exactly are you so concerned about with these mosquitoes?

10 A. Well, I remember when there was a Dengue  
11 outbreak in East Maui and everybody was pouring out any  
12 standing water. But when there's a quarter mile of  
13 streambed with standing water, where are you going to pour  
14 it out to?

15 Q. So --

16 A. You can't get rid of it.

17 Q. Excuse me.

18 So just to make sure I understand you clearly,  
19 your biggest concern with mosquitoes is, like, the possible  
20 effect on humans; right?

21 A. Humans and native birds, other species.

22 Q. Okay. And can you tell us some of the species  
23 of native birds that you're thinking of?

24 A. Well, I know that -- I'm not familiar with a lot  
25 of native birds. And I know that most of the native birds

1 are in the upper reaches of the mountains. But when a  
2 streambed has -- a streambed can become a corridor for  
3 mosquitoes moving up the mountain.

4 Q. I see. So by "native birds" -- I don't know all  
5 their names either. Don't worry.

6 But by "native birds," you're basically talking  
7 about the kind of birds that live in native forests; right?

8 A. Yes.

9 Q. Okay. And this isn't a native forest anymore,  
10 is it?

11 A. There's patches of it that are, and there's  
12 patches that are, you know, mostly invasive. But I know  
13 there's a beautiful ohia grove right nearby.

14 Q. So you don't know if the birds are going to, you  
15 know, come back to those areas if the water does too;  
16 right?

17 A. Correct.

18 Q. And, in fact, as yourself have acknowledged,  
19 invasive species might be preventing the forest -- the  
20 native forest from coming back; right?

21 A. Yes. And what I do know, as a biologist, is  
22 that when you create the environment that supports the  
23 native species, they have a better chance of returning,  
24 especially if you plant them. And when you have an  
25 environment that supports invasive species, that's what you

1 get.

2 Q. Understood. Thank you, Ms. Powers.

3 Moving on, I just -- my last question just has  
4 to do with -- I believe it was Trial Exhibit 54, the  
5 photograph you took. I'm just going to hold up my copy so  
6 you can kind of sort of -- do you know which one I'm  
7 talking about? If you can pull that up in front of you? I  
8 just wanted to ask you a couple short questions about it.

9 So -- oh, I'm sorry.

10 THE COURT: Was that 54, Ms. Goldman?

11 MS. GOLDMAN: Yes, Your Honor, 54.

12 THE COURT: Thank you.

13 Q. (BY MS. GOLDMAN) Ms. Powers, do you have 54 in  
14 front of you?

15 A. Yes.

16 Q. Or projected somewhere? We can't see your  
17 screen.

18 A. (Indicates.)

19 Q. Okay. Got it.

20 So remind me, which stream is this on again?

21 A. This is Hoolawa nui Stream.

22 Q. Okay. And you had Hoolawa nui Stream for a long  
23 time, up and down the stream, you're pretty familiar with  
24 the area; yeah?

25 A. Yes. I hadn't ever been up to this intake.

1 Q. Okay.

2 A. This is -- we needed EMI's permission to go  
3 there.

4 Q. Understood.

5 So you're also aware, then, that there are no  
6 diversions further mauka of this diversion; right?

7 A. I don't know about that. If --

8 Q. I think that you had said -- and please correct  
9 me -- that this diversion was on Hoolawa nui at the Wailua  
10 Ditch; right?

11 A. Yeah, this -- correct, this is at the Wailoa  
12 Ditch.

13 Q. Okay. Oh, Wailoa. Excuse me.

14 Okay. And how did the water look to you that  
15 day that you were hiking there and you saw this?

16 A. It was slightly milky, you can see. And that's  
17 a new trend that I've been concerned about, but haven't had  
18 time to research.

19 Q. Okay. So if -- so it was cloudy on that day,  
20 obviously.

21 You've seen it cloudy on other days, then?

22 A. Yes.

23 Q. Yeah.

24 And if there's no diversions above it,  
25 diversions can't be causing the cloudiness; right?

1 A. Correct.

2 Q. Okay.

3 A. What I'm not aware of is that -- well, I know  
4 that Maui County has diversions above in the upper reaches  
5 of the mountain, above the 3,000-foot level, and I think  
6 there may also be diversions, but I don't know on the  
7 stream up there as well.

8 Q. Understood. There's a lot. It's hard to keep  
9 track. Thank you very much, Ms. Powers.

10 MS. GOLDMAN: That's all the questions from the  
11 State at this time.

12 THE COURT: All right. Thank you.

13 Mr. Rowe?

14 MS. GOLDMAN: Thank you.

15 MR. ROWE: Thank you.

16 Can you hear me with it in the middle here?

17 THE COURT: Yes.

18 CROSS-EXAMINATION

19 BY MR. ROWE:

20 Q. So, Ms. Powers, you had mentioned that while you  
21 were living -- I believe it was near Hoolawa Stream, you  
22 would gather drinking water from springs near the property;  
23 is that correct?

24 A. Yes.

25 Q. Was that your only source of drinking water when

1 you were growing up?

2 A. Otherwise, we would have to go into town to get  
3 water until they built rain catch a few years later.

4 Q. Okay. So what did you use in your house for  
5 things like cleaning, cooking, and laundry?

6 A. We went into town to do laundry, or we would go  
7 to the stream and rinse the few clothes that we had. And  
8 for the kitchen, we would carry up -- in the early days, we  
9 would carry up five-gallon buckets of water from the  
10 stream. And later on, we built a little shed and had rain  
11 catch.

12 Q. Okay. What is your current source of water in  
13 the home that you're living in now?

14 A. I'm not currently living on that property.

15 Q. Okay. I'm -- I'll rephrase.

16 Where you are currently living, what is the  
17 source of -- your source of water?

18 A. Maui County, East Maui streams.

19 MR. ROWE: Okay. No further questions, Your  
20 Honor.

21 THE COURT: All right. Back to you,  
22 Mr. Frankel.

23 REDIRECT EXAMINATION

24 BY MR. FRANKEL:

25 Q. Ms. Powers, why are you a member of the Sierra

1 Club?

2 A. Because I believe in their work, supporting the  
3 environment, protecting it.

4 Q. And you rely on it to represent your interest at  
5 meetings?

6 A. Yes.

7 Q. Thank you.

8 Has EMI or anyone disclosed to you how much more  
9 water EMI and A&B are planning to take from Hanawana  
10 Stream?

11 A. No.

12 Q. Has EMI or anyone disclosed to you how much more  
13 water EMI and A&B are planning to take from Honopou Stream?

14 A. No.

15 Q. Has EMI or anyone disclosed to you how much more  
16 water EMI and A&B are planning to take from Hoolawa Stream?

17 A. No.

18 Q. Given your experience on Honopou, Hanawana, and  
19 Hoolawa Streams, if EMI increases the amount of water taken  
20 from these streams, how would your experiences be affected?

21 A. It would reduce or eliminate the stream flow,  
22 which would have a negative impact on the stream life  
23 there, which has an emotional and a spiritual impact on me,  
24 and it would make my ability to enjoy the streams, the  
25 beauty, and to recreate and swim with them less.

1 MR. FRANKEL: Thank you.

2 No further questions, Your Honor.

3 THE COURT: All right. Thank you.

4 Ms. Akagi, back to you.

5 MS. AKAGI: Thank you, Your Honor.

6 Just a couple of questions.

7 RE CROSS-EXAMINATION

8 BY MS. AKAGI:

9 Q. Ms. Powers, do you know how much water is  
10 currently being diverted by EMI?

11 A. No.

12 Q. And you had just testified that if the amount of  
13 water being diverted from Hanawana, Honopou, or Hoolawa  
14 Streams is increased, that it would impact your enjoyment  
15 of those streams.

16 Do you recall that?

17 A. Yes.

18 Q. But isn't it true that it would need to be an  
19 increase of water sufficient to make the stream begin to  
20 run dry to impact your experience? Correct?

21 A. No, because a trickle of water in the stream is  
22 a lot different than gallons of water flowing down the  
23 stream. The stream life needs a certain amount of water to  
24 be able to swim upstream and -- and repopulate.

25 Q. Right.



1           But if the amount of the increase does not  
2 create a detectable difference in the stream flow, it would  
3 not impact your experience; correct?

4           A.     Are you saying that the amount of increase of  
5 diversion, if it is undetectable to me, that it would not  
6 impact my enjoyment of them?

7           Q.     That's correct.

8           A.     Well, I know that those streams at this point  
9 still don't have enough water to really -- they are better  
10 than they were in the past when they were dry, but they are  
11 not nearly what they need to be to thrive. And I'm aware  
12 of that and that affects me.

13          Q.     Okay. So any increase in the amount of water,  
14 regardless of if it's detectable to you, would impact your  
15 enjoyment of those streams; is that correct?

16          A.     Yes.

17          Q.     Okay. Thank you.

18                 So if there is an increase in the diversion of  
19 water from streams that you don't visit, you would not be  
20 individually impacted by that; correct?

21          A.     I would not be individually impacted by that  
22 where I live. But if the fisheries continue to be damaged  
23 by the interruption of stream flow, then everybody is  
24 impacted.

25          Q.     But you wouldn't personally be impacted;

1 correct?

2 A. I care about all the living systems on this  
3 island, and I'm aware, even with streams that I'm not  
4 personally experiencing, that if they are impacted  
5 negatively and the fisheries don't get to populate with  
6 fish, everybody's impacted. That's just one example. But  
7 me personally at the pools that I go to, would not impact  
8 it if you're taking water from other streams.

9 MS. AKAGI: Okay. Thank you.

10 No further questions, Your Honor.

11 THE COURT: All right. Thank you.

12 Ms. Goldman, your turn.

13 MS. GOLDMAN: Thank you, Your Honor. Just very  
14 briefly.

15 RE-CROSS-EXAMINATION

16 BY MS. GOLDMAN:

17 Q. Ms. Powers, isn't it true that the amount of  
18 water being diverted today is less than when you were a  
19 child, overall?

20 A. Overall, yes, because they're not farming and  
21 because the diversion is currently broken.

22 Q. Okay. And isn't it true that you're saying now  
23 the situation is a little better than when they were dry,  
24 right, because there's some water?

25 A. Yes.

1 MS. GOLDMAN: Okay. Thank you. That's all.

2 THE COURT: Mr. Rowe?

3 MR. ROWE: I have nothing further, Your Honor.

4 THE COURT: Mr. Frankel, back to you.

5 MR. FRANKEL: Sure.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. FRANKEL:

8 Q. How would you be affected, Ms. Powers, if the  
9 amount of water taken from Honopou, Hanawana, and Hoolawa  
10 Streams was the same in the future as it used to be prior  
11 to 2016?

12 A. That would be very bad.

13 MR. FRANKEL: Thank you.

14 No further questions, Your Honor.

15 THE COURT: Ms. Akagi?

16 MS. AKAGI: Nothing further from me, Your Honor.

17 THE COURT: Thank you.

18 And, Ms. Goldman?

19 MS. GOLDMAN: Nothing further from the State.

20 THE COURT: Thank you.

21 Mr. Rowe?

22 MR. ROWE: Nothing further, Your Honor.

23 THE COURT: All right. Ms. Powers, your  
24 testimony is concluded. Thank you.

25 THE WITNESS: Thank you, Your Honor.

1 MR. FRANKEL: Your Honor, our next witness is  
2 Rob Weltman, who I believe has checked in. And so the  
3 County will bring him in as appropriate.

4 THE COURT: Well, just go straight to the next  
5 witness, because we've got a while before our next break.

6 You're ready to swear him in, Madam Clerk?

7 (The Court and the court reporter confer.)

8 THE COURT: We're off record right now.

9 (A discussion was held off the record.)

10 THE COURT: We're back on record.

11 THE CLERK: I will swear in the witness.

12 You do not need to stand. You may sit. Just  
13 raise your right hand.

14 ROBERT WELTMAN,  
15 called as a witness by and on behalf of the Plaintiff,  
16 having been first duly sworn, was examined and testified as  
17 follows:

18 THE COURT: Sir, would you please state your  
19 full name and then spell it for our court reporter. Thank  
20 you.

21 THE WITNESS: My full legal name is Robert  
22 Eugene Weltman. R-o-b-e-r-t (indiscernible).

23 THE COURT: We're having difficulty hearing. I  
24 don't know if it's the placement of the microphone or what.  
25 Try that again, sir. Try spelling again.

1 THE WITNESS: Yes, sir. R-o-b-e-r-t E-u-g-e-n-e  
2 W-e-l-t-m-a-n.

3 THE COURT: I think we're okay. We might have  
4 to make more adjustments.

5 But go ahead and start, Mr. Frankel.

6 DIRECT EXAMINATION

7 BY MR. FRANKEL:

8 Q. All right.

9 A. Yes.

10 Q. Where do you live, Mr. Weltman?

11 A. I live in Kihei (indiscernible).

12 THE COURT: And I'm sorry.

13 THE WITNESS: And that's on Maui.

14 THE COURT: It's very fuzzy now, all of a  
15 sudden. We need to fix it. Does he have a --

16 THE WITNESS: I'll try it without my mask. Is  
17 it better now without the mask?

18 COURT REPORTER: A little.

19 THE COURT: A little better.

20 COURT REPORTER: Speak slowly.

21 THE COURT: And maybe slow down just a little  
22 bit. Sometimes going faster creates sort of bubbles in the  
23 audio.

24 COURT REPORTER: Thank you.

25 THE WITNESS: Okay.

1 THE COURT: All right. Let's try this.

2 THE WITNESS: I live -- I live in Kihei, at 188  
3 Waialua Place, South Maui.

4 Q. (BY MR. FRANKEL) Can you spell the name of that  
5 street for the court reporter, please?

6 A. Yes. W-a-l-u-a, Waialua Place.

7 Q. And I'm sorry. That's on Maui; correct?

8 A. Yes.

9 Q. Are you a member of the Sierra Club?

10 A. Yes, I am.

11 Q. How long have you been a member of the Sierra  
12 Club?

13 A. I've been a member of the Sierra Club since  
14 1995.

15 Q. What role do you currently serve in the Sierra  
16 Club?

17 A. I'm currently the chairperson of the executive  
18 committee of the Sierra Club, Maui Group. I'm also the  
19 chairperson of the political committee and  
20 (indiscernible) --

21 THE COURT: I'm sorry. You're going -- I don't  
22 know what it seems like on your end, but on this end, it's  
23 garbled. We can make out most of it, but not all of it.  
24 And I think maybe you're still going a little bit fast. So  
25 try to slow down a little bit. Can you give your last

1 answer again, please, sir?

2 THE WITNESS: Yes, sir.

3 I am currently the chairperson of the Sierra  
4 Club, Maui Group, chairperson of the executive committee.  
5 I am also the chairperson of the -- of the political  
6 committee and of the outings committee in Sierra Club, Maui  
7 Group.

8 THE COURT: That was much better. So, yes,  
9 please slow it down just a bit. It helps us a lot on our  
10 end. Thank you, sir.

11 Q. (BY MR. FRANKEL) How long have you been chair  
12 of the Maui Group of the Sierra Club?

13 A. I've been chairperson of the Sierra Club, Maui  
14 Group, for four years, a little more than four years.

15 Q. Are you a member of Maui Tomorrow?

16 A. I'm not a member of Maui Tomorrow.

17 Q. Have you ever been a member of Maui Tomorrow?

18 A. No, I've never been a member of Maui Tomorrow.

19 Q. Are you or have you ever been a member of Na  
20 Moku?

21 A. No, I have -- I am not and have not been a  
22 member of Na Moku.

23 Q. What is the Sierra Club's mission?

24 A. Sierra Club's mission is to explore, enjoy, and  
25 protect the raw places of the earth, to promote responsible

1 use of the earth's natural resources and ecosystems, and to  
2 protect and restore the natural and (indiscernible)  
3 environment.

4 COURT REPORTER: And something environment?

5 THE COURT: What was the word before  
6 "environment," please?

7 THE WITNESS: The natural and human environment.

8 THE COURT: Thank you.

9 Q. (BY MR. FRANKEL) So, Mr. Weltman, you have to  
10 keep -- try to speak slowly, and if you can, look at the  
11 video screen, because sometimes you'll get some signals  
12 from us that you should be slowing down. But I know it's  
13 challenging.

14 What does the Sierra Club do to help protect,  
15 enjoy, and explore nature?

16 A. The Sierra Club organizes outings to bring  
17 people into nature so they can see it and understand it and  
18 appreciate it and realize why they need to -- need to  
19 protect it. We also engage in testimony when issues come  
20 up, proposals come up in legislative entities such as the  
21 county council or (indiscernible) --

22 COURT REPORTER: "Or" what?

23 THE COURT: Timeout.

24 THE WITNESS: Oh.

25 THE COURT: Sir, you are very articulate, but



1 you're talking too fast. Okay? I know I'm asking you to  
2 do something that's unnatural, but you've just got to hang  
3 in there and slow down. Okay? I know it's also probably a  
4 little anxious. People don't like testifying, and you're  
5 in this weird environment, and that can make people speed  
6 up too. But just -- I don't know. Maybe pretend like  
7 you're talking to a five-year-old and just really slow it  
8 down. That might help.

9 THE WITNESS: Yes, sir.

10 THE COURT: Can you give your last answer again,  
11 please?

12 THE WITNESS: I'll break it down too. Sierra  
13 Club brings the public into nature when it can so that  
14 people can see and understand and appreciate nature so  
15 they'd want to protect it. The Sierra Club also  
16 participates in decision-making as witnesses or as through  
17 testimony in public entities, such as county council and  
18 also state entities, on issues involving the environment  
19 and protection of the environment. And when necessary, the  
20 Sierra Club will also (indiscernible).

21 COURT REPORTER: Sorry. "When necessary, the  
22 Sierra Club will" --

23 THE COURT: I think you said, when necessary, to  
24 litigate? Was that it?

25 THE WITNESS: Litigate, yes.

1 THE COURT: Okay. We're good. Go ahead.

2 THE WITNESS: The Sierra Club also -- the Sierra  
3 Club also informs and educates the public outside of such  
4 public events through media, through meetings, through  
5 other public events about the value of the environment and  
6 the importance of protecting it.

7 Q. (BY MR. FRANKEL) Okay. And as part of outings,  
8 have you led Sierra Club hikes in East Maui?

9 A. Yes, I have.

10 Q. Can you -- this is going to be tough. I'm going  
11 to ask you.

12 MR. FRANKEL: Your Honor, I don't know if you  
13 want to go to the exhibit again.

14 Q. (BY MR. FRANKEL) I'm going to ask you to  
15 identify streams that you have hiked to and along and  
16 streams you've led hikes to. We have an exhibit, and what  
17 we're going to do is -- if we can bring up Exhibit J-14,  
18 that's Joint Exhibit 14.

19 A. Okay. Thank you.

20 Q. Hold on. What we're going to do, rather than  
21 you naming the streams, we're going to a page number, and  
22 the streams have numbers, and then the court reporter will  
23 know which streams you're talking about. Makes things a  
24 little easier. So I believe it was -- there's numbers at  
25 the very bottom of the page that are bigger than the other

1 numbers. And we want to go to page 40 of that.

2 A. Yes, yes.

3 Q. Are you there?

4 A. Yes.

5 Q. So I want to break this question down into  
6 separate parts. So maybe you could begin by identifying  
7 the streams you have hiked to or along East Maui. And,  
8 again, if you would just go through those numbers and let  
9 us know which ones those are.

10 A. Yes. Starting from the top, the Nahiku lease  
11 area, Section A, I have led hikes to and hiked on Number 1,  
12 (indiscernible), and Number 2 --

13 COURT REPORTER: Okay. Wait, wait.

14 THE COURT: Hold on. Just give us the numbers.  
15 The pronunciation of the Hawaiian names, that is very  
16 difficult to pick up on our end. So please give us the  
17 number. Thank you.

18 THE WITNESS: Okay. At A1 (Makapipi) and A2  
19 (Hanawi). In Section (indiscernible).

20 COURT REPORTER: Section P?

21 THE COURT: B, as in "bravo"?

22 THE WITNESS: B, as in "bravo," 7 (Kopiliula), 9  
23 (West Wailuaiki), 10 (Wailuanui) -- yes. (Indiscernible)  
24 Section C.

25 THE COURT: I didn't get that. What was that

1 last part?

2 THE WITNESS: Section C, none.

3 THE COURT: C, as in "Charlie," none. Okay.

4 Thank you.

5 THE WITNESS: In Section D, "David," Streams 21  
6 (Wahinepe'e), 22 (Waikamoi), and 35 (Hoolawa).

7 Q. (BY MR. FRANKEL) All right. And now, if you're  
8 able to, which of those streams have you led a Sierra Club  
9 outing on? Just the numbers.

10 A. Do I repeat the numbers?

11 Q. Yeah. Give us the numbers that -- the streams  
12 that you've led the hikes on.

13 THE COURT: I think he started his answer to  
14 that question saying he had led hikes.

15 THE WITNESS: I've led hikes on all of them  
16 except the last one. I can repeat them, just to be sure.  
17 I've led hikes on Alpha 1 (Makapipi), Alpha 2 (Hanawi), and  
18 Bravo 7 (Kopiliula), Bravo 9 (West Wailuaiki), David 21  
19 (Wahinepe'e), and David 22 (Waikamoi). That's it.

20 Q. (BY MR. FRANKEL) Thank you. How often would  
21 you say that you hike in East Maui?

22 A. Usually four to six times per year.

23 Q. And why do you enjoy hiking to and along the  
24 streams in East Maui?

25 A. I live in a town and I've always lived in towns

1 and spent a lot of time in front of a computer. And I  
2 think I would go crazy if I wasn't able to get to nature.  
3 And East Maui streams are very, very special in terms of  
4 nature because they are away -- away from -- from urban  
5 environments. They're quiet. They are, in many ways,  
6 pristine. You can be there for a long time without  
7 seeing -- running into other people. And the streams are  
8 very special in that they flow. They're the sounds of the  
9 streams. They change continuously.

10 In my mind, they represent the cycle of life, of  
11 water falling, flowing, feeding -- feeding farms, feeding  
12 people, feeding the -- the plant and animals that live  
13 along the streams. The streams in Maui -- of East Maui are  
14 very special.

15 Q. Tell me about the native species you've seen in  
16 East Maui streams.

17 A. In the streams, I -- in some of the streams, I  
18 see 'o'opu, the Hawaiian (indiscernible).

19 COURT REPORTER: The Hawaiian what?

20 THE WITNESS: The small ones.

21 THE COURT: That's the Hawaiian Gobi, G-o-b-i?

22 THE WITNESS: Yes, that's correct.

23 THE COURT: Thank you. Go ahead.

24 Q. (BY MR. FRANKEL) Why do you like to see the  
25 'o'opu?

1           A.     Similarly to the streams themselves, the 'o'opu  
2 are special, because they are -- they're special fish.  
3 They don't just stay put. They -- they're amphidromous.  
4 They spawn. They flow out to the ocean. They swim back up  
5 again. So they have a cycle of life, which is very  
6 special, very unique. And that reminds me of -- it  
7 inspires me as to how life is connected with the  
8 environment. There could be no 'o'opu if the streams were  
9 not connected to the ocean. If they were interrupted, then  
10 we would not see them. So that's inspiring to me.

11           Q.     Have you seen the East Maui Irrigation Company's  
12 diversion structures on streams in East Maui?

13           A.     Yes, I have.

14           Q.     Describe what the streams look like above the  
15 diversion structures.

16           A.     In general, there's more water flowing above the  
17 diversion structures than below.

18           Q.     And can you -- okay. Can you paint a picture  
19 for us what the stream looks like above the diversion  
20 structure?

21           A.     Above the diversion structure, you're more  
22 likely to see a waterfall with stream -- with water in it  
23 flowing, a full waterfall, and to see an uninterrupted  
24 stream which is flowing continuously. It does not vary as  
25 much, depending on the -- the rainfall, as below the

1 diversions.

2 Q. Describe, if you can, typically what the stream  
3 looks like below a diversion structure.

4 A. Below a diversion structure, it also varies much  
5 more, depending on rainfall. Sometimes it could be almost  
6 void of water, some of them. And at other times, they have  
7 more water, depending on rainfall and depending on probably  
8 on the amount of water being diverted at that time.

9 Q. How has your hiking experience been affected by  
10 the diversion of water from East Maui streams?

11 A. The reason I travel the distance from Kihei to  
12 East Maui streams, which is a considerable distance and I  
13 do not like driving, is to enjoy the streams. If the  
14 streams are dry, if the waterfalls are -- are interrupted  
15 or barely flowing, if there's little life in the stream, I  
16 am really disappointed. I have driven a distance and I  
17 come there, and I find that it's not fulfilling to -- I  
18 have to reenergize and relax and enjoy the flow of the  
19 stream. So I'm very disappointed when I arrive to East  
20 Maui and find the stream which has been dewatered.

21 Q. How would your experiences be affected if more  
22 water was diverted from these streams in the future  
23 compared to today?

24 A. I think that more diversion can only lead to  
25 more occasions when -- when the streams are dry or have

1 little flow and have little life in them. So that would  
2 drastically affect my enjoyment and my reasons for even  
3 driving to the East Maui streams.

4 MR. FRANKEL: Thank you, Your Honor. I have no  
5 further questions.

6 THE COURT: Thank you.

7 Ms. Akagi?

8 MS. AKAGI: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. AKAGI:

11 Q. Good morning, Mr. Weltman. My name is Trisha  
12 Akagi. I represent Alexander & Baldwin and East Maui  
13 Irrigation Company.

14 Can you hear me okay?

15 A. I can hear you fine.

16 Q. Okay. If at any time you can't hear me or you  
17 don't understand what I'm saying, please let me know. All  
18 right?

19 A. Okay.

20 Q. Mr. Frankel had asked you if you are a member of  
21 Maui Tomorrow Foundation.

22 Do you recall that?

23 A. Yes, I do.

24 Q. Would you consider yourself a supporter of Maui  
25 Tomorrow Foundation?



1           A.     I think there are many things that Maui Tomorrow  
2 does which I think are good. And Sierra Club has  
3 collaborated with Maui Tomorrow in the past. So I do  
4 consider them a good organization, yes.

5           Q.     Thank you.

6                     You were describing what -- you've seen EMI  
7 diversions, and you've seen the stream above the diversion  
8 and the stream below the diversion.

9                     Do you recall that testimony?

10          A.     Yes, I do.

11          Q.     Can you tell me which streams you were  
12 describing?

13          A.     I've seen the Makapipi, above and below Makapipi  
14 Stream. I've seen the Hanawi Stream, above and below.

15                     COURT REPORTER: The Hana beach stream?

16                     THE COURT: Can you spell that stream name,  
17 please?

18                     THE WITNESS: Yes, sir. H-a-n-a-v-i.

19                     THE COURT: Thank you.

20                     THE WITNESS: I'm sorry. W-i. H-a-n-a-w-i.

21                     THE COURT: Thank you.

22                     Go ahead, Ms. Akagi.

23          Q.     (BY MS. AKAGI) That was the only two,  
24 Mr. Weltman?

25          A.     The third one, I would say, is West Wailuaiki.

1 Should I spell that too?

2 Q. Yes, please. Oh, no, I'm sorry. The judge is  
3 saying no need.

4 THE COURT: We're good.

5 THE WITNESS: No need. Okay.

6 Q. (BY MS. AKAGI) Okay. No need.

7 So when you were just -- when you observed the  
8 diversion on Makapipi Stream, when was that?

9 A. Last time was last year.

10 Q. So in 2019?

11 A. Yeah, 2019. Fall of 2019. I don't remember  
12 which month.

13 Q. Okay. So the conditions that you were  
14 describing were conditions that you saw on Makapipi Stream  
15 in fall of 2019?

16 A. Yes.

17 Q. And for Hanawi Stream, when was that?

18 A. Hanawi Stream was -- last time I was above the  
19 diversion was 2018, fall of 2018.

20 Q. And for West Wailuaiki?

21 A. West Wailuaiki, that was 2019, fall of 2019.

22 Q. Mr. Weltman, have you ever filed a petition with  
23 the Commission for Water Resource Management seeking to  
24 amend interim instream flow standards for any streams in  
25 East Maui?

1           A.     You're asking me as a person, or are you asking  
2 if Sierra Club has?

3           Q.     You as a person.

4           A.     I have not.

5           Q.     Are you aware if Sierra Club has?

6           A.     No, I'm not aware.

7           Q.     Did you testify at the November 9th, 2018, Board  
8 of Land and Natural Resources meeting regarding the subject  
9 revocable permits?

10          A.     I do not believe -- I do not remember having  
11 testified at that meeting, no.

12          Q.     Okay. If it helps you, the meeting was held on  
13 Oahu.

14          A.     Yes. I was not there.

15          Q.     Okay. Did you testify at the October 11th,  
16 2019, Board of Land and Natural Resources meeting regarding  
17 the subject revocable permits? That was also on Oahu, if  
18 that helps you.

19          A.     Yeah. I did not.

20          Q.     Did you submit written testimony to the Board of  
21 Land and Natural Resources prior to its November 9th, 2018,  
22 meeting regarding the subject revocable permits?

23          A.     I do not remember if I submitted written  
24 testimony at that time.

25          Q.     Okay. Did you submit written testimony to the

1 Board of Land and Natural Resources prior to its  
2 October 11th, 2019, meeting regarding the subject revocable  
3 permits?

4 A. I do not remember if I submitted written  
5 testimony, no.

6 Q. Okay. Now, Mr. Frankel had asked you about how  
7 your hiking experience would be impacted by an increase in  
8 the amount of water being diverted.

9 Do you recall that?

10 A. Yes, I do.

11 Q. Okay. So if the amount of water -- if the  
12 amount of the increase in the water being diverted is not  
13 detectable to you, then it wouldn't impact your hiking  
14 experience; correct?

15 A. If there was no detectable differences, then it  
16 would not affect my experience, that is correct.

17 Q. So the amount of increase in the water diverted  
18 would need to be enough to start to affect the stream flow  
19 in order for it to impact your hiking experience; correct?

20 A. Yes, there would have to be a detectable change  
21 for me to even know that there was an increased diversion.

22 Q. Do you know how much of an increase there would  
23 need to be for you to detect a change in the stream flow?

24 A. I do not -- I can't quantify the amount that  
25 would be detectable, no.

1 Q. So is it your testimony that you -- your hiking  
2 experience is currently being impacted by the current  
3 amount of water being diverted?

4 A. The amount of water flowing in some streams  
5 varies depending on when I go. And when there's less  
6 water, it is a much less satisfying experience than when  
7 water flows freely.

8 Q. Okay. So for some of the streams that you  
9 visit, the current diversions are impacting your hiking  
10 experience; is that correct?

11 A. Yes. At times, yes.

12 Q. And for some other streams, it is not currently  
13 impacting your hiking experience; right?

14 A. That is correct.

15 THE COURT: Ms. Akagi, timeout. Before you move  
16 on to another area, we would usually be taking a break  
17 right about now. My question is, if we pushed forward a  
18 few more minutes, do you think we would finish with  
19 Mr. Weltman before the lunch break, or is it going to take  
20 longer than that, so we might as well just take our break  
21 right now?

22 MS. AKAGI: I personally only have one more  
23 question, Your Honor.

24 THE COURT: How about the rest of you? Do you  
25 have any sense of it?

1 MS. GOLDMAN: I think the State will probably  
2 take only about five minutes, Your Honor.

3 THE COURT: Mr. Rowe?

4 MR. ROWE: Your Honor, I don't intend on asking  
5 this witness any questions.

6 THE COURT: Mr. Frankel, you have a lot of  
7 redirect?

8 MR. FRANKEL: No, Your Honor.

9 THE COURT: Let me take a brief survey in here.  
10 Hang on a minute.

11 We're going to push ahead. Thank you.

12 Go ahead, Ms. Akagi.

13 MS. AKAGI: Thank you, Your Honor.

14 Q. (BY MS. AKAGI) So, Mr. Weltman, for those  
15 streams where the current level of diversion is impacting  
16 your hiking experience, if the current amount of water  
17 being diverted continues, then your hiking experience will  
18 continue to be impacted; correct?

19 A. If -- so diversion is not a percentage equal  
20 across all streams and tributaries, so it really depends on  
21 how it is applied, if more is diverted from a particular  
22 stream. So it -- it is conceivable that the amount of  
23 water diverted could increase but be decreased at a  
24 particular stream that I hike along. So it would really  
25 depend upon each stream.

1 Q. So you're not sure if your hiking experience  
2 would be impacted?

3 A. My hiking experience would be impacted if the  
4 amount of water in a stream was reduced, but not  
5 necessarily if it -- amount of water was reduced across the  
6 board.

7 Q. So you can't say either way unless you know how  
8 much water is going to be diverted from the streams that  
9 you visit?

10 A. That's correct.

11 MS. AKAGI: Thank you.

12 No further questions, Your Honor.

13 THE COURT: Okay. Thank you.

14 Ms. Goldman?

15 MS. GOLDMAN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. GOLDMAN:

18 Q. Mr. Weltman, my name is Melissa Goldman. I'm  
19 here representing the State today. And I just have a few  
20 questions for you.

21 I was -- I wanted to ask you some questions  
22 about your experience of particular streams, so I thought  
23 maybe to help out the court reporter and everybody follow  
24 along, we can just take out J-14 at 40 to 42 again, that  
25 same list.

1 THE COURT: Thank you. Go ahead.

2 For the record, that exhibit is up on the screen  
3 for the witness right now.

4 MS. GOLDMAN: Thank you, Your Honor.

5 Q. (BY MS. GOLDMAN) Mr. Weltman, you're aware that  
6 there was a 2018 decision by the Water Commission that set  
7 interim instream flow standards for some of the streams on  
8 this list; right?

9 A. Yes, I am.

10 Q. You're aware that the decision and order  
11 restored the full restoration for Makapipi, that's Number  
12 1; right?

13 A. Yes.

14 Q. And you're also aware that in the decision and  
15 order, the Water Commission restored the Hanawi, Number 2,  
16 for connectivity; correct?

17 A. Connectivity, yes.

18 Q. And, Number 7, Kopiliuʻla, the Water Commission  
19 restored that one to H90 flow; right?

20 COURT REPORTER: H90? H90 flow?

21 THE COURT: What was the last piece,  
22 Ms. Goldman?

23 MS. GOLDMAN: It's H90.

24 THE COURT: Thank you.

25 Q. (BY MS. GOLDMAN) Mr. Weltman?



1           A.     I'm sorry. I don't know what H90 means in this  
2 context.

3           Q.     That's okay.

4                     What about the West Wailuaiki, Mr. Weltman,  
5 Number 9, are you aware that that one was restored to full  
6 capacity -- or that one was fully restored by the 2018  
7 decision?

8           A.     I'm aware that it was -- it is among the streams  
9 to be fully restored, yes.

10          Q.     Okay. And Number 22, the Waikamoi Stream,  
11 you're aware that that one was ordered restored as well,  
12 that one's also an H90, technical term; right?

13          A.     I think that was ordered for a limited  
14 restoration.

15          Q.     Okay.

16          A.     (Indiscernible.)

17                     COURT REPORTER: Oh, I didn't get that --

18                     THE COURT: Hold on. We didn't get that last  
19 remark, Mr. Weltman. Please repeat.

20                     THE WITNESS: I believe the Waikamoi was  
21 designated for a limited restoration. If that is the same  
22 as H90, I don't know.

23          Q.     (BY MS. GOLDMAN) Okay. Yeah, H90 is, you know,  
24 your understanding or -- excuse me.

25                     Okay. So on the last stream, you said that it

1 was Hoolawa, the one where you talked about today, Number  
2 35; right?

3 A. Yes.

4 Q. You also have experience with stream Number 36,  
5 the Honopou?

6 A. I have not. I incorrectly named that stream in  
7 my deposition, but I have -- in my original statement.  
8 It's off by one stream. It's actually Hoolawa.

9 Q. Oh, I see.

10 So the Hoolawa and the Honopou Streams are right  
11 next to each other; right?

12 A. Yes.

13 Q. On the map?

14 A. Yeah.

15 Q. And you testified earlier that you have not led  
16 any hikes on Hoolawa, that's Number 35; right?

17 A. That is correct.

18 Q. Okay. You also haven't led any hikes on Number  
19 5, Pa'akea, or in that area, have you?

20 A. No, I have not.

21 Q. And you also haven't led any hikes on Number 23,  
22 the Kolea?

23 A. No, I have not.

24 Q. And Number 24, Mr. Weltman, you also didn't  
25 hike -- you haven't led any hikes on the Punaluu either,

1 have you?

2 A. That is correct, I have not.

3 Q. And is that the same for the Kaaiea, Number 25?

4 A. Yes, that's same for that one. I have not led a  
5 hike in Kaaiea.

6 Q. Number 26, 'O'opuola, have you ever led a hike  
7 on that stream?

8 A. Have not. I have not.

9 Q. What about stream 27, Puehu, have you ever hiked  
10 there?

11 THE COURT: Ms. Goldman, timeout. If he's  
12 already identified which ones he did do, do we really need  
13 to go one by one on all the ones that he didn't do?

14 MS. GOLDMAN: No, Your Honor. I just wanted to  
15 make sure we had a complete record. But understood.

16 Q. (BY MS. GOLDMAN) Maybe I can ask it this way:  
17 Mr. Weltman, of the streams that you identified -- that you  
18 did not identify as having led hikes on, have you led any  
19 hikes on those?

20 A. No. I've only led hikes on the ones that I  
21 identified earlier.

22 MS. GOLDMAN: Okay. Thank you.

23 No further questions.

24 THE COURT: All right. So, Mr. Rowe?

25 MR. ROWE: I have no questions for this witness,

1 Your Honor.

2 THE COURT: Mr. Frankel, back to you.

3 REDIRECT EXAMINATION

4 BY MR. FRANKEL:

5 Q. Mr. Weltman, as a member of the executive  
6 committee of the Maui Group of the Sierra Club, what is  
7 your expectation of staff of the Sierra Club when it comes  
8 to agenda items that come up for the Board of Land and  
9 Natural Resources or county councils or agencies or what  
10 have you?

11 A. If I understood the question correctly, the  
12 responsibility of Sierra Club staff is to protect and  
13 advocate for protection of the natural and human  
14 environment, and that includes plans which are managed --  
15 under the stewardship of the Board of Land and Natural  
16 Resources.

17 Q. And in so doing, is the staff representing the  
18 interest of its members, including you?

19 A. Yes. When they do so, they're acting in the  
20 interest of all of Sierra Club's members.

21 Q. Thank you.

22 Has Alexander & Baldwin or EMI or anybody  
23 disclosed to you how much more water they want to divert  
24 from any of the particular streams in East Maui?

25 A. No, I have not received any such information.

1 MR. FRANKEL: Thank you.

2 No further questions, Your Honor.

3 THE COURT: Thank you.

4 Ms. Akagi?

5 MS. AKAGI: No further questions, Your Honor.

6 THE COURT: Thank you.

7 Ms. Goldman?

8 MS. GOLDMAN: Nothing from the State, Your

9 Honor.

10 THE COURT: Mr. Rowe?

11 MR. ROWE: I have nothing, Your Honor.

12 THE COURT: All right. Mr. Weltman, your

13 testimony is concluded. Thank you very much.

14 Let's go off record and discuss our lunch break.

15 (A discussion was held off the record.)

16 (A lunch recess was taken.)

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C E R T I F I C A T E

STATE OF HAWAII )  
CITY AND COUNTY OF HONOLULU )

I, SANDRA M. N. YOU, an Official Court Reporter for the First Circuit Court, State of Hawaii, do hereby certify that the foregoing pages comprise a full, true, and correct transcription of the A.M. Session proceedings had on Thursday, August 6, 2020, in connection with the above-entitled cause, to the best of my ability.

Dated this 7th day of August, 2020.

*/s/ Sandra M. N. You*  
Sandra M. N. You, CSR 406, RPR  
Official Court Reporter