

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

In the Matter of a Contested Case Regarding) DLNR File No. CCH-LD-21-01
the Continuation of Revocable Permits (RPs))
for Tax Map Keys (2) 1-1-001:044 & 050;) DECLARATION OF WAYNE TANAKA
(2) 2-9-014:001, 005, 011, 012 & 017; (2) 1-)
1-002:002 (por.) and (2) 1-2-004:005 & 007)
for Water Use on the Island of Maui to)
Alexander & Baldwin, Inc. and East Maui)
Irrigation Company, LLC for the remainder)
of the 2021 RPs, if applicable, and for their)
continuation through the end of 2022)

DECLARATION OF WAYNE TANAKA

I, Wayne Tanaka, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I started as the director of the Sierra Club in October of this year. In that role, I monitor environmental issues closely, advocate before administrative and legislative bodies, supervise the activities of the Sierra Club, coordinate with members and volunteers, and oversee the overall operations of the state chapter, of which the Maui Group is a part.
3. I am a member of the Sierra Club.
4. The parties to this proceeding as well as BLNR have Marti Townsend's declarations. They also had the opportunity to cross examine her and have available the court transcript and deposition transcript of those cross examinations.
5. For decades, the Sierra Club has been fighting to protect endangered species. We have frequently sued to protect endangered species: *Palila v. Hawaii Dept. of Land & Natural Resources*, 471 F. Supp. 985 (D. Haw. 1979) (DLNR violated Endangered Species Act);

Conservation Council for Hawai‘i v. Babbitt, 24 F.Supp.2d 1074 (D. Haw. 1998)(requiring designation of critical habitats for 245 endangered or threatened Hawaiian plant species); *Sierra Club v. Department of Transp.*, 115 Hawai‘i 299 167 P.3d 292 (2007) (challenging Superferry’s impact on endangered marine species); *Unite Here! Local 5 v. City and County of Honolulu*, 123 Hawai‘i 150, 231 P.3d 423, (2010) (requiring supplemental EIS that assessed impact on endangered and threatened monk seal and green sea turtle). Endangered species and native biodiversity are what define the unique identity and value of Hawai‘i’s environment, and are necessary for the restoration and perpetuation of Native Hawaiian traditional and customary practices; the Sierra Club accordingly seeks to protect endangered species and native biodiversity on behalf of its members who enjoy Hawai‘i’s unique environmental opportunities and who wish to perpetuate Native Hawaiian cultural practices and values.

6. An endangered species population has been recorded near one of EMI’s diversions, and its breeding habitat is adversely affected by the diversions. *See* Exhibit Y-41.

7. Exhibits Y-55 and Y-56 are the petitions for a contested case hearing in this case that the Sierra Club filed in 2020 and 2021.

8. In communicating with our members and reviewing our records, I can say that the Sierra Club has led hiking trips this year. Rob Weltman led a hike to Hanawī Stream in July. Miranda Camp led a hike to Wailua Iki in early September. Lucienne de Naie led a hike to Kopiliula and Waiohue streams in August. We are planning on leading more hikes to east Maui streams in 2022.

9. The Sierra Club has also started a stream monitoring program that involves visits to Hanehoi stream and Ho‘olawa stream every two weeks.

10. I have a B.S. in engineering from Harvey Mudd College and a Juris Doctorate

from the William S. Richardson School of Law.

11. Prior to joining the Sierra Club, for the past 12 years I have worked in the fields of aquatic and natural resource management as the DLNR Division of Aquatic Resources' Marine Law Fellow, and in public policy as an advocate and manager in the Office of Hawaiian Affairs' Public Policy Program, focusing on subject matter areas including natural and cultural resource management, the Public Trust Doctrine, Native Hawaiian traditional and customary rights, and Hawai'i water law.

12. I have analyzed the seven quarterly reports that Alexander & Baldwin, Inc., and East Maui Irrigation, Ltd.'s (collectively "A&B") filed in 2020 and 2021 (Exhibits Y-5 – Y-11). These data are summarized in chart I have prepared that is designated Exhibit Y-1.

13. Exhibits Y-57, Y-58, and Y-59 contain requests made by the Sierra Club to the BLNR pertaining to the need for additional information regarding water use and for additional actions to uphold the BLNR's public trust responsibilities.

14. Over the past seven quarters, the County has used an average of 2.66_mgd for the Kula Agricultural Park and for upcountry domestic uses. The County has never used 5 mgd in any quarter from January 2020-September 2021.

15. I have been unable to find data that supports A&B's claim that Mahi Pono's citrus requires more than 5,000 gallons per acre per day. I found this April 29, 2008 press release from the Southwest Florida Water Management District:

<https://www.swfwmd.state.fl.us/about/newsroom/news/projects-will-help-citrus-groves-reducegroundwater-pumping-hardee-county>. It is designated as Exhibit Y-4. It mentions that one 444 acre citrus farm is permitted to use 589,700 gallons of water per day (before efficiency measures). That translates into 1,328 gallons per acre per day. Another 1,170 acre citrus grove is

permitted to use an average of 910,300 gallons of water per day (before efficiency measures). That translates to 778 gallons per acre per day.

16. On September 29, 2021, the Sierra Club submitted a petition to amend the instream flow standards for the dozen Huelo streams that were not part of the 2018 CWRM order. A true and correct copy of it is Exhibit Y-50.

17. The Sierra Club has objected to any extension of time beyond the legally required 180 days to resolve the petition.

18. Email correspondence regarding the petition is attached as Exhibit Y-51.

19. When the revocable permits were issued in 2000, the monthly rental amounts for the four revocable permits at issue in this case were \$1,698.32, \$6,588.40, \$3,476.72 and \$1,426.88 (Trial Exhibits J-1, J-2, J-3 and J-4). The rent remained the same from 2000 through 2018. (Trial Exhibit J-16 at 6).

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

DATED: Honolulu, Hawai'i, November 24, 2021.



Wayne Tanaka