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1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2016 FEB -5 AM 10:52

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CLERK

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COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

HEALOHA CARMICHAEL, LEZLEY  
JACINTHO, and NA MOKU AUPUNI O  
KO'OLAU HUI,

Plaintiffs,

vs.

BOARD OF LAND AND NATURAL  
RESOURCES, SUZANNE CASE, in her official  
capacity as Chairperson of the Board of Land and  
Natural Resources, the DEPARTMENT OF  
LAND AND NATURAL RESOURCES,  
ALEXANDER & BALDWIN, INC., EAST  
MAUI IRRIGATION CO., LTD., HAWAIIAN  
COMMERCIAL AND SUGAR CO., and  
COUNTY OF MAUI, DEPARTMENT OF  
WATER SUPPLY,

Defendants.

CIVIL NO. 15-1-0650-04 RAN  
(Environment; Declaratory Judgment)

ORDER GRANTING DEFENDANT  
COUNTY OF MAUI, DEPARTMENT OF  
WATER SUPPLY'S APPLICATION FOR  
LEAVE TO TAKE INTERLOCUTORY  
APPEAL OF THE ORDER GRANTING  
PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT FILED OCTOBER  
21, 2015 AND MOTION FOR STAY OF  
PROCEEDINGS AND/OR ENFORCEMENT  
OF THE ORDER PENDING APPEAL FILED  
JANUARY 19, 2016

**HEARING:**

Date: February 1, 2016

Time: 9:30 a.m.

Judge: Honorable Rhonda A. Nishimura

**ORDER GRANTING DEFENDANT COUNTY OF MAUI, DEPARTMENT OF WATER  
SUPPLY'S APPLICATION FOR LEAVE TO TAKE INTERLOCUTORY APPEAL OF  
THE ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT FILED OCTOBER 21, 2015 AND MOTION FOR STAY OF  
PROCEEDINGS AND/OR ENFORCEMENT OF THE ORDER PENDING  
APPEAL FILED JANUARY 19, 2016**

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On January 19, 2016, Defendant County of Maui, Department of Water Supply (hereinafter "County"), filed herein their Application for Leave to Take Interlocutory Appeal of the Order Granting Plaintiffs' Motion for Partial Summary Judgment, filed October 21, 2015 and Motion for Stay of Proceedings and/or Enforcement of the Order Pending Appeal. On January 22, 2016, Plaintiffs filed a Memorandum in Opposition to the County's motion, and Defendants Alexander & Baldwin, Inc., East Maui Irrigation Co., Ltd. and Hawaiian Commercial and Sugar, Co. ("A&B Defendants") filed their substantive joinder in Defendant County's Application for Leave to Take Interlocutory Appeal of the Order Granting Plaintiffs' Motion for Partial Summary Judgment. On January 27, 2016, the County filed *ex officio* its Reply Memorandum, and Defendant Board of Land and Natural Resources, Suzanne Case and Department of Land and Natural Resources ("State Defendants"), filed their Substantive Joinder in Defendant County of Maui, Department of Water Supply's Application for Leave to Take Interlocutory Appeal of the Order Granting Plaintiffs' Motion for Partial Summary Judgment, filed October 21, 2015 and Motion for Stay of Proceedings and/or Enforcement of the Order Pending Appeal. On January 28, 2016 the State Defendants and the A&B Defendants filed Reply Memoranda in support of their substantive joinders.

The County's application for leave to take interlocutory appeal and motion for stay of proceedings and/or enforcement of the order pending appeal was heard by the Honorable Rhonda A. Nishimura on February 1, 2016. David Frankel, Camille Kalama and Summer Sylva appeared on behalf of the Plaintiffs. Deputy Attorney General Linda Chow appeared on behalf of the State Defendants. David Schulmeister and Elijah Yip appeared on behalf of the A&B Defendants. Deputy Corporation Counsel Caleb P. Rowe on behalf of the County.

The Court, having reviewed the County's application, the memorandum attached thereto, the joinders filed thereto, the memoranda in opposition, the reply memoranda, and the files and records herein, and for good cause shown, hereby grants the County's Application for Leave to Take Interlocutory Appeal of the Order Granting Plaintiffs' Motion for Partial Summary Judgment, Filed October 21, 2015, and the Joinders filed by the State Defendants and the A&B Defendants for the following reasons:

1. At the time of the hearing on this matter, the remaining issues before this Court were for injunctive relief and for attorney's fees, as well as two pending non-hearing motions;

2. The Court finds that the remaining issues before this Court at the time of its January 8, 2016 Order Granting Plaintiffs' Motion for Summary Judgment, filed October 21, 2015 ("January 8, 2016 Order") are contingent upon this Court's findings as to the validity of Revocable Permit Numbers S-7263, S-7264, S-7265 and S-7266; and

3. Because of the foregoing, this Court concludes that an interlocutory appeal is advisable for the speedy termination of the litigation before it as is required for an interlocutory appeal pursuant to Hawaii Revised Statutes § 641-1(b).

As to the County's Motion for Stay of the Proceedings and/or Enforcement of the Order Pending Appeal, the Court, having reviewed the County's Motion, the memorandum attached thereto, the joinder there to, the memoranda in opposition, the reply memoranda, and the files and records herein, and for good cause shown, hereby grants the County's Motion for Stay of the Proceedings and/or Enforcement of the Order Pending Appeal and DENIES the State Defendant's Joinder as follows:

1. Defendant County, having shown that the continued provision of water to customers of its Upcountry service area, inclusive of approximately 35,000 residents, is in the

public interest, has met its burden for showing that a stay pending appeal is warranted as to the water it currently receives from Defendant East Maui Irrigation for the Department of Water Supply's continued provision of water to customers of its Upcountry Service Area;

2. The State Defendants, having not specified the relief sought or presented evidence regarding the potential impacts of enforcement of the order pending appeal, failed to meet their burden for showing that a stay is warranted;

3. A&B Defendants, having failed to join to the County's Motion for Stay, are not entitled to relief at this time but are not precluded from filing their own motion for stay of enforcement of the January 8, 2016 order; and

4. The County's Motion for Stay Pending Appeal is granted only as to the County and only as applied to the water presently delivered by Defendants East Maui Irrigation to the County for the Department of Water Supply's continued provision of water to customers of its Upcountry service area.

5. The State Defendants' Joinder is denied other than to the extent necessary to accommodate the continued diversion of water delivered by East Maui Irrigation to the County for the Department of Water Supply's continued provision of water to customers of its Upcountry service area.


IT IS SO ORDERED.

DATED: Honolulu, Hawaii, FEB - 4 2016.



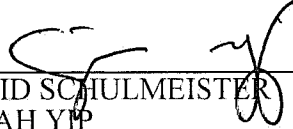
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JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:




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RESOURCES

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*Healoha Carmichael, et al. v. Board of Land and Natural Resources, et al.*, Civil No. 15-1-650-04 RAN, ORDER GRANTING DEFENDANT COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S APPLICATION FOR LEAVE TO TAKE INTERLOCUTORY APPEAL OF THE ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED OCTOBER 21, 2015 AND MOTION FOR STAY OF PROCEEDINGS AND/OR ENFORCEMENT OF THE ORDER PENDING APPEAL FILED JANUARY 19, 2016.