

BOARD OF LAND AND NATURAL RESOURCES, SUZANNE CASE,
AND DEPARTMENT OF LAND AND NATURAL RESOURCES' ANSWER
TO FIRST AMENDED COMPLAINT FILED ON APRIL 10, 2015

Defendants Board of Land and Natural Resources (“Board”), Department of Land and Natural Resources (“DLNR”), and Suzanne Case¹, in her official capacity as Chairperson of the Board of Land and Natural Resources (collectively “Defendant State”), answer the First Amended Complaint (“Am. Complaint”) filed by Plaintiffs Healoha Carmichael, Lezley Jacintho, and Nā Moku Aupuni O Ko’olau Hui (collectively “Nā Moku”) filed on April 20, 2015, as follows:

FIRST DEFENSE

1. The Am. Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

2. Paragraphs 13, 21, and 51 are admitted.
3. Paragraphs 1, 14, 32, 33, 35, 41, 46, 47, 49, 53, 54, 55, 58, and 59 are denied.
4. Paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 15, 16, 18, 23, 23.a., 23.b., 23.c., 23.d., 52, and 61 are denied as Defendant State does not have sufficient knowledge or information with which to admit or deny the truth of the allegations contained therein and therefore deny the same.

5. As to paragraph 10, Defendant State admits that the Board heads the DLNR pursuant to Haw. Rev. Stat. (HRS) § 26-15, but denies the remainder of the allegations in this paragraph.

6. As to paragraph 11, Defendant State admits that Carty Chang was the interim Chairperson of the Board and that he was named in his official capacity. However, based on

¹ Pursuant to Haw. R. Civ. Pro. 25(d)(1) Suzanne Case has been automatically substituted for Carty Chang in this case.

HRCF R. 25(d)(1), Suzanne Case has been automatically substituted for Carty Chang in this case and is named in her official capacity as the Chairperson of the Board.

7. As to paragraph 12, Defendant State admits that the DLNR is an agency of the State of Hawaii that is responsible to manage and administer the approximately 33,000 acres of ceded lands that are the subject of Defendants Alexander & Baldwin, Inc.'s ("A&B") and Defendant East Maui Irrigation Co., Ltd.'s ("EMI") application for a long-term lease in the Nahiku, Keanae, Huelo and Honomanu license areas which application is the subject of the Board's Case No. 01-05-MA, but denies the remainder of the allegations in this paragraph.

8. As to paragraph 17, Defendant State responds that the document referred to in the paragraph speaks for itself, and on that basis the allegations are denied to the extent said paragraph is inconsistent with the referenced document.

9. As to paragraph 19, Defendant State is unable to identify the source of the quoted statements by Davianna Pomaika'i McGregor, Ph.D. and as such Defendant State does not have sufficient knowledge or information with which to admit or deny the truth of the allegations contained therein and therefore deny the same.

10. As to paragraph 20, Defendant State is unable to identify the specific geographic area described as the "East Maui watershed" and as such is unable to admit or deny the specific allegations contained in this paragraph. Defendant State admits that there are threatened and endangered plant species in the East Maui area; that there are native bird species, of which some are endemic to Maui; and that there are areas that have been designated critical habitat for some threatened and endangered plant species. Defendant State does not have sufficient knowledge or information with which to admit or deny the truth of the remaining allegations contained in this paragraph and therefore deny the same.

11. As to paragraph 22, Defendant State admits that it designated four license areas (Honopou, Keanae, Huelo and Nahiku) comprising approximately 33,000 acres of ceded lands from which A&B/EMI has diverted and continues to divert water from streams to central Maui. Defendant State does not have sufficient knowledge or information with which to admit or deny the truth of the remaining allegations contained in this paragraph and therefore deny the same.

12. As to paragraph 24, Defendant State admits that after the last 25-year license to divert water from East Maui expired in 1986, Defendant State began to issue month-to-month revocable permits. Defendant State denies the remainder of the allegations in this paragraph.

13. As to paragraphs 25, Defendant State admits that the Board, at its regular meeting on May 26, 2000, approved, as amended, the issuance of four revocable permits to Defendants A&B and EMI and requested that the Department of the Attorney General issue an opinion regarding compliance with Chapter 343, HRS, as it relates to the water leases. Defendant State denies the remainder of the allegations contained in this paragraph.

14. As to paragraphs 25.a., 25.b., 25.c., and 25.d., Defendant State states that Revocable Permit Nos. S-7263, S-7264, S-7265, and S-7266 speak for themselves. The allegations are denied to the extent that said paragraphs are inconsistent with the above referenced revocable permits.

15. As to paragraph 26, 45, and 57, Defendant State admits that in 2001 Defendants A&B and EMI applied for a 30-year lease of the East Maui water license areas and the continued issuance of interim revocable permits pending issuance of a long-term lease. Defendant State denies the remainder of the allegations contained in this paragraph.

16. As to paragraph 27, Defendant State admits that in 2002, because a contested case hearing was pending, the Board deferred action on the re-issuance of the interim revocable

permits and granted a holdover of the existing revocable permits on a month-to-month basis pending the results of the contested case hearing. Defendant State denies the remainder of the allegations in this paragraph.

17. As to paragraph 28, Defendant State admits that on January 24, 2003, the Board issued its First Amended Findings of Fact and Conclusions of Law and Order in Docket No. 01-05-MA (“1/10/03 - 1st Am FOF”). The 1/10/03 - 1st Am FOF speaks for itself, and on that basis the remaining allegations are denied to the extent said paragraphs are inconsistent with the 1/10/03 - 1st Am FOF.

18. As to paragraph 29, Defendant State admits that on October 10, 2003, Judge Eden Elizabeth Hifo of the First Circuit Court, State of Hawaii, issued an Order Affirming in Part and Reversing in Part State of Hawaii Board of Land and Natural Resources’ Findings of Fact and Conclusions of Law and Order, Dated January 10, 2003; Amended January 24, 2003 Regarding Petition Contesting Application for Long Term Disposition of Interim Revocable Permits at Honomanu, Keanae, Nahiku, and Huelo, Maui (“Cir. Ct. Order”). The Cir. Ct. Order speaks for itself, and on that basis the remaining allegations are denied to the extent said paragraphs are inconsistent with the Cir. Ct. Order.

19. As to paragraph 30, Defendant State are without sufficient knowledge or information regarding the alleged representations in 2009 and 2014 with which to admit or deny the truth of the allegations contained therein and therefore denies the same. To the degree that the paragraph seems to state that Defendant State represented that the revocable permits were not in operation, Defendant State denies the allegation. Defendant State denies all other allegations contained in this paragraph.

20. As to paragraph 31, Defendant State admits that a representative of Defendant EMI testified that he had received a letter from DLNR regarding one of the revocable permits. Defendant State denies the remainder of the allegations contained in this paragraph.

21. As to paragraph 34, there is no indication regarding the source of the allegations contained in this paragraph and as such, Defendant State is without sufficient knowledge to admit or deny the truth of the allegations contained therein and therefore denies the same.

22. As to paragraph 36, Defendant State admits that no environmental assessment has been conducted in connection with the revocable permits nos. S-7263, S-7264, S-7265, and S-7266. Defendant State denies the remainder of the allegations contained in this paragraph.

23. As to paragraph 37, Defendant State admits that it has not made a determination that the revocable permit nos. S-7263, S-7264, S-7265, and S-7266 are “minor projects” that will “probably have minimal or no significant effects on the environment.” Defendant State denies the remainder of the allegations contained in this paragraph.

24. As to paragraph 38, Defendant State admits that it has not made a declaration that the revocable permit nos. S-7263, S-7264, S-7265, and S-7266 are exempt from the requirements of HRS Chapter 343. Defendant State denies the remainder of the allegations contained in this paragraph.

25. To the extent that paragraphs 40, 42, 43, 44, and 48 cite to Hawaii Revised Statutes or the Hawaii Administrative Rules, the statutes and rules speak for themselves. Defendant State rejects any other allegations contained therein or any legal conclusions or inferences drawn therefrom and on that basis denies the same.

26. As to paragraph 50, Defendant State admits that no EA has been done for revocable permit nos. S-7263, S-7264, S-7265, and S-7266. Defendant State denies the remainder of the allegations contained in this paragraph.

27. As to paragraph 60, Defendant State admits that it has not received an EA for approval in connection with revocable permit nos. S-7263, S-7264, S-7265, and S-7266. Defendant State denies the remainder of the allegations contained in this paragraph.

28. As to paragraphs 39 and 56, Defendant State realleges and incorporates by reference its responses to all paragraphs as if fully set forth herein.

THIRD DEFENSE

29. Nā Moku's claims are barred by Defendant State's sovereign immunity.

FOURTH DEFENSE

30. Defendant State are not waiving any defense based on the lack of subject matter jurisdiction over Nā Moku's claims, or some of them.

FIFTH DEFENSE

31. Nā Moku has not suffered prejudice of any substantial right as a result of the actions or inaction of the Board.

SIXTH DEFENSE

32. The lawsuit is not timely or is otherwise barred by the applicable statute of limitations and/or the doctrine of laches.

SEVENTH DEFENSE

33. The claims asserted in the Notice of Appeal and the Statement of the Case are barred by the doctrines of waiver and/or estoppel.

EIGHTH DEFENSE

34. The claims asserted in the Notice of Appeal and the Statement of the Case are barred by the doctrines of res judicata and/or collateral estoppel.

NINTH DEFENSE

35. Defendant State reserves the right to assert any affirmative or other defenses that may become known and seeks leave to amend this Answer to allege any such defenses and to assert any other defenses.

WHEREFORE, Defendant State respectfully request that this Court:

- A. Dismiss the First Amended Complaint with prejudice; and
- B. That Defendant State be granted such other and further relief as is just and equitable in the premises.

DATED: Honolulu, Hawaii, May 26, 2015.



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Attorney for Appellees
Board of Land and Natural Resources,
Department of Land and Natural Resources, and
Suzanne Case, in her official capacity as
Chairperson of the Board of Land and Natural
Resources