

DEPARTMENT OF HEALTH
STATE OF HAWAII

DEPARTMENT OF HEALTH, STATE OF
HAWAII,

Complainant,

vs.

UNITED STATES DEPARTMENT OF
THE NAVY,

Respondent.

Docket No. 21-UST-EA-02

ORDER AMENDING PARAGRAPH II.8
OF THE SCHEDULING AND PRE-
HEARING ORDER, FILED DECEMBER
14, 2021, REGARDING “PRE-HEARING
FILINGS”

ORDER AMENDING PARAGRAPH II.8 OF THE SCHEDULING AND PRE-HEARING
ORDER, FILED DECEMBER 14, 2021, REGARDING “PRE-HEARING FILINGS”

In Paragraph II.8 of the Scheduling and Pre-Hearing Order, filed December 14, 2021, it states, in pertinent part: “The parties and the proposed intervenors must ensure that pre-hearing filings are filed no later than Friday, December 17, 2021, at 3:00 p.m. . . .”

On December 15, 2021, counsel for proposed intervenor Sierra Club, Kylie Wager Cruz, Esq., made a respectful request by email that the deadline for pre-hearing filings be extended to Saturday, December 18, 2021, at 12:00 p.m. (noon), for the reasons stated in her email. Counsel for the Navy, Mr. Craig D. Jensen, Esq. and the Department of Health, Deputy Attorney General Wade D. Hargrove III, Esq., and counsel for proposed intervenor Honolulu Board of Water Supply, Ella Foley Gannon, Esq., all affirmatively stated via email that they do not object to the request. The relevant string of emails is attached to this order.

The Hearings Officer finds that the Sierra Club's request is reasonable under the circumstances of this proceeding. The request is granted.

Therefore, it is ordered that Paragraph II.8 is amended to read as follows:

8. Pre-Hearing Filings

The parties and the proposed intervenors must ensure that pre-hearing filings are filed no later than Saturday, December 18, 2021, at 12:00 p.m. (noon). Such filings include a pre-hearing brief, an exhibit list, all exhibits on the exhibit list, a witness list, and any anticipated demonstratives. If any party or proposed intervenor wishes to file anything beyond this, it shall raise it at the December 17, 2021 status conference, or earlier.

DATED: Honolulu, Hawai'i, December 15, 2021.

/s/ David D. Day
David D. Day
Hearings Officer

From: [Hargrove, Wade H](#)
To: [Day, David D](#); [Ella Gannon](#); [Jensen, Craig D SES USN OGC WASH DC \(USA\)](#); [Kylie Wager Cruz](#); [Kam, Stella M](#); [dhenkin@earthjustice.org](#); [Isaac Moriwake](#); [Brown, David K.](#); [jlau3@honolulu.gov](#)
Subject: Re: Scheduling Order filed 12/14/21.
Date: Wednesday, December 15, 2021 4:33:52 PM

Apologies for the delay. No objection from DoH. Please note today is a travel day for me but will be back online tomorrow morning.

-Wade

From: Day, David D <david.d.day@hawaii.gov>
Sent: Wednesday, December 15, 2021 1:20 PM
To: Ella Gannon <ella.gannon@morganlewis.com>; Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>; Kylie Wager Cruz <kwager@earthjustice.org>; Kam, Stella M <Stella.M.Kam@hawaii.gov>; Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; dhenkin@earthjustice.org <dhenkin@earthjustice.org>; Isaac Moriwake <imoriwake@earthjustice.org>; Brown, David K. <david.brown@morganlewis.com>; jlau3@honolulu.gov <jlau3@honolulu.gov>
Subject: RE: Scheduling Order filed 12/14/21.

Thank you very much for responses Mr. Jensen and Ms. Gannon.

Just waiting to hear from Deputy Hargrove.

From: Gannon, Ella Foley <ella.gannon@morganlewis.com>
Sent: Wednesday, December 15, 2021 12:55 PM
To: Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>; Day, David D <david.d.day@hawaii.gov>; Kylie Wager Cruz <kwager@earthjustice.org>; Kam, Stella M <Stella.M.Kam@hawaii.gov>; Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; dhenkin@earthjustice.org; Isaac Moriwake <imoriwake@earthjustice.org>; Brown, David K. <david.brown@morganlewis.com>; jlau3@honolulu.gov
Subject: [EXTERNAL] RE: Scheduling Order filed 12/14/21.

Hearing Officer Day: Proposed Intervenor the Board of Water Supply does not object.

Best regards,

Ella

Ella Foley Gannon

Morgan, Lewis & Bockius LLP

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ella.gannon@morganlewis.com | www.morganlewis.com

Assistant: Ashley Martin | [+1.415.442.1647](#) | ashley.martin@morganlewis.com

COVID-19 Resources and Updates



From: Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>
Sent: Wednesday, December 15, 2021 2:45 PM
To: Day, David D <david.d.day@hawaii.gov>; Kylie Wager Cruz <kwager@earthjustice.org>; Kam, Stella M <Stella.M.Kam@hawaii.gov>; Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; dhenkin@earthjustice.org; Isaac Moriwake <imoriwake@earthjustice.org>; Gannon, Ella Foley <ella.gannon@morganlewis.com>; Brown, David K. <david.brown@morganlewis.com>; jlau3@honolulu.gov
Subject: RE: Scheduling Order filed 12/14/21.

[EXTERNAL EMAIL]
Hearings Officer Day:

Navy does not object.

Craig

From: Day, David D <david.d.day@hawaii.gov>
Sent: Wednesday, December 15, 2021 4:35 PM
To: Kylie Wager Cruz <kwager@earthjustice.org>; Kam, Stella M <Stella.M.Kam@hawaii.gov>; Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; Jensen, Craig D SES USN OGC WASH DC (USA) <craig.d.jensen.civ@us.navy.mil>; dhenkin@earthjustice.org; Isaac Moriwake <imoriwake@earthjustice.org>; Ella Gannon <ella.gannon@morganlewis.com>; david.brown@morganlewis.com; jlau3@honolulu.gov
Subject: [Non-DoD Source] RE: Scheduling Order filed 12/14/21.

Counsel: Your respectful request is duly noted. Are there any objections?

Dave Day

From: Kylie Wager Cruz <kwager@earthjustice.org>
Sent: Wednesday, December 15, 2021 11:10 AM
To: Kam, Stella M <Stella.M.Kam@hawaii.gov>; Hargrove, Wade H <Wade.H.Hargrove@hawaii.gov>; craig.d.jensen.civ@us.navy.mil; dhenkin@earthjustice.org; Isaac Moriwake <imoriwake@earthjustice.org>; Ella Gannon <ella.gannon@morganlewis.com>; david.brown@morganlewis.com; jlau3@honolulu.gov
Cc: Day, David D <david.d.day@hawaii.gov>
Subject: [EXTERNAL] RE: Scheduling Order filed 12/14/21.
Importance: High

Dear Hearings Officer Day,

Upon reviewing the scheduling order, we noticed that you set Friday, 12/17, at 3 p.m. as the pre-hearing filing deadline. Having not discussed a pre-hearing filing deadline during either of yesterday's status conferences, we had assumed that it would be set along the lines of the previous schedule (8 p.m. the night before the hearing), but somewhat farther in advance to account for more filings associated with any additional parties. We understand that the parties and Hearings Officer will need adequate time to review the pre-trial filings and prepare for the hearing. And at the same time, we need a bit more time to prepare our case.

We respectfully request that the pre-hearing filing deadline be extended by less than a day to **Saturday, 12/18, at 12 p.m. (noon)**. This would give the Hearings Officer and the parties a day-and-a-half to prepare for the hearing.

Thank you for your attention to this time-sensitive matter.

Respectfully,

Kylie Wager Cruz
David Henkin

Attorneys for Proposed Intervenor Sierra Club

From: Kam, Stella M <stella.m.kam@hawaii.gov>
Sent: Tuesday, December 14, 2021 5:32 PM
To: wade.h.hargrove@hawaii.gov; craig.d.jensen.civ@us.navy.mil; David Henkin <dhenkin@earthjustice.org>; Kylie Wager Cruz <kwager@earthjustice.org>; Isaac Moriwake <imoriwake@earthjustice.org>; ella.gannon@morganlewis.com; david.brown@morganlewis.com; jlau3@honolulu.gov
Cc: david.d.day@hawaii.gov
Subject: Scheduling Order filed 12/14/21.

Stella M.L. Kam

Deputy Attorney General

Administration Division

[\(808\) 586-0618](tel:(808)586-0618)

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