

December 16, 2021

Department of Health, State of Hawai'i v. United States Department of the Navy, DOH Docket No. 21-UST-EA-02

Summary of Parties' and Proposed Intervenor's December 16, 2021 Meet and Confer Pursuant to Paragraph 6 of the Hearings Officer's Scheduling and Pre-Hearing Order (filed December 14, 2021)

Transmission of Pre-Hearing Filings

All pre-hearing filings pursuant to paragraph 8 of the Scheduling and Prehearing Order (Dec. 14, 2021, as amended) will be transmitted to the Hearings Officer, the parties, and proposed intervenors through DOH's file-sharing system. DOH will attempt to create 1 subfolder for each party and proposed intervenor for uploading documents. On or before December 17, 2021, DOH will email the Hearings Officer, the parties, and proposed intervenors, as well as designated support staff, a web link to test DOH's file-sharing system. If there are problems with DOH's file-sharing system, the Navy will provide an alternative file-sharing system.

Exhibits

Exhibits will be labeled and Bates-stamped with the following prefixes:

- "D" for DOH (e.g. "D-1," "D00001")
- "B" for BWS (e.g. "B-1," "B000001")
- "S" for Sierra Club (e.g. "S-1," "S000001")
- "N" for the Navy (e.g. "N-1," "N00001")

DOH, BWS, and Sierra Club agree that, for purposes of cross-examination, all documents that were admitted in the Red Hill permitting proceeding, DOH Dkt. No. 19-UST-EA-01, shall be deemed admissible, subject only to objections regarding relevance. Given the time constraints placed on this Hearing by the Department of Health, the Navy proposed, for purposes of record manageability, limiting exhibits from the Red Hill permitting proceeding to the parties to that proceeding's post-hearing briefs and exhibits. The Navy believes Complainant and proposed Intervenor's proposal would run counter to the record management purpose by eliminating the possibility of materiality and repetition objections (HRS 91-10: agencies are to admit any and all evidence, limited only by consideration of relevance, materiality and repetition objections).

The parties and proposed intervenors agree that any objections as to the admissibility of exhibits served pursuant to paragraph 8 of the Scheduling and Prehearing Order (Dec. 14, 2021, as amended) will be communicated to all other parties and proposed intervenors by email no later than 12:00 p.m. noon on December 19, 2021. .

Anticipated Witnesses and Declarations in Lieu of Direct Testimony

The parties and proposed intervenors disclosed their plans regarding witnesses as follows:

- DOH: 4 witnesses, all of whom will provide live direct testimony;
- BWS: 2 witnesses, all of whom will provide written declarations and limited live direct testimony;

- Sierra Club: Estimated 6 witnesses, at least one of whom will provide direct testimony only via a written declaration; other witnesses will provide written declarations and limited live direct testimony;
- Navy: 4 witnesses, all of whom will provide written declarations and limited live direct testimony.

The parties and proposed intervenors agree that witnesses' written declarations will be served with the pre-hearing filings pursuant to paragraph 8 of the Scheduling and Prehearing Order (Dec. 14, 2021, as amended) (i.e., by 12:00 p.m. noon on December 18, 2021).

- No later than 12:00 p.m. noon on December 19, 2021, the Navy will notify the Sierra Club via email and identify which, if any, of Sierra Club's witnesses who have provided declarations in lieu of direct testimony who the Navy intends to cross-examine.
- If the Navy does not notice for cross examination a Sierra Club witness who has provided a declaration in lieu of direct testimony, that witness is excused from appearing at the contested case hearing.

Stipulated Facts

At this time, the parties and proposed intervenors have not stipulated to any facts.

Opening and Closing Statements

Each party will have 10 minutes for an opening statement and 15 minutes for a closing statement. Each party may decide at its discretion whether it would like to deliver its opening statement at the start of the hearing or at the start of its own case in chief. Unless there is sufficient time on Day 1 of the hearing (December 20, 2021), closing statements will be made on Day 2 of the hearing (December 21, 2021).

Order of Presentation

The order of presentation will be as follows:

- DOH: opening, direct exam of DOH's witnesses, cross-exam of DOH's witnesses
- BWS: opening (if not previously made at the beginning of the hearing), direct exam of BWS's witnesses, cross-exam of BWS's witnesses
- Sierra Club: opening (if not previously made at the beginning of the hearing), direct exam of Sierra Club's witnesses, cross-exam of Sierra Club's witnesses
- Navy: opening (if not previously made at the beginning of the hearing), direct exam of the Navy's witnesses, cross-exam of the Navy's witnesses

Time Allotments and Calculations

Exclusive of opening and closing statements, the parties' time to conduct direct exam and cross-exam will be limited as follows:

- DOH: 3 hours
- BWS: 2 hours
- Sierra Club: 2 hours
- Navy: 3 hours

The parties and proposed intervenors propose that the Hearings Officer designate non-party support staff to track each party’s time.

In the interest of completing the hearing in one day, if possible, DOH, BWS, and Sierra Club propose that Day 1 of the hearing (December 20, 2021) run from 8 a.m. to 8 p.m. The Navy does not object to this schedule.

Stipulated Protective Order Concerning Protected Non-Classified Information

The Navy will modify materials (e.g., maps) so as to avoid disclosing protected non-classified information. Therefore, no stipulated protective order is necessary at this time.