

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 REGARDING EVIDENTIARY  
HEARING AND PRE- AND POST-  
HEARING MATTERS

ORDER REGARDING EVIDENTIARY HEARING AND PRE- AND POST-HEARING  
MATTERS

Pursuant to the Summary of Parties' and Proposed Intervenors' December 16, 2021 Meet and Confer Pursuant to Paragraph 6 of the Hearings Officer's Scheduling and Pre-Hearing Order, filed December 16, 2021, and representations at the Final Status/Pre-Hearing Conference, held on Friday, December 17, 2021, at 9:00 a.m., the Hearings Officer orders:

I. Pre-Hearing Matters

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

- "D" for Department of Health ("DOH") (e.g. "D-1," "D00001")
- "B" for Board of Water Supply ("BWS") (e.g. "B-1," "B000001")
- "S" for Sierra Club (e.g. "S-1," "S000001")
- "N" for the United States Navy ("Navy") (e.g. "N-1," "N00001")

Exhibit labeling and Bates-stamping need not be sequential so long as such information is ascertainable from the exhibit list.

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 filed with the Hearings Officer and communicated to all other parties and proposed intervenors by email no later than 12:00 p.m. noon on Sunday, December 19, 2021.

The Hearings Officer is attempting to provide a file-sharing platform where all parties or proposed intervenors can deposit their proposed exhibits in separately marked folders for each party and proposed intervenor no later than 12:00 p.m. noon on Saturday, December 18, 2021. To the extent the file-sharing platform is viable, the Hearings Officer orders that a party or proposed intervenor may only upload documents into its own folder. Any party or proposed intervenor may view or download any file from any folder (including others' folders), but are expressly prohibited from uploading, deleting, manipulating, or otherwise altering the contents of any other party or proposed intervenor's folder. *To the extent that the file-sharing platform turns out not to be a viable option, each party or proposed intervenor bears the responsibility to ensure that all exhibits are transmitted to the Hearings Officer and all other parties or proposed intervenors by 12:00 p.m. noon on Saturday, December 18, 2021.*

The Navy will modify materials (e.g., maps) so as to avoid disclosing protected non-classified information.

All pre-hearing filings pursuant to paragraph 8 of the Scheduling and Prehearing Order (December 14, 2021, as amended), with the exception of exhibits, shall be filed

with the Hearings Officer and served upon all parties *via email* no later than 12:00 p.m. noon on Saturday, December 18, 2021.

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 Saturday, December 18, 2021) *via email*.

- No later than 12:00 p.m. noon on Sunday, 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.

## II. Witnesses

All parties and proposed intervenors must provide email addresses to the Hearings Officer of any and all witnesses or party representatives who wish to attend the hearing so that they may become authorized to use the evidentiary hearing Zoom link as soon as possible. If multiple witnesses will be appearing from a common room, the party or proposed intervenor is responsible for ensuring that an email address is provided that will allow Zoom to work in that room. If a witness will be appearing on his or her own computer (i.e., not in a common room), the propounding party or proposed intervenor must ensure that the witness can access Zoom by being able to use a distinct Zoom account, unless otherwise directed.

The witness exclusion rule is in effect. With the exception of one party representative, every party is responsible for ensuring that its witnesses do not view the testimony of other witnesses, whether live or on YouTube, while the hearing is ongoing.

### III. Conduct of the Evidentiary Hearing

In the interest of completing the hearing in one day, if possible, all parties admitted to participate in the hearing shall be prepared for the hearing to run from 8:00 a.m. to 8:00 p.m. on Monday, December 20, 2021.

**All attorneys should be logged in to Zoom by 7:40 a.m. on Monday, December 20, 2021. A link to the Zoom hearing will be emailed to attorneys, which may be shared with staff and witnesses only. Attorneys are ordered to instruct their witnesses not to disseminate this link to anyone. All attorneys are responsible for ensuring that their respective witnesses are available and are logged into Zoom prior to being called.**

Before the beginning of the evidentiary hearing, documents for which there are no objections may be admitted into evidence. Exhibits that are objected to may be addressed at that time, or during the course of the hearing when a party moves to admit an exhibit into evidence, depending on the number of exhibits at issue, at the Hearings Officer's discretion.

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).

Assuming for the sake of scheduling that Sierra Club and BWS are granted party status, the order of presentation will be as follows:

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

If one or both of the proposed intervenors are not granted party status, the order of presentation will be discussed before the hearing. Closing arguments will be made in the following order: Navy, Sierra Club, BWS, and DOH.

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

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

#### IV. Post-Hearing Exhibit Responsibilities

After the evidentiary hearing has concluded, the parties shall submit a stipulated list of exhibits that identify any duplicate exhibits in the record no later than Wednesday, December 22, 2021 at 3:00 p.m.

DATED: Honolulu, Hawai'i, December 17, 2021.

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