

CARE Committee

From: Keola Whittaker <Keola.R.Whittaker@co.maui.hi.us>
Sent: Tuesday, July 20, 2021 1:46 PM
To: CARE Committee
Subject: CARE-1(5) presentation
Attachments: Presentation on Climate Change Litigation.pptx

Follow Up Flag: Follow up
Flag Status: Flagged

Please see attached. Do you prefer that I share this presentation from my computer or have committee staff share it? I am happy with either option.

Keola Whittaker
Deputy Corporation Counsel
County of Maui
200 High Street, 3rd Floor
Wailuku, Hawaii 96793
Ph: (808) 270-7740 (main)

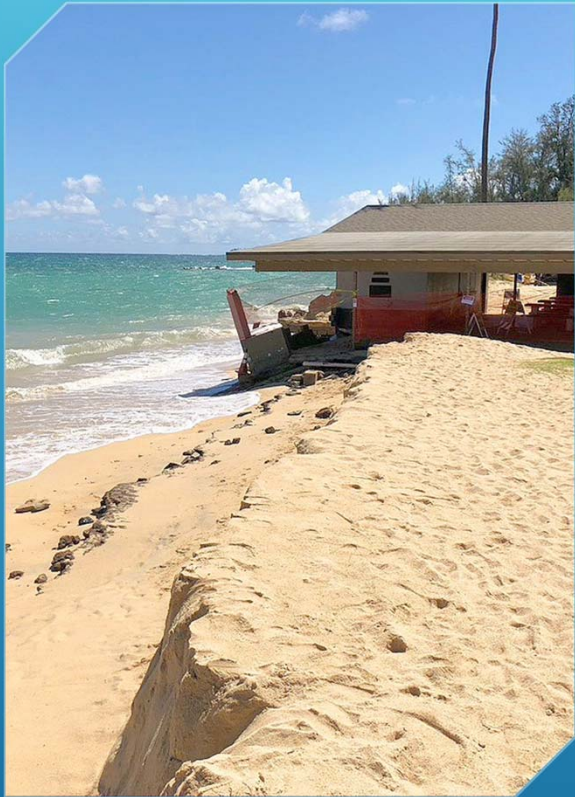
COUNTY OF MAUI V. SUNOCO LP, ET AL.

Climate Change Litigation

Update from the Department of the Corporation
Counsel

Climate Action, Resilience, and Environment
Committee

July 21, 2021

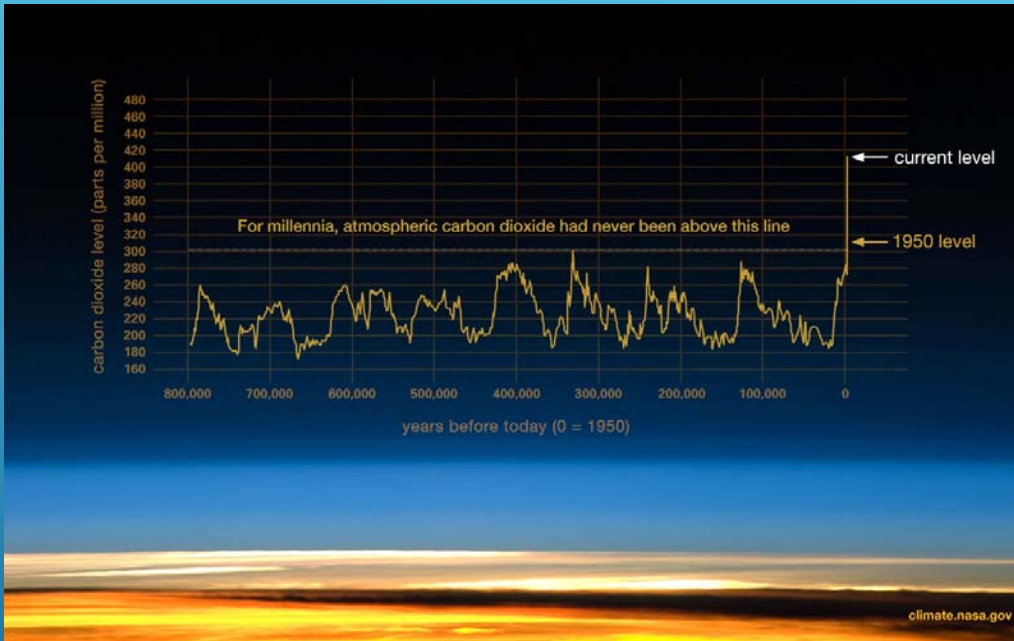


OVERVIEW

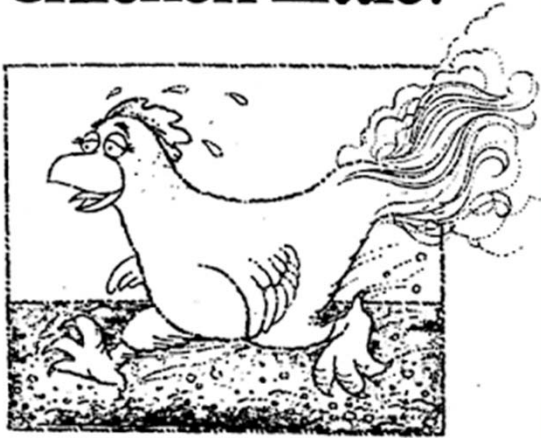
- Background on climate change litigation generally
- What makes Maui's case unique?
- Early victories in our case
- What we expect to happen next

CLIMATE CRISIS

- The planet's average surface temperature has risen about 2.12 degrees since the late 19th Century.
- Most of the warming occurred in the last 40 years, with the last 7 being the warmest
- Global sea level rose about 8 inches in the last century. During the last two decades, the rate of increase is double of the last century and is accelerating each year.



Who told you the earth was warming... Chicken Little?



Chicken Little's hysteria about the sky falling was based on a fact that got blown out of proportion.

It's the same with global warming. There's no hard evidence it is occurring. In fact, evidence the Earth is warming is weak. Proof that carbon dioxide has been the primary cause is non-existent. Climate models cannot accurately predict far-future global change. And the underlying physics of climatic change are still wide open to debate.

If you care about the earth, but don't want your imagination to run away



FOSSIL FUEL COMPANIES DECEIVED THE PUBLIC TO INFLATE THE MARKET FOR THEIR PRODUCTS

- "Defendants have known for more than 50 years that greenhouse gas pollution from their fossil fuel products would have significant adverse impacts on the Earth's climate and sea levels..."
- "Instead of warning of those known consequences ... defendants concealed the dangers, promoted false and misleading information, sought to undermine public support for greenhouse gas regulation, and engaged in massive campaigns to promote the ever-increasing use of their products at ever-greater volumes."

CLIMATE CHANGE CASES FILED NATIONWIDE

- ▶ 26 public entities have filed climate change-related lawsuits based on Big Oil's failure to warn and campaigns of deception.
 - ▶ States of Rhode Island, Minnesota, Delaware, Massachusetts, and Connecticut, as well as the District of Columbia.
 - ▶ Cities and Counties in California (8), Maryland (3), and Colorado (3); City of Charleston, South Carolina; City of New York, New York; King County, Washington; City of Hoboken, New Jersey; the City & County of Honolulu; and the County of Maui.

CLIMATE CHANGE CASES FILED NATIONWIDE

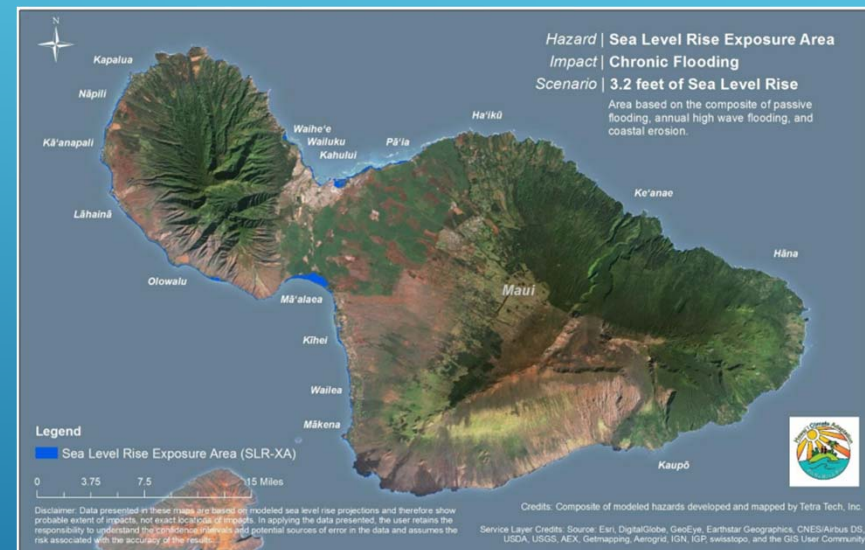
- ▶ Fight over Forum. The Big Oil Defendants want these cases decided in federal courts, not state court. Four appellate courts and eight district courts have all rejected attempts to remove cases targeting climate deception from state court to federal court.
- ▶ Fight to move forward on the merits. The Big Oil Defendants have uniformly sought stays in all of these cases to prevent an adjudication of claims on the merits.
- ▶ Several cases currently moving forward on the merits in the state courts in which they were filed: *Massachusetts*, *Boulder*, *Honolulu*, and our case. *Baltimore* and *Rhode Island* cases have been stayed in state court pending decisions in other courts.

THE IMPACTS OF CLIMATE CHANGE
INCLUDED IN OUR COMPLAINT THAT
ARE UNIQUE TO THE COUNTY OF MAUI



SEA LEVEL RISE & IMPACT TO HAWAIIAN COMMUNITIES

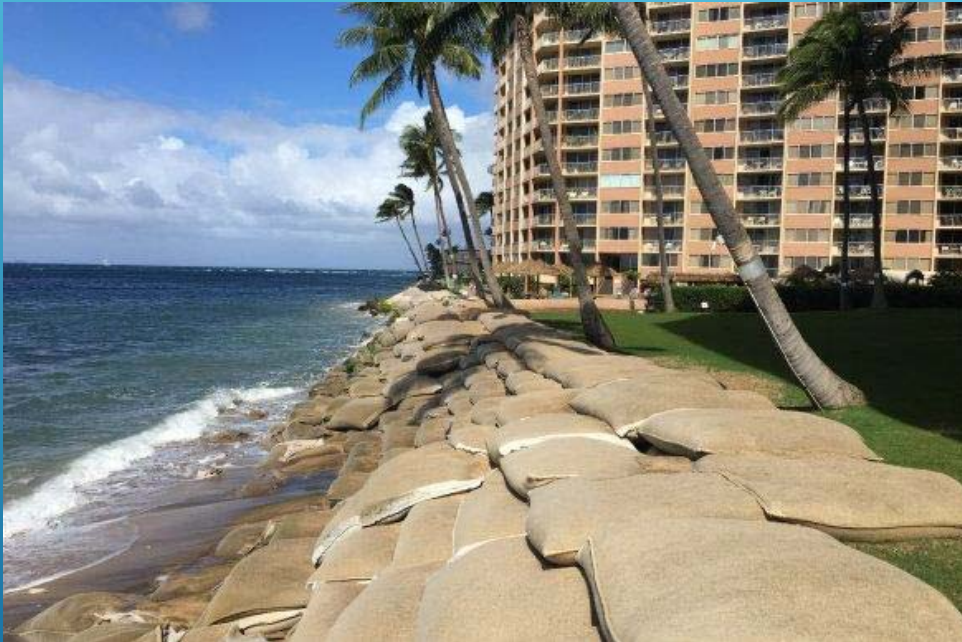
- ▶ A substantially developed coastline and substantial low-lying areas including south coast of Maui, Kahului, and Kaunakakai on Molokai.
- ▶ \$3.2B in assets, including 3,100 acres of land, 760 structures, and 11.2 miles of major roads are in the sea level rise exposure area.
- ▶ Hawaiian Home Lands on Maui and Molokai are within the SLR exposure area and are at a high risk of displacement.
- ▶ Historical and cultural sites, including burial grounds, home sites, and fishponds are within the SLR exposure area, including 26 cultural sites on Molokai alone.





ECOSYSTEM HARM

- ▶ Hawai'i is the "Endangered Species Capital of the World."
- ▶ Three species mentioned by name in the Complaint: kiwikiu (Maui parrotbill); 'ahinahina (silversword); 'i'iwi (scarlet Hawaiian honeycreeper).
- ▶ In 2019 DLNR released a report indicating that 50% of coral species that make up much of Molokini's reef was bleached or "paling heavily."



PLANNING COSTS / COSTS ALREADY INCURRED

- Removal of the old pavilion at Baldwin Beach Park
- Repairs to roads near the shoreline including Lower Honoapi'ilani Road in late 2018.
- Construction costs relating to the Wailuku-Kahului Wastewater Reclamation Facility to address shoreline erosion and rising sea levels
- Planning costs including hazard mitigation plans and other administrative agency planning for sea level rise, increased fires, and erosion.

EARLY VICTORIES IN OUR CASE

Remand from Federal Court

- ▶ The Big Oil Defendants tried to remove our case from state court to federal court.
- ▶ We successfully persuaded the federal court that there is no basis for federal court jurisdiction since our claims are based in state law and primarily focus on the Defendants' deceptive practices.

Preventing a Stay of the Litigation

- ▶ The Big Oil Defendants wanted to prevent any decisions on the merits of the case by asking the court to stay the case until all appeals relating to earlier filed cases are heard.
- ▶ Thus far none of the requests for a stay in our case – in federal or state court – have been granted.

WHAT IS NEXT?

- ▶ **Moving forward in the First Circuit in Honolulu.** At the request of the parties, our case has been transferred to Judge Crabtree in the First Circuit (Honolulu), the same judge that was assigned the related Honolulu case, for all pretrial purposes.
 - ▶ Judge Crabtree already denied a request for a stay and has set a briefing schedule on the motions to dismiss.
- ▶ **Motions to Dismiss.** Later this summer, we will respond to Defendants' motions to dismiss. We expect Judge Crabtree to issue a decision on the motions early this Fall.
 - ▶ We expect Defendants to argue that federal law preempts any state laws regulating fossil fuel companies.
- ▶ **Discovery.** If any claims move forward, we will start the discovery process and expect to obtain additional information about Big Oil's deceptive practices.



MAHALO FOR DOING WHAT YOU CAN
TO PREVENT CLIMATE CHANGE