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July 14, 2020

VIA FIRST CLASS MAIL & EMAIL

Deputy Attorney General William J. Wynhoff  
Department of the Attorney General  
465 S. King Street, Room 300  
Honolulu, Hawaii 96813

Re: Sierra Club Letter of May 14, 2020 to BLNR Chair Suzanne Case

Dear Bill:

I am responding to your email of May 30, 2020, transmitting a letter of May 14, 2020, from Sierra Club of Hawai'i to BLNR Chair Suzanne Case. In that letter, Sierra Club asked Chair Case to solicit further information from Mahi Pono ("MP") and posed a number of questions to be directed by Chair Case to MP. The questions relate to the Quarterly Report submitted to Chair Case by EMI on April 25, 2020 (the "Quarterly Report"). I have had the opportunity to discuss the letter and its contents with our client, and it has authorized me to provide you with the following response.

MP has and will continue to cooperate with DLNR and the Board with regard to the Water Permits and water use information under the Permits. Sierra Club's letter, however, asks for information that goes beyond the permit conditions. (Those conditions and responses are laid out in the Quarterly Report.) For example, the BLNR did not impose reporting conditions relating to use of groundwater by MP which underlies their property, such as groundwater usage, crop tolerance to brackish water, or crop location in reference to groundwater wells.

That being said, MP can provide the following information on questions being posed by the Sierra Club.

At this early stage of MP's implementation of its agricultural development plans, no crops are currently being irrigated by groundwater. There are a number of reasons for this. First, the wells are being rehabilitated. Further, MP's irrigation requirements this year are still relatively low as shown by the quarterly report to

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**TRIAL EXHIBIT AB-32**

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DLNR. As planted acres increase, MP will evaluate the timing, technical feasibility (due to concerns regarding salinity and sustainable capacity of this resource) and the economics of rehabilitating and placing the old plantation wells on the eastern portion of the former sugar plantation back into service as may appropriate to support the projected future development of its farm plan.

Sierra Club asks how the water from streams west of Honopou, outside of the permit area, has been used by MP in 2020. Any water collected from these streams by EMI is comingled with water collected east of Honopou, i.e. from the permit area, and is thus delivered and used together with water from other parts of the EMI System.

As for Sierra Club's questions regarding how many acres are being planted for crops, that is covered on page 1 of the Quarterly Report.

Sierra Club specifically asks for how much water HC&D is using, for what purposes, and whether alternative sources are available. MP would note that there are a number of individual users of water imported from East Maui, other than MP, including the Maui County Department of Water Supply. The permit conditions do not require that each individual user's water usage be tracked or reported. It is MP's understanding, however, that HC&D has historically obtained water from a pipeline that supplied the former HC&S mill in Puunene and uses this water for its quarry and concrete batching operations on land that it leases from A&B. On average, HC&D uses from 200,000 to 250,000 gallons per day for its concrete batching operations and approximately 50,000 gallons per day for dust control. MP's understanding is that HC&D does not currently have an alternative source. HC&D provides the island of Maui with an on-island source of aggregate for its many infrastructure and development projects.

Sierra Club asks MP to explain in detail where water goes in the category "reservoir/fire protection/ evaporation/dust control/hydroelectric." As the EMI System has been developed and used over its history, any water flow that is not diverted for specific use is stored in the reservoirs. Actual storage and water use from the reservoirs depends upon day-to-day needs which can be affected by such variables as rainfall, sunshine intensity, humidity, winds, seepage and evaporation. Part of the water in the EMI System, both in the ditches and in the reservoirs, will necessarily be lost due to seepage and evaporation which cannot be directly measured. Note that seepage does contribute to recharge of underlying aquifers. MP would like to clarify, moreover, that the 22.7% estimated seepage loss from the

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CWRM D&O in the "System Losses" column of Exhibit A was derived during sugar cultivation, when a much larger volume of water was being imported. Since much of this system loss represented seepage from reservoirs, and the reservoirs are continuing to be filled for fire protection, the total amount of seepage loss currently being experienced is necessarily greater than 22.7%, with the difference being captured in the last column. As for hydroelectric use, that is a reasonable-beneficial use and is basically a non-consumptive use.

The existence of the reservoirs is also extremely important for fire safety reasons. They are a major source of water for fighting fires. Of course such water is not needed all the time, but when there is a fire the water is needed immediately. As I'm sure you are aware, given the hot summer season the island is again battling major brushfires, and the latest fires have consumed approximately 4,000 acres--most of which has been on MP lands. The water being used to fight these fires primarily comes from the reservoirs.

On the Sierra Club's questions regarding garbage removal and diversions, MP is planning to institute a program to make a documentary record by taking photographs of garbage and any diversions being removed, and will provide copies of those photographs to the Department. We note that the Sierra Club's questions presume that all diversions will be removed, but CWRM explicitly stated that it was not requiring that, and left it to subsequent permitting as to whether and what diversions would be removed.

MP hopes that this properly responds to the inquiries in the Sierra Club letter. Please contact me if you want to discuss this response.

Very truly yours,

ASHFORD & WRISTON  
A Limited Liability Law Partnership LLP

By



JAMES K. MEE

Attorneys for Mahi Pono, LLC

Civil No. 19-1-0019-01 (JPC)

**Defendant A&B/EMI's Exhibit AB-32**

FOR IDENTIFICATION \_\_\_\_\_

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CLERK \_\_\_\_\_