

NAME: Megan Powers

**Interrogatory #1:** Describe fully how you “would be adversely affected if the revocable permits were held over for another year,” as alleged in paragraph 14 of the Sierra Club’s First Amended Complaint.

Plaintiff objects to this interrogatory because: (a) the request is duplicative of information already provided; and (b) the request is unnecessarily burdensome given the materials previously provided to the defendants.



\_\_\_\_\_  
David Kimo Frankel  
Attorney for the Sierra Club

Subject to and without waiving these objections, I previously submitted a declaration dated February 25, 2019 and answered questions in a deposition on May 30, 2019. I incorporate those responses.

I have swum and played in Honpou, Hanawana and Ho‘olawa streams virtually my whole life. I have experienced the harm caused when A&B’s diversions have dried up the streams. If A&B increases its diversions, I will be harmed. I was also harmed when A&B took water from other streams and dumped this excess diverted water into Ho‘olawa Stream, making it dangerous to swim in. The diversions authorized by the continuation of the revocable permits harm my aesthetic, recreational and environmental interests. An increase in the amount of water diverted from east Maui streams will further diminish my enjoyment of the east Maui watershed.

**Interrogatory #2:** Describe fully how you have been harmed or will be harmed by the Board of Land and Natural Resources’ October 2019 decision to continue the subject revocable permits for calendar year 2020.

Plaintiff objects to this interrogatory because: (a) the request is duplicative of information already provided; and (b) the request is unnecessarily burdensome given the materials previously provided to the defendants.



\_\_\_\_\_  
David Kimo Frankel  
Attorney for the Sierra Club

Subject to and without waiving these objections, the answer to this question is the same as #1 above.

Interrogatory #3: Describe fully the irreparable harm that you will suffer if the diversion of water authorized by the Board of Land and Natural Resources' October 2019 decision to continue the subject revocable permits for calendar year 2020 continues for calendar year 2020 (i.e., if Sierra Club's request for an injunction is not granted).

Interrogatory #4: Describe whether and to what extent the harm that you have suffered or will suffer as a result of the Board of Land and Natural Resources' October 2019 decision to continue the subject revocable permits for calendar year 2020 is different than the harm that you have suffered as a result of the Board of Land and Natural Resources' November 2018 decision to continue the subject revocable permits for calendar year 2019.

1.) In 2018 A & B was still dumping water from other streams down Ho'olawa stream at the Haiku ditch blow-off tunnel, about 350 feet to the west from the Haiku ditch diversion at the Old Hana Hwy. bridge on the first Ulalena Loop. When A & B learned that we were aware of their illegal water dumping practices, they stopped. (See recent photo of me standing in blow-off tunnel now that no water is being dumped.) This did reduce the danger of being swept away over an 80 ft waterfall down-stream from our property when recreating in the stream. Therefore, one could say that at this moment, the a portion of the condition listed as #12 in my complaint has improved.

However, it does un-due the damage that was done during the approximate 2.5 years of dumping from 2016 – early 2019. Some of the erosion can be seen around the roots and banks in these photographs. The eroded soil continues to negatively impact the reef and fishery of Ho'olawa bay.

Picture #1: Standing in Blow-off tunnel

Picture #2: Exposed roots

Picture #3: Eroded banks

Picture #4: Blight on Trees (supplied as evidence during original subpoena)

A growing hazard:

Further damage that cannot be undone from previous dumping continues to be a growing hazard: Many groves of large, tall standing-dead trees, too dangerous to cut down, have created a situation where invasive weed trees/bushes are now growing up underneath them in the light, due to loss of canopy coverage. We are unable to remove these weed trees because of the dangerous falling limbs from high above. This is now an epicenter of invasive plants that we will not be able to eradicate until all the standing-dead has collapsed.

(I spoke with, emailed, and took samples to an Ag. extension agent from UHMC when the trees first began to show signs of disease. Their explanation was that the excess water around the roots gave them a root-rot which made them susceptible to a blight. That blight killed a whole grove of trees on our property and spread up and down the valley impacting many groves of trees on other property, and even spread into the next down-wind valley of Honopou. The damage and danger continues and grows.

2.) A temporary improvement: The first ongoing natural flow of water down Ho'olawa stream since the construction of the Haiku Ditch. The stream and pools are beautiful and clear and not stagnant (less mosquitos) and life is returning to the stream.

Why?:

Due to aging and lack of maintenance by A & B/EMI to the diversion structures of the Haiku Ditch located at the Old Hana Highway bridge on Ulalena Loop, a very dangerous situation had evolved.

The water gate actuator (a very long steel bar with notches for ratcheting) had rusted and broken free from the activator gear assembly. This made it impossible to control the water gate at the bridge. The gate (a huge steel plate) had gotten stuck in a partially open position where some water was released and the rest of the water backed up so that it could drain into the collection chute for the Haiku Ditch. It was dangerous because, lots of the public (kids, locals, tourists) often frequent the stream in that area to recreate and, someone could have gotten sucked underneath the gate and been trapped or pinned underwater. After more than a year of it being in this condition, EMI removed the old broken actuator bar and the water gate that it was attached to.

The pros:

We have had some natural flow of water down Ho'olawa stream since the gate was removed (natural flow meaning coming from upstream).

The Con:

If they decide to repair the diversion we will lose the water & life in the stream.

Therefore, this is a temporary improvement to the water flow in Ho'olawa valley below the Haiku ditch. The minimal stream flow we are currently experiencing could easily be lost when A & B/EMI services the hardware.

Please Note: This is only the water that accumulates from below the Hamakua ditch ... or perhaps that is released at the Lowry ditch to allow for recreation at the Twin Falls tourist attraction and continues to flow downstream to us. The Hamakua and Wailoa diversions upstream are total diversions not allowing any water to flow downstream. Therefore, there are patches of dead, dry streambed above the Lowry ditch and Ho'olawa stream is far from restored.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 3/5/2020, Hawai'i, Haiku/Huelo.  
(date) (city)

Megan Powers  
Signature  
Megan Powers  
Print Name









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

**Defendant A&B/EMI's Exhibit AB-89**

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

RECEIVED IN EVIDENCE \_\_\_\_\_

CLERK \_\_\_\_\_