

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,) CIVIL NO. 19-1-0019-01 JPC
) (Environmental Court)
Plaintiff,)
vs.) SECOND DECLARATION OF MARTHA
) TOWNSEND
BOARD OF LAND AND NATURAL)
RESOURCES, DEPARTMENT OF LAND)
AND NATURAL RESOURCES,)
SUZANNE CASE in her official capacity as)
Chairperson of the Board of Land and)
Natural Resources, ALEXANDER AND)
BALDWIN, INC., EAST MAUI)
IRRIGATION, LLC and COUNTY OF)
MAUI)
Defendants.

SECOND DECLARATION OF MARTHA TOWNSEND

I, Martha Townsend, under penalty of perjury hereby state the following is true and accurate to the best of my knowledge and belief:

1. The statements below are based upon my personal knowledge.
2. I have served as the director of the Sierra Club of Hawai'i since 2015. In that capacity, I monitor environmental issues closely, advocate before administrative and legislative bodies, supervise the activities of the Sierra Club of Hawai'i, administer Sierra Club communications in Hawai'i, coordinate with members and volunteers, and oversee chapter and group staff, and manage the overall operations of the state chapter, of which the Maui Group is a part.
3. I am a member of the Sierra Club.
4. Given my position, I am familiar with the Sierra Club's activities in Hawai'i as well as the interests of its members.
5. The Sierra Club is a 501(c)(4) nonprofit corporation registered to do business in the State of Hawai'i, with its principal place of business in Hawai'i at 1164 Bishop Street, suite 1512, Honolulu, HI 96813.

6. The Sierra Club's mission is to explore, enjoy and protect the wild places of the earth.
7. The Sierra Club offers hikes that encourage people to explore and enjoy nature.
8. To help protect wild places, the Sierra Club also offers service trips to eradicate invasive species that crowd out native forests throughout the state, as well as planting native plants.
9. The Sierra Club has led hikes to and along streams in east Maui.
10. One of the Sierra Club's purposes is the protection of natural resources, including our streams and native aquatic life.
11. The Sierra Club and its members seek to preserve and enjoy free-flowing streams.
12. Sierra Club members enjoy the beauty of free-flowing streams.
13. Sierra Club members enjoy the benefits of a healthy stream ecosystem in which stream habitat supports native aquatic life.
14. Sierra Club members are beneficiaries of public trust obligations imposed upon government agencies and officials, including BLNR.
15. Sierra Club members hike along streams that have been or are diverted by A&B pursuant to the continuation of revocable permits S-7263 (Tax Map Key (2) 1-1-001:044), S-7264 (Tax Map Keys (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key (2) 1-1-002:por. 002) and S-7266 (Tax Map Keys (2) 1-2-004:005 & 007).
16. Sierra Club members recreate in and next to streams that have been, are, or may be diverted by A&B pursuant to the continuation of the revocable permits.
17. Ironically, I am not much of a hiker or an outdoors person. But in the summer of 2018, the Sierra Club Hawai'i Chapter's executive committee held its quarterly meeting on Maui. As the "fun" part of the meeting, we walked to and along Hanehoi Stream. I was shocked and dismayed to see that no water was flowing in the stream.
18. As the Sierra Club's director, I rely on studies and government documents to educate the public and policy makers regarding the impacts of various projects.
19. The lack of information on the impact of the diversion of streams on east Maui has impeded my ability to educate the public and policy makers regarding the impacts and to craft conditions that would better protect our trust resources.

20. The lack of basic information – such as what percentage of each stream’s water are A&B and EMI diverting – has made it difficult to advocate for the protection of east Maui streams.

21. The Sierra Club and its members have recreational, aesthetic, environmental and public trust interests in ensuring that streams are free-flowing and that public lands are properly managed.

22. Allowing the revocable permits to be held over for another year (without appropriate conditions) will harm the Sierra Club’s interests by:

- a. allowing debris to be left in or next streams because the department of land and natural resources has not attempted to verify the conditions on the ground or take any meaningful action to get A&B and EMI to clean up their mess;
- b. allowing diversion structures to continue to interfere with the migration of native aquatic species on many east Maui streams;
- c. preventing sufficient water from flowing within many streams;
- d. allowing A&B and EMI to divert water from one stream and dump it into another stream;
- e. allowing A&B and EMI to divert more water than they have been diverting over the past two years;
- f. jeopardizing the ability of our members to hike in the areas covered by the revocable permit; and
- g. allowing invasive species to continue to spread.

23. The Sierra Club’s recreational, aesthetic, environmental and public trust interests are harmed by allowing the revocable permits to be held over for another year without adequate conditions.

24. Attached as Exhibit A is a true and correct copy of the first eleven pages, pages 3-18, 6-52, 6-53 and those portions of chapter 7 (Species of Greatest Conservation Need) describing ‘o’opu species of the department of land and natural resources’ Hawaii’s Comprehensive Wildlife Strategy (October 1, 2005) that I downloaded from <https://dlnr.hawaii.gov/wildlife/files/2013/09/CWCS-Full-Documnet-2005Oct01.pdf>

25. Attached as Exhibit B is a true and correct copy of the U.S. Fish and Wildlife Services' December 21, 2018 letter on the preparation of an environmental impact statement on the diversion of east Maui streams that is published in the Environmental Impact Statement Preparation Notice for the Proposed Lease (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Heulo License Areas (February 2017). I downloaded it from the Office of Environmental Quality Control's official website: http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2017-02-08-MA-EISPN-East-Maui-Water-Lease.pdf#search=title%3Awater

26. Attached as Exhibit D is only the first page and pages iv-v, 14-18, 134-35, 187 and 268-70 of the Commission on Water Resource Management's June 2018 Findings of Fact, Conclusions of Law, & Decision and Order entered in the Petition to Amend Interim Instream Flow Standards for Honopou, Hanehoi/Puolua (Huelo), Waiakmoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Puna/au/Ko/ea, Honomanu, Nuaailua, Pinaau, Palauhulu, Ohia (Waianu), Waiokamilo, Kualani (Hamau), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaka, Kapaula, Hanawi, and Makapipi Streams; CCH-MA13-01. The entire document is Exhibit 9 of A&B's motion to dismiss. I downloaded the relevant pages from <http://files.hawaii.gov/dlnr/cwr/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf>.

27. Attached as Exhibit E is a true and correct copy of the department of land and natural resources' staff submittal to the board of land and natural resources dated November 9, 2009 regarding the holdover of the revocable permits. I downloaded it from DLNR's official website: <https://dlnr.hawaii.gov/wp-content/uploads/2018/11/D-7.pdf>

28. Attached as Exhibit J is a true and correct copy of the minutes of the board of land and natural resources November 9, 2018 meeting that I downloaded from DLNR's official website: <https://dlnr.hawaii.gov/wp-content/uploads/2019/02/181109-minutes.pdf>.

29. Attached as Exhibit Q is a true and correct copy of the minutes of the board of land and natural resources November 9, 2017 meeting that I downloaded from DLNR's official website: <https://dlnr.hawaii.gov/wp-content/uploads/2018/01/171109-minutes.pdf>.

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

DATED: Honolulu, Hawai'i, July 19, 2019.


MARTHA TOWNSEND

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

Defendant A&B/EMI's Exhibit AB-91

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____