



2. The scope of production will be limited to documents or things currently within Plaintiff's possession, custody or control.

3. The Plaintiff's search for responsive documents (in particular, photographs) is ongoing.

### **Objections**

1. Defendant's request is obtainable from some other sources (e.g., its own files) that are more convenient, less burdensome and expensive.

2. Plaintiff objects to all portions of the Request relating to documents or things which may be held by other persons or parties and/or any other documents which are not in Plaintiff's possession, custody or control.

3. Plaintiff objects to all portions of the Request not reasonably calculated to lead to the discovery of admissible evidence.

4. Plaintiff objects to the Request as it seeks to impose burdensome obligations upon Plaintiff greater than Rule 34 of the HRCF.

5. Plaintiff objects generally to the Request in that the categories are so broad as to call for the production of privileged documents or documents that are neither relevant to the issues of this action nor reasonably calculated to lead to the discovery of admissible evidence.

6. Plaintiff objects to the Request to the extent that they are overly broad, vague and ambiguous.

7. Plaintiff objects to the Request to the extent that it asks for privileged communications, trial preparation materials, experts' trial preparation materials, or work product.

8. Plaintiff objects to the Request to the extent that it is unreasonably burdensome and oppressive in expenditure of time and money to gather and/or produce.

9. Plaintiff objects to the Request to the extent that it calls for Plaintiff to obtain documents from its members because it would be burdensome, it would violate their associational and privacy rights, and the Sierra Club is a corporate entity and its members are not subject to the Sierra Club's control.

10. Plaintiff objects to the Request to the extent that it suggests that a production number must be provided.

9. Plaintiff reiterates the objections to the specific interrogatories for which the documents are requested.

POD 1

Plaintiff objects because: (a) the term "riparian rights" is vague and ambiguous; (b) the request is overly broad; (c) the request calls for legal conclusions; (d) the identity of the members of the Sierra Club is confidential and protected by the U.S. and State constitutions, including First Amendment, associational, and privacy rights; (e) the interrogatory is irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence; (f) the request is unduly burdensome given the number of Sierra Club members; (g) this question requests information that is privileged or protected by the work product doctrine.

POD 2

Plaintiff objects because: (a) the term "appurtenant rights" is vague and ambiguous; (b) the request is overly broad; (c) the request calls for legal conclusions; (d) the identity of the members of the Sierra Club is confidential and protected by the U.S. and State constitutions, including First Amendment, associational, and privacy rights; (e) the admission is irrelevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence; (f) the request is unduly burdensome given the number of Sierra Club members; (g) this question requests information that is privileged or protected by the work product doctrine.

POD 4

Plaintiff objects because: (a) the request is overly broad; (b) the identity of the members of the Sierra Club is confidential and protected by the U.S. and State constitutions, including First Amendment, associational, and privacy rights; (c) the request is unduly burdensome given the number of Sierra Club members.

PODs 5, 6 & 7

Please refer to the objections and response to POD 4.

POD 8

Plaintiff objects because: (a) the request is overly broad; (b) the identity of the members of the Sierra Club is confidential and protected by the U.S. and State constitutions, including First Amendment, associational, and privacy rights; (c) the request is unduly burdensome given the number of Sierra Club members.

POD 9

Please refer to the objections and response to Interrogatory 8.

POD 10

Plaintiff objects because: the term “identify the location” is vague, overly broad and burdensome.

POD 12

Plaintiff objects because: (a) the response calls for attorney work product; (b) the response calls for a breach of the attorney-client privilege; and (c) the request is overly broad, premature and unduly burdensome;


POD 13

Plaintiff objects because: (a) the response calls for attorney work product; (b) the response calls for a breach of the attorney-client privilege; and (c) the request is overly broad, premature and unduly burdensome;

POD 15

Plaintiff objects because: (a) the response calls for attorney work product; (b) the response calls for a breach of the attorney-client privilege; (c) the request is overly broad, premature and unduly burdensome; (d) the request calls for legal conclusions;

Subject to the above objections, enclosed, please find the declarations of members of Rob Weltman, Megan Loomis Powers, Miranda Camp, Paul Carter, Neola Caveny, Lucienne de Naie and Martha Townsend.

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

March 8, 2019



7. One of the Sierra Club's purposes is the protection of natural resources, including our streams and native aquatic life.

8. The Sierra Club and its members seek to preserve and enjoy free-flowing streams.

9. 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) (“**revocable permits**”).

10. I have hiked to, or along, Makapipi Stream, Hanawī Stream, Kopili‘ula Stream, West Wailuaiki Stream, Wahinepe‘e Stream, Waikamoi Stream, and Honopou Stream.

11. I hike in the East Maui watershed several times a year.

12. On these hikes to and along streams in East Maui, I explore the plant and aquatic life made possible by stream flows, enjoy views of dramatic waterfalls, appreciate the beauty of nature, experience the sounds made by flowing water, dip into the stream to cool off, and bask in nature’s wonder.

13. One of the joys of hiking is getting away from civilization and seeing the world in its natural condition.

14. I have hiked above, below and next to the stream diversions.

15. When the streams are flowing, I revel in watching stream life reinvigorated.

16. I have seen the streams flowing with lots of water and I have seen the streams with only a trickle of water.

17. When the streams lack water, it has saddened me because I come to enjoy a natural experience. The hiking experience is also less interesting when stream flow is diminished by diversions.

18. That experience is diminished when I see man-made blockages along our streams.

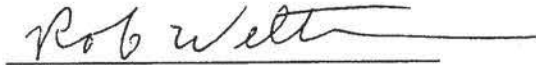
19. I have participated in numerous service projects on Maui to get rid of invasive species – but have not been able to do so within the area covered by the revocable permits.

20. I have seen invasive plants crowd out native species in the East Maui watershed covered by the revocable permits.

21. My interests would be adversely affected if the revocable permits are continued for another year without sufficient conditions to protect our natural environment.

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

DATED: Kihei, Hawai'i, January 14, 2019.



Rob Weltman





Junior year in high school at Seabury Hall, I started my day by jumping off the 30-foot waterfall. I know the many faces of these streams through their yearly cycles.

8. I plan to continue visiting and using these streams for the rest of my life and my adult children plan to do the same.

9. Between 1972 and 2016, on Ho'olawa stream, after more than a 1/4 mile of stagnant, stinky, mucky streamwater and debris was cleared out after a big rain event, and when diversions are curbed (1x/yr.) allowing for the natural stream flow, I would witness an event unfold over the next few weeks where life returned to the streams and banks with spring-like fervor to finally settle into a state of thriving balance. It is the most beautiful thing one can ever imagine! Water is life! Life in Balance! But it was always taken away and everything would dry out again and again and again for many years.

10. I have seen the ill effects of diversions on all three of these streams.

11. When these streams have been diverted, the streams are fairly dry, which impacts the streamlife's ability to flourish and allows invasive weed species to take over the banks, it also impacts my ability to enjoy and recreate in them. Also, the dry streambeds prevent seepage which has caused springs to dry out from which we used to gather drinking water. This is very disturbing, heartbreaking and scary to lose our drinking water. I know firsthand, from daily experience, the difference of how BAD it usually is with the total diversion and, how GOOD it can get when allowed to thrive.

12. Before 2016, Ho'olawa stream below the Haiku Ditch diversion was generally pretty dry except after winter storms, or when EMI decided to open the gates, causing unexpected flooding. Since A&B stopped growing sugarcane, it has been flowing in excess of what would be considered "normal stream flow" because water diverted from other streams is

being dumped into Ho'olawa Stream via an underground tunnel. This has impacted my ability to enjoy the stream because of the danger of getting washed away over the next waterfall. In addition, it has caused a lot of erosion on the banks of the river and root rot which killed a whole grove of trees, not to mention flooding Ho'olawa Bay with excess silt, adversely impacting the fishery.

13. Allowing diversions to continue, or to increase, adversely affects my enjoyment of these streams.

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

DATED: Haiku, Hawai'i, February 25<sup>th</sup>, 2019.

  
MEGAN LOOMIS POWERS



8. I love hiking along streams with running water. I cannot fully describe how happy it makes me to see streams full of life flowing from mauka to makai. I enjoy seeing the diversity of life in streams and experiencing the natural world.

9. I have hiked above, below and next to the stream diversions.

10. It is far more pleasant to hike along a stream that is flowing than one that is bone dry or just a trickle.

11. While some streams are in better health than they used to be, I am concerned both that existing diversions and an increase in the amount of water diverted will diminish my enjoyment of hiking to and along streams in east Maui.

12. I appreciate seeing native plants and am discouraged by the growth of invasive species.

13. When the streams are diverted, the natural experience is diminished.


14. I have participated in numerous service projects on Maui to get rid of invasive species – but have not been able to do so within the area covered by the revocable permits.

15. I have seen invasive plants crowd out native species in the East Maui watershed covered by the revocable permits.

16. My interests would be adversely affected if the revocable permits are continued for another year without sufficient conditions to protect our natural environment.

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

DATED: Kihei, Hawai'i, February 15 2019.

  
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Miranda Camp

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB, ) CIVIL NO. 19-1-0019-01 JPC  
 ) (Environmental Court)  
 )  
 ) Plaintiff, )  
 )  
 vs. ) DECLARATION OF PAUL CARTER  
 )  
 )  
 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., and )  
 EAST MAUI IRRIGATION, LLC )  
 )  
 )  
 ) Defendants. )  
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**DECLARATION OF PAUL CARTER**

I, Paul Carter, 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 live on, and am a resident of, Maui – and have been for decades.
3. I have been a member of the Sierra Club for decades.
4. I live very close to Waipio Stream.
5. I walk down to dip into the stream approximately five or six times a year.
6. When the water from the stream is diverted, I cannot dip in the water because there is none.
7. Approximately once a week, I walk to Hoolawa stream to swim in one of the pools there.

8. When the water levels in Hoolawa stream are low, there is too little water in some of the pools to swim in.

9. I enjoy the beauty and the sounds of a running stream.

10. I plan to continue visiting and using these streams, but my use is affected when too much water is diverted from these streams.

11. Allowing diversions to continue, or to increase, adversely affects my enjoyment of these streams.

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

DATED: Huelo, Hawai'i, 2-1, 2019.

  
PAUL CARTER



9. If more water were restored to Hanehoi Stream, I would be able to irrigate my crops without worry that I will run out of water from my catchment tank, which is currently the only source of water for my property.

10. A free-flowing Hanehoi Stream is important to me as a source of water for my home and farm; I enjoy the sound of the rushing water; I enjoy looking at the water flowing; I would enjoy seeing native fish in the stream.

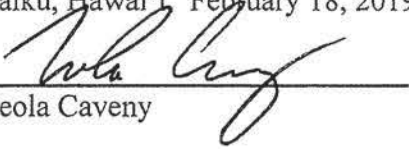
11. A free-flowing Hanehoi Stream increases my enjoyment of my home and enhances the value of my property.

12. While more water is flowing in Hanehoi Stream than in the past, this past summer, the water levels in the stream were very low.

13. My interests would be adversely affected if the revocable permits are continued for another year without conditions that require restoration of natural water flows in Hanehoi Stream by a fixed deadline and without fixing the diversion structures that interfere with the migration of fish upstream and the flow of larvae downstream.

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

DATED: Haiku, Hawai'i, February 18, 2019.

  
\_\_\_\_\_  
Neola Caveny





8.I have also hiked to or along many east Maui streams as an individual or with friends (i.e. not part of an official Sierra Club outing).

9.I plan to continue to visit many of the east Maui streams this year and in future years.

10.I have hiked to or along the following streams in east Maui: Honopou, Hoolawa ili'ili, Hoolawa nui, Honokala, Mokupapa, Waipio, Waipioiki/Kapalaea, Puolua, Hanehoi, West Hanehoi, Huelo, Hoalua, Hanawana, Kailua, Nailiilihaele, Puehu, Oopuola, Ka'aiea, Kolea, Waiakamoi, Waihinepe'e, Puohakamoa, Haipuaena, Punalau, Honomanu, Nua'ailua, Piina'au, Waiokamilo, Wailuanui, West Wailua iki, East Wailuaiki, Kopiliula, Waihue, Paakea, Waiakea, Kapaula, Hanawi and Makapipi.

11.I enjoy observing natural beauty, including free-flowing streams and the native aquatic life that is dependent upon them.

12.Over the past 25 years, I have observed the spread of invasive species throughout the east Maui watershed.

13.My enjoyment of hiking in East Maui has been diminished when I have seen:

- a.debris (such as unused/discarded/obsolete pipes) in or near streams;
- b.diversion structures that interfere with the flow of water and the migration of native aquatic life up and downstream;
- c.reduced flow in streams, making it more difficult (and sometimes impossible) to swim or dip in a stream, and making it more difficult for native aquatic species to survive; and
- d.invasive species taking over native forests.

14.I have recreational, aesthetic, environmental and public trust interests in ensuring that streams are free-flowing and that public lands are properly managed.

15. Allowing the revocable permits to be held over for another year (without appropriate conditions) will harm my 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 three years;
- f. potentially jeopardizing my ability to hike in this area; and
- g. allowing invasive species to continue to spread.

16. My recreational, aesthetic, environmental and public trust interests are harmed by allowing the revocable permits to be held over for another year.

17. I read environmental impact statements (EISs) and reports by government agencies to educate myself and to craft testimony.

18. The lack of information that an EIS would provide has hindered my ability to be fully informed as to the status of east Maui streams.

19. The failure of BLNR to require A&B and EMI to provide relevant data (including what percentage of water they are taking from each stream) makes it more difficult for me to protect the streams that I enjoy.

20. I provided a 91-paragraph declaration to the Commission on Water Resources Management in December 2014. A true and correct copy of it was attached to A&B's motion to dismiss as its Exhibit 43.

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

DATED: Haiku, Hawai'i, February 28, 2019.

  
LUCIENNE DE NAIE

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.	)	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., and EAST MAUI	)	
IRRIGATION, LLC	)	
	)	
Defendants.	)	

**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, administers Sierra Club communications in Hawai'i, coordinate with members and volunteers, 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 environmental impact statements and environmental assessments to educate the public and policy makers regarding the impacts of various projects.
19. The lack of an EIS on the use of 33,000 acres of public land and the diversion of millions of gallons daily from east Maui streams has impeded my ability to educate the public and policy makers regarding the impacts and to craft conditions that would better protect our public 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 to 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 three 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.

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

DATED: Honolulu, Hawai'i, March 7, 2019.



MARTHA TOWNSEND



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

**Defendant A&B/EMI's Exhibit AB-107**

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

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

CLERK \_\_\_\_\_