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Attorney for the Sierra Club

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

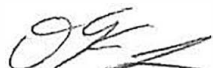
STATE OF HAWAI'I

| | | |
|--|---|--------------------------------|
| SIERRA CLUB, |) | CIVIL NO. 19-1-0019-01 JPC |
| |) | (Environmental Court) |
| Plaintiff, |) | |
| vs. |) | PLAINTIFF'S RESPONSE TO |
| |) | DEFENDANTS ALEXANDER & |
| BOARD OF LAND AND NATURAL |) | BALDWIN, INC. AND EAST MAUI |
| RESOURCES, DEPARTMENT OF LAND |) | IRRIGATION COMPANY LLC'S FIRST |
| AND NATURAL RESOURCES, |) | REQUEST FOR ANSWERS TO |
| SUZANNE CASE in her official capacity as |) | INTERROGATORIES SERVED |
| Chairperson of the Board of Land and |) | FEBRUARY 6, 2019 |
| Natural Resources, ALEXANDER AND |) | |
| BALDWIN, INC., and EAST MAUI |) | |
| IRRIGATION, LLC |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF'S RESPONSE TO DEFENDANTS ALEXANDER & BALDWIN, INC. AND
EAST MAUI IRRIGATION COMPANY LLC'S FIRST REQUEST FOR ANSWERS TO
INTERROGATORIES SERVED FEBRUARY 6, 2019

Interrogatory #1: If Your response to RFA #1 is anything other than an unqualified admission, describe fully the facts and circumstances upon which You rely for Your response, including the identity of Persons and Documents that support or evidence those facts or circumstances.

Plaintiff objects to this interrogatory 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.



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Subject to and without waiving these objections, please see the Declaration of Neola Caveny, which is being provided in response to the request for documents. The Sierra Club is continuing to find members who own property next to streams who are willing to discuss the impacts that stream diversions cause.

Interrogatory #2: If Your response to RFA #2 is anything other than an unqualified admission, describe fully the facts and circumstances upon which You rely for Your response, including the identify of Persons and Documents that support or evidence those facts or circumstances

Plaintiff objects to this request for admission 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.



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Subject to and without waiving these objections, please see the Declaration of Neola Caveny, which is being provided in response to the request for documents. The Sierra Club is continuing to find members who own property next to streams who are willing to discuss the impacts that stream diversions cause.

Interrogatory #3: If Your response to RFA #3 is anything other than an unqualified admission, describe fully the facts and circumstances upon which You rely for Your response, including the identify of Persons and Documents that support or evidence those facts or circumstances.

If we are able to find photographs along with information regarding the dates they was taken and their location, we will provide them to you.

Interrogatory #4: Identify Your members that “hike along streams that have been or are diverted by A&B pursuant to the continuation of revocable permits S-7263 . . . , S-7264 . . . , S-7265 . . . , S-7266,” as alleged in paragraph 11 of the Complaint.

Plaintiff objects to this interrogatory 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.



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Subject to and without waiving these objections, please see the declarations which are being provided in response to the request for documents.

Interrogatory #5: Identify Your members that “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,” as alleged in paragraph 12 of the Complaint.

Please refer to the objections and response to Interrogatory 4.



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Interrogatory #6: Identify Your members that “would be adversely affected if the revocable permits were held over for another year,” as alleged in paragraph 14 of the Complaint.

Please refer to the objections and response to Interrogatory 4.



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Interrogatory #7: Identify Your members that are “harmed by the debris that litters the landscape within the revocable permit areas,” as alleged in paragraph 15 of the Complaint.

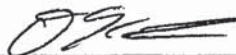
Please refer to the objections and response to Interrogatory 4.



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Interrogatory #8: Identify the streams along which Your members hike as alleged in paragraph 11 of the Complaint.

Plaintiff objects to this interrogatory 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.



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Subject to and without waiving these objections:

Honopou
Hoolawa ili'ili
Hoolawa nui
Honokala
Mokupapa
Waipio
Waipioiki/Kapalaea
Puolua
Hanehoi
West Hanehoi
Huelo
Hoalua
Hanawana
Kailua
Naililihaele
Puehu
Oopuola
Ka'aiea
Kōlea
Waiakamoi
Waihinepe'e
Puohakamoa
Haipuaena
Punalau
Honomanu
Nua'ailua
Piina'au
Waiokamilo
Wailuanui
West Wailua iki
East Wailuaiki
Kopili'ula
Waiohue
Paakea
Waiakea
Kapaula
Hanawī
Makapipi
Punaluu
Papaaea
Puehu
Waikamoi
Waiohue

Please see the declarations which are being provided in response to the request for documents.

Interrogatory #9: Identify the streams that Your members “recreate in and next to” as alleged in paragraph 12 of the Complaint.

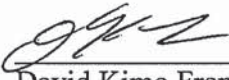
Please refer to the objections and response to Interrogatory 8.



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Interrogatory #10: Identify the location(s) of the “debris that litters the landscape within the revocable permit areas,” as alleged in paragraph 15 of the Complaint.

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



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Subject to and without waiving these objections, please refer to the response to Interrogatories 11 and 14. As the Sierra Club obtains more information, it will provide it to you.

Interrogatory #11: Identify the hiking trails from which the “debris that litters the landscape within the revocable permit areas,” as alleged in paragraph 15 of the Complaint, can be seen.

Papa’aea trail
Makapipi trail
Wailuaiki trail
Waikamoi trail
Wahinepe’e trail
Piinau trail
Lowry ditch trail
Lupi Road/Wailoa Ditch Trail

Interrogatory #12: Describe fully how Your members “would be adversely affected if the revocable permits were held over for another year,” as alleged in paragraph 14 of the Complaint.

Plaintiff objects to this interrogatory 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;



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Subject to and without waiving these objections, please see the declarations which are being provided in response to the request for documents.

Interrogatory #13: Describe fully how Your members “are harmed by the debris that litters the landscape within the revocable permit areas,” as alleged in paragraph 15 of the Complaint.

Plaintiff objects to this interrogatory 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;



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Subject to and without waiving these objections, please see the declarations which are being provided in response to the request for documents.

Debris that litters the landscape detracts and distracts from nature’s beauty, diminishing enjoyment of the experience in nature.

Interrogatory #14: With respect to the photos attached hereto as Exhibits 1 - 9, identify:

- a. The person that took the photo;
- b. The date the photo was taken;
- c. Where the photo was taken; and
- d. Whether the depicted item is “debris” as alleged in paragraph 15 of the Complaint.

Exhibit 1.

- a. Person taking photo: Lucienne de Naie
- b. Date of photo: 9/1/17
- c. Where photo taken: Waikamoi stream, Huelo lease area
- d. Whether depicted item is debris: this broken pipe does not appear to be serving any useful purpose and the stream of water feeds alien plants any creates erosion and slippery conditions

Exhibit 2.

- a. Person taking photo: Lucienne de Naie
- b. Date of photo: 6/18/16
- c. Where photo taken: Hanawi i stream, Nahiku lease area

d. Whether depicted item is debris: old iron pipe does not appear to be serving any useful purpose and is just rusting away on diversion structure

Exhibit 3.

a. Person taking photo: Lucienne de Naie

b. Date of photo: 6/18/16

c. Where photo taken: Hanawi i stream, Nahiku lease area (same as exh 2)

Whether depicted item is debris: PVC pipes carry water from minor diversion to main diversion at wailoa ditch. The June 2018 CWRM decision calls for H90 flow in Hanawi stream. The "wetted pathway" pipe pictured would appear to be unneeded with the new IIFS.

Exhibit 4.

a. Person taking photo: Lucienne de Naie

b. Date of photo: 11/29/17

c. Where photo taken: on Makapipi trail., East Kopili'ula stream area Ke'anae lease area

d. Whether depicted item is debris: this abandoned PVC pipe on state land does not appear to be serving any useful purpose above the banks of the E. Kopiliula stream. It spoils the natural beauty of the area and could be washed into the stream.

Exhibit 5.

a. Person taking photo: Lucienne de Naie

b. Date of photo: Oct 1/17

c. Where photo taken: banks above West Hanehoi stream near Hana Hwy. Huelo lease area

d. Whether depicted item is debris: this abandoned concrete pipe does not appear to be serving any useful purpose. It appears to be left over from past stream modifications and is a hazard when trying to clean litter around the stream.

Exhibit 6.

a. Person taking photo: Lucienne de Naie

b. Date of photo: May 2016

c. Where photo taken: near Hoalua stream. Huelo lease area

d. Whether depicted item is debris: this abandoned, deteriorating section of the 1882 Spreckels ditch is near the old government road on state land. Its deteriorated condition makes it a hazard.

Exhibit 7.

a. Person taking photo: Lucienne de Naie

- b. Date of photo: 3/7/2012
- c. Where photo taken: Wailua iki trail. Ke'anae lease area
- d. Whether depicted item is debris: this abandoned and damaged PVC has been leaking water on the wailua iki trail (state land) for many years, creating slippery area.

Exhibit 8.

- a. Person taking photo: Lucienne de Naie
- b. 6/18/17
- c. Where photo taken: on Makapipi trail. Nahiku lease area
- d. Whether depicted item is debris: this abandoned PVC pipe does not appear to be serving any useful purpose among the native Uluhe (*Dicranopteris linearis*) ferns. It spoils the natural beauty of the hike.

Exhibit 9.

- a. Person taking photo: Lucienne de Naie
- b. 11/29/17
- c. Where photo taken: on Makapipi trail., East Kopili'ula stream area Ke'anae lease area
- d. Whether depicted item is debris: deteriorated wooden platform and other debris is found on the stream banks on state land. It spoils the natural beauty of the area and could be washed into the stream.

Interrogatory #15: Explain fully the legal and factual bases for Your request that the court “enjoin [A&B and EMI] from taking more than 25 [MGD] of water on any day from East Maui (as measured at Honopou Stream) until completion of the HRS chapter 343 process and the proper issuance of a permit, license or lease from the BLNR,” as alleged in the Prayer of the Complaint, including without limitation how You determined the 25 MGD amount.

Plaintiff objects to this interrogatory 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;



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Subject to and without waiving these objections, the factual bases for this case are laid out, to some extent, in the complaint, the documents attached to the plaintiff's memorandum in opposition to the stay, some of the documents attached to A&B's motion to dismiss, and the declarations that are being provided in response to the request for documents. The legal basis is laid out, in part, in the plaintiff's complaint and its memorandum in opposition to the motion to dismiss.

Although the Sierra Club believes that it will prevail on the merits as to all three counts, the test for injunctive relief requires a balancing of harms. Rather than waste time and money arguing about the balancing of harm, the Sierra Club is willing, for the purposes of this case, to ask that the court prohibit the diversion of more water than the maximum amount that has been diverted from East Maui over the past three years. Thus, injunctive relief will not harm the County or other existing users of diverted stream water. The injunctive relief will maintain the status quo in terms of the amount of water that can be taken out of East Maui.

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

Defendant A&B/EMI's Exhibit AB-108

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____