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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 COMBINED RESPONSE TO |
| |) | DEFENDANTS ALEXANDER & |
| BOARD OF LAND AND NATURAL |) | BALDWIN, INC. AND EAST MAUI |
| RESOURCES, DEPARTMENT OF LAND |) | IRRIGATION COMPANY LLC'S SECOND |
| AND NATURAL RESOURCES, |) | REQUEST FOR ANSWERS TO |
| SUZANNE CASE in her official capacity |) | INTERROGATORIES AND PRODUCTION |
| as Chairperson of the Board of Land and |) | OF DOCUMENTS SERVED FEBRUARY 5, |
| Natural Resources, ALEXANDER AND |) | 2020 |
| BALDWIN, INC., and EAST MAUI |) | |
| IRRIGATION, LLC |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF'S RESPONSE TO DEFENDANTS ALEXANDER & BALDWIN, INC. AND
EAST MAUI IRRIGATION COMPANY LLC'S SECOND REQUEST FOR ANSWERS TO
INTERROGATORIES AND PRODUCTION OF DOCUMENTS
SERVED FEBRUARY 5, 2020

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 request is overly broad; (b) the request is vague; (c) 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; (d) the request is unduly burdensome given the number of Sierra Club members; (e) this question requests information that is privileged or protected by the work product doctrine; (f) the request

is duplicative of information already provided; and (g) the request is unnecessarily burdensome given the materials previously provided to the defendants.




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Subject to and without waiving these objections, please see all the documents that the Sierra Club has provided to you, as well as those already filed in this case, including, but not limited to: the seven declarations and exhibits that were attached to the plaintiff's motion for summary judgment as to count 1; the declarations and exhibits that were attached to the plaintiff's motion for summary judgment as to count 2; the declarations and exhibits attached to the Sierra Club's memorandum in opposition to A&B's motion for summary judgment as to standing; the deposition transcripts; the memorandum opposing the re-opening the depositions of Sierra Club members; the responses to the first set of discovery served in February 2019; the forthcoming declarations of individual members in response to the request made in February 2020; and the memoranda that discuss those declarations, transcripts, and exhibits.

Interrogatory #2: 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 FAC.

Please refer to all the objections and responses to Interrogatory #1.




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Interrogatory #5: Describe fully how Your members have been harmed or will be harmed by the Board of Land and Natural Resources' October 2019 decision to continue the RPs for calendar year 2020.


Please refer to all the objections and responses to Interrogatory #1.



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Interrogatory #6: 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 RPs for calendar year 2020.

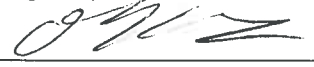
Please refer to all the objections and responses to Interrogatory #1.



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Interrogatory #7: Describe fully the irreparable harm that Your members will suffer if the diversion of water authorized by the Board of Land and Natural Resources' October 2019 decision to continue the RPs for calendar year 2020 continues for calendar year 2020 (*i.e.*, if Your request for an injunction is not granted).

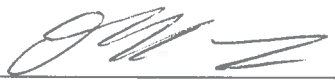
Please refer to all the objections and responses to Interrogatory #1.



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Interrogatory #8: 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 RPs for calendar year 2020 continues for calendar year 2020 (*i.e.*, if Your request for an injunction is not granted).

Please refer to all the objections and responses to Interrogatory #1.



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Interrogatory #3: With regard to the Board of Land and Natural Resources' October 2019 decision to continue the RPs for calendar year 2020, explain fully the legal and factual bases for the allegation in paragraph 123 of the FAC that "BLNR, DLNR and Chair Case have breached their trust duties."

Plaintiff objects to this interrogatory because: (a) the request is overly broad; (b) this question requests information that is protected by the work product doctrine, or is privileged; (c) the request is duplicative of information already provided; (d) to the extent this request calls for a list of exhibits to be used in the trial, it is premature; and (e) the request is unnecessarily burdensome given the materials previously provided to the defendants.

Plaintiff objects to the request for documents as these documents are readily available from a more convenient source and the request is overly burdensome.



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Subject to and without waiving these objections, please see all the documents that have been filed in this case, including, but not limited to the Sierra Club's motion for summary judgment as to count 2, the exhibits and declarations attached thereto, the replies and the exhibits and declarations attached thereto; the first amended complaint; the deposition transcripts of Suzanne Case, the 30(b)(6) witnesses, Glenn Higashi and Ian Hirokawa, and the forthcoming depositions; the experts report/declarations; the first amended pretrial statement; and A&B's exhibits. At the trial, testimony will be solicited from the witnesses.

Additional documents, which A&B should already have, include:


- the Sierra Club's testimony to the BLNR on the continuation of the revocable permits for 2019 and 2020;
- the Sierra Club's request for a contested case hearing on the continuation of the revocable permits for 2019 and 2020;
- DLNR's Division of Forestry and Wildlife's, the Division of Aquatic Resources' and U.S. Fish & Wildlife's comments regarding stream diversion work permits;
- reports, memorandum and letters prepared by the Division of Aquatic Resources
- the staff submittals in 2018 and 2019 on the continuation of the revocable permits;
- the minutes of BLNR's decisionmaking on the continuation of the revocable permits;
- A&B's draft EIS; and
- all the documents that the DLNR Defendants have produced in discovery

If you do not have a copy of some of the above, please let us know and we will attempt to email you a copy.

Interrogatory #4: With regard to the Board of Land and Natural Resources' October 2019 decision to continue the RPs for calendar year 2020, explain fully the legal and factual bases for the allegation in paragraph 127 of the FAC that "BLNR, DLNR and Chair Case have breached their statutory obligations."

Plaintiff objects to this interrogatory because: (a) the request is overly broad; (b) this question requests information that is protected by the work product doctrine, or is privileged; (c) the request is duplicative of information already provided; (d) to the extent this request calls for a list of exhibits to be used in the trial, it is premature; and (e) the request is unnecessarily burdensome given the materials previously provided to the defendants.

Plaintiff objects to the request for documents as these documents are readily available from a more convenient source and the request is overly burdensome.



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Subject to and without waiving these objections, please see all the documents that have been filed in this case, including, but not limited to the Sierra Club's motion for summary judgment as to count 2, the exhibits and declarations attached thereto, the replies and the exhibits and declarations attached thereto; the first amended complaint; the deposition transcripts of Suzanne Case, the 30(b)(6) witnesses, Glenn Higashi and Ian Hirokawa, and the forthcoming depositions; the experts report/declarations; the first amended pretrial statement; and A&B's exhibits. At the trial, testimony will be solicited from the witnesses. Please also read HRS §§ 205A-2, -4, -5 and -6.

Additional documents, which A&B should already have, include:

- the Sierra Club's testimony to the BLNR on the continuation of the revocable permits for 2019 and 2020;
- the Sierra Club's request for a contested case hearing on the continuation of the revocable permits for 2019 and 2020;
- DLNR's Division of Forestry and Wildlife's, the Division of Aquatic Resources' and U.S. Fish & Wildlife's comments regarding stream diversion work permits;
- reports, memorandum and letters prepared by the Division of Aquatic Resources
- the staff submittals in 2018 and 2019 on the continuation of the revocable permits;
- the minutes of BLNR's decisionmaking on the continuation of the revocable permits;
- A&B's draft EIS; and
- all the documents that the DLNR Defendants have produced in discovery.

If you do not have a copy of some of the above, please let us know and we will attempt to email you a copy.

VERIFICATION

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

Martha Townsend being first duly sworn on oath, deposes and says that he/she is authorized to execute these answers to Interrogatories on behalf of SIERRA CLUB and that he/she has read the answers to the foregoing Interrogatories and that the same are true to his/her personal knowledge.

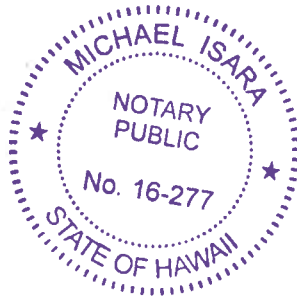
M. Townsend
Signature

Position with Plaintiff: Chapter Director

Subscribed and sworn to before me
this 5 day of March, 2020.

Michael Isara
Name: Michael Isara
Notary Public, State of Hawaii

My commission expires: 8/14/2020



NOTARY CERTIFICATION STATEMENT

Document Identification or Description: VEHICULAR

Doc. Date: _____ or Undated at time of notarization.

No. of Pages: 2 Jurisdiction: 1st Circuit
(in which notarial act is performed)



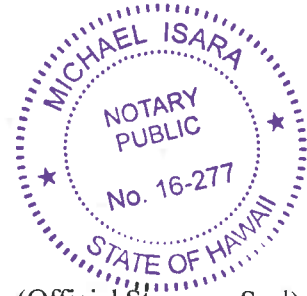
Signature of Notary

Date of Notarization and Certification Statement

Michael Isara

MAR 05 2020

Printed Name of Notary



(Official Stamp or Seal)

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

Defendant A&B/EMI's Exhibit AB-109

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____