

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

SIERRA CLUB,) CIVIL NO. 19-1-0019-01 JPC
) (Environmental Court)
Plaintiff,)
) DECLARATION OF CEIL HOWE, III
vs.)
)
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.)
)

DECLARATION OF CEIL HOWE, III

I, CEIL HOWE, III, do hereby declare as follows:

1. I am the Manager of Mahi Pono Holdings, LLC, a Delaware limited liability company ("Mahi Pono Holdings").
2. I make this declaration based on personal knowledge and am competent to testify to the matters contained herein.
3. On December 24, 2018, Mahi Pono Holdings closed a transaction whereby it acquired agricultural lands and other interests from Alexander & Baldwin.

4. The property subject to the transaction was acquired through various subsidiary entities formed by Mahi Pono Holdings. A chart showing the structure of Mahi Pono Holdings and its subsidiaries is attached hereto as Exhibit A.

5. Attached hereto as Exhibit B is a list of real properties acquired including identification by Tax Map Key, location, the acquiring subsidiary, and the area of the property.

6. In addition to the real property identified in Exhibit B, the following additional interests were acquired by Mahi Pono Holdings subsidiaries:

- (a) MP Kulolio Ranch, LLC, a Delaware limited liability company, acquired a 100% interest in Kulolio Ranch LLC, a Hawaii limited liability company;
- (b) MP CMF, LLC, a Delaware limited liability company, acquired a 100% interest in Central Maui Feedstocks, LLC; a Hawaii limited liability company
- (c) MP EMI, Inc., a Delaware limited liability company, acquired a 50% interest in East Maui Irrigation Company, LLC, a Hawaii limited liability company.

7. Mahi Pono, LLC, a Delaware limited liability company (“Mahi Pono”), is the operating company formed by Mahi Pono Holdings to operate the assets acquired by Mahi Pono Holdings.

8. Mahi Pono is presently engaged in substantial efforts to develop diversified agriculture on the Island of Maui. As a matter of illustration, these activities, and the effects that disrupting or limiting available agriculture could have on those activities, include the following:

- (a) Negative Impacts on Diversified Agriculture
 - (i) Mahi Pono has purchased \$7 million of equipment for the development of lands for planting over the next 5 years. There are also obligations for

acquisition of an addition \$3 million in equipment to complete land development, and it is anticipated that further equipment will need to be acquired in 2020. Disruption or limitation of water could mean a loss of investment in this equipment.

(ii) Mahi Pono has worked with the Natural Resources Conservation Service of the United States Department of Agriculture to develop conservation plans for its lands. Any material delay of Mahi Pono's agricultural activities because of disruption or limitations on water or increased costs for use of water could put Mahi Pono in violation of its conservation plans.

(iii) In anticipation of development of agricultural activities, Mahi Pono has hired approximately 37 full-time Mahi Pono and EMI employees, as well as a number of local consultants and third-party advisors in Maui to help coordinate planting. Mahi Pono is actively hiring additional employees and plans to create many more job opportunities in Maui as more vacant land is converted into active farming. These roles would include farming staff, agronomists, mechanics, equipment operators, and engineers, as well as sales, marketing, and finance professionals. A delay in agricultural development due to the disruption or limitation of water would require Mahi Pono to reduce staffing and lay off employees.

(iv) Planting of permanent crops such as citrus, coffee, papayas and avocados is scheduled to begin in the fourth quarter of 2019 and will continue for the next several years. Trees have already been propagated in greenhouses, and the contracts for these trees cannot be canceled without a 100% loss for Mahi Pono. Disruption or limitation of water could cause severe damage to these efforts.

(v) To facilitate plantings, Mahi Pono is building a 25-acre shade house to accommodate to accommodate the trees after they have left the greenhouse for

acclimation. The estimated cost for this construction is \$4-5 million. Disruption or limitation of water could mean a loss of this investment.

(vi) Mahi Pono is working with a local greenhouse which has agreed to dedicate their entire facility to growing trees for Mahi Pono, and it will cease all other business until it completes the Mahi Pono growing. As part of this transaction, Mahi Pono will be putting \$15 million in an escrow account to secure the trees and technical expertise. Any delay caused by the disruptions or limitation of water could significantly hurt both parties.

(vii) Delays in plantings because of the uncertainty and risks that may be caused by this litigation will cause substantial financial costs for Mahi Pono in not getting product to market as scheduled.

(viii) Mahi Pono is working with local retailers, restaurants and other food supply companies for long-term supply contracts for various products. Delays could cost Mahi Pono contract opportunities.

(ix) Mahi Pono is in the planning stages for constructing processing facilities, office, and support facilities. The beginning estimates for such facilities are \$35 million, and the facilities will be needed to sell the agricultural products which are being grown. Disruption or limitation of water could cause these needed facilities not to be built.

(b) Negative Impacts on Cattle Raising

Mahi Pono has contractual commitments to take stockers cattle from Maui Cattle Company and provide adequate feed for the animals. If the animals do not perform because of inadequate feed, Maui Cattle Company will default on contracts. Mahi Pono has also begun preparations and planted forage crops to help supplement the feed program because feed is

currently limited due to dry conditions. Maui Cattle Company members rely on this program for cattle sales. Water disruption or limitation could harm these feed programs.

(c) Negative Impacts on Irrigation System Maintenance and Improvement

(i) Mahi Pono has ordered and delivered irrigation systems to begin planting and these irrigation systems will degrade over time if they are not functioning on a routine basis. These systems are specific to crop types and do not have alternative uses. Water disruption or limitation could severely harm these irrigation systems.

(ii) Mahi Pono has negotiated the procurement of irrigation supplies for the entire project to reduce costs. It has committed to a baseline quantity to receive preferential pricing. Any delay in being able to use these supplies could cause substantial costs increases.

(iii) Mahi Pono is preparing to repair/replace some of the large water delivery infrastructure. This includes repairs to two siphons, reservoir repairs, and canal repairs which are scheduled to begin shortly. These repairs are required to deliver water to the land, but could be delayed or put on hold permanently if water supply is disrupted or limited.

(d) Additional Harm to Others and to the Island of Maui

In addition to the harm to Mahi Pono and to greenhouse operations and cattle growers as already set forth, other third parties could be harmed by disruption or limitation of water:

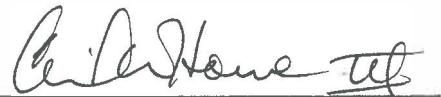
(i) Mahi Pono is working with local farmers to create a Community Farm with the first plantings scheduled for late 2019 and early 2020. Plans are in place for 50 or more individual farms that could be negatively impacted by disruption or reduction of water supplies.

(ii) Mahi Pono is working with other local businesses to help support Mahi Pono operations. Delays in operations due to water disruptions or reduction could hurt these other local businesses and vendors who are staffing up to help Mahi Pono.

9. Mahi Pono Holdings became aware of Plaintiff's Motion for Summary Judgment on Count II ("Motion") soon after it was filed on July 22, 2019. Prior to that time, Mahi Pono had hoped that the disposition of pending motions would obviate Mahi Pono's participation in the litigation. Upon the filing of the Motion, however, it became clear that a ruling that the agencies of the State had violated their public trust duties could have a dramatic impact on Mahi Pono's ability to continue to use agricultural water. Mahi Pono Holdings contacted the law firm of Ashford & Wriston and engaged that firm to represent it in this proceeding on or about July 24, 2019.

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

DATED: Delwood City, CA, July 30, 2019.



CEIL HOWE, III