

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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**”).
2. I make this declaration based on personal knowledge and am competent to testify to the matters contained herein.
3. MP EMI, Inc., a subsidiary of Mahi Pono, is a 50% owner of East Maui Irrigation Company, LLC (“**EMI**”). MP EMI, LLC, another subsidiary of Mahi Pono, is the current manager of EMI.

4. Mahi Pono is presently engaged in substantial efforts to develop diversified agriculture on the Island of Maui. This declaration lays out some of those activities and the effects that limiting available agriculture could have on those efforts.

5. Mahi Pono's budget this year to develop diversified ag on Maui is in excess of \$50,000,000. Almost all of that money will be spent on the island of Maui in goods, services and wages.

6. The Governor of the State of Hawaii and the Mayor of the County of Maui have declared farming to be an essential service. As such, Mahi Pono has been able to continue operating full time.

7. Mahi Pono presently has 43 fulltime employees. Since the start of the COVID-19 pandemic Mahi Pono has not laid off any employees, and Mahi Pono has no plans to reduce its workforce so long as it can continue to farm.

8. Mahi Pono also employs approximately 125 people from Mahi Pono Management Service ("MPMS"). Since the pandemic began, not one MPMS employee has been laid off. Mahi Pono has no plans to reduce hiring employees from MPMS so long as Mahi Pono can continue to farm.

9. Since the start of the pandemic, Mahi Pono has donated agricultural products to the Hawaii Food Bank, Hawaii Department of Education, Hale Makua, Hale Kau Kau, Maui Food Bank, Hawaii Farm Bureau, Maui Medical Group, Maui First Responders, Keanae Kupuna Program, Molokai Food Bank, Lanakila Pacific, Maui Rapid Response, Kauai Food Pantry, Big Island Food Basket, and the County of Maui. These donations consisted of 42,000 pounds of potatoes and over 10,000 pounds of USDA certified venison. Mahi Pono expects to continue to

make agricultural commodities available for those impacted by the pandemic until this crisis is over.

10. The farm plan this year includes planting 3,400 acres of citrus trees. Mahi Pono has expended approximately \$5,250,000 in purchasing trees to plant.

11. Mahi Pono also has plans to plant potatoes, sweet potatoes, papaya, onions, community garden, chef's corner, avocado, 'ulu (breadfruit) and coffee in 2020. These crops are either already in the ground or planned to be planted during 2020.

12. Mahi Pono is currently operating under the revocable permits issued by the Board of Land and Natural Resources to A&B/EMI (Revocable Permits Nos. S-7263, S-7264, S-7265 and S-7266) (the "**Revocable Permits**"). In terms of water usage necessary to implement Mahi Pono's farming plan as well as the needs of other users, Mahi Pono has projected a yearly average of approximately 45 mgd (million gallons per day), increasing from an average use of 34.87 mgd in the first quarter of 2020 to 56.09 mgd in the fourth quarter. This projection reflects both estimated rainfall patterns and increasing agricultural use by Mahi Pono, It also includes 7.1 mgd being delivered to the Maui County Department of Water Supply and 1.5 mgd being delivered to the Kula Agricultural Park.

13. Mahi Pono's projected water uses are set forth in **Exhibit "D"** attached hereto, which is a true and correct copy of the written testimony of Grant Nakama, Operations Manager for Mahi Pono, dated October 9, 2019, and submitted to the Board of Land and Natural Resources in connection with its public hearing on October 11, 2019 regarding the Revocable Permits. **Exhibit "D"** is a document which is part of the records and files of Mahi Pono, which records are made and kept by Mahi Pono in the course of a regularly conducted activity and are kept in the ordinary course of its business.

14. In part because Maui received more rain than normal in March, the actual average water use for the first quarter of 2020 was 27.9 mgd, as reflected in the compliance status report dated April 25, 2020, filed by A&B/EMI with the Board of Land and Natural Resources, a copy of which is attached hereto as **Exhibit “B.” Exhibit “B”** is a document which is part of the records and files of Mahi Pono, which records are made and kept by Mahi Pono in the course of a regularly conducted activity and are kept in the ordinary course of its business. The factual contents of this report are true and correct to the best of my personal knowledge, information and belief.

15. If the amount of water is reduced as requested by the Sierra Club there would be significant impacts to Mahi Pono, its employees and the Maui community. The following are examples of the harm that would be suffered by Mahi Pono and others.

16. If sufficient surface water is not made available for the farm this year then all the citrus trees may not be planted. This will have a ripple effect. If trees are not being planted then land for planting does not have to be developed. Trees will stay in nurseries and not be planted. If no trees are planted then there is no farming of the planted trees. All of these actions will cause a reduction in the work force and foreclose a growth in hiring because trees are not in the ground and need no care. A similar scenario arises if Mahi Pono is not able to plant other crops because of a lack of water.

17. A reduction in water will have a ripple effect in other ways. For instance, Mahi Pono is ordering trees now, for planting next year. Typical nursery contracts require Mahi Pono to put 50% down. If sufficient surface water is not available this year then Mahi Pono may be forced to forego ordering trees for next year given the uncertainty in the water supply.

18. Planting of permanent crops such as citrus, coffee, papayas and avocados is scheduled 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. Delays in plantings because of the uncertainty and risks that may be caused by this litigation and concerns about whether sufficient water will be available will cause substantial financial costs for Mahi Pono.

19. These concerns are magnified by the effects of the pandemic. While Mahi Pono is able to keep on operating in terms of farming and developing more farm lands, the pandemic has totally disrupted normal markets and the logistics for getting products to market. For example, restaurants and hotels are taking no product, and these were major consumers of Hawaii agricultural products. Given changing emergency orders and proclamations as to what is permitted and what is not, it is uncertain from day to day how the market and logistics will work. Throwing the uncertainty of a preliminary injunction on top of the current problems will only exacerbate Mahi Pono's commercial issues.

20. 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 grow because of inadequate feed, Maui Cattle Company will default on contracts. Maui Cattle Company members rely on this program for cattle sales.

21. Mahi Pono is preparing to repair/replace some of the large water delivery infrastructure. This includes repairs to two syphons, reservoir repairs, and canal repairs which are scheduled to begin shortly. These repairs are required to deliver water to the land for agricultural use as well as to the Maui County Board of Water Supply, but could be delayed or put on hold permanently if water supply is disrupted or reduced.

22. 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 providing goods and services to Mahi Pono.

23. The EMI ditch system is operated in a manner that insures continuous water availability in the reservoirs to meet the County's needs for fire protection from brush fires, the risk of which has increased due to the reduction of the irrigated acreage following the cessation of sugar cultivation. If the amount of water is reduced as requested by Sierra Club, there may be insufficient water in the reservoirs for the County's fire protection needs.

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

DATED: Thursday, April 30, 2020.



CEIL HOWE, III