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FILED
CIRCUIT COURT OF
THE THIRD CIRCUIT
STATE OF HAWAII

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RALPH PALIKAPU DEDMAN; TERRI L.) Civil No. 15-1-274K
NAPEAHI; ROBERT M. PETRICCI; RUTH-)
REBECCALYNNE TYANA LOKELANI) (Kona) (Environmental Court)
ALOUA; ALICIA M. ILIKEA KAM;)
WINTER NANI HOOHULI; CLARE) FIRST AMENDED COMPLAINT
LOPRINZI; JOSEPH KASSEL ND, L.Ac.;) FOR DECLARATORY AND
and MISHA KASSEL, MD,) INJUNCTIVE RELIEF; SUMMONS

Plaintiffs,)

vs.)

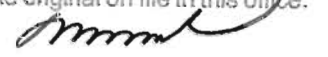
STATE OF HAWAII, DEPARTMENT OF)
LAND AND NATURAL RESOURCES;)
UNIVERSITY OF HAWAII, HAWAII)
INSTITUTE OF GEOPHYSICS AND)
PLANETOLOGY and CENTER FOR THE)
STUDY OF ACTIVE VOLCANOES; and)
JOHN DOES 1-10,)

Defendants.)

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

In this action, Plaintiffs seek to compel Defendants to comply with environmental review procedures required by the Hawai'i Environmental Policy Act (HEPA), Hawai'i

I hereby certify that this is a full, true and correct copy of the original on file in this office.



Revised Statutes (HRS) Chapter 343, and related regulations with regard to proposed geothermal exploration on the Island of Hawai`i.

For their complaint against Defendants, the Plaintiffs allege and aver as follows:

1. Plaintiff Ralph Palikapu Dedman, a resident of the County of Hawai`i, State of Hawai`i, is President of the Pele Defense Fund, actively practices Native Hawaiian cultural and spiritual traditions and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

2. Plaintiff Terri L. Napeahi, a resident of the County of Hawai`i, State of Hawai`i, is Vice-President of the Pele Defense Fund, actively practices Native Hawaiian cultural and spiritual traditions and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

3. Plaintiff Robert M. Petricci, a resident of the County of Hawai`i, State of Hawai`i, is President of the Puna Pono Alliance, has been actively involved in numerous proceedings to assure geothermal operations on the Island of Hawai`i are conducted in a safe, legal and reasonable manner and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

4. Plaintiff Ruth-Rebeccalynne Tyana Lokelani Aloua, a resident of the County of Hawai`i, State of Hawai`i, has a Bachelor of Arts degree in Anthropology and a Master of Arts degree in Archaeology, is volunteer coordinator for Kaloko-Honokohau National Historical Park, an organic farmer, and a Hawaiian cultural practitioner residing in Kailua-Kona having a life-long spiritual relationship with Mauna Hualalai, and in that

context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

5. Plaintiff Alicia M. Ilikea Kam, a resident of the County of Hawai'i, State of Hawai'i, is part of an `ohana that has always lived on Mauna Hualāla`i, her sons have genealogical ties there and one is a namesake of the Ahu a Umi Hāinoa, the summit of Hualāla`i, considers the area very sacred culturally and archeologically rich, and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

6. Plaintiff Winter Nani Hoohuli, a resident of the County of Hawai'i, State of Hawai'i, is part of an `ohana related to Mauna Hualalai for generations, considers the area important culturally and environmentally and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

7. Plaintiff Clare Loprinzi, a resident of the County of Hawai'i, State of Hawai'i, Traditional Midwife, CPM, MCH (Maternal/Child Healthcare), is a Hawaiian cultural practitioner and Ke Kula`o Ehunuikaimalino Garden Coordinator; she lives on the slopes of Mauna Hualalai in the ahupuaa of Honokohau mauka, works with the sensitive intact ecosystem of Mauna Hualalai that is essential for gathering laau lapaau (medicines) for her work as a traditional midwife and appreciates its cultural areas that are meeting places to maintain a strong connection with the Mauna, and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

8. Plaintiff Joseph Kassel ND, L.Ac., a resident of the County of Hawai`i, State of Hawai`i, lives on Mauna Hualalai, Honokohau mauka, and as a physician is well aware of impacts of destruction of environment and cultural sites on the health of affected populations, as the interconnectedness of all life with our environment is a fundamental concept of all indigenous cultures, and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

9. Plaintiff Misha Kassel, MD, a resident of the County of Hawai`i, State of Hawai`i, an Emergency Medicine Physician, owns a residence in Makalei Estates near proposed exploration sites and is alarmed by the prospect that geothermal exploration may eventually result in development of a geothermal production site where potential toxic incidents and the release of hydrogen sulfide may cause injury, death, respiratory problems and neurological effects, and in that context is particularly concerned with the proposed action's significant potential impacts upon a sensitive environment.

10. Defendant Department of Land and Natural Resources (DLNR) is an agency of the State of Hawai`i.

11. Defendants Hawai`i Institute of Geophysics and Planetology (HIGP) and the Center for the Study of Active Volcanoes (CSAV) are entities created and operating within the University of Hawai`i (UH), a body corporate established in Article X, Section 5 of the Hawai`i Constitution and further described in HRS Chapter 304A and § 26-11.

(a) HIGP is a multi-disciplinary institute conducting research, technology development, teaching, workforce training, and service in oceanographic, atmospheric, geophysical, geological, and planetary science and

engineering as part of the School of Ocean and Earth Science and Technology at the UH Manoa campus.

- (b) CSAV, established at UH in 1989 to provide international training in volcanology and related sciences, primarily operates at the campus of UH Hilo, and at the Hawaii Institute of Geophysics and in conjunction with the U.S. Geological Survey (USGS) Hawai`i Volcano Observatory (HVO).

12. Jurisdiction and venue are appropriate in this Third Circuit Court pursuant to HRS §§ 603-21.5, 603-36(5) (claims for relief arose in this circuit), 604A and 632-1 and also article XI, section 9 of the Hawai`i Constitution (“[e]ach person has the right to a clean and healthful environment....”)

13. Defendant DLNR, acting through its Board of Land and Natural Resources (BLNR), authorized and approved applications from the UH entities, HIGP and CSAV, for the issuance of a Geothermal Exploration Permit to conduct non-invasive geothermal exploration activities in specific locations along the Hualalai West Rift Zone.

14. The approved and permitted activities are part of a larger effort referred to as the Geothermal Resources Exploration Plan for Hawai`i supported by funding from DLNR and the U.S. Department of Energy.

15. In granting the permit, BLNR declared that the project was exempt from requirements to prepare an environmental assessment (EA).

16. HRS Chapter 343, titled *Environmental Impact Statements*, provides in relevant part in § 343-5, titled *Applicability and requirements*, that an EA must be prepared for actions that propose the use of state lands or funds:

(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

(1) Propose the use of state or county lands or the use of state or county funds ...

(b) Whenever an agency proposes an action in subsection (a) ... the agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required.

17. On or about March 27, 2015, Defendant DLNR, acting through its BLNR, first approved the Application for Geothermal Exploration Permit Hualalai West Rift Zone, Hawai`i, submitted by Defendant HIGP.

18. The applicant said the project is “being supported by funding from both the U.S. Department of Energy and the Department of Land and Natural Resources.”

19. On or about July 10, 2015, Defendant DLNR, acting through its BLNR, subsequently approved the Application for Geothermal Exploration Permit Hualalai West Rift Zone, Hawai`i, submitted by Defendants HIGP and CSAV.

20. In the second instance, on July 10, 2015, the application had been amended so that the proposed exploration locations would involve only agricultural district land.

21. The BLNR made a formal determination that “[i]n accordance with Hawaii Administrative Rule Section 11-200-8(A), the subject request is exempt from preparation of an environmental assessment pursuant to Exemption Class No.5, ‘Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resources.’”

22. Exemption Class 5, paragraph 11, says in its entirety:

Conduct geothermal exploration activity that involves non-invasive geophysical operations for testing and analysis. Activities conducted under this exemption shall comply with all applicable federal, state and county laws, rules, regulations, guidelines and standards. This exemption would not apply in Urban or Conservation land use districts or in sensitive environments.

23. The proposed action that is the subject of this litigation is described as taking place in locations that include sensitive natural and cultural environments.

24. The application's project description portrays the placement of numerous wires below the ground surface connected to instruments powered by automobile batteries, and further says (emphasis supplied):

... in areas that are heavily vegetated, we may need to clear some vegetation to allow us to weight the entire length of the cables to the ground with sand bags or soil.... The field crew will restore each station site to its original condition, by filling in the electrode holes and the antenna trenches, as they remove the equipment.

For each area that we expect to survey we will meet with the landowners or land manager *to determine whether there are any sensitive areas, for example cultural features, sensitive plant or animal species*, that we need to avoid or be particularly cautious about impacting. We can then plan the survey and site layout to avoid those sensitive areas of the property.

25. January 26, 2015, comments of the DLNR's Historic Preservation Division say "multiple historic properties including burial sites have been recorded" and "[t]here is a distinct possibility that historic properties could be impacted by the proposed project."

26. The Office of Environmental Quality Control publication *Practice and Implementation of HEPA* (2102), § 1.9 Phased Actions, says, at page 8:

Section 11-200-7, HAR, states that "[a] group of actions proposed by an agency or an applicant shall be treated as a single action when:

A. The component actions are phases or increments of a larger total undertaking

B. An individual project is a necessary precedent for a larger project
C. An individual project represents a commitment to a larger project
D. The actions in question are essentially identical and a single statement will adequately address the impacts of each individual action and those of the group of actions as a whole”.

A proposed action must be described in its entirety and cannot be broken up into component parts, which if each is taken separately, may have minimal impact on the environment. Segmenting a project in this incremental way to avoid the preparation of an environmental impact statement is forbidden. If a project includes a later phase that cannot be fully described in the current EA because it is only likely to be implemented in the distant future (as opposed to the “reasonably foreseeable future”), the EA should disclose as much detail as possible about the future phase. Should the future phase of such a project eventually be proposed, a new environmental review document will be required at that time.

27. The March 27, 2015, Application for Geothermal Exploration Permit says:

The proposed project is part of an overall effort referred to as the “Geothermal Resources Exploration Plan for Hawaii” being undertaken by the applicant. The project is being supported by funding from both the U.S. Department of Energy and the Department of Land and Natural Resources. The initial focus of the project will be a MT-based assessment of the Hualalai area and is the first exploration permit application being submitted for this project.

28. Approval of the application for geothermal exploration around Hualalai was improvidently granted due to (1) inapplicability of the exemption in view of the location’s sensitive environment and (2) improper segmentation of the proposed action to avoid the requirement for environmental review of the entire project.

29. Pursuant to HRS Chapters 343, 604A and 632, an actual controversy involving interests of the parties has arisen so that relief by declaratory judgment may be appropriately granted to determine and resolve the legal relations, status, rights, or privileges of the parties in and related to the proposed action.


30. Plaintiffs are entitled to temporary, preliminary and permanent injunctive relief to remedy the Defendants violations of HRS Chapter 343.

Wherefore Plaintiffs pray that: (a) judgment be entered in their favor against Defendants for declaratory relief as prayed for herein; (b) the Court issue such temporary, preliminary and permanent injunctive relief as shall remedy Defendants's violations; (c) the Court retain continuing jurisdiction to review Defendant's compliance with judgments and orders entered herein, and to render additional judicial determinations and orders as may be necessary to effectuate the foregoing; (d) the Plaintiffs be awarded their damages, costs and reasonable attorneys fees, and (e) the Court award such further relief as it deems just and equitable.

DATED: Hilo, Hawai'i, October 21, 2015.

S/Gary C. Zamber
Gary C. Zamber
Attorney for Plaintiffs

STATE OF HAWAI'I CIRCUIT COURT OF THE THIRD CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER Civil No. 15-1-274K
PLAINTIFF RALPH PALIKAPU DEDMAN; TERRI L. NAPEAHI; ROBERT M. PETRICCI; RUTH-REBECCALYNNE TYANA LOKELANI ALOUA; ALICIA M. ILIKEA KAM; WINTER NANI HOOHULI; CLARE LOPRINZI; JOSEPH KASSEL ND, L.Ac. and MISHA KASSEL, MD;	vs.	DEFENDANT STATE OF HAWAI'I, DEPARTMENT OF LAND AND NATURAL RESOURCES; UNIVERSITY OF HAWAI'I, HAWAII INSTITUTE OF GEOPHYSICS AND PLANETOLOGY and CENTER FOR THE STUDY OF ACTIVE VOLCANOES; and JOHN DOES 1-10
PLAINTIFF'S ADDRESS AND TELEPHONE NUMBER Gary C. Zamber 8446 21 Waianuenue Ave., # 3 Hilo, HI 96720 Phone: (808) 969-3600 E-mail: gzamber@gmail.com Attorney for Plaintiffs		
<p style="text-align: center;">TO THE ABOVE NAMED DEFENDANT(S)</p> <p>You are hereby summoned and required to file with the court and serve upon <u>Gary C. Zamber</u>, plaintiff's attorney, whose address is <u>21 Waianuenue Ave., # 3, Hilo, HI 96720</u> an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;">THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p style="text-align: center;">A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
DATE ISSUED OCT 21 2015	CLERK S. MURANAKA (SEAL)	
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CIRCUIT COURT CLERK	

 In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office at PHONE NO. 961-7440, FAX 961-7416, or TTY 961-7525 at least ten (10) working days prior to your hearing or appointment date.