COURT RULES ARMY MUST GIVE COMMUNITY MEANINGFUL INFORMATION ON TRAINING IMPACTS

Victory: Marine contamination, cultural sites at Makua at stake

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Honolulu, HI — Yesterday, U.S. District Chief Judge Susan Oki Mollway ruled that the Army is obliged to give the community meaningful information on how military training at Makua Military Reservation ("MMR") on O'ahu could damage Native Hawaiian cultural sites and contaminate marine resources on which area residents rely for subsistence.

Malama Makua, represented by Earthjustice, had asked the court in August to set aside the Army's environmental impact statement (EIS) for proposed military training at MMR until it completes key marine contamination studies and archaeological surveys.

"For years we've been insisting that the Army tell the community the truth about the threats that training at Makua poses to irreplaceable subsistence and cultural resources," said Malama Makua president Sparky Rodrigues. "Now the court has told the Army that it can't get away with junk science."

Under an October 2001 settlement of Malama Makua's earlier lawsuit, which challenged the Army's failure to prepare an EIS for training at MMR, as well as a related settlement in January 2007, the Army was required to conduct

comprehensive studies to determine the potential for training activities to contaminate fish, shellfish, limu and other marine resources at Mäkua that Wai'anae Coast residents gather for subsistence purposes. The Army was also required to prepare comprehensive subsurface archaeological surveys to identify cultural sites that could be damaged or destroyed by military training.

The Army filed a motion seeking to dismiss Malama Makua's August complaint, arguing that, regardless of the scientific adequacy of its studies, it had met all its responsibilities under the settlement agreements.

In denying the Army's motion, Judge Mollway wrote: "The Army has not demonstrated that the settlement agreement provided it with the sole right to determine what was meant by [an archaeological] 'survey.' Taken to its logical conclusion, the Army's argument would allow the [A]rmy to satisfy its burden by poking a stick into the ground and calling that action a 'survey.'"

Judge Mollway also found that Malama Makua had a viable claim when it asserted that the Army had failed to meet its obligations under the settlement agreement in regard to studying the contamination of subsistence marine resources along the Wai'anae Coast.

"At the hearing on this motion, the Army argued that it was entitled to summary judgment because the settlement agreement only required it to do a study, which it did," Judge Mollway wrote. "The Army contended that what kind of study it did was in its sole discretion. At the hearing, the Army went so far as to argue that it could have satisfied the 'study' requirement by simply having a luau, serving food from the area, and seeing whether anyone got sick."

"The Army points to nothing in any agreement giving it the sole discretion to interpret what constitutes any "study" required by any agreement," Judge Mollway continued. "[T]his court is not persuaded by the Army's overall argument that, as the settlement agreements required no particular methodology, any methodology sufficed."

Judge Mollway emphasized that, "[t]o rule otherwise would lead to ludicrous results. For example, under the Army's argument, if A agrees to pay B $30,000 for B to build a car, B could give A the body of a car with wheels, but no engine, and then say that it satisfied its burden of building a 'car' because B considered that to be a 'car.'"

"To make a rational decision about whether to allow training at Makua, it's vital that decision-makers and the public have accurate information about the harm to public health and cultural sites that resuming training at Mäkua could cause," said Earthjustice attorney David Henkin. "This ruling puts the Army on notice that the Court will not allow the Army to pass off woefully inadequate studies as meaningful."

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Legal Case

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