

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

BETWEEN:

BACONGO

Appellant

and

The Queen

and

The Department of the Environment

1st Respondent

Belize Electric Company Limited

2nd Respondent

Affidavit of Phyllis Dart dated July 16, 2003

I, Phyllis Dart MAKE OATH AND SAY as follows:

1. I am the owner of Ek-Tun, a small jungle lodge on the Macal River, in the Cayo district of Belize, approximately 8 miles downstream of the Mollejon dam. I have lived in Belize since 1990 and became a citizen in 1997. I am the President of the Belize Ecotourism Association (BETA), have served in various capacities in other tourism organizations, and have operated several businesses during this time, one of which was the local newspaper in Cayo.
2. BETA and our members, including Ek-Tun, have been deeply concerned about the proposal to build the Chalillo dam. In September, 2001, BETA wrote to the Chief Environmental Officer following the submission of the Environmental Impact Assessment (EIA) for the Chalillo dam to the Department of the Environment (DOE). A copy of this letter (approved by email by

our members) is shown to me and marked P.D.(1) for identification.

3. In this letter, BETA requested the DOE to provide a better opportunity to view the EIA, more time to provide substantive comments, and emphasized the need for public hearings. To my knowledge, BETA has not received a response to this letter.
4. BETA issued a press release at the time, which stated that:

"This decision is far too important to rush through," was the reasoning from the [BETA]Board. "We only ask that Mr. Fabro makes sure everyone concerned has the time and opportunity to review the EIA and have their comments taken seriously."

- A copy of this press release is shown to me and marked P.D.(2) for identification.
5. When the Public Utilities Commission granted consent for construction of the project in April 2003, BETA wrote to the chairman of the PUC requesting a reversal of the decision and requesting that the PUC hold public hearings and/or a public inquiry into the project. A copy of BETA's letter to the PUC is shown to me and marked P.D.(3) for identification.
 6. The members of BETA are deeply concerned about the effects the Chalillo dam project could have on our businesses—directly due to the effects on tourism activities on the river, and water quality, and indirectly through the effects of the project on wildlife and the wilderness qualities that make nature tourism in Belize so special.

7. BETA has also been strongly in favor of having full, open and public hearings on the Chalillo dam project, something which, in my view, has not yet occurred despite BETA's requests to the Department of Environment, and the PUC, and despite BACONGO's legal challenges. BETA was originally a co-applicant in the challenge to the DOE/NEAC's decisions on the EIA for the Chalillo project. BACONGO, as an umbrella organization, represents the interests of BETA's members in seeking to have the requisite geology, archaeology, and wildlife studies, and in pressing for a fair and open public hearing.
8. The concerns of BETA members about the impacts of the dam are illustrated by the case of my business, Ek-Tun. Ek-Tun is the fourth highest rated jungle lodge in the country, and enjoys that ranking in large part because of the beauty of its natural setting. There is no road to the property—access for guests to Ek-Tun is by boat across the Macal River. Ek-Tun purchases all of its supplies from local (Belizean) producers, and contracts with many different tour operators in country. Like many lodges on the Macal River, Ek-Tun contributes very directly to the local economy. The high wildlife concentrations and beauty attracts tourists.
9. I have noticed the wildlife populations diminish significantly since the Mollejon dam became operational and a few local roads were built. River otters, tapir, fish populations, birds of prey are no longer as abundant. I verily believe that new construction and road building will further diminish wildlife populations.
10. We have seen the water quality on the river dramatically deteriorate. The river has become full of slime and algae—where before every rock in the river could be seen clearly, they are now

covered in slime. It is impossible to stand or walk on the stones in the river now because they are so slippery. Within a year after Mollejon became operational, these changes to the river became apparent. I verily believe that this change in water quality is due to the construction of the Mollejon dam, and that the Chalillo dam—many times larger—would exacerbate this problem.

11. Before the dam was built, the river was crystal clear and the black slates clearly shone through the water. This is the only place in the country where black slate is exposed, and one of the most beautiful places in Belize.
12. During a testing phase for the Chalillo dam a few years ago, rock was being blasted at the dam site. As a result of this somewhat limited activity, a white sediment layer appeared on all the black slate rocks in the river and lasted for a few weeks, until after the blasting stopped.
13. While the Mollejon dam was being built, the water flowing near Ek-Tun would leave a slimy coating on the rocks. I remember spending hours trying to scour this layer of slime off. I verily believe that the construction of the Chalillo dam will cause increased problems of water quality.
14. These changes in the river have a strong impact on my quality of life and on my business. Many of the activities at Ek-Tun are river-based, though we have built a swimming pool as an alternative since the river often has too much slime and sediment to swim in. Many guests have commented on the slime and murkiness of the river, and it. Guests who arrived for honeymoons leave with their bathing suits ruined because the sediment cannot be washed out.

15. There are at least nine tourism facilities downstream of the Mollejon dam on the Macal River. These facilities employ several hundred employees and are a major source of foreign exchange for Belize. The construction of the Mollejon dam has affected all of these facilities and taints the tourism experience along the formerly pristine Macal River. Nature-based tourism is a highly competitive business, dependent on word-of-mouth and individual experiences. I am very concerned that the loss of habitat and deterioration of water quality will jeopardize the entire industry. If Cayo loses its reputation as a haven for pristine wilderness, then tourists will begin looking elsewhere, like Costa Rica, for a nature experience.
16. Although other tour operators see the same deterioration in the environment, I verily believe that many have not spoken publicly about these effects because of fear of retribution. For all the reasons above, I pray that Her Majesty in Council grant the order sought by BACONGO.

Sworn to by the above-named)
Phyllis at San Ignacio,)
Belize on the day of July)
2003)_____

Phyllis Dart

Before me,

This affidavit is filed on behalf of the Applicant (Appellant) herein AND
TAKE NOTICE that it is intended to use this affidavit at the hearing of the
application for an injunction and for Judicial Review.