



Testimony to  
**Board of Land and Natural Resources**

April 10, 2026

9:00 AM

Room 132

**Offering COMMENTS on Agenda Item D-1**  
INFORMATIONAL BRIEFING ON THE COUNTY OF MAUI, DEPARTMENT OF THE  
EAST MAUI WATER AUTHORITY'S OPERATIONAL CAPACITY AND PLANNING  
RELATED TO THE EAST MAUI IRRIGATION SYSTEM, KOOLAU FOREST  
RESERVE, ISLAND OF MAUI, HAWAI'I; TAX MAP KEYS: (2) 1-1-001:004 AND 050; 1-  
1-002: 002 (POR.); 1-2-004:005 AND 007; 2-9-014:001, 005, 011, 012 AND 017.

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Aloha mai e Chair Kanaka'ole and members of the Board of Land and Natural Resources (BLNR),

It is good to see you asking tough questions to the County of Maui. It is time that the BLNR ask East Maui Irrigation (EMI) and Mahi Pono tough questions as well.

For your information, we are providing three judicial filings, of which you should already be aware.

A month ago, the Environmental Court reduced the amount of water that can be taken from East Maui streams, limiting Mahi Pono to 30 million gallons (as averaged monthly). The court noted that "Mahi Pono will have access to multiple alternative sources of water for irrigation, amounting to an average of 10.87 mgd (7 mgd of groundwater from private wells, 13 1.60 mgd in surface water gained between Honopou and Maliko, and 2.27 mgd typically not used by the County)." This Board has never recognized this indisputable fact.

The Environmental Court also held, "BLNR's continued refusal to hold a contested case hearing for the 2026 RP suffers from the same deficiencies identified by this Court as well as the Supreme Court."

Three months ago, the Environmental Court held that "BLNR renewed the RP for 2025 due to a constitutionally unlawful procedure."

Five months ago, the Environmental Court held "BLNR breached its public trust duties because it failed to address and, as such, failed to protect traditional and customary Native Hawaiian rights/practices. . . . BLNR breached its public trust duties because (a) it failed to ensure that water taken from streams was and will be used in a reasonable and beneficial manner given system losses; (b) it failed to hold A&B/EMI to their burden

regarding their actual water needs and the lack of alternative water sources; (c) it improperly authorized an increase in the amount of water diverted from east Maui before resolution of the Sierra Club's petition to set instream flow standards; and (d) it failed to protect the flow of the 12 Huelo streams and impermissibly used 'uncertainty' as a reason." It instructed BLNR to: "Require practical mitigation measures to reduce system losses. Ensure that CWRM's interim instream flow standards are in place and fully implemented before allowing more water to be taken from east Maui streams. Render necessary findings regarding traditional and customary practices."

The BLNR must not continue to ignore or drag out its compliance with clearly applicable court rulings and thereby undermine its own public trust and constitutional obligations. Unfortunately, rather than follow the letter and spirit of the law, the BLNR's attorneys, along with those of EMI and Mahi Pono, have continued to seek borderline frivolous appeals on procedural matters that have been litigated time and again, hoping for a different outcome even as the courts have repeatedly vindicated the due process rights of the Sierra Club and similarly situated entities.

Nonetheless, the Sierra Club remains ready and willing to help the BLNR fulfill its constitutional and fiduciary obligations with regards to East Maui's streams, including through a contested case hearing needed to meaningfully scrutinize relevant evidence, and hear legal arguments regarding how much water can and should be diverted from East Maui, consistent with the public trust. The Sierra Club urges the BLNR to direct staff to hold a contested case hearing on the East Maui revocable permit as required by the constitution and ordered by the courts in a timely manner.

We hope that pursuant to your trust obligations, you also ask EMI how much staff it has; what is its entire budget and financing strategy; and when will it start lining a reservoir.

Mahalo nui for the opportunity to testify.

Electronically Filed  
FIRST CIRCUIT  
1CCV-25-0002146  
06-MAR-2026  
11:56 AM  
Dkt. 201 ORD

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB,	)	Civil No. 1CCV-25-0002146 (LWC)
	)	(Agency Appeal) (Environmental Court)
Appellant,	)	
	)	ORDER RE: (1) APPELLANT SIERRA
vs.	)	CLUB'S MOTION TO STAY A PORTION
	)	OF BLNR'S DECISION, FILED ON
RYAN KANAKA'OLE in his official	)	JANUARY 26, 2026 [DKT. 125] AND (2)
capacity as Acting Chair of the Board of	)	APPELLANT SIERRA CLUB'S MOTION
Land and Natural Resources, BOARD	)	TO STRIKE, FILED ON FEBRUARY 23,
OF LAND AND NATURAL	)	2026 [DKT. 174]
RESOURCES, MAHI PONO, LLC,	)	
EAST MAUI IRRIGATION COMPANY,	)	<u>Hearing</u>
LLC, and the COUNTY OF MAUI,	)	Date: February 27, 2026
	)	Time: 1:30 p.m.
Appellees.	)	Judge: Hon. Lisa W. Cataldo
	)	
	)	

ORDER RE: (1) APPELLANT SIERRA CLUB'S MOTION TO STAY A PORTION OF BLNR'S DECISION, FILED ON JANUARY 26, 2026 [DKT. 125] AND (2) APPELLANT SIERRA CLUB'S MOTION TO STRIKE, FILED ON FEBRUARY 23, 2026 [DKT. 174]

On January 26, 2026, Appellant Sierra Club filed its Motion to Stay a Portion of BLNR's Decision ("**Motion to Stay**") (Dkt. 125). On February 19, 2026, Appellees Ryan Kanaka'ole and Board of Land and Natural Resources, State of Hawai'i (collectively, "**BLNR**") filed their Memorandum in Opposition (Dkt. 157-162), Appellee County of Maui filed its Position Statement (Dkt. 164), and Appellees Mahi Pono, LLC, and East Maui Irrigation Company, LLC (collectively, "**Mahi Pono and EMI**") filed their Memorandum in

Opposition (Dkt. 166). On February 24, 2026, Sierra Club filed its Reply to Mahi Pono and EMI's Opposition (Dkts. 180-195) and its Reply to BLNR's Opposition (Dkt. 197).

On February 23, 2026, Sierra Club filed its **Motion to Strike** (Dkt. 174). The County of Maui filed a Statement of No Position (Dkt. 178). On February 25, 2026, Mahi Pono and EMI filed a Memorandum in Opposition (Dkt. 199). Due to her personal circumstances related to civil unrest in Mexico, the Court permitted BLNR's counsel to place her opposition to the Motion to Strike on the record at the hearing without first filing a written opposition.

On February 27, 2026, both Motions came on for hearing before the above-entitled Court. David Frankel appeared for Sierra Club, Miranda Steed appeared for BLNR, Calvert Chipchase and Trisha Akagi appeared for Mahi Pono and EMI, and Mariana Löwy-Gerstmar appeared for the County of Maui. The Court, having heard the arguments of counsel at the hearing on both Motions, and being duly advised of the record and files herein and finding good cause therefor, rules as follows.

1. The Court DENIES that Motion to Strike for the reasons stated in Mahi Pono and EMI's Memorandum in Opposition (Dkt. 199). This Court's review on the *merits* of this agency appeal will be confined to the agency decision record as defined by Hawai'i Revised Statutes ("**HRS**") § 91-9, and as discussed in *DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC*, 134 Hawai'i 187, 339 P.3d 685 (2014). In the *limited* context of considering Sierra Club's Motion for a Stay, the Court concludes it should consider the most updated information possible when evaluating irreparable harm under HRS § 91-14(c).

2. The Court GRANTS the Motion to Stay, finding that all four requirements stated in HRS § 91-14(c) have been met.<sup>1</sup>

a. Sierra Club's likelihood of success on the merits. Based on the Hawai'i Supreme Court's recent decision in *Sierra Club v. BLNR*, 156 Hawai'i 382 575 P.3d 472 (2025),<sup>2</sup> and this Court's prior ruling that BLNR was obligated under constitutional law to hold a contested case hearing on the same revocable water permit ("RP") for calendar year 2025 in *Sierra Club v. Chang*, Civ. No. 1CCV-25-0031 (Dkt. 451), Sierra Club is likely to succeed on the similar question to be presented on the merits of the instant appeal, as to whether a contested case hearing was required prior to BLNR's approval of the RP for 2026. The high likelihood that a contested case hearing was required is further implicated by the fact that BLNR has not held a

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<sup>1</sup> HRS § 91-14(c) states:

(c) The proceedings for review shall not stay enforcement of the agency decisions . . . but the reviewing court may order a stay if the following criteria have been met:

(1) There is likelihood that the subject person will prevail on the merits of an appeal from the administrative proceeding to the court;

(2) Irreparable damage to the subject person will result if a stay is not ordered;

(3) No irreparable damage to the public will result from the stay order; and

(4) Public interest will be served by the stay order.

<sup>2</sup> Of particular relevance here are the Supreme Court's holdings that Sierra Club was entitled to a contested case hearing as a matter of constitutional due process (1) in light of the (a) importance of Sierra Club's asserted protected property interest, (b) changed circumstances between prior versions of the RPs and the challenged RPs, and (c) continuation of the RPs for over twenty years and that (2) Sierra Club's participation in a prior bench trial and BLNR public meetings did not provide reasonable protection from the risk of erroneous deprivation of its protected property interest. *Sierra Club*, 156 Hawai'i at 396-397, 575 P.3d at 486-487.

contested case hearing on this RP or prior versions since 2021,<sup>3</sup> despite “the magnitude of the water diversions authorized.” *Carmichael v. Bd. of Land & Nat. Resources*, 150 Hawai‘i 547, 567, 506 P.3d 211, 231 (2022). With its conclusion, the Court does not imply that BLNR must hold contested case hearings on a pre-determined time interval; rather BLNR’s continued refusal to hold a contested case hearing for the 2026 RP suffers from the same deficiencies identified by this Court as well as the Supreme Court.

b. Irreparable damage to Sierra Club will result if a stay is not ordered.

In November 2022, the Commission on Water Resource Management (“**CWRM**”) adopted DLNR’s Staff Submittal amending interim instream flow standards (“**IIFS**”) for streams in the Huelo region of East Maui. Dkts. 49-50, CROA at 0725-0733; Dkt. 53, CROA at 0786-0792. The Staff Submittal expressly stated the following in its “Summary of Recommendations to Protect Instream Uses”:

Each stream in the Huelo region of East Maui is a gaining stream with spring flow from perched groundwater held in the Kula Volcanics supporting surface water. In some reaches, groundwater gains are sufficient to meet recognized instream uses of water. In some reaches, additional flow must be provided to meet recognized instream uses of water. . . .

Commission staff make the following conclusions regarding instream uses in the Huelo region:

1. There is a need to ensure downstream flows below the Lowrie Ditch are sufficient for recognized riparian uses in the Ho’olawa, Waipi’o, and Hānawana hydrologic units.

. . .

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<sup>3</sup> In Civ. No. 1CCV-22-0794, *Sierra Club v. BLNR*, Sierra Club appealed from BLNR’s Findings of Fact, Conclusions of Law, and Decision and Order filed on June 30, 2022, arising out of a contested case hearing held in December 2021, approving RPs for the 2022 calendar year. BLNR denied all of Sierra Club’s requests for contested case hearings made in the years since. See Dkt. 1 ¶ 76; Dkt. 24 ¶ 53. Moreover, this Court ultimately reversed BLNR’s 2022 Decision and Order for breach of public trust duties. Civ. No. 1CCV-22-0794, Dkt. 1514 at 3-4.

3. There is a need to ensure downstream flows are sufficient for recreational uses immediately above the Lowrie ditch in the Ho‘olawa, Kailua, and Nailiilihaele hydrologic units, as well as below the Lowrie and Haiku ditches in the Ho‘olawa hydrologic unit.

. . . To ensure that instream uses are sufficiently protected while providing for both non-instream public trust uses and the reasonable and beneficial uses of water for agriculture, staff recommends. . . modifications to the East Maui Irrigation System.

Dkt. 50, CROA at 0726 (emphasis added). The Staff Submittal then ordered a series of required modifications to EMI’s irrigation system for seven Huelo streams: Kōlea, Ka‘aiea, ‘O‘opuola, Nailiilihaele, Kailua, Waipi‘o, and Ho‘olawa. Dkt. 50, CROA at 0726-0732.

In its Answer to Sierra Club’s Statement of the Case, BLNR admitted that “the specific modifications to diversion structures ordered by CWRM in November 2022 have not been completed and EMI is still seeking the requisite permits required to make the modifications.” Dkt. 24 at 13 ¶ 69.

In opposing Sierra Club’s Motion to Stay, BLNR submitted the Declaration of Ayrton M. Strauch, a CWRM hydrologist who is “involved” in CWRM’s East Maui Monitoring Program. Dkt. 158, Strauch Decl. ¶ 4. Dr. Strauch’s Declaration—which the Court finds relevant for the limited purpose of providing input on the irreparable harm inquiry—reflects EMI’s overall progress toward compliance with CWRM’s 2022 IIFS modification orders. Dr. Strauch also confirms, however, that some of the ordered modifications remain unsatisfied, with some diversions in the RP area still awaiting permits more than 3 years later. For example, in the Ho‘olawa Hydrologic Unit:

- In West Ho'olawanui Stream, which is subject to Partial Restoration, the New Hāmākua Ditch management approach is “connectivity,” but the current status is “waiting for permit(s).” Dkt. 158, Strauch Decl. ¶ 34.
- In Ho'olawānui Stream, which is subject to Partial Restoration, the Wailoa Ditch management approach is “connectivity,” but the current status is “waiting for permit(s).” *Id.*, ¶ 35. The New Hāmākua Ditch management approach is “seal & abandon,” but the current status is “waiting for permit(s).” *Id.* The Old Hāmākua Ditch management approach is “seal & abandon,” but the current status is “waiting for permit(s).” *Id.* The Lowrie Ditch management approach is “connectivity” and the current status is “flow restored; waiting for permit(s).” *Id.*

Because CWRM expressly determined that these modifications were required “to ensure downstream flows” for the protection of recognized riparian uses and instream recreational uses, evidence of current non-compliance with CWRM’s modification orders necessarily demonstrates harm to Sierra Club in the form of insufficient stream flow to meet its members’ instream uses.<sup>4 5</sup> This type of harm is irreparable; assuming these

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<sup>4</sup> Sierra Club’s Petition for a Contested Case Hearing identified its members’ instream uses as enjoyment of the streams for “recreational, cultural, and spiritual purposes.” Dkt. 150 at 6. The Petition further claimed that some members “live along and draw water from the streams in the license area for residential and farming purposes.” *Id.*

<sup>5</sup> Regarding diversion structures where restored stream flow was observed but permits remain pending, Dr. Strauch states:

In many instances where structural modifications are pending, the operator has voluntarily reduced or eliminated diversion activity in the interim, releasing water past the intake or lowering gates to the extent practicable, so that water is flowing downstream while the permitting process is completed and the IIFS is met to the extent practicable.

instream uses are eventually met and fully protected, Sierra Club members will never regain the time and opportunity lost while waiting to use and enjoy these streams for recreational, cultural, and spiritual purposes.<sup>6</sup>

c. No irreparable damage to the public will result from a stay. On this point, the parties strongly dispute the potential harm to Mahi Pono—as a member of the public—with respect to its diversified agricultural operations if a stay is ordered. The Court determines that no irreparable damage to Mahi Pono will result from a stay, however, because the record shows that Mahi Pono will have sufficient access to water for its irrigation needs if a stay is ordered.

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Dkt. 158, Strauch Decl. ¶ 78 (emphasis added). The Court takes Dr. Strauch’s statements at face value, but for a number of reasons, it cannot accept representations that a water permittee is “voluntarily” restricting non-compliant diversion activity “to the extent practicable” as a substitute for actual completion of the ordered modifications. First, no representative of EMI or Mahi Pono submitted a similar declaration. Second, on this Motion, the Court must determine irreparable harm to Sierra Club’s instream uses, and in that context, Dr. Strauch does not explain what “voluntarily” allowing water flow “to the extent practicable” actually means in terms of water usage and eliminating irreparable harm.

<sup>6</sup> In further opposing the Motion to Stay, BLNR, Mahi Pono and EMI argued that Sierra Club failed to carry its burden of establishing irreparable harm by failing to submit contemporaneous declarations from its members attesting to specific harms as of 2026. See Dkts. 157 at 8-10; Dkt. 166 at 11. While the Court finds the ROA evidence cited above sufficient to conclude that irreparable harm has been established, the Court also notes that Sierra Club members have testified to specific harms to their instream uses in proceedings related to prior versions of the RP. See Dkt. 181 (Decl. of Lurlyn Scott dated 11/16/21); Dkt. 182 (Tr. of BLNR Contested Case Hearing Proceedings, 12/13/21); Dkts. 186-188 (Transcripts of Proceedings, Civ. No. 19-1-0019, *Sierra Club v. BLNR*, Further Jury-Waived Trial, 08/06/20 & 08/07/20); and nothing was provided to the Court to dispute that these circumstances remain. Based on the briefing on this Motion, the circumstances surrounding the Sierra Club’s members’ previous testimony has not changed.

i. Groundwater. In 2021, EMI’s own environmental impact statement for a proposed 30-year water lease for the license area surrounding the EMI aqueduct system estimated that the irrigation needs for a fully implemented farm plan would use up to 16.47 million gallons per day (“**mgd**”) of groundwater. Dkt. 54, CROA at 0932-0933.<sup>7 8</sup>

EMI’s Water Use Report of October 2025, submitted to BLNR for renewal of the RP, shows that in 2025, Mahi Pono pumped an average of 18.06 mgd of groundwater from its privately owned wells. Dkt. 32, CROA at 0120.<sup>9</sup>

On the topic of groundwater, Sierra Club argued both that (i) groundwater is accessible to Mahi Pono as an alternative water source, and also (ii) “[i]f this court believes it is necessary to prevent Mahi Pono from pumping more than 7 mgd of groundwater, it can so order.” Dkt. 197 at 8. Sierra Club’s proposed limit of 7 mgd

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<sup>7</sup> This figure for groundwater usage was estimated based on a farm plan for an eventual 20,650 acres of irrigated farmland, in addition to 800 acres for a community garden and other uses, plus 4,700 acres of irrigated pasture for cattle. *Id.* As of September 30, 2025, the planted acreage in Mahi Pono’s East Maui fields totaled 12,734 acres. Dkt. 32, CROA at 0092.

<sup>8</sup> Consistent with counsel’s representations at the hearing, DLNR also did not contemplate the expansion of Mahi Pono’s operations in 2026, noting in its Staff Submittal for the 2026 RP that its recommendation was

based on the current planted acreage of 12,734 acres . . . in response to concerns raised by Sierra Club that Mahi Pono is planting too many acres. . . . [T]his recommendation is [to] maintain status quo during this 2026 RP.

Dkt. 30, CROA at 0011 (emphasis added).

<sup>9</sup> The actual range of pumped groundwater varied greatly from month to month, with Mahi Pono pumping as little as 7.10 mgd in February 2025 and as much as 29.66 mgd in September 2025.

refers to the “sustainable yield” for the Pā‘ia aquifer system. Dkt. 50, CROA at 0718 and 0721. However, the DLNR Staff Submittal for the 2026 RP expressly noted that “[n]one of the aquifer systems from which Mahi Pono pumps groundwater are designated as groundwater management areas,” and “[i]n a non-designated aquifer system, well operators may pump ground water consistent with their correlative rights[.]” Dkt. 30, CROA at 0012.

The parties’ briefing did not focus on the specific issue of whether the Court has the authority or jurisdiction to impose a restriction on Mahi Pono’s common law rights with respect to pumping groundwater from its privately owned wells, and the Court need not decide that issue now. The ROA shows CWRM and Dr. Strauch have consistently taken the position that 7 mgd of pumped groundwater represents “sustainable yield” for the aquifer, at least in the short term.<sup>10</sup> Dkt. 50, CROA at 0718 and 0721; Dkt. 193 at 86 Ins. 21-22.

For the purposes of this Order, then, the Court concludes that Mahi Pono has access to 7 mgd of pumped groundwater as an alternative irrigation source.<sup>11</sup>

ii. Surface water gains. EMI’s Water Use Report of October 2025 also shows that an average of 1.60 mgd is available for irrigation in the form of

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<sup>10</sup> In his Declaration, Dr. Strauch stated: “Groundwater is not a reliable *long-term substitute* for East Maui stream water. While groundwater pumping can serve as a supplemental source for limited periods, pumping in excess of the sustainable yield of an aquifer can damage the aquifer.” Dkt. 158, Strauch Decl. ¶ 90 (emphasis added).

<sup>11</sup> To the extent Mahi Pono submitted evidence regarding the adverse effects of “excessive” or “sustained” groundwater usage on specific crops, see Dkt. 166, Decl. of Feras Almasri ¶¶ 5-6, 8(d), these are long-term concerns and any stay ordered by this Court is intended to be short in duration.

surface water gained from the area between Honopou and Maliko. Dkt. 32, CROA at 0120.

iii. Water not used by the County of Maui. DLNR's Staff Submittal for the 2026 RP further noted that the County of Maui has an average water usage of 3.98 mgd (3.42 mgd for the Department of Water Supply and 0.56 mgd for the Kula Agricultural Park). Dkt. 30, CROA at 0012. For the 2026 RP, the total amount allocated to the County of Maui is 6.25 mgd, meaning that on average, Mahi Pono will have access to roughly 2.27 mgd of water not used by the County.<sup>12</sup>

Based on the foregoing, even if a stay is ordered, Mahi Pono will have access to multiple alternative sources of water for irrigation, amounting to an average of 10.87 mgd (7 mgd of groundwater from private wells,<sup>13</sup> 1.60 mgd in surface water gained between Honopou and Maliko, and 2.27 mgd typically not used by the County).

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<sup>12</sup> During the recent hearing, counsel for Maui County, Ms. Löwy-Gerstmar, emphasized the County's desire to work with all parties to resolve disputes related to water diversions. She also represented that the County routinely communicates with Mahi Pono to ensure that water not used by the County does not go to waste.

<sup>13</sup> As implied by the prior discussion, the Court is not setting a "cap" on the permittees' groundwater usage but merely acknowledging its availability as an alternative source for the purpose of evaluating irreparable harm.

While all Appellees voiced concerns regarding groundwater usage in opposition to the Motion—none of them seemed to take issue with Mahi Pono pumping groundwater well in excess of the aquifer's sustainable yield during a drought year (Dkt. 32, CROA at 0120), or that EMI's 2021 EIS requested issuance of a long-term lease that anticipated groundwater pumping at more than twice sustainable yield. Dkt. 54, CROA at 0933.

In any case, if any party perceives an issue with unregulated, non-sustainable use of groundwater to the detriment of the relevant aquifer, that party may avail itself of the appropriate regulatory mechanisms for establishment of a groundwater management area. Per *Kia'i Wai O Wai'ale'ale v. Bd. of Land and Nat'l Resources*, 157 Hawai'i 303, 320-321, 576 P.3d 816, 833-834 (2025), BLNR has "broad powers and

d. The public interest will be served by a stay. Given Sierra Club's likelihood of success on the merits, the public interest will be vindicated by (i) the Court's intent to ensure adequate protection of Sierra Club's constitutional right to due process, and (ii) the Court's intent to mitigate irreparable harm to instream uses resulting from non-compliance with CWRM's 2022 modification orders.

3. Because the requirements of HRS § 91-14(c) have been met, this Court is empowered to order a stay under the statute and to fashion an equitable remedy pursuant to the Court's general equity powers under HRS § 604A-2(b) and its inherent powers under HRS § 603-21.9.

4. Accordingly, IT IS ORDERED that Sierra Club's Motion to Stay is GRANTED, as follows.

a. BLNR's decision made on December 12, 2025, to approve the RP for 2026 is hereby STAYED as to the specific portion that authorized the diversion of 35.22 mgd of East Maui surface water (averaged annually) to Mahi Pono and EMI.

b. In its place, the Court orders a surface water diversion cap of **30 mgd** (averaged monthly) from the East Maui streams subject to the RP.<sup>14 15</sup>

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authority over public lands and the resources thereon, including water" under HRS Chapter 171, such that the Court would expect BLNR to have the power and authority to either address the issue in the first instance or petition CWRM to do so.

<sup>14</sup> This cap does not include or in any way reduce or otherwise affect the County's entitlement to 6.25 mgd. Given Mahi Pono's average usage of 34.49 for diversified agriculture in 2025 and access to multiple water sources for irrigation, this cap should be well within acceptable range. This figure is also given as a monthly average rather than an annual average given that the length of the stay is not anticipated to exceed one year.

<sup>15</sup> Based on Dr. Strauch's Declaration, BLNR argues that a "system-wide cap" is "structurally ill-suited to the instream flow concerns" and "does not correspond to

c. This stay will remain in effect through the date that this Court issues its decision on the merits of this appeal following oral arguments, unless lifted earlier by further order of the Court.

DATED: Honolulu, Hawai'i, March 6, 2026.

/s/ Lisa W. Cataldo   
\_\_\_\_\_  
Judge of the Above-Entitled Court

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stream-specific conditions or stream-specific instream flow needs.” Dkt. 157 at 15; Strauch Dec. ¶ 91. It’s notable that what is at issue is a short-term stay (anticipated to be significantly shorter than the 12-month RP at issue), and what the Court has ordered, i.e., a diversion cap that presumes the permittees’ compliance with CWRM’s IIFS, is no different than what BLNR ordered.

Electronically Filed  
FIRST CIRCUIT  
1CCV-25-0000031  
09-JAN-2026  
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Dkt. 451 MO

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB,	)	Civil No. 1CCV-25-0000031 (LWC)
	)	(Agency Appeal – Environmental Court)
Appellant,	)	
vs.	)	
	)	
DAWN CHANG in her official capacity as	)	
Chairperson of the Board of Land and	)	
Natural Resources, BOARD OF LAND	)	Oral Argument: July 30, 2025
AND NATURAL RESOURCES,	)	
ALEXANDER & BALDWIN, INC., and	)	Judge: Hon. Lisa W. Cataldo
EAST MAUI IRRIGATION, LLC,	)	
	)	
Appellees.	)	
_____	)	

OPINION ON APPEAL

1. This appeal, pursuant to HRS section 91-14, involves the Board of Land and Natural Resources’ (“BLNR”) decisions to (a) deny Appellant Sierra Club’s oral and written requests for a contested case hearing; and (b) then issue a revocable water permit (“RP”) to Appellee Alexander & Baldwin, Inc. and East Maui Irrigation, LLC (“AB/EMI”) for 2025 for the diversion of water from East Maui streams.<sup>1</sup>

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<sup>1</sup> When the initial briefing for this appeal occurred in May, June, and July 2025, the transcript for the December 13, 2024, BLNR meeting was not completed and had not been filed. The parties disputed the reasons and impact of such circumstance. In

2. Two recent Hawai'i Supreme Court cases guide the Court's determination that because (a) Sierra Club has a constitutionally protected property interest in a clean and healthful environment, (b) the importance of that property interest, (c) the new evidence, and (d) the continuation of the RP for over twenty years, due process mandated a contested case hearing prior the BLNR's issuance of the 2025 RP—*Sierra Club v. Board of Land and Natural Resources*, 156 Hawai'i 382, 575 P.3d 473 (Sept. 5, 2025) and *Kia'i Wai O Wai'ale'ale v. Board of Land and Natural Resources*, 157 Hawai'i 303, 576 P.3d 816 (Sept. 30, 2025).

4. As here, at issue in *Sierra Club v. Board of Land and Natural Resources*, was BLNR's denial of Sierra Club's request for a contested case hearing and its subsequent decision to "continue (renew)" four RPs in 2021 "reauthoriz[ing AB/EMI] to continue for another year, its 'temporary occupancy' of state lands and its daily diversion of millions of gallons of fresh water from East Maui's streams into Central Maui." *Id.*, at 386. The Supreme Court held in part:

a. BLNR's renewal of the RPs implicated Sierra Club's constitutionally protected property interest to a clean and healthful environment (article XI, section 9 of the Hawai'i constitution) as defined by HRS chs. 205A and 343 and HRS section 171-55;

b. Sierra Club's constitutionally protected property interest gave rise to "a due process right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner[.]"

c. given "the importance of Sierra Club's asserted protected property interest, the new conditions, changed circumstances, and continuation of the RPs for over twenty years," "the prior bench trial, short duration of the RPs, and

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August 2025, after the oral argument but while a decision was still pending, the transcript was completed and filed. Thereafter, the parties had an opportunity to file—and did file—supplemental briefs citing to the transcript in favor of and against their respective arguments. Dkt. Nos. 434, 436, 438, 440, 438 and 446.

BLNR's November 13, 2020 public meeting did not provide reasonable protection from the risk of an erroneous deprivation of Sierra Club's constitutionally protected property interest in a clean and healthful environment[;]"

d. "the burdens on the government of a contested case hearing . . . in this matter can be reasonably mitigated in a contested case hearing and do not outweigh the additional protections a contested case would provide to Sierra Club[;]" and

E. "constitutional due process required that Sierra Club's contested case hearing should have been held prior to BLNR's renewal of the RPs for 2021.

*Sierra Club*, 156 Hawai'i at 394-398.

5. In *Sierra Club*, the "changed circumstances affecting Sierra Club's constitutionally protected property interest as implicated in BLNR's renewal" included (a) the Division of Aquatic Resources recommendation "that 'restoring four more of the streams should be high priority;'" (b) "recent reports from A&B showed actual water usage that contrasted with amounts of estimated water use;" and (c) BLNR's changed definition of water waste. The Court summarized:

A contested case hearing on this new evidence and new RP conditions subsequent to the 2019 and 2020 RPs would have provided Sierra Club with a meaningful opportunity to challenge and clarify the agency's fact-finding, reasoning, and conclusions on these matters; to address pages of submitted material; and to cross-examine witnesses, thereby reducing the risk of an erroneous deprivation of its property interest.

*Id.* at 396.

6. Ultimately, in relevant part, the Court affirmed the Environmental Court's decisions to (a) vacate the RPs; (b) require BLNR to hold a contested case hearing as soon as practicable; (c) modify the RPs for 2021, such that they remained in effect, but limited AB/EMI's monthly water diversion to 25 mgd (averaged monthly) until the conclusion of the contested case hearing; and (d) awarded attorney's fees. *Id.* at 401.

7. Here, Sierra Club argues that at the time of their request for a contested case hearing prior to BLNR's renewal of the RP for 2025, there was "significant new information" that demonstrated "(1) more water needed to flow in some streams; (2) much less water is needed for irrigation than previously claimed; (3) millions of gallons of water are available from groundwater to supplement irrigation needs; (4) extra water allocated to the County can be used for irrigation; and (5) A&B had invented out of whole cloth its need for 1.1 mgd for 'historic/industrial' uses." Dkt. 360 at 8; see *also id.* at 2.

8. This new information is the same type of information addressed in *Sierra Club*. While the Supreme Court also discussed a "new condition" on the 2021 RPs under review (i.e., a change in the definition of water waste), which is not present here, that absence does not otherwise change the analysis applied by this Court.

9. Accordingly, this Court finds the Supreme Court's recent analysis in *Sierra Club* dispositive of the issues presented here and determines:

a. Sierra Club has a constitutionally protected property interest to a clean and healthful environment that gives rise to a due process right to notice and an opportunity to be heard at a meaningful time and manner; and

b. given that interest, as well as (i) the Supreme Court's acknowledgment of the "importance of the water resources at issue," (ii) the new evidence, which the Court determines was significant, and (iii) the continuation of the RPs for over 20 years, the prior bench trial (which the ICA recently vacated and remanded for an order of dismissal for lack of jurisdiction by the Environmental Court), the contested case hearing for the 2021-2022 RPs, which gave rise to a 2022 Board Decision that this Court recently reversed due to its determination that BLNR breached its public trust duties in variety of ways, and BLNR's December 2024 public meeting did not provide reasonable protection from the risk of an erroneous deprivation of Sierra Club's recognized constitutionally protected property interest; and

c. any burdens on the government for a contested case hearing, which can be mitigated, “do not outweigh the additional protections a contested case would provide to Sierra Club;” and

d. BLNR was required to hold the mandated contested case hearing prior to the renewal of the 2025 RP.

10. Additionally, *Kia’i Wai O Wai’ale’ale v. Board of Land and Natural Resources*, 157 Hawai’i 303, 576 P.3d 816, is relevant to the disposition of this appeal in light of BLNR’s argument that Sierra Club lacks standing for a contested case hearing, and its related argument that BLNR lacks jurisdiction to provide the requested relief. Dkt. 399 at 8-11 and 13-16.

11. *Kia’i Wai O Wai’ale’ale* involved BLNR’s denial of a request for a contested case hearing related to BLNR’s continuation of a revocable water permit for the years 2021 and 2022 to Kauai Island Utility Cooperative (“KIUC”). BLNR argued in part that petitioners lacked injury-in-fact standing. *Id.* at 317.

11. Analyzing the three-part test for injury-in-fact standing, the Supreme Court concluded that *Kia’i Wai O Wai’ale’ale* “sufficiently demonstrated injury to their traditional and customary practices and rights, and that the alleged injury was traceable to the Board’s actions in continuing the RP.” *Id.* at 320. That determination was based in part on the petitions, which stated:

The Board’s action causes waters from the [Wai’ale’ale, Waikoko, Waiahi, ‘Ili’ili’ula, I’ole, Hanamā’ula, Waiaka, and Wailua] streams to be diverted, leaving portions of some streambeds dry, increasing waters in other areas of the [sic] East Kaua’i, and facilitates a network of unsustainable practices that frustrate the ability of [Petitioners] to use and enjoy the environs, cultural and natural resources, and waters of Wai’ale’ale and its tributaries for the exercise of native Hawaiian traditional and customary rights, domestic uses, recreation, research, environmental uses, uses as [DHHL] beneficiaries, aesthetic purposes, and as KIUC ratepayers and County of Kaua’i Department of Water [KDOW] customers.

*Kia'i Wai O Wai'ale'ale*, 157 Hawai'i at 319.

12. As it does here (Dkt. 399 at 15-16), BLNR argued that petitioners could not satisfy the third prong of the test—"is likely to be remedied by favorable judicial action:"

The Board asserts that even if we determine that Petitioners have actual or threatened injuries, they remain without standing because the alleged injuries are redressable only by CWRM, and not by the Board. The Board contends that all of Petitioners [sic] claims are associated with instream flow standards and/or stream diversion structures, such that Petitioners are actually complaining of interim instream flow standards and "stream diversion works" which are under the "exclusive" and "sole jurisdiction" of CWRM, pursuant to HRS Chapter 174C.

*Id.*, at 320 (emphasis in original).

13. Citing various constitutional provisions and sections of HRS ch. 171, the Court rejected BLNR's arguments:

Under this argument, the Board seeks to be absolved of its responsibility and authority over permits and conditions which it issued under HRS § 171-58 and subsequently continued under HRS § 171-55, and also its constitutional obligations as trustee of the State's public trust resources.

We agree with Petitioners that such an argument cannot stand.

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Here, under HRS Chapter 171, the Board had the authority to issue the permit and to prescribe conditions on the permit which "best serve the interests of the State" pursuant to HRS § 171-58 (1991). Moreover, the Board had the authority thereafter to continue the permit, after determining that such dispositions were "temporary" and that the permit was issued "under conditions and rent which will serve the best interests of the State[.]" HRS § 171-55. The Board also had the authority to require "restrictions as may from time to time be expressly imposed[.]" HRS § 171-55. ***The Board's authority to issue and continue the permit, with conditions and restrictions, establishes the Board's broad statutory authority, along with its constitutional public trust authority to address violations of the same.***

***We conclude that within the context of continuing the permit, BLNR had both statutory and constitutional authority to address alleged***

**violations of the RP conditions . . . notwithstanding CWRM's jurisdiction and authority over implementation and administration of the state water code pursuant to HRS Chapter 174C.**

*Kia'i Wai O Wai'ale'ale*, 157 Hawai'i at 321 (emphasis added).

14. Here, BLNR argues that Sierra Club lacks injury-in-fact standing for a contested case hearing. Dkt. 399 at 13-16. While not addressed explicitly in *Sierra Club*, in light of the Supreme Court's analysis and holdings in that case, it appears the argument is without merit. However, to the extent necessary, the Court provides the following.

a. "[W]here the interests at stake are in the realm of environmental concerns[,] [the Supreme Court has] not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements." *Kia'i Wai O Wai'ale'ale*, 157 Hawai'i at 317–18.

b. BLNR concedes the first of the three-part test for determination of injury-in-fact standing—actual or threatened injury. Dkt. 399 at 13.

c. Related to the second part of the test (the injury is traceable to the challenged action), Sierra Club stated in its petition:

The Sierra Club's members are directly affected by the continuation of the revocable permits. They live along and draw water from the streams in the license area for residential and farming purposes. They use and enjoy the streams for recreational, cultural, and spiritual purposes. This includes, but is not limited to, hiking, fishing, swimming, and other recreational uses in and around the streams of the proposed license area. The Sierra Club's interests are harmed by these diversions, poor management, and waste of water. The Sierra Club's and its members' interest in hiking to east Maui streams, experiencing them flow freely, seeing native aquatic life in them, and enjoying nature is undermined by the new revocable permit without appropriate conditions. The diversions harm the native stream life that Sierra Club members enjoy. These diversions harm the Sierra Club's members' ability to use and enjoy free-flowing streams.

Dkt. 68 at 4.

Based on these statements, as well as the cited evidence and arguments in Sierra Club's Reply (Dkt 414 at 7), the Court determines that Sierra Club satisfied the second part of the test.

d. In light of the Supreme Court's rejection of BLNR's arguments related to jurisdiction, the Court finds that Sierra Club satisfied the third part of the injury-in-fact test and has standing.

15. The Court's decision that BLNR renewed the RP for 2025 due to a constitutionally unlawful procedure now presents the issue of relief. Sierra Club requested the Court take a variety of actions, much as it did in the agency appeal that gave rise to the Supreme Court's recent decision, *Sierra Club*. However, the Court is informed and believes that the BLNR has renewed the RP for 2026, also without a contested case. In light of that, as well as the Court's opinion in 1CCV-24-0794, which included some of the same instructions Sierra Club requested here, the Court vacates BLNR's renewal of the 2025 RP, and takes no further action on this appeal.

DATED: Honolulu, Hawai'i, January 9, 2026.

/s/ Lisa W. Cataldo



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LISA W. CATALDO  
Judge of the Above-Entitled Court

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB,	)	Civil No. 1CCV-22-0000794 (LWC)
	)	(Agency Appeal – Environmental Court)
	)	
Plaintiff,	)	
vs.	)	
	)	
BLNR, ALEXANDER & BALDWIN, INC.,	)	
et al.,	)	Hearing: April 30, 2025
	)	
Defendants.	)	Judge: Hon. Lisa W. Cataldo
	)	
	)	
	)	

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OPINION ON APPEAL

1. Finding two applicable exceptions to the mootness doctrine—capable of repetition yet evading review and public interest—the Intermediate Court of Appeals remanded this appeal to the Environmental Court for further proceedings consistent with the Summary Disposition Order. *Sierra Club v. Board of Land and Natural Resources, et al.*, CAAP-24-0082. At issue here is the Board of Land and Natural Resources’ (BLNR) Findings of Fact, Conclusions of Law, and Decision and Order filed on June 30, 2022 (Dkt. 137) (“2022 Board Decision”), wherein the BLNR issued four revocable permits for the 2022 calendar year.

2. The original briefing included Dkt. Nos. 1347, 1357, 1359, 1361, 1375, 1400, 1402 and 1404. Oral argument was on April 30, 2025. Part of that proceeding involved the requested/permmissible relief, given the passage of time and the permit years at issue. Accordingly, the parties filed supplemental briefs. Dkt. Nos. 1498, 1500, 1502, 1504, 1506 and 1508.

3. Therein, Appellant Sierra Club acknowledges that “[m]uch of the relief requested [in its Opening Brief] is no longer appropriate.” Dkt. 1498 at 1. Accordingly, the Sierra Club now requests that this Court (1) reverse the 2022 Board Decision and explain its decision in plain language (Dkt. 1498 at 1-2); (2) instruct BLNR that in considering revocable permits, BLNR must (a) “reduce the amount of east Maui stream water allocated for irrigation by the amount of groundwater that can be sustainably pumped;” (b) “reduce the amount of water allocated for irrigation by the amount of water that the County does not use daily on average;” (c) “require practical mitigation measures to reduce system losses;” (d) “ensure CWRM’s interim instream flow standards are in place and fully implemented before allowing more water to be taken from east Maui streams;” and (e) “render necessary findings regarding traditional and customary practices.” Dkt. 1498 at 3-5.

4. Appellee BLNR characterizes the requested relief as “a request for a mandatory injunction,” presumably based on BLNR’s characterization of the proposed instructions as the imposition of “five conditions on current or future permits.” Dkt. 1502 at 2-3.

5. Appellees Alexander & Baldwin, Inc. and East Maui Irrigation Company (“A&B/EMI”) argue that when an appeal is not moot because it is capable of repetition,

yet evading review or the public interest, a court is limited to offering future guidance, and more specifically, guidance on legal principles rather than fact or case-specific issues. Dkt. 1500 at 1-2. Accordingly, A&B/EMI argue, “the only relief that the Court can provide is a declaratory ruling since the subject revocable permits have long-since expired. Any such ruling should be limited to questions of law that are not fact-or-case specific and that would provide necessary or desirable guidance for future agency decisions.” *Id.* at 4. Like BLNR, A&B/EMI characterize the proposed instructions as “conditions on the subject of revocable permits.” *Id.* at 4-5 (“Sierra Club’s suggestion that the Court can direct BLNR to impose specific conditions for current or further revocable permit decisions is inappropriate.”)

6. The Sierra Club disputes the “mandatory injunction” characterization and clarifies that the “proposed instructions do not dictate permit terms and conditions.” Dkt. 1506 at 2. The proposed instructions simply “reiterate principles” BLNR is required to follow and are neither “too inflexible” nor “too vague.” *Id.*

7. In response to A&B/EMI, the Sierra Club states that it “has **not** asked for specific permit conditions.” Dkt. 1504 at 2. “The proposed instructions do **not** specify the quantity of water that should be reduced to the availability of groundwater . . . .” “The proposed instructions do **not** specify what mitigation measures should be employed.” *Id.* (bold in original). Rather, “[t]he proposed instructions are generic legal principles—regardless of the year” that BLNR “needs to apply” “in rendering its decisions on the revocable permits.” *Id.*

8. On the record before it and pursuant to HRS sections 91-14(g), the Court reverses the 2022 Board Decision finding that BLNR breached its public trust duties

because it failed to address and, as such, failed to protect traditional and customary Native Hawaiian rights/practices. Dkt. 1504 at 2. While that is a sufficient basis in and of itself for reversal, based on the arguments and authorities provided in Dkt. Nos. 1347, 1375, 1377, 1379, 1498, 1504 and 1506, the Court additionally determines that BLNR breached its public trust duties because (a) it failed to ensure that water taken from streams was and will be used in a reasonable and beneficial manner given system losses; (b) it failed to hold A&B/EMI to their burden regarding their actual water needs and the lack of alternative water sources; (c) it improperly authorized an increase in the amount of water diverted from east Maui before resolution of the Sierra Club's petition to set instream flow standards; and (d) it failed to protect the flow of the 12 Huelo streams and impermissibly used "uncertainty" as a reason.

9. Sierra Club requests the following instructions be given to BLNR:
  - A. Reduce the amount of east Maui stream water allocated for irrigation by the amount of groundwater that can be sustainably pumped (as a practicable alternative water source).
  - B. Reduce the amount of water allocated for irrigation by the amount of water that the County does not use daily on average (as a practicable alternative water source).
  - C. Require practical mitigation measures to reduce system losses.
  - D. Ensure that CWRM's interim instream flow standards are in place and fully implemented before allowing more water to be taken from east Maui streams.
  - E. Render necessary findings regarding traditional and customary practices.

Dkt. 1504 at 2.

The Court also finds these proposed instructions are not presented as permit conditions nor do they amount to a request for a mandatory injunction. However, while the Court has adopted the Sierra Club's arguments and authorities and reversed the

2022 Board Decision, the Court is not prepared to adopt all of the requested instructions. Specifically, and whether termed “instructions” or “guidance” as Appellees earlier described, the Court takes no issue with items C, D and E, above, finding they are not too inflexible or too vague, are well supported by case authority and do not amount to “broad, sweeping pronouncements on fact- and case-specific issues.” Dkt. 1500 at 5.<sup>1</sup>

This is not the case regarding requests A and B, which seek instructions to reduce the amount of water allocated for irrigation. The Sierra Club raised several arguments about the Findings of Fact in the 2022 Board Decision regarding groundwater and County usage and the evidentiary support (or more accurately, the lack of) for the determination that groundwater was not a practicable alternative water source (see *e.g.*, Dkt. Nos. 1347 at 25-27; 1375 at 8-9) and Finding of Fact 105 related to County usage. The arguments and authorities presented persuade the Court that there is a cognizable basis to reverse the 2022 Board Decision. That conclusion, in and of itself, should provide BLNR with some guidance. However, the Court declines to prejudge these issues for any future contested case hearing and to instruct BLNR at this time to (i) find there is an amount of groundwater that can be sustainably pumped such that groundwater is a practicable alternative water source resulting in the reduction of the amount of water allocated for irrigation;<sup>2</sup> or (ii) reduce the amount of water allocated

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<sup>1</sup> As to mitigation, BLNR argues that there is no requirement for 100% elimination of system losses. Dkt. 1361 at 18. No party argued as much. On the other side of the continuum, the Court agrees that doing “nothing about system losses” is not appropriate based on the discussion of evidence, case authority and the 2022 Board Decision. Dkt. Nos. 1347 at 10-19; 1375 at 3-6. The Court finds that reference to “practical” mitigation measures strikes the appropriate balance.

<sup>2</sup> See Dkt. 1375 at 8-9 (“The Sierra Club concedes that there are limits as to how

for irrigation by the amount of water that the County does not use daily on average.

DATED: Honolulu, Hawai`i, October 29, 2025.

/s/ Lisa W. Cataldo



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LISA W. CATALDO  
Judge of the Above-Entitled Court

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much groundwater should be pumped (just as there are limits as to how much water should be drained from a stream). But it is A&B's burden to prove that using groundwater is [not] practicable. It is not for the Sierra Club's burden . . . A&B must prove that it cannot pump any groundwater; or it cannot pump more than four mgd, or ten mgd, or 20 mgd. . . ."); see *also* Dkt. 1404.