



SIERRA CLUB OF HAWAI'I

MEDIA ADVISORY

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Hawai'i Supreme Court Vindicates Water Advocates' Rights, Upholds Due Process

HONOLULU, HAWAI'I - The Hawai'i Supreme Court today confirmed that the Board of Land and Natural Resources (BLNR) violated water advocates' constitutional rights when it permitted Alexander & Baldwin, Inc. (A&B) to drain east Maui streams dry. The court also affirmed the BLNR's statutory responsibility to consider the mauka-to-makai impacts of its decisions, given the wide-ranging impacts of stream diversions on watersheds, estuaries, and the nearshore environment.

In 2020, the BLNR renewed A&B's revocable permit to dewater East Maui streams, while denying the Sierra Club of Hawai'i's request for an evidentiary hearing, or contested case, to more thoroughly examine the environmental and cultural impacts of its decision - as well as A&B's apparent waste of millions of gallons of water per day.

The environmental court subsequently found that the BLNR had deprived Sierra Club of Hawai'i members' constitutional right to a healthful environment, without due process. The environmental court further reduced the amount of water that A&B was authorized to take from east Maui until an evidentiary hearing on the Sierra Club's concerns was held, and due process satisfied.

The intermediate court of appeals later reversed the environmental court's decisions - a ruling that was reversed again by the Hawai'i Supreme Court in today's opinion.

The supreme court opinion, finding that the BLNR had failed to uphold the Sierra Club's right to be heard, reflected the court's historic "concern about barriers facing community members seeking meaningful participation in an agency's proceeding and determinations affecting the environment."

"This is about more than the BLNR's responsibility to consider the impacts of dried out streambeds, disrupted cultural practices, and rampant water waste – all of which are extremely critical issues," observed David Kimo Frankel, attorney for the Sierra Club of Hawai'i. "This is also about whether a government agency can simply deprive you of



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your constitutional rights – without any opportunity to present and examine facts, cross examine witnesses, or demonstrate the extent of the harm that you may suffer from its decisions.”

Notably, the supreme court also emphasized that the BLNR, as a state agency, must consider the “mauka to makai” impacts of its decisions under the Coastal Zone Management Act. The law requires the BLNR to consider the impacts of stream diversions on coastal waters and ecosystems, even if the diversions it authorized took place far upstream from the coast.

“The court recognized the common-sense fact – embodied in our coastal zone management law, and in the state’s own taxpayer-funded studies – that what happens mauka affects makai,” said Wayne Tanaka, Sierra Club of Hawai'i executive director.

The controversy over the BLNR's repeated issuance of "temporary" permits to allow A&B to continuously drain east Maui streams dry is long-standing, having spawned more than twenty years of litigation, highly controversial legislation, and multiple rebukes by the environmental court as well as the highest court of the land. In 2023, environmental court Judge Crabtree found that the BLNR's denial of the Sierra Club of Hawai'i's contested case request on a subsequent stream diversion permit "offends the constitution." Last year, the supreme court concluded that the BLNR and Attorney General had made false claims regarding the need for increased stream diversions during the Maui wildfires, stating that the "facts" presented “were so manifestly and palpably without merit, so as to indicate bad faith.”

While the one-year permits issued in 2020 have already expired, the supreme court opinion will likely influence the outcome of similar cases pending in lower courts, concerning the BLNR's repeated denials of evidentiary hearing requests from the Sierra Club of Hawai'i and other water advocates. This includes requests for hearings on subsequently issued revocable permits, including one submitted for the 2025 east Maui revocable permits by Nā Moku 'Aupuni o Ko'olau Hui, a group of kalo farmers and lineal descendants of east Maui.

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About the Sierra Club of Hawai'i: Formed in 1968, the Sierra Club of Hawai'i has over 20,000 members and supporters working throughout the islands to stop climate change, ensure climate justice for all, and protect Hawai'i's unique natural resources. The Sierra Club is the largest, oldest environmental organization in the U.S. We rely on volunteers to support outdoor education programs, trail and native species restoration projects, and grassroots advocacy for sound environmental policies.