IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

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

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/permissible 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.[1]

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;[2] or (ii) reduce the amount of water allocated

[1] 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.

[2] *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

LISA W. CATALDO
Judge of the Above-Entitled Court

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.