



**DEPARTMENT OF THE ATTORNEY GENERAL**  
*KA 'OIHANA O KA LOIO KUHINA*

**JOSH GREEN, M.D.**  
GOVERNOR  
*KE Kaimana*

**ANNE LOPEZ**  
ATTORNEY GENERAL  
*LOIO KUHINA*

News Release 2024-16

**BOARD OF LAND AND NATURAL RESOURCES PREVAILS ON APPEAL IN EAST MAUI WATER CASE**

**FOR IMMEDIATE RELEASE**

April 12, 2024

HONOLULU – Today, the Hawai'i Board of Land and Natural Resources (BLNR), as represented by the Department of the Attorney General, prevailed on appeal in a case regarding the continuation of revocable permits for the diversion of water from streams in East Maui to Central and Upcountry Maui.

During a November 2020 public meeting, while the BLNR was considering the continuation of revocable permits, Sierra Club requested a contested case hearing on the issuance of any revocable permits for calendar year 2021. The BLNR denied the request and voted to continue the permits subject to terms and conditions.

Sierra Club appealed the decision in the Environmental Court of the First Circuit. The court ordered the BLNR to hold a contested case hearing, modified the terms of the permits, and reduced the amount of water Alexander & Baldwin, Inc. (A&B) and its subsidiary, East Maui Irrigation Company, LLC (EMI) could divert until the contested case hearing was held and a decision was made. The BLNR, A&B, EMI, and the County of Maui appealed the Environmental Court's judgment.

Today, the Hawai'i Intermediate Court of Appeals (ICA) reversed the Environmental Court's judgment and ruled in favor of the BLNR and its co-appellants. The ICA ruled that the BLNR did not err in denying Sierra Club's request for a contested case hearing and that a hearing was not required as a matter of law. The ICA further held that the Environmental Court had no legal authority to modify the terms of the revocable permit, stating: "The Environmental Court substituted its judgment for that of BLNR, an expert agency dealing with a specialized field. In doing so, the court exceeded its authority[.]" and that the Environmental Court is not authorized "to substitute its judgment about the application of public policy to the facts for that of an agency, which is constitutionally delegated that power."

"We are pleased with the result, which recognizes that agencies acting in their field of expertise make policy decisions in our system of government," said Deputy Attorney General Melissa Goldman, who represented the BLNR in this case.

BLNR Chair Dawn Chang said, “The BLNR, comprised of dedicated volunteers from each island, has consistently applied appropriate Hawai‘i Administrative Rules (HARs) and state statutes in its decision making. We appreciate the court recognizing that the board did indeed follow applicable law when awarding and renewing water diversion revocable permits.”

The case is *Sierra Club v. Board of Land and Natural Resources, et al.*, Docket Nos. CAAP-22-0000516 & CAAP-22-0000519. A copy of the Intermediate Court of Appeal’s published opinion can be found [here](#).

# # #

**Media Contacts:**

Dave Day  
Special Assistant to the Attorney General  
Office: 808-586-1284  
Email: [david.d.day@hawaii.gov](mailto:david.d.day@hawaii.gov)  
Web: <http://ag.hawaii.gov>

Toni Schwartz  
Public Information Officer  
Hawai‘i Department of the Attorney General  
Office: 808-586-1252  
Cell: 808-379-9249  
Email: [Toni.E.Schwartz@hawaii.gov](mailto:Toni.E.Schwartz@hawaii.gov)  
Web: <http://ag.hawaii.gov>