

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

NĀ MOKU AUPUNI O KO'OLAU HUI,	)	Civil No. 1CCV-26-0011 (LWC)
	)	(Agency Appeal) (Environmental Court)
Appellant,	)	
	)	
vs.	)	OPINION ON APPEAL
	)	
RYAN KANAKA'OLE in his official	)	
capacity as Acting Chair of the Board of	)	
Land and Natural Resources, BOARD	)	Oral Argument: June 25, 2026
OF LAND AND NATURAL	)	
RESOURCES, MAHI PONO, LLC,	)	
EAST MAUI IRRIGATION COMPANY,	)	Judge: Hon. Lisa W. Cataldo
LLC, and the COUNTY OF MAUI,	)	
	)	
Appellees.	)	
	)	

OPINION ON APPEAL

1. This is a companion appeal to Civ. No. 1CCV-25-0002146, *Sierra Club v. Kanaka'ole, et al.*, filed by Appellant Nā Moku Aupuni O Ko'olau Hui ("**Nā Moku**") on January 5, 2026. As with *Sierra Club*, Nā Moku challenges the decisions made by the Board of Land and Natural Resources ("**BLNR**") on December 12, 2025: (1) denying Nā Moku's request for a contested case hearing ("**CCH**") and (2) approving the continuation of a revocable permit ("**RP**") for 2026 ("**2026 RP**"), authorizing permittees Mahi Pono, LLC ("**Mahi Pono**"), and East Maui Irrigation Company, LLC ("**EMI**") to divert 41.72

million gallons per day (mgd) of water from east Maui streams—35.22 mgd (averaged annually) to Mahi Pono/EMI and 6.5 mgd (averaged monthly) to the County of Maui.

Dkt. 43, CROA at 28; Dkt. 124, CROA at 9832.

NĀ MOKU HAS STANDING

2. Recently, in Civ. No. 1CCV-25-0034, *Nā Moku v. BLNR*, this Court said:

In Nā Moku’s previous appeal (Civ. No. 16-1-0052), the Environmental Court found that Nā Moku was entitled to a contested case hearing, because

Nā Moku’s members asserted traditional and customary Native Hawaiian rights and practices, protected by Article XII, Section 7 of the Hawai’i Constitution, which constitutes a proper[ty] interest for purposes of a due process analysis in determining whether a hearing was required—and [the court] independently finds it was a violation not to allow a contested case hearing.

Order, Dkt. 62, CROA at 237 (internal citation omitted). Here, Nā Moku’s written petition for a contested case hearing not only incorporated the Order, but also reasserted that

Nā Moku is an organization comprised of descendants of the Ke’anae-Wailuanui Ahupua’a (land division) within the Ko’olau District who can trace their genealogical lineage to the original settlers (*i.e.*, ahupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778) and their spouses. . . . Its members include Native Hawaiians who engage in traditional and customary practices on a number of streams in East Maui. Nā Moku’s interests are directly affected by the issuance of another revocable permit authorizing more water to be diverted in 2025. Nā Moku’s members are kalo farmers, fishers, and gatherers who depend on the steams covered by the permit for growing taro and feeding their families. Nā Moku’s members have seen streams run dry for long periods as a result of A&B/EMI’s diversions. Approval of the permits for 2025 will adversely impact members’ ability to continue to engage in and perpetuate their traditional practices that depend on free-flowing streams: gathering aquatic life, fishing, growing kalo, and transmitting traditional knowledge to future generations.

Dkt. 62, CROA at 228-229. **These assertions regarding Nā Moku's members' traditional and customary Native Hawaiian rights and practices were sufficient to establish a constitutionally protected interest under Article XII, Section 7 of the Hawai'i Constitution.** See *In re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications*, 128 Hawai'i 228, 241–42, 287 P.3d 129, 142–43 (2012) (highlighting the statutory preservation of the rights of Native Hawaiian farmers to water for subsistence, cultural, and religious purposes in the State's Water Code). These assertions were also sufficient to establish Nā Moku's standing generally, particularly given that “where 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 v. Bd. of Land & Nat. Res.*, 157 Hawai'i 303, 317–18, 576 P.3d 816, 830–831 (2025).

Civ. No. 1CCV-25-0000034, Dkt. 206 at 5-6 (emphasis in bold added) (footnotes omitted).

3. For BLNR's December 12, 2025 Meeting on the issuance of the 2026 RP, Nā Moku's written petition for a CCH again restated its straightforward protected interests in the maintenance of traditional and customary Native Hawaiian rights as they pertain to East Maui streams, and again incorporated the Environmental Court's unappealed Order from 2024 filed in Civ. No. 16-1-0052. Dkt. 47.

4. On this appeal, BLNR acknowledges the prior holdings of the Environmental Court that Nā Moku was entitled to a CCH on prior versions of the RP in Civ. Nos. 16-1-0052 and 1CCV-25-0000034, but contends that Nā Moku cannot rely on its members' 2014 declarations to establish a particularized concrete injury arising from stream diversions in 2026. See Dkt. 226 at 7.¹ In other words, BLNR argues that Nā

¹ See also Dkt. 56, CROA at 258 n.7, 264-415 (Nā Moku's 2025 written testimony attaching 2014 declarations).

Moku's asserted harms lack traceability to the stream diversions authorized for 2026.

See *id.*

5. BLNR's legal analysis offers a strict interpretation of the doctrine of standing that is too stringent for cases involving environmental and Native Hawaiian rights. Just as with environmental standing generally,² standing to enforce Native Hawaiian rights must be evaluated on a less rigorous standard, because the protection of those rights is a matter of great public concern. As the Hawai'i Supreme Court stated in *Ka Pa'akai*:

With regard to native Hawaiian standing, this court has stressed that “the rights of native Hawaiians are a matter of great public concern in Hawai[‘i].” *Pele Defense Fund v. Paty*, 73 Haw. 578, 614, 837 P.2d 1247, 1268 (1992), certiorari denied, 507 U.S. 918, 113 S.Ct. 1277, 122 L.Ed.2d 671 (1993). Our “fundamental policy [is] that **Hawai'i's state courts should provide a forum for cases raising issues of broad public interest, and that the judicially imposed standing barriers should be lowered when the “needs of justice” would be best served by**

² It is well-settled that because the right to a “clean and healthful environment” is expressly protected by Haw. Const. art. XI § 9, courts apply a “**less rigorous** standing requirement . . . in environmental cases.” *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 320, 167 P.3d 292, 313 (2007) (*Superferry*) (emphasis added). The “appellate courts of this state have generally recognized public interest concerns that **warrant the lowering of standing barriers** in . . . cases . . . pertaining to environmental concerns.” *Id.* (emphasis added) (citing *Citizens for Prot. of North Kohala Coastline v. County of Hawai'i*, 91 Hawai'i 94, 100–01, 979 P.2d 1120, 1126–27 (1999) (“Where the interests at stake are in the realm of environmental concerns, **we have not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements.**”) (brackets and internal quotation marks removed, emphasis added). In sum, “environmental plaintiffs must meet the three-part [injury-in-fact] standing test, . . . [but] **there [is] no requirement that their asserted injury be particular to the plaintiffs, and the court will recognize harms to plaintiff[']s environmental interests as injuries that may provide the basis for standing.**” *Id.* (emphasis added).

allowing a plaintiff to bring claims before the court.” *Id.* at 614–15, 837 P.2d at 1268–69 (citing *Life of the Land v. The Land Use Comm’n*, 63 Haw. 166, 176, 623 P.2d 431, 441 (1981)).

Ka Pa‘akai O Ka‘Aina v. Land Use Comm’n, State of Hawai‘i, 94 Hawai‘i 31, 42, 7 P.3d 1068, 1079 (2000) (emphasis added); *Kilakila ‘O Haleakala v. Bd. of Land & Nat. Res.*, 131 Hawai‘i 193, 204, 317 P.3d 27, 38 (2013) (“in cases involving native Hawaiian and environmental interests, we have been especially concerned that the doctrine of standing **not serve as a barrier** to a plaintiff’s legitimate claims[.]”) (emphasis added).

6. Moreover, as Nā Moku’s Reply Brief appropriately states:

Although BLNR correctly acknowledges that [in 2018] CWRM ordered full restoration of certain streams with known kalo cultivation (Makapipi, Waiohue, West Wailuaiki, Wailuanui, Waiokamilo, Palauhulu, Pi‘ina‘au, Hanehoi, and Honopou), Dkt. 123:CROA at 9583-84, the declarations attached to Nā Moku’s written testimony—which were also before CWRM when it set the IIFS—make clear that **the traditional and customary practices Nā Moku’s members exercise in East Maui streams extend well beyond kalo cultivation to include fishing, gathering ‘ōpae, hīhīwai, and ‘o‘opu, and other cultural and subsistence activities that depend on flowing water in all of the streams covered by CWRM’s D&O.** See Dkt. 56:CROA at 290-402. **These fishing and gathering practices are acknowledged in A&B’s [2021] final environmental impact statement (“FEIS”)[.]**

. . . The record clearly demonstrates that these practices occur in streams that are still diverted under the 2026 RP. [Dkt. 69:CROA] at 1193-1264.

. . . BLNR defends its denial of Nā Moku’s [CCH] based on a single incorrect assertion: that the streams where Nā Moku asserts traditional and customary practices [] are no longer diverted. Dkt. 226 at 10-12. The record clearly demonstrates that **Nā Moku members have engaged in recognized traditional and customary practices in East Maui streams from Waikamoi to Makapipi—not just “full restoration” streams—impacted by the diversions authorized by the 2026 RP.** See Dkt. 56:CROA at 290-393.

. . .

BLNR also invents a legal requirement that no court has imposed as a precondition to a contested case hearing—that a petitioner must prove in advance a definite, stream-specific injury before accessing

the hearing designed to establish those very impacts. The right to a contested case hearing exists precisely because constitutional rights should not be decided by agencies in closed rooms without evidence, cross-examination, and findings. **The threshold question is whether an agency action *may* affect a constitutionally protected interest.** See *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai'i 376, 380, 363 P.3d 224, 228 (2015). Under those circumstances, **due process requires that the holder of that interest be given a meaningful opportunity to be heard before the agency acts.** A contested case hearing is the mechanism through which that opportunity is provided in the administrative context — one that guarantees the right to present evidence, cross-examine witnesses, and obtain a decision grounded in a factual record developed through a somewhat adversarial process. *Id.* BLNR's traceability argument conflates this threshold question — does a protected interest exist that *may be affected* — with the merits question — what *specific* harm the agency action will cause. Those are different questions. A contested case hearing is the appropriate forum for the second, not a precondition to the first.

The environmental court has already resolved the threshold question for Nā Moku, twice holding that Nā Moku's traditional and customary Native Hawaiian rights are constitutionally protected interests entitling it to a contested case hearing before BLNR approves an RP authorizing the diversion of water from East Maui streams. See *Nā Moku Aupuni O Ko'olau Hui v. Bd. of Land and Nat. Res.*, 1CCV25-000034 (LWC), Dkt. 206, Opinion on Appeal (Feb. 10, 2026) ("2025 Opinion") at 6; *Nā Moku Aupuni O Ko'olau Hui v. Bd. of Land & Nat. Res.*, Civ. No. 1CC161000052 (JPC), Dkt. 102 at 6. **Those findings were not contingent on stream-specific proof of injury. They were grounded in the nature and scope of Nā Moku's interests and the magnitude of the diversions authorized.** Those bases are still present and, in fact, the magnitude of diversions authorized under the 2026 RP is greater than what this court considered under the 2025 RP. . . .

Significantly, this court has already disposed of the argument that Nā Moku received sufficient process through CWRM's D&O. See Opinion at 9 (citing *Kia'i Wai O Wai'ale'ale*, 157 Hawai'i at 321, 576 P.3d at 834). BLNR cannot keep hiding behind CWRM's 11-year-old hearing to address Nā Moku's due process rights related to the RPs.

Dkt. 230, at 1-4 (emphasis added) (footnotes omitted).

7. Nā Moku correctly rejects a stringent traceability standard in this context.

Such a standard is improper not just because of the low standard for environmental and

Native Hawaiian standing generally, but also because one of the purposes of the CCH itself is to substantiate the facts and asserted harms in an adversarial process *prior to* the agency's final decision. See *Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res.*, 136 Hawai'i 376, 380, 363 P.3d 224, 228 (2015) (describing a CCH as providing "a high level of procedural fairness and protections to ensure that decisions are made based on a factual record that is developed through a rigorous adversarial process"); *Sierra Club v. Bd. of Land and Nat. Res.*, 156 Hawai'i 382, 395, 575 P.3d 472, 487 (2025) ("*Sierra Club*") ("[i]n contrast to a public meeting, [a CCH] promotes in-depth challenges of assertions and mere arguments, and it facilitates the rejection of supposition or conjecture in favor of presenting data and evidence and testing of its veracity and methodologies than mere discussion and general commentary affords.").

Indeed, "[o]ne whose legitimate interest is in fact injured by illegal action of an agency or officer should have standing because **justice requires that such a party should have a chance to show that the action that hurts his interest is illegal.**" *Mahuiki*, 65 Haw. at 512–13, 654 P.2d at 878 (quoting *East Diamond Head Association v. Zoning Board of Appeals*, 52 Haw. 518, 523 n. 5, 479 P.2d 796, 799 n. 5 (1971) (citations omitted)). See also [...] *Life of the Land*, 63 Haw. at 176–77, 623 P.2d at 441 (group members had standing to invoke judicial intervention of LUC's decision "even though they are neither owners nor adjoining owners of land reclassified by the Land Use Commission in [its] boundary review"); *Life of the Land*, 61 Haw. at 8, 594 P.2d at 1082 (group members who lived in vicinity of reclassified properties and used the subject area for "diving, swimming, hiking, camping, sightseeing, horseback riding, exploring and hunting and for aesthetic, conservational, occupational, professional and academic pursuits," were specially, personally and adversely affected by LUC's decision for purposes of HRS § 91–14).

Ka Pa'akai, 94 Hawai'i at 42–43, 7 P.3d at 1079–80 (emphasis added).

8. Further, traceability *does* exist as to Nā Moku's claim on this record, not only for the reasons Nā Moku stated, but also because—as this Court found in *Sierra Club*'s companion case—the Commission on Water Resource Management ("**CWRM**")

ordered modifications to EMI's ditch system in 2022 to ensure downstream flows in the Huelo region, and those modifications remain incomplete. See Civ. No. 1CCV-25-0002146, Dkt. 201 at 4-7. Those straightforward facts have also been admitted on this record³ and are sufficient to establish harm to Nā Moku's cultural interests in the form of inadequate streamflow, which is precisely the type of broad injury that need not be particularized in a way that differentiates Nā Moku from members of the general public who use and enjoy the affected streams.

9. BLNR has also admitted on this appeal that it is "without knowledge or information sufficient to form a belief regarding" whether "[g]rowing kalo, catching 'o'opu, collecting 'ōpae, and gathering hīhīwai from the water flowing within east Maui streams were traditional and customary practices that existed prior to 1892." Dkt. 25 at 5 ¶ 35; Dkt. 37 at 4 ¶ 18. Yet, these exact traditional and customary practices were expressly identified and discussed in EMI's 2021 FEIS for the RP area, which was highlighted in DLNR's Staff Submittal for the 2026 RP. Dkt. 43, CROA at 10; Dkt. 69, CROA at 1215-1221. Specifically, the FEIS stated, in pertinent part:

Based on the cultural and historical background presented . . . in conjunction with archaeological evidence, oral histories, declarations, and interviews throughout East Maui, . . . there are specific valued natural and cultural resources within the License Area. . . . which includes the following activities and resources:

1. Foraging, traditional, and generational gathering of freshwater species for personal consumption. These species include but are not limited to 'ōpae, 'o'opu, pūpūlo'i (also known as pūpū Pākē or Chinese snail), crayfish, prawns, and hīhīwai.

³ Dkt. 25 at 14 ¶¶ 80-81; Dkt. 37 at 12 ¶ 61 ("the Board admits 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").

2. Foraging, traditional, and generational gathering of plants that may be in or adjacent to tributaries for personal consumption. These species include but are not limited to pohole and watercress.
3. Traditional and generational gathering of introduced plants that can be cultivated or foraged. These species include but are not limited to 'ulu, bananas, wild kalo, wild lū'au, guava, 'uala, 'awapuhi, tī, oranges, hāhā, avocado, puakenikeni, and medicinal plants for lā'au lapa'au.
4. Traditional and generational gathering of plants that can only be foraged. This includes but is not limited to pepeiao, various types of ferns (ornamental), and hau.

Dkt. 69, CROA at 1220.

10. On this record, as in prior appeals, Nā Moku has standing to maintain this agency appeal as to BLNR's denial of the CCH and BLNR's renewal of the 2026 RP.⁴

NĀ MOKU WAS ENTITLED TO A CCH AS A MATTER OF DUE PROCESS

11. As with the Sierra Club appeal, here Nā Moku was also entitled to a CCH prior to the issuance of the 2026 RP. On the due process factors recognized in *Sandy Beach Def. Fund v. City Council of City & Cnty. of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989), Appellees' analysis rests on the assertion that Nā Moku's constitutionally protected property interest was already addressed by CWRM's 2018 IIFS Decision and Order, such that there is low risk of erroneous deprivation of Nā Moku's interest. See Dkt. 224 at 11-15; Dkt. 226 at 9.

12. Reliance on CWRM's 2018 IIFS Decision and Order to establish a low risk of erroneous deprivation in 2026, however, is improper for at least two reasons. First,

⁴ As with the Sierra Club appeal of the 2026 RP, BLNR did not purport to deny Nā Moku's request for a CCH for lack of standing. Rather, Chair Chang's motion to deny the written request for a CCH included remarks explicitly "recognizing that both Nā Moku and Sierra Club have interests and have asserted what their harms are – recreational use, impacts to customary practices." Dkt. 61, CROA at 565.

the 2018 CWRM Decision predates EMI's 2021 FEIS, which more extensively identified and described cultural practices and resources in the RP area, representing updated information weighing in favor of requiring a CCH. *Sierra Club* at 396, 575 P.3d at 486; see *also* Dkt. 232 at 2 (arguing that "EMI's [FEIS] documenting the traditional and customary practices . . . define the baseline against which current impacts must be measured.").

13. Second, as Nā Moku succinctly argues:

. . . *Flores* require[s] that "the potential impact of" the prior and subsequent actions "overlap entirely." *Flores v. Board of Land and Natural Resources*, 143 Hawai'i 114, 127, 424 P.3d 469, 482 (2018). The IIFS proceedings addressed how much water must remain in East Maui streams to protect instream use. A contested case hearing on the RP would address what BLNR's December 12, 2025 meeting should have—among other things, whether diverting water above that minimum serves the best interest of the state and protects traditional and customary practices. These address legally distinct questions. The answer to one does not resolve the other. As CWRM explained in 2018, "[o]ur decision establishes a quantity of water that must remain in each stream. It does not allocate any additional water that can potentially be diverted offstream to support other activities as that is under the purview of [BLNR]." Dkt. 123:CROA at 9310; see *also id.* at 9314 ("The Commission recognizes that authorizing how much water will be allowed to be diverted offstream once the instream flow standards are met is the purview of the [BLNR].").

. . .

. . . **[Appellees]' logic, taken to its conclusion, would mean that CWRM's 2018 D&O permanently satisfies BLNR's due process obligations** for every annual RP that follows in perpetuity. The Hawai'i Supreme Court squarely rejected this reasoning in *Kia'i Wai O Wai'ale'ale v. Board of Land and Natural Resources*, 157 Hawai'i 303, 321, 576 P.3d 816, 834 (2025), holding that CWRM proceedings do not address all concerns related to stream flows such that no further process before BLNR is required.

Dkt. 232 at 2-3 (emphasis added).

14. On the third *Sandy Beach* factor, weighing the “governmental interest,” the same reasons favoring Sierra Club in its companion appeal also favor Nā Moku. As in Sierra Club’s appeal, BLNR’s framing of the government interest as ensuring “uninterrupted water” diversions⁵ evidences a misunderstanding of both Nā Moku’s CCH request and the choice BLNR faced. In Nā Moku’s fitting words:

Fundamentally, the governmental interest in water delivery, however legitimate, cannot permanently foreclose a constitutional due process right. BLNR has on a number of occasions invoked the same governmental interest — uninterrupted water for municipal and agricultural uses — to deny Nā Moku and the Sierra Club a contested case hearing. **If that interest is sufficient to deny a [CCH] every December when the existing RP is about to expire, then Nā Moku’s constitutional right to a hearing is effectively nullified.** The annual RP cycle, combined with BLNR’s practice of waiting until the last possible moment to consider renewal, cannot be used as a mechanism to permanently avoid the state’s legal obligations. BLNR cannot use **the time pressure it created** as a justification for denying the very hearing it was constitutionally obligated to hold.

Mahi Pono’s assertion that BLNR had no choice because granting the [CCH] would have cut off water entirely . . . mischaracterizes both the law and the record. Dkt. 224 at 22-23. **Nā Moku did not demand that BLNR relinquish its discretion.** Rather, it proposed a workable path forward: grant the [CCH], issue the RP with conditions reflecting actual 2025 usage levels, and resolve the contested issues through the hearing process. . . . The choice BLNR actually faced was not between Nā Moku’s constitutional rights and water delivery—it was between those rights and an RP more favorable to Mahi Pono than the record supported.

Dkt. 232 at 3-4 (emphasis added).

15. Based on the foregoing, Nā Moku was entitled to a CCH. “Once a contested case hearing is mandated, due process requires that the petitioner be afforded the hearing *at a meaningful time* ‘before governmental deprivation of a significant property interest.’” *Sierra Club* at 397, 575 P.3d at 487 (emphasis added).

⁵ Dkt. 61, CROA at 566.

On a similar record on prior East Maui RPs, the Supreme Court said that “constitutional due process required that [the CCH] should have been held *prior to BLNR’s renewal* of the RPs for 2021.” *Id.* at 398, 575 P.3d at 488 (emphasis added). The result must be the same here, “in light of the magnitude of the water diversions authorized and the BLNR’s role as a public trustee of the State’s water resources.” *Carmichael v. Bd. of Land & Nat. Res.*, 150 Hawai‘i 547, 567, 506 P.3d 211, 231 (2022).

BLNR’S RENEWAL DECISION BREACHED THE PUBLIC TRUST

16. Per this Court’s Opinion on Appeal issued in Civ. No. 1CCV-25-0002146, *Sierra Club v. Kanaka’ole, et al.*, BLNR’s renewal of the RP for 2026 has been reversed for breach of the public trust, pursuant to HRS § 91-14(g)(1), (3), and (4). Civ. No. 1CCV-25-0002146, Dkt. 358 (“**Sierra Club Opinion**”). The Court held that “BLNR breached its public trust duties by (1) failing to render independent findings for the identification and protection of Native Hawaiian traditional and customary practices, and (2) failing to operate with a presumption in favor of public use and access to the water resources at issue.” *Sierra Club Opinion* at 11-12 ¶ 22.

17. The same circumstances supporting that holding exist here. Again, Nā Moku correctly argues:

BLNR cannot rely on CWRM’s 2018 analysis to fulfill its duties to protect traditional and customary practices related to the 2026 RP. BLNR and CWRM exercise distinct and independent kuleana. CWRM’s authority extends to setting the minimum level of water that must remain in a stream — the IIFS. BLNR’s authority, and its obligation, is separate: it must independently determine how much water, if any, above that minimum may be authorized for offstream diversion.⁸ In a binding decision involving the same East Maui streams, the circuit court held that “**neither the BLNR nor this Court can rubber-stamp any determination of the CWRM.** Rather, the BLNR is obligated to make a truly independent investigation as to whether it’s in the state’s best interest to authorize the diversion of water from East Maui streams.” *Maui Tomorrow [v.. State]*, 110 Hawai‘i at

240-41, 131 P.3d at 523-24 [(2006)] (emphasis added). **BLNR's wholesale reliance on CWRM's 2018 decision is precisely the rubber-stamping that the court warned against.** The inadequacy of that reliance is compounded by CWRM's decision itself, which stated that "[t]here is universal agreement that more water and better connectivity in streams is a good thing for native habitat restoration[.]" Dkt. 123:CROA at 9313, which in turn impacts cultural practices. BLNR cannot invoke CWRM's 2018 decision as a shield for its *Ka Pa'akai* obligations while ignoring the very finding that decision contains.

Dkt. 143, at 12-13 (emphasis added). In a footnote, Nā Moku further correctly noted that "BLNR is not required to grant *any* amount of water above the IIFS. Had BLNR declined to issue the 2026 RP, that water would have remained in East Maui's streams — available to support Nā Moku members' kalo farming and the gathering of 'ōpae, 'o'opu, hīhīwai, and other traditional and customary practices." *Id.* at 12 n.8 (emphasis added). Nā Moku made this same correct legal argument before BLNR in its written testimony on the 2026 RP. See Dkt. 56, CROA at 256-259.⁶

ORDER

18. Per the Sierra Club Opinion, the matter of the 2026 RP has been remanded to BLNR for BLNR to conduct the CCH required by due process to be held as soon as practicable, and with the CCH to cover the RP for both calendar years 2026 and 2027.

19. At oral argument for this appeal, counsel for BLNR objected to any CCH ordered by this Court covering calendar year 2027 in addition to 2026, on the grounds that HRS § 171-55(a) limits RPs to terms of one year only, whereas CCHs may take

⁶ Failure to discharge its obligations to make independent findings regarding traditional and customary practices is the same reason that the Court reversed BLNR's decision in Sierra Club's 2022 Appeal arising out of a prior 2021 CCH. See Civ. No. 1CCV-22-0794, *Sierra Club v. BLNR*, Dkt. 1514 at 3-4.

much longer or otherwise run through RP expiration dates. Counsel provided an example of a CCH on a BLNR enforcement action that has taken over 17 months, and informed the Court regarding the practical challenges of holding CCHs generally.

20. While the Court understands and appreciates the practical considerations involved, the one-year term limit for RPs set forth by HRS § 171-55(a) cannot be interpreted as foreclosing rights to due process solely because the required CCH proceedings may exceed one year, or otherwise run through an RP's expiration date because the CCH was convened by the agency late in the year. The Court cannot adopt an interpretation of HRS § 171-55(a) that produces an absurd result. *Morgan v. Plan. Dep't, Cnty. of Kauai*, 104 Hawai'i 173, 181, 86 P.3d 982, 990 (2004).⁷

21. By this Order, the Court confirms that Nā Moku, by virtue of its standing and entitlement to a CCH on the same subject matter, is entitled to be a party to the CCH ordered by the Court pursuant to the Sierra Club Opinion. To that effect, this Order incorporates paragraphs 35 through 37 of the Sierra Club Opinion.

⁷ The Legislature is "presumed not to intend an absurd result," *State v. Decoite*, 132 Hawai'i 436, 438, 323 P.3d 80, 82 (2014), and "a statutory interpretation that is "rational, sensible, and practicable . . . is preferred to one which is unreasonable, impracticable . . . inconsistent, contradictory, and illogical." *Moranz v. Harbor Mall, LLC*, 150 Hawai'i 387, 398, 502 P.3d 488, 499 (2022) (brackets omitted). In enacting the one-year duration limit for renewed RPs in HRS § 171-55(a), the Legislature cannot have intended for that term limit to eliminate the need to conduct CCHs that may be required by law (by rule, statute, or constitutional due process). *Sierra Club* at 395, 575 P.3d at 485; *Mauna Kea Anaina Hou*, 136 Hawai'i at 390, 363 P.3d at 238.

22. Pursuant to HRS § 91-14(i), this Court reserves jurisdiction as may be necessary to “appoint a master or monitor to ensure compliance with its orders.”

DATED: Honolulu, Hawai‘i, July 21, 2026.

/s/ Lisa W. Cataldo

Judge of the Above-Entitled Court

