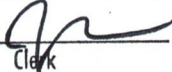


David Kimo Frankel 5791

FIRST CIRCUIT COURT
STATE OF HAWAII

FILED

2:17 o'clock P.M.
11-30, 2017


Clerk

Martha Townsend 8401

Attorneys for the Sierra Club

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

SIERRA CLUB,	)	CIVIL NO. 17-1-1350-08 JPC
	)	(Environmental Court)
Plaintiff,)	
vs.	)	ORDER DENYING THE DEFENDANTS
	)	DEPARTMENT OF HEALTH AND
DEPARTMENT OF HEALTH, and	)	VIRGINIA PRESSLER IN HER OFFICIAL
VIRGINIA PRESSLER in her official	)	CAPACITY AS DIRECTOR OF
capacity as Director of Health,	)	HEALTH'S SEPTEMBER 5, 2017
	)	MOTION TO DISMISS COMPLAINT
Defendants.	)	FILED ON AUGUST 17, 2017
)	
	)	Hearing
	)	Date: September 27, 2017
	)	Time: 10:00 a.m.
	)	Judge: Honorable Jeffrey Crabtree
)	
	)	Trial Date: Not set

ORDER DENYING THE DEFENDANTS DEPARTMENT OF HEALTH AND VIRGINIA PRESSLER IN HER OFFICIAL CAPACITY AS DIRECTOR OF HEALTH'S SEPTEMBER 5, 2017 MOTION TO DISMISS COMPLAINT FILED ON AUGUST 17, 2017

On September 27, 2017, this court heard arguments on the defendants' motion to dismiss the plaintiff's complaint. Wade H. Hargrove III appeared on behalf of the defendants, the Department of Health and Virginia Pressler. David Kimo Frankel and Martha Townsend appeared on behalf of the plaintiff, the Sierra Club. This court reviewed the motion, the

memoranda filed by the parties and the entire record in this proceeding. Having considered the arguments made by counsel, the court denies the defendants' motion. Without limiting the court's rationale, the primary reasons for the court's ruling are:

(a) Strict standards govern a motion to dismiss. To grant the motion, it must appear beyond a doubt that the plaintiff can prove no set of facts entitling the plaintiff to relief. The allegations of the complaint are deemed to be true. For purposes of this motion, the court is required to accept as true that: 1) the Southern O'ahu Basal Aquifer, which is the principal source of drinking water for over 750,000 Honolulu residents, is at risk of contamination from various sources, including underground fuel storage tanks that have leaked petroleum both in the past and recently; and 2) various improvements intended to prevent contamination of the aquifer from leaking underground fuel tanks are insufficient.

(b) HRS § 342L-32 (1992) required DOH to adopt standards to address leaking underground fuel storage tanks.

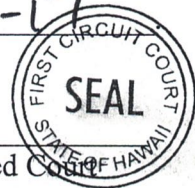
(c) The court finds mixed questions of law and fact exist as to whether steps taken by DOH comply with statutory and constitutional mandates to protect the quality of O'ahu's principal source of drinking water.

(d) The court rejects DOH's exhaustion argument, primarily because the plaintiff is challenging the validity of agency rule-making.


The court emphasizes this ruling should not be interpreted as an affirmative ruling that DOH has violated its duty. The court is simply denying DOH's rule 12(b) motion to dismiss.

DATED: Honolulu, Hawai'i, 11-30-17
Jeffrey P. Crabtree

Judge of the Above-Entitled Court



APPROVED AS TO FORM:


Wade H. Hargrove, III
Attorney for defendants