

BLACK BEAR HYDRO PARTNERS, LLC

v.

BOARD OF ENVIRONMENTAL PROTECTION et al.

Argued September 11, 2024

Decided January 21, 2025

Panel: STANFILL, C.J., and MEAD, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

Black Bear Hydro Partners, LLC appeals to us from a judgment of the Superior Court (Kennebec County, *Murphy, J.*), denying Black Bear's M.R. Civ. P. 80C petition for review of a decision of the Maine Board of Environmental Protection that rejected its application for a Water Quality Certification for the Ellsworth Hydroelectric Project. M.R. Civ. P. 80C. When the Superior Court acts in its intermediate appellate capacity in reviewing the decision of an administrative agency, we directly review the agency's decision on appeal. *See Hannum v. Bd. of Env't Prot.*, 2006 ME 51, ¶ 9, 898 A.2d 392. After considering the parties' supplemental briefs and upon review of the record, we conclude that Black Bear's appeals to the Superior Court and to us are nonjusticiable.<sup>1</sup> *See Hamilton v. Bd. of Licensure in Med.*, 2024 ME 43, ¶¶ 8-12,

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<sup>1</sup> Because the Maine Board of Environmental Protection had three, independently sufficient grounds for issuing an adverse ruling on Black Bear's application, Black Bear needed to have challenged each of those independent grounds for an appeal to grant any real or effective relief. *See Desmond v. Desmond*, 2012 ME 77, ¶ 19, 45 A.3d 701; *see also Knight v. Con-Agra Foods, Inc.*, 476 S.W.3d 355, 358 (Mo. Ct. App. 2015). Here, Black Bear's appeals challenged only one of these independent grounds and asserted no claims that the other bases for the Board's decision were

315 A.3d 762; *Brunswick Citizens for Collaborative Gov't v. Town of Brunswick*, 2018 ME 95, ¶ 7, 189 A.3d 248; *Chretien v. Chretien*, 2017 ME 192, ¶ 6, 170 A.3d 260.

The entry is:

Judgment of the Superior Court vacated.  
Remanded to the Superior Court for dismissal of  
the petition for judicial review as nonjusticiable.

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Aaron M. Frey, Attorney General, Robert L. Martin, Asst. Atty. Gen. (orally), and Scott W. Boak, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellees Maine Board of Environmental Protection and Department of Environmental Protection

William J. Kennedy, Esq. (orally), Drummond & Drummond, LLP, Portland, and Ronald A. Kreisman, Esq., Portland, for appellee Downeast Salmon Federation

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incorrect. Thus, Black Bear's appeals to both the Superior Court and the Law Court must be dismissed as nonjusticiable, as no decision by either court would provide relief from the Board's denial of the application for a Water Quality Certification.