

Governance, Ethics, and Transparency Committee

Hawaii Wildlife Fund, et al. v. County of Maui
U.S. Supreme Court, Docket 18-260 (GET-26)

ERIC NAKAGAWA

DIRECTOR, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



Pre-1970s

Raw sewage disposal
via direct ocean outfalls

Now: Water Reclamation and Reuse



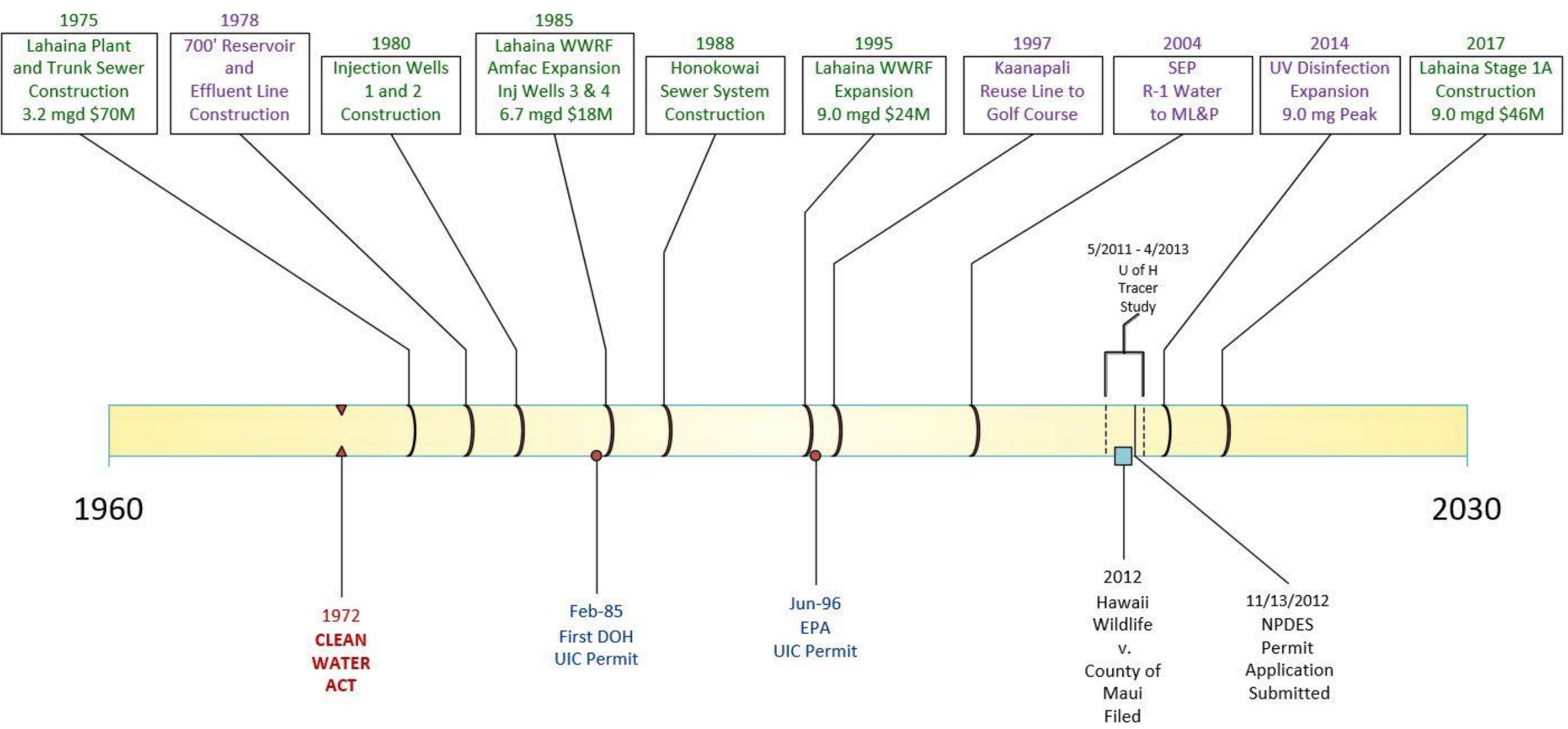
Irrigation

(Resorts, golf courses, parks and other facilities)



Disposal via injection wells

(Excess treated water)



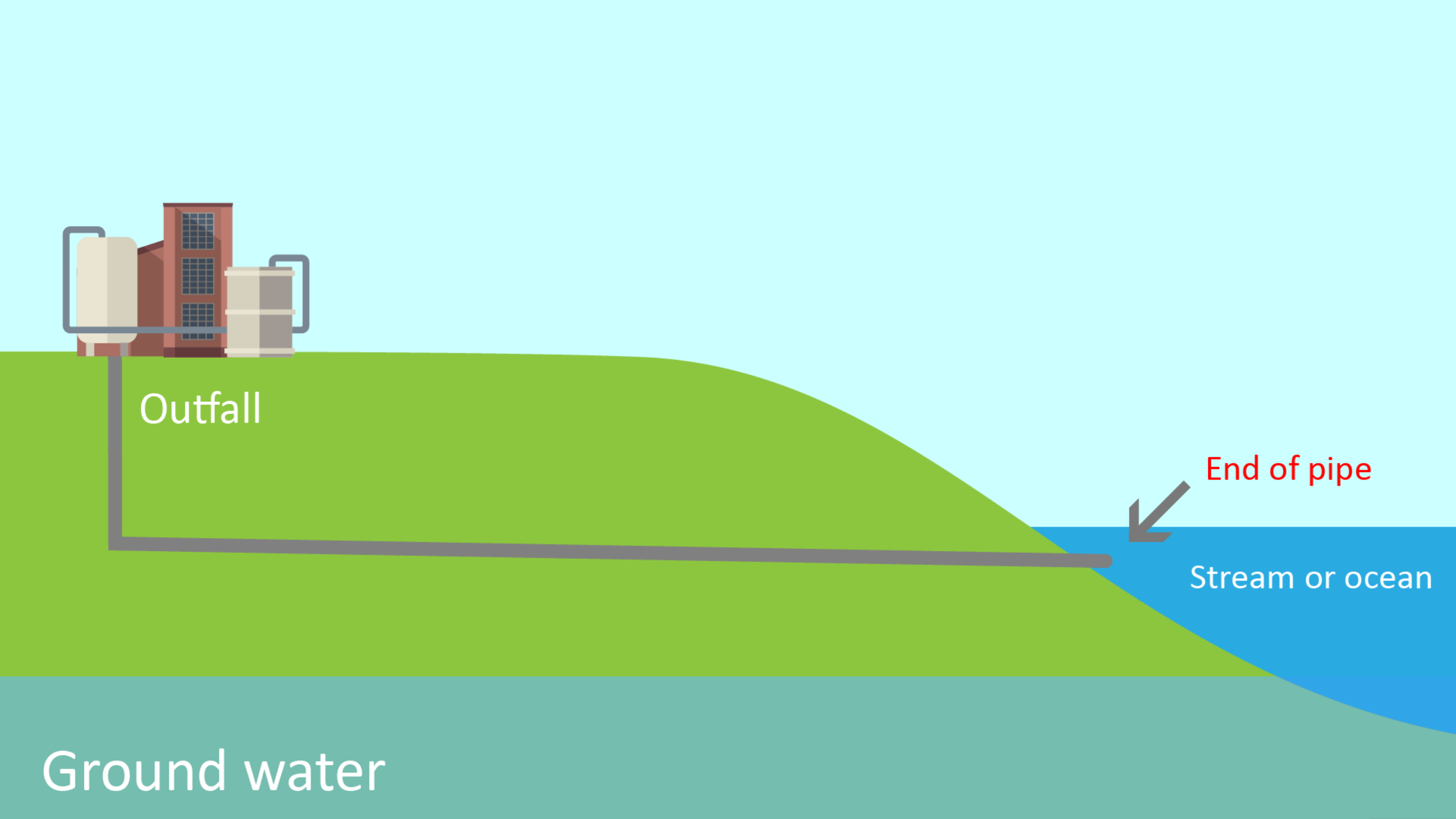
The County's
Lahaina Facility
produces the
highest quality
recycled water
in the State of
Hawaii.



Point Source vs. Non-Point Source

- Point Source – Any discernable, confined, and discrete conveyance
 - Outfalls and pipes
 - **Regulated by the Clean Water Act**





Outfall

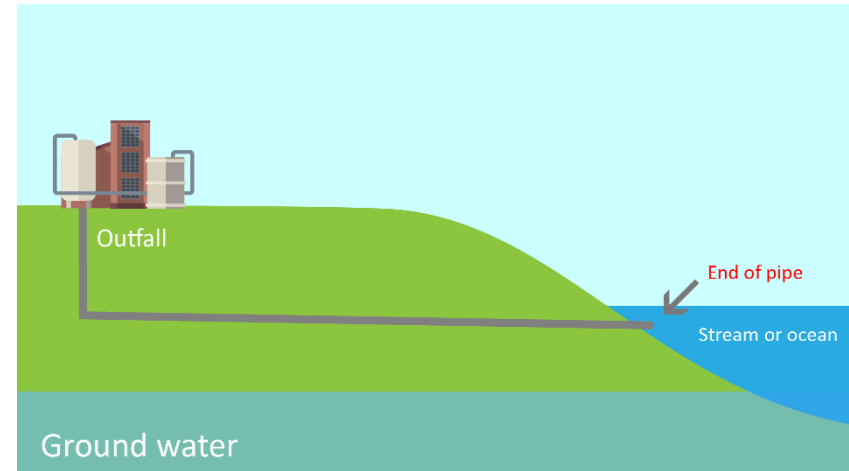
End of pipe

Stream or ocean

Ground water

Clean Water Act

NPDES Permits

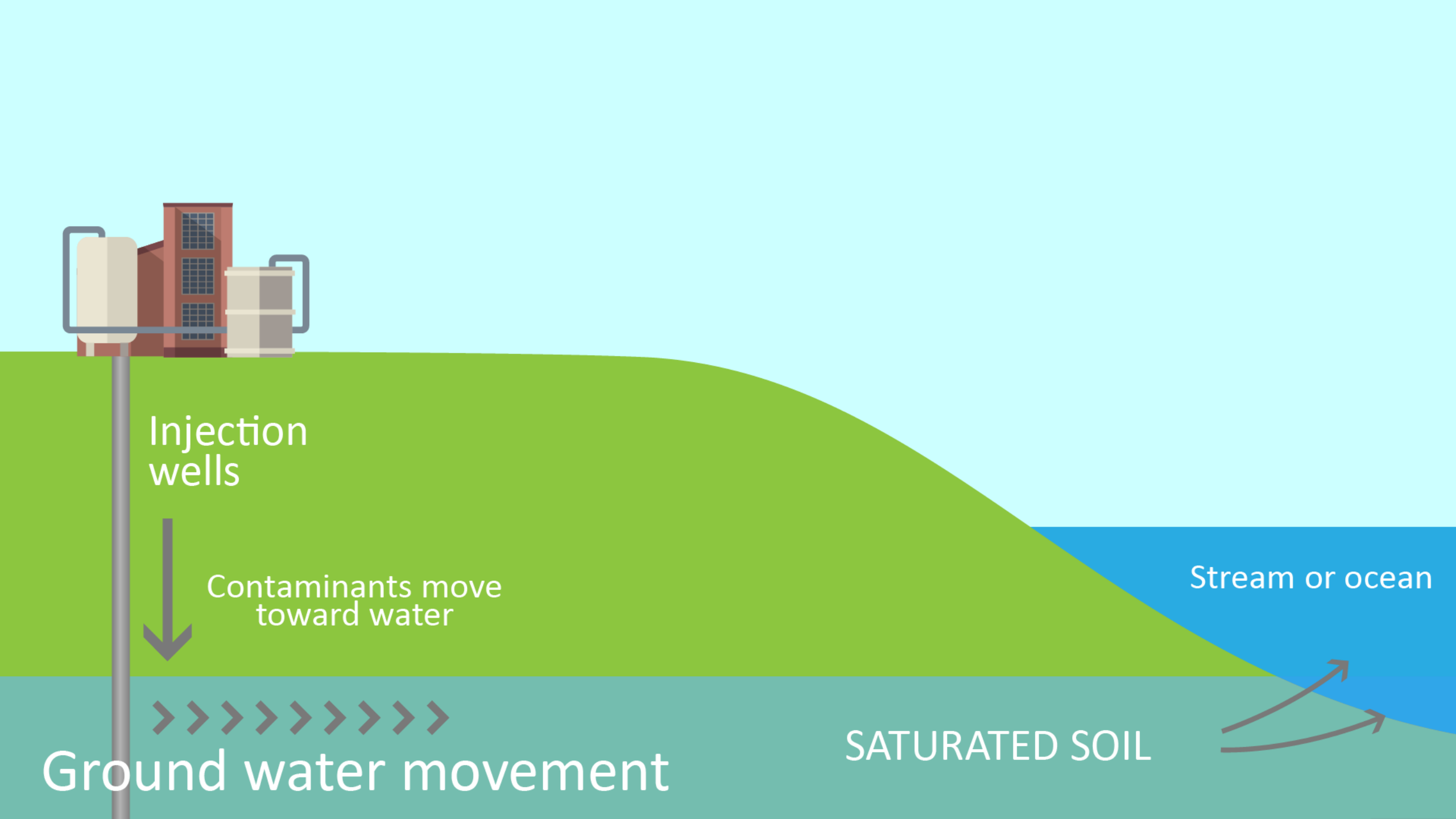


Outfalls

Point Source vs. Non-Point Source

- Non-Point Source – broad, diffuse and uncontained by nature
 - Surface water runoff (residential, urban, agricultural) and groundwater
 - **Regulated through State management programs and other non-Clean Water Act programs, including the Safe Drinking Water Act**





Injection wells



Contaminants move toward water



Ground water movement

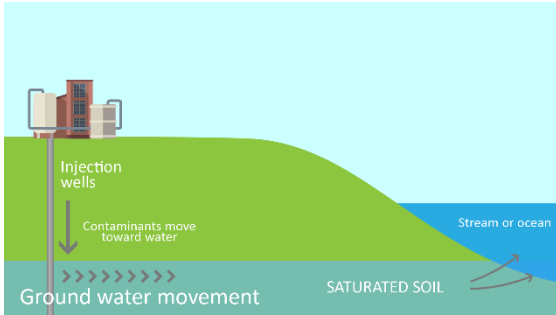
SATURATED SOIL

Stream or ocean



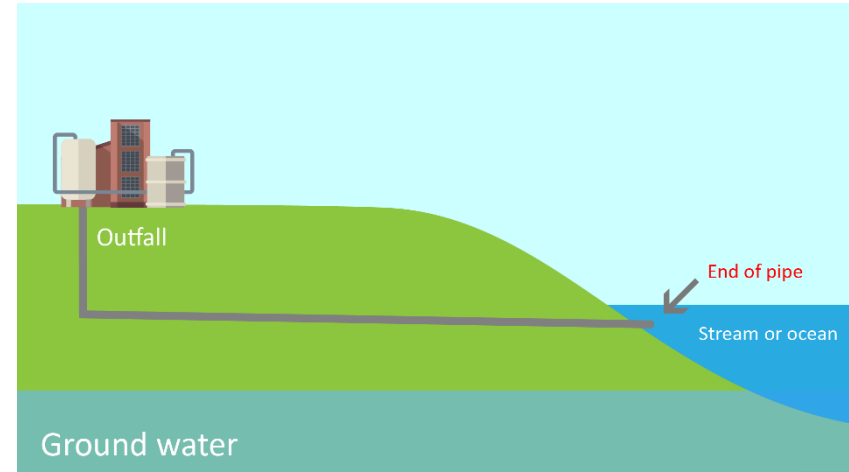
Federal Safe Drinking Water Act HRS 340E, HRS 342D, HRS 342E

Regulates impacts to groundwater/aquifers



Injection Wells

Clean Water Act NPDES Permits



Outfalls



Cesspools/septic tanks

Contaminants move toward water



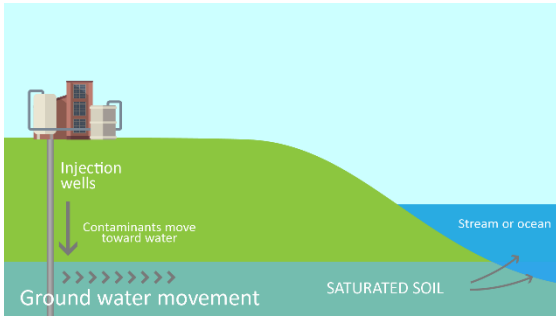
Ground water movement

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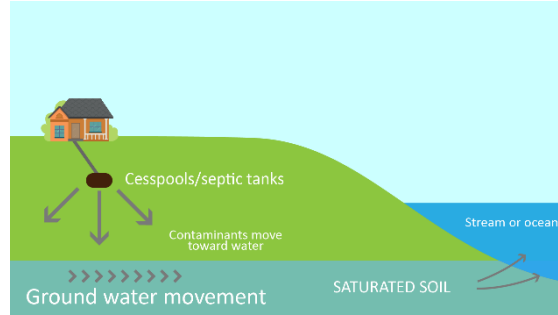
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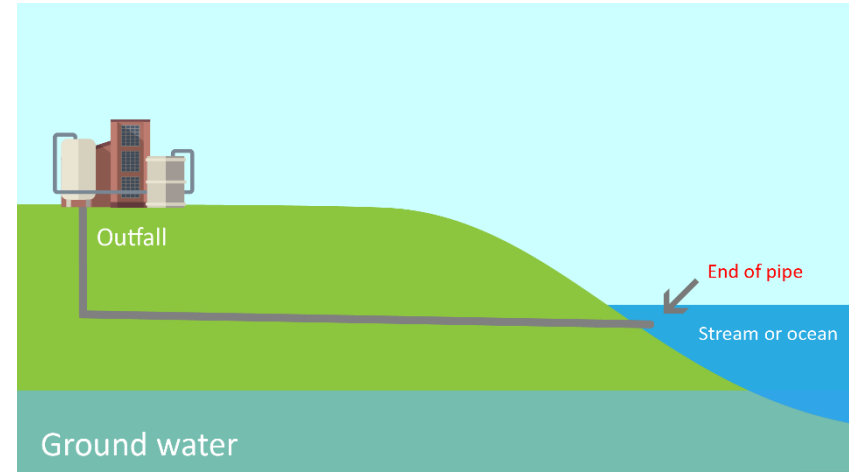
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Injection Wells

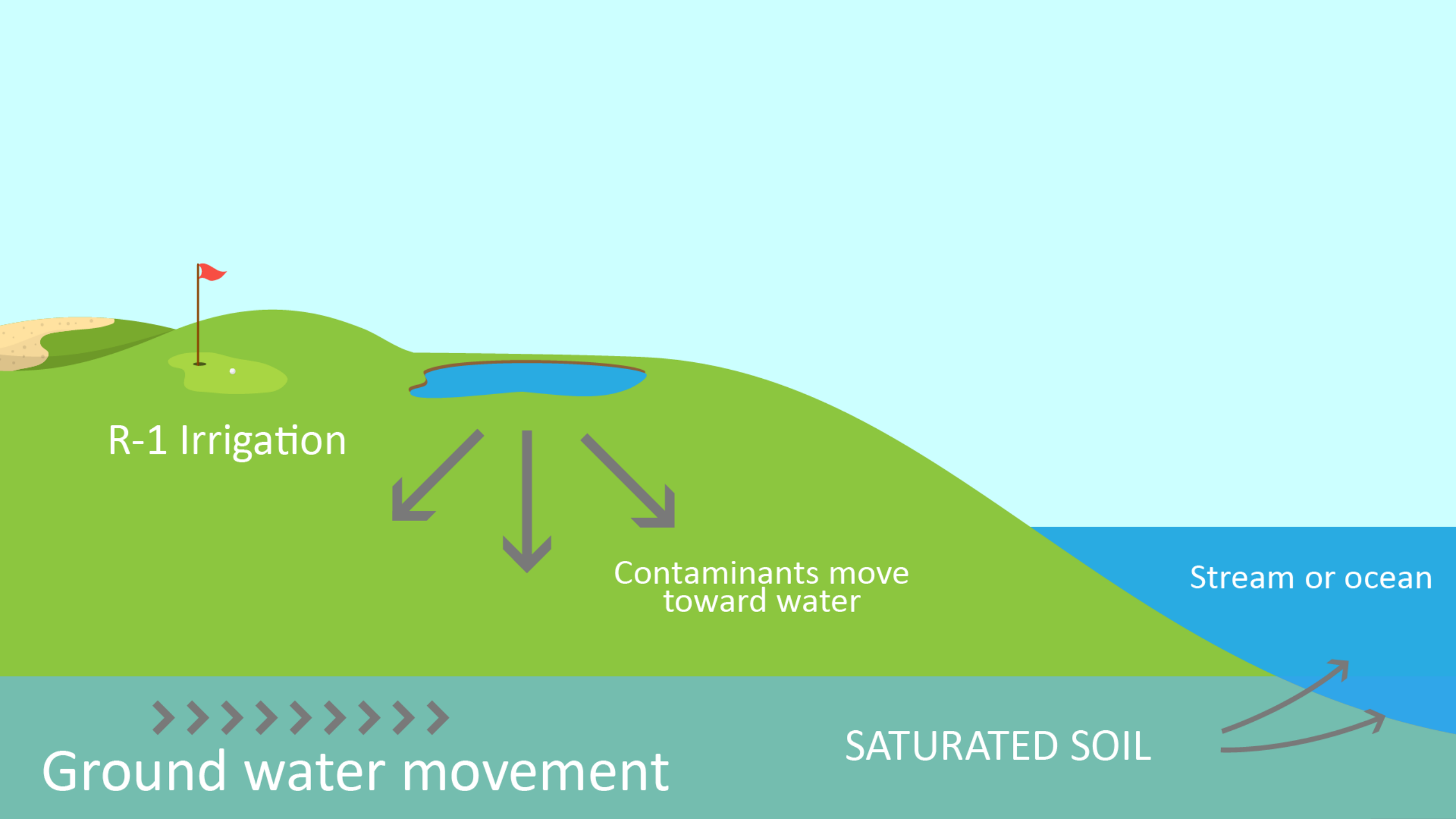


Cesspools/ Septic Tanks



Outfalls

Clean Water Act NPDES Permits



R-1 Irrigation



Contaminants move toward water

Stream or ocean



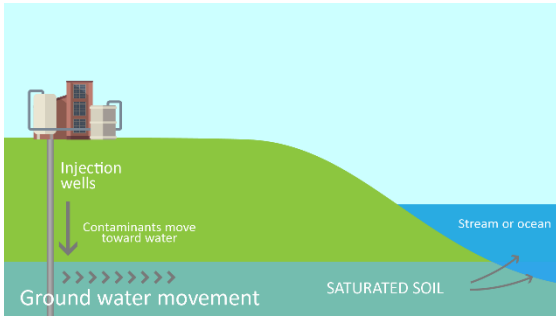
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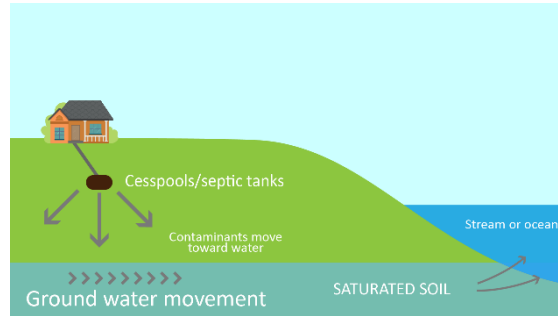


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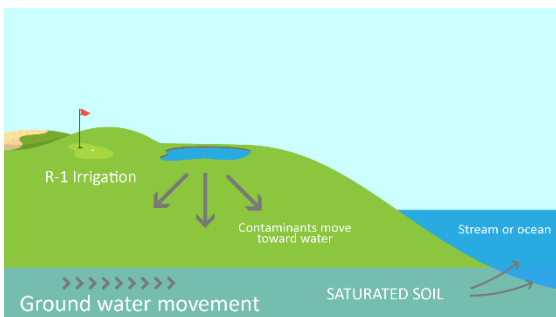
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Injection Wells

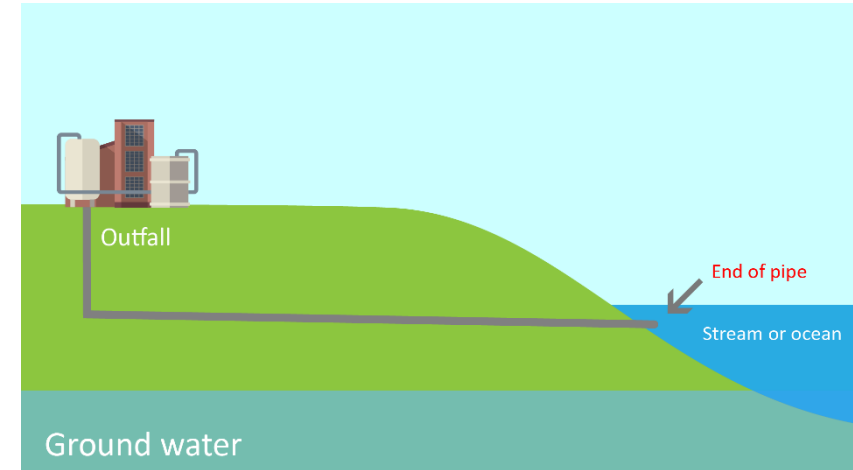


Cesspools/ Septic Tanks

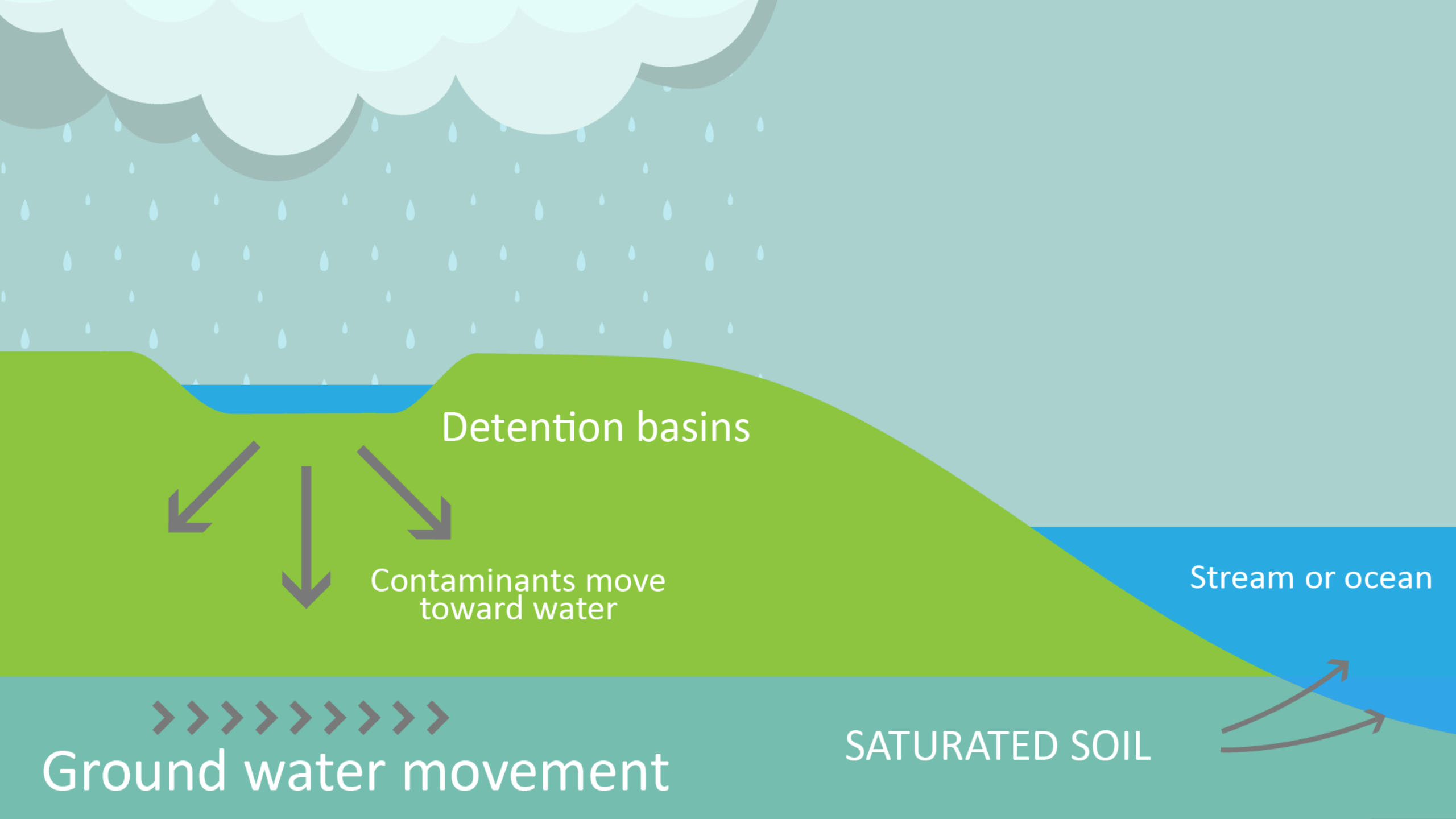


R-1 Irrigation

Clean Water Act NPDES Permits



Outfalls



Detention basins

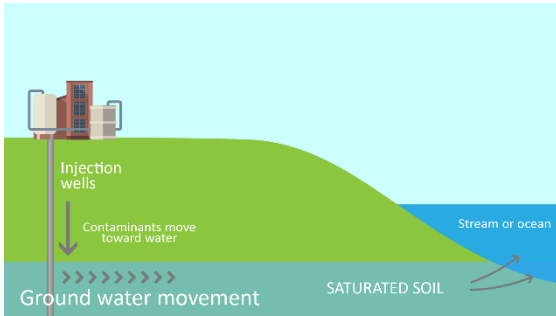
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Stream or ocean

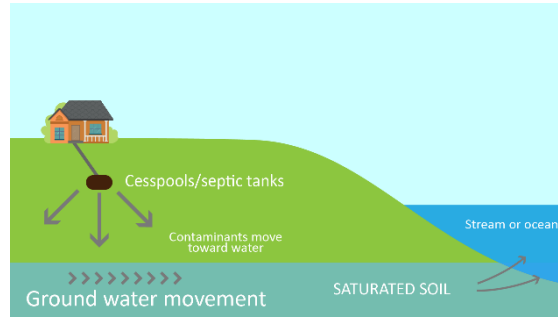
Ground water movement

SATURATED SOIL

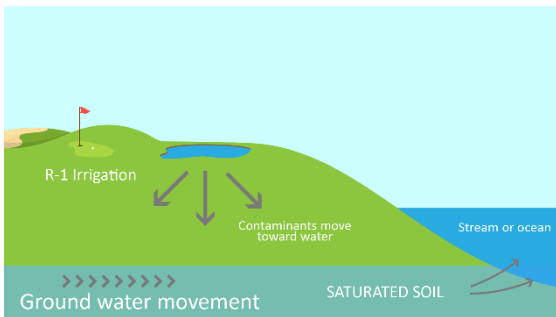
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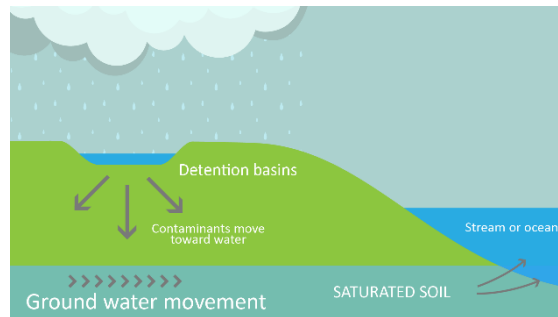
Injection Wells



Cesspools/ Septic Tanks

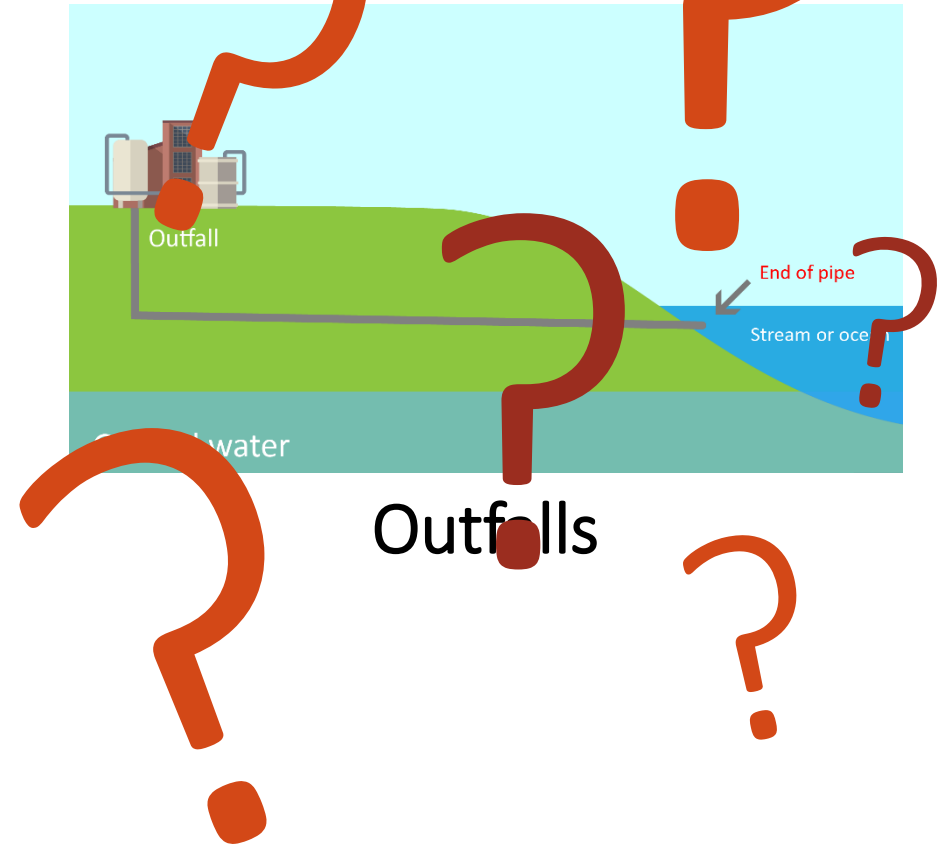


R-1 Irrigation

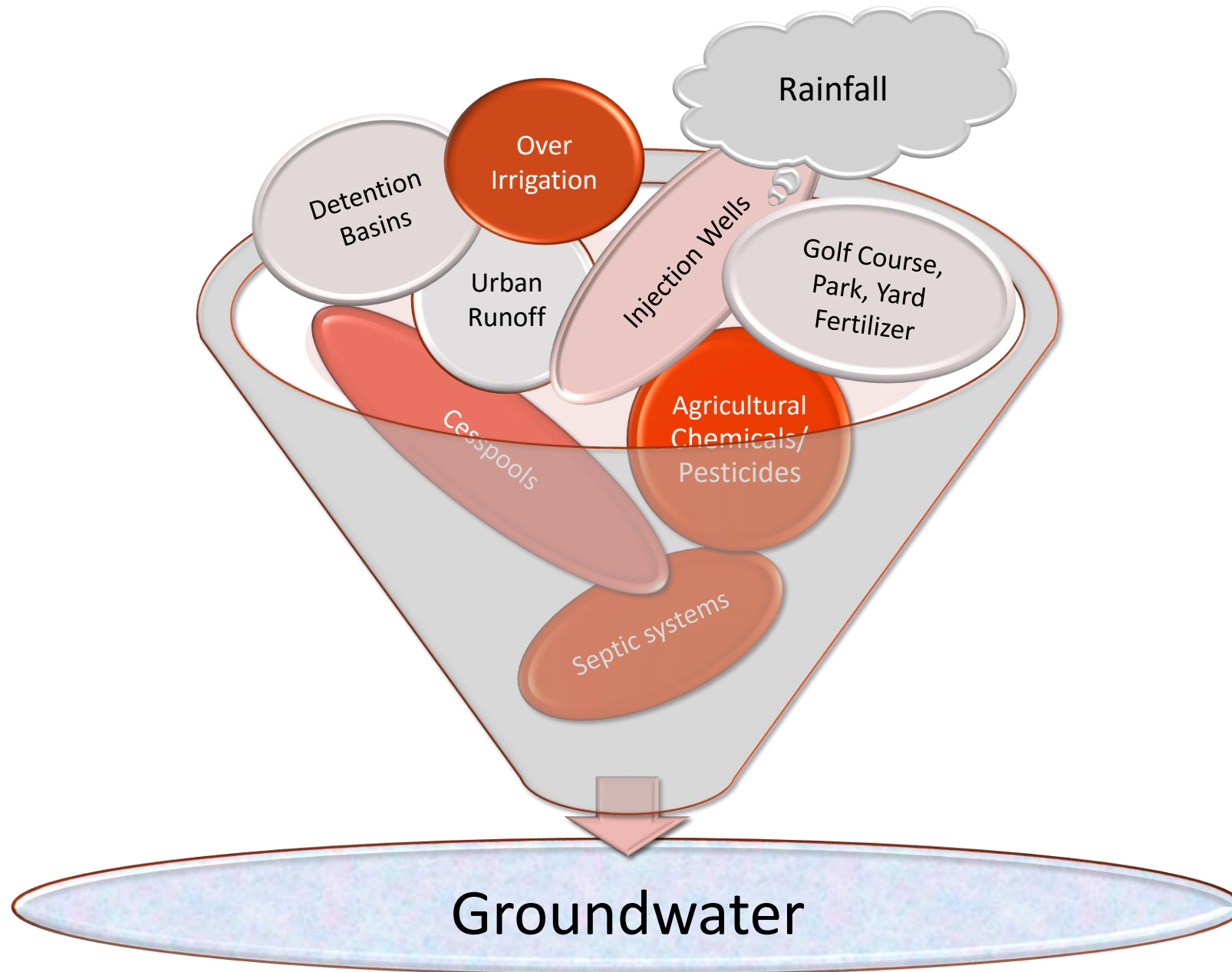


Detention Basins

Clean Water Act NPDES Permits



Outfalls



What does this lawsuit mean for Maui County and its property owners?

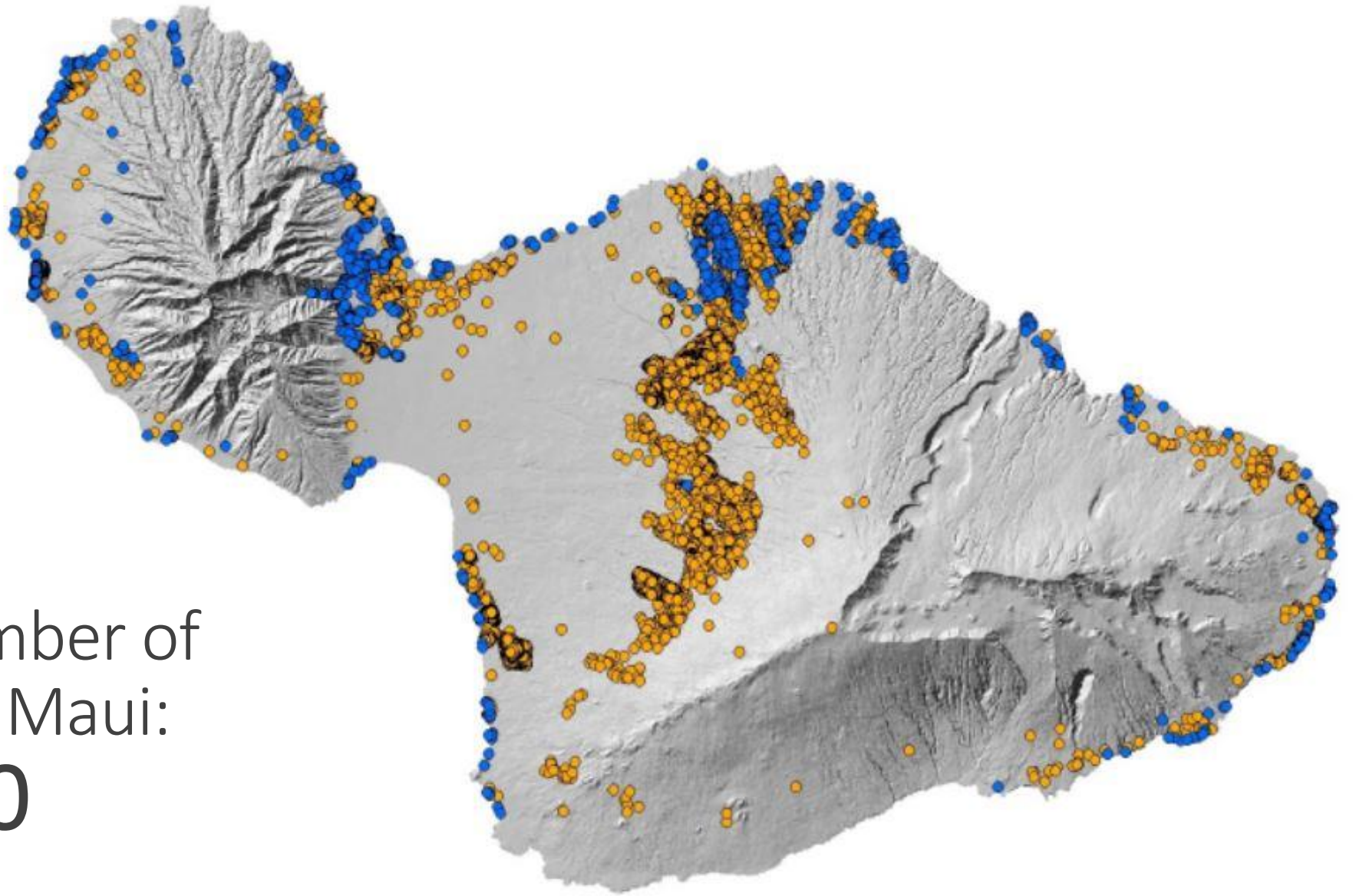
This case sets a huge precedent, and the Ninth Circuit's decision means that a Clean Water Act "NPDES" permit would be required **not just for the County's injection wells but for thousands of other types of sources in Hawaii, most of which are along the coastline.**

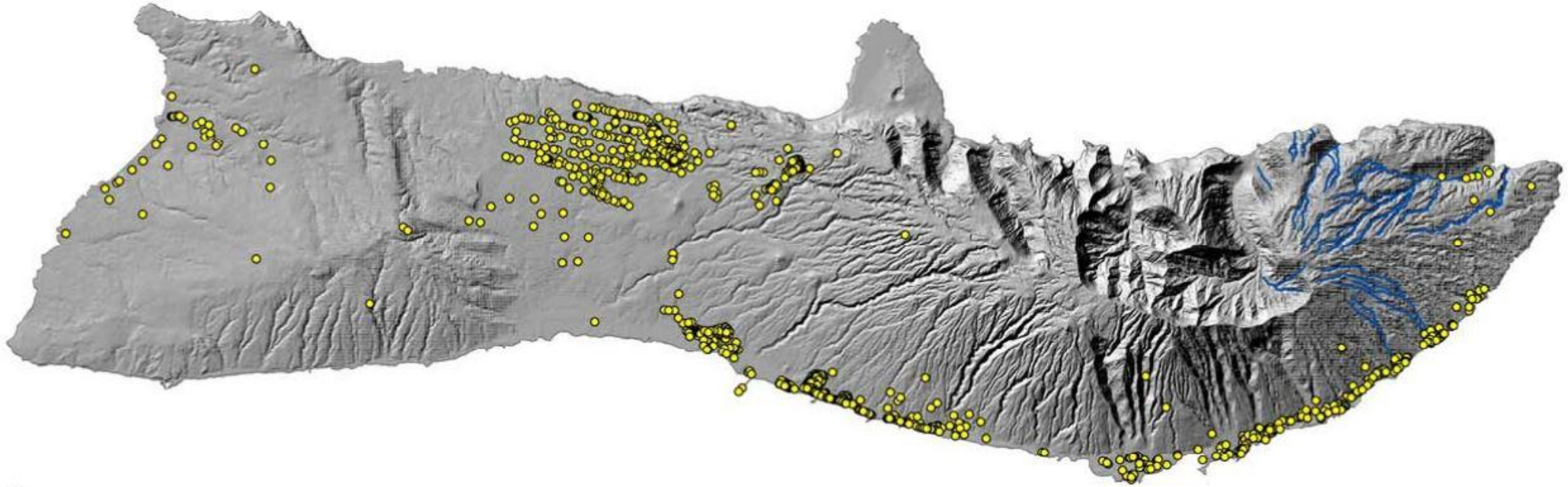
What does the Ninth Circuit's test mean for Maui County?

- **Injection wells (6,000 in State)**
- **Septic tanks (>21,000 in State)**
- **Cesspools (88,000 in State)**
- **Recycled water used on land close to the ocean**

All of these sources could now be regulated under the Clean Water Act.

Estimated number of
cesspools on Maui:
12,000





Estimated number of cesspools on Molokai:
1,400

Impacts to non-sewered areas: Maalaea





Impacts to
coastal parks:
Kalama Park

An aerial photograph of a coastal residential area. A large area in the center and right is outlined in purple and contains several purple-shaded rectangular plots, likely representing individual lots or units. A road labeled 'South Kihei Road' runs horizontally across the middle. To the left, a road is labeled 'Kulaninako'i Street'. To the right, a road is labeled 'Waipuilani Road'. In the bottom right corner, the text 'Waipuilani Park' is visible. A large red box with white text is overlaid on the top right of the image. The bottom of the image has a solid red background.

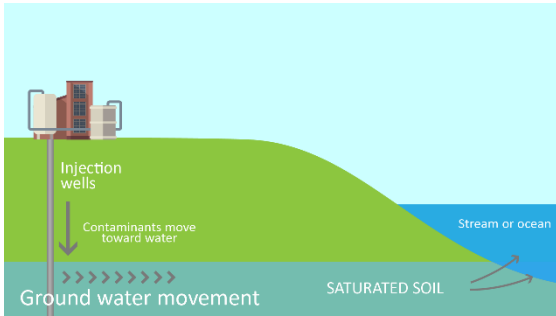
Impacts to coastal parks: Waipuilani Park

South Kihei Road

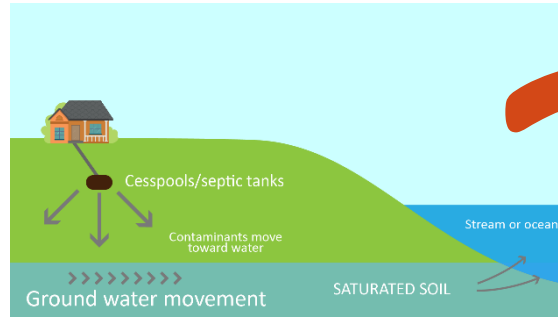
Waipuilani Park

Federal Safe Drinking Water Act
HRS 340E, HRS 342D, HRS 342E
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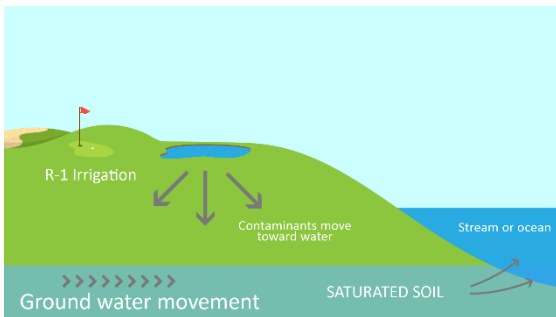
Clean Water Act
NPDES Permits



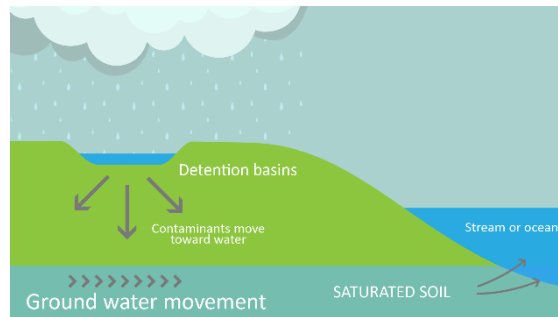
Injection Wells



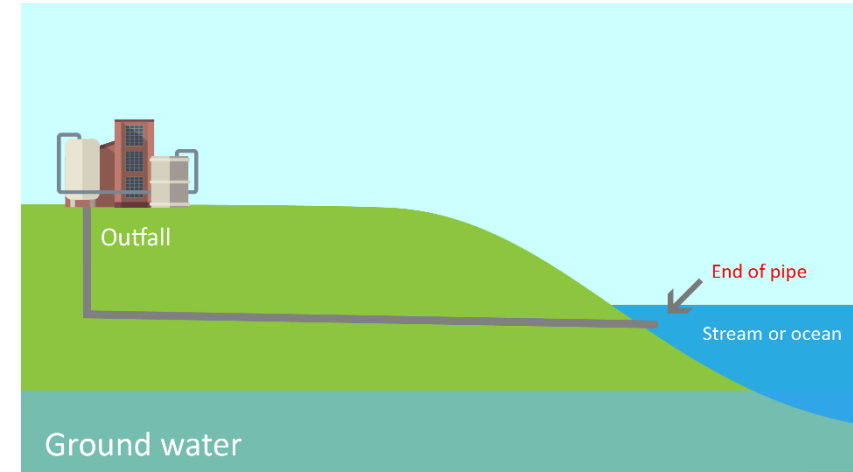
**Cesspools/
Septic Tanks**



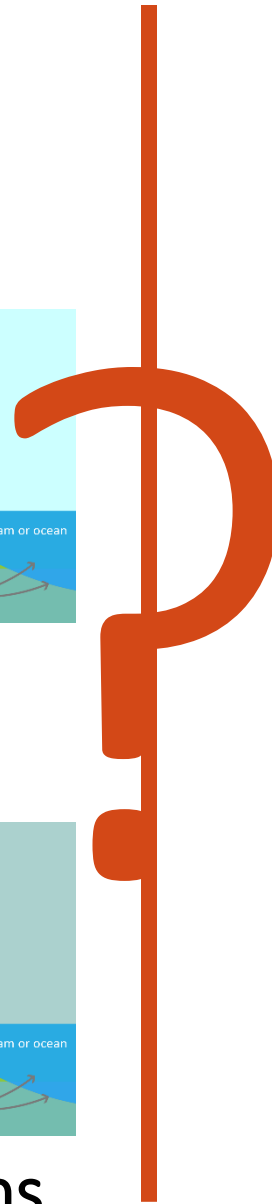
R-1 Irrigation



Detention Basins



Outfalls



What are the alternatives?

- **Land Application Treatment (\$177M)**
- **Direct Potable Reuse (\$190-\$200M Lahaina only)**
- **Deep Ocean Outfall (\$130M Lahaina only)**

*Land Application needs Injection Wells for Backup during the wet season

*No regulations for Direct Potable Reuse and needs injection wells for brine

Supreme Court?

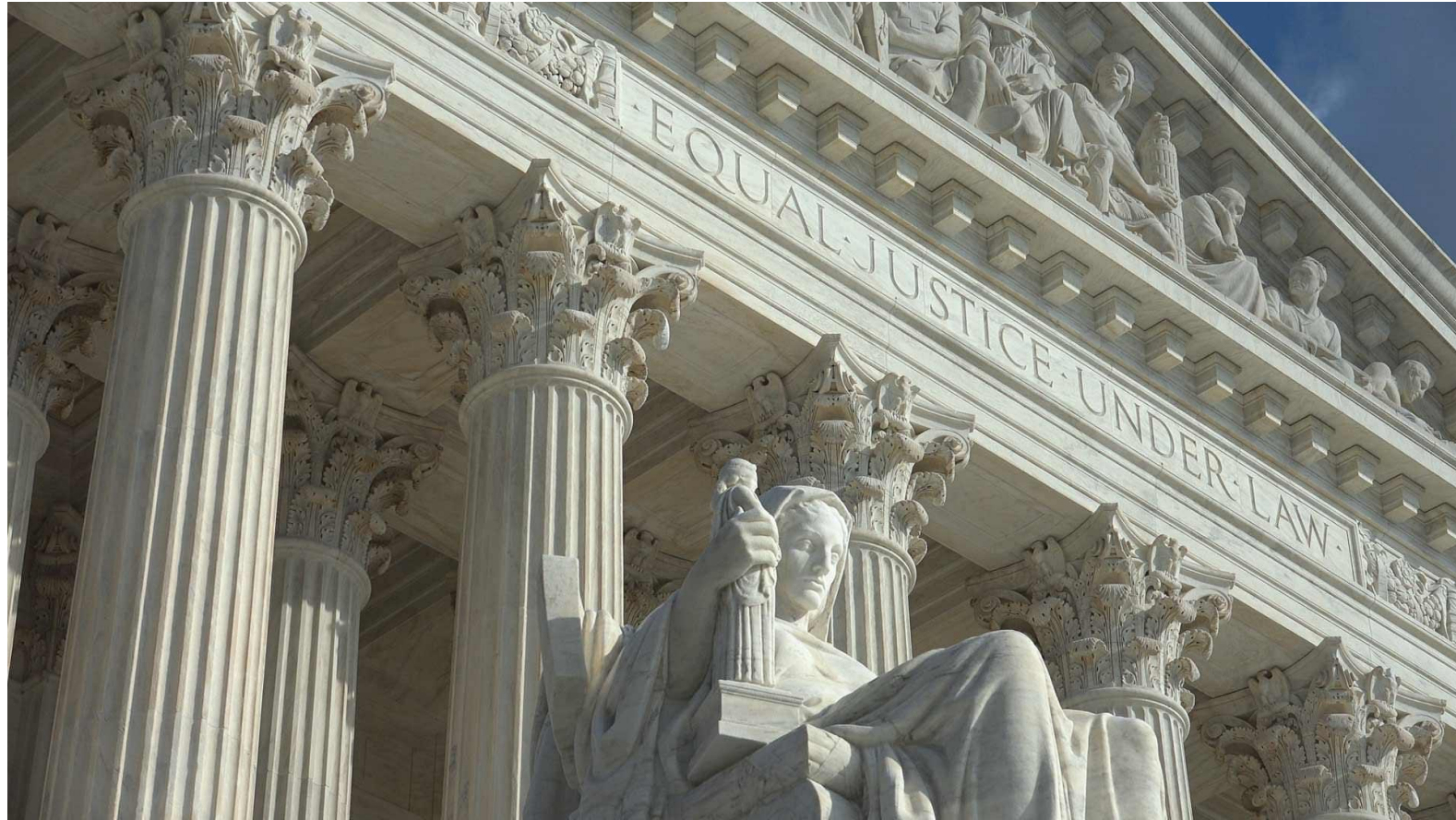
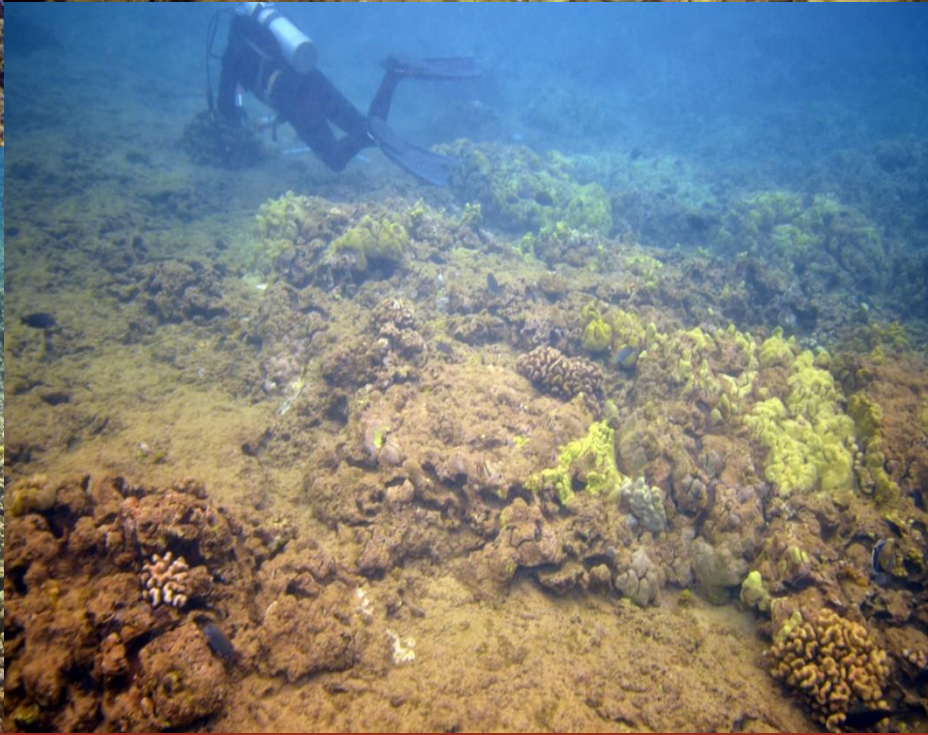
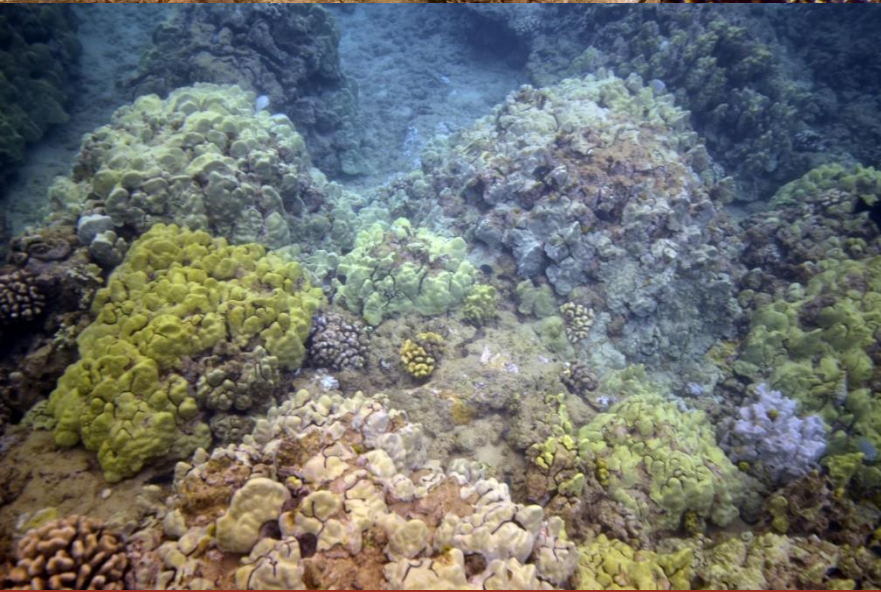




PHOTO BY JASON MOORE

MAHALO



What does this mean for Maui County?

- If the County “settles” with Earthjustice, the Ninth Circuit “fairly traceable” standard will control in all the western states, including Hawaii.
- Under this standard, the potential liability is vast:
 - All 4 County wastewater treatment facilities
 - **UIC wells, septic systems and cesspools** throughout Hawaii
 - Underground water supply and irrigation systems
 - Underground storage tanks
 - Green infrastructure (stormwater impound basins, rain gardens)
 - Water reuse projects including continued use of County R-1 water by resorts, golf courses, and parks

What does this mean for Maui County?

Without clarification from the Supreme Court, the Ninth Circuit's ruling as it stands will **expose county taxpayers, private businesses and others to possible civil and criminal liability** if the pollutants from these sources can be traced back from their origin, which can easily be done through computer modeling.

Owners of injection wells, cesspools and septic tanks (and users of recycled water) could be subject to **civil fines of up to \$53,484 per day and criminal prosecution** if a connection to the ocean can be found and you have no NPDES permit.

Clean Water Act – max civil penalties

Example: Lahaina's 4 injection wells

4 wells x \$53,484 per day x (365 days x 5 years) =
\$390,433,200

Example: Kahului's 8 injection wells

8 wells x \$53,484 x (365x5) = \$780,866,400