

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

April 23, 2019

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON TUESDAY, APRIL 23, 2019, BEGINNING AT 9:00 A.M., WITH CHAIR KELLY T. KING PRESIDING.

CHAIR KING: Okay, good morning, Maui. Nice to see all Councilmembers all bright eyed and bushy-tailed after such a late-night last night. So, I'm calling, it's nine o'clock, I'm calling the meeting of the Maui County Council regular April 23, 2019 meeting. And this is a regular Council meeting, even though it's not on a Friday, because of the schedule of the budget session.

So, I'll turn it over to our County Clerk for roll call. Mr. Clerk.

### ROLL CALL

PRESENT: COUNCILMEMBERS G. RIKI HOKAMA, NATALIE A. KAMA, ALICE L. LEE, MICHAEL J. MOLINA, TAMARA A.M. PALTIN, SHANE M. SINENCI, YUKI LEI K. SUGIMURA, VICE-CHAIR KEANI N.W. RAWLINS-FERNANDEZ AND CHAIR KELLY T. KING.

CHAIR KING: I am present, and I was handed this note from our resident linguist. Good morning in Micronesian is "Rananim".

COUNCILMEMBER LEE: Very good; "Rananim".

CHAIR KING: Thank you, Alice.

Okay, Mr. Clerk.

COUNTY CLERK JOSIAH K. NISHITA: Madam Chair, there are nine Members present and no Members excused. A quorum is present to conduct the business of the Council.

CHAIR KING: Alright. Thank you.

Alright, we have opening remarks today by Councilmember Shane Sinenci.  
Mr. Sinenci.

### OPENING REMARKS

The opening remarks were offered by Councilmember Shane Sinenci.

CHAIR KING: Mahalo, Councilmember Sinenci.

Alright, will folks in the, in the chambers please join me for, rise and join me for the  
Pledge of Allegiance?

### PLEDGE OF ALLEGIANCE

The Members of the Council, and others in attendance, rose and recited the Pledge of  
Allegiance.

CHAIR KING: Thank you. And before we proceed with our meeting, may I please request  
that everybody silence their noisemakers, and cellphones, or iPads?

Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with the presentation of testimony on agenda  
items. We've established limited interactive communication that enables individuals  
from Hana, Lanai, and Molokai, to provide testimony from our District Offices.

Individuals who wish to offer testimony from Hana, Lanai, and Molokai, should now  
sign up with District Office staff. Individuals who wish to offer testimony in the chamber,  
please sign up at the desk located in the eighth-floor lobby just outside the chamber  
door. Testimony at all locations is limited to the items listed on today's agenda.

When testifying, please state your name and the name of any organization you  
represent. Please also identify to the Council if you are a paid lobbyist.

Currently, we have no testifiers waiting at our District Offices. The first person to testify in the chamber is Artemio Baxa, testifying on Committee Report 19-46. To be followed by Ke`eaumoku Kapu.

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. ARTEMIO BAXA (testifying on Committee Report 19-46):

Good morning, Honorable Chair--

CHAIR KING: Good morning, sir.

MR. BAXA: --Kelly King, Honorable Members of the Council. I initially testified fully supporting the nomination of Ms. Tshako as Director of the Department of Housing Concerns *[sic]*. I do not need to belabor the point at this time. I will just add and reiterate that Ms. Tshako has . . . demonstrated her integrity, leadership, ability to make good decisions, and dedicated service to the people of the Maui County. Please confirm her. Thank you.

CHAIR KING: Alright, thank you for your testimony. Any questions, Councilmembers? Thank you so much for being here.

MR. BAXA: Thank you.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Ke`eaumoku Kapu, testifying on County Communication 19-178. To be followed by Tova Callender.

MR. KE`EAUMOKU KAPU, AHA MOKU O MAUI INC. (testifying on County Communication No. 19-178):

Good morning, Councilmembers. Ke`eaumoku Kapu from Lahaina. I am here this morning to support No. 19-178. Reasons why is because I live on the westside. And when that lawsuit came about, I'm not a party to the lawsuit or anything. My issue is, to this matter is basically it's a huge cultural concern for myself and the community that I live with. And I think that, you know, throughout the years this has been going on and

on and on. And it's only been a battle from the corporate level and it's never where we need to look at the seriousness as pertaining to the community that is being affected by this.

So, I strongly urge this Council to take upon this responsibility and let's get back to work. Let's start cleaning up our environment. Let's stop relying on these resources from the outsiders getting paid millions of dollars to litigate basically who's attorney firm is better than another attorney firm. Now, if the County can't get their wits together on how we're going to address this situation pertaining to the Clean Water Act, especially for the westside. Our resources are degraded enough already.

We got to start patching all those pukas and not putting band-aid patches on it. We got to start really fixing our infrastructure if everybody thinks affordability of homes is coming in the future. If it is, then we got to start fixing our infrastructure first. That's the priority and that's the reason why I'm here. And I'm always here to enact the fact that we got to start moving ahead by doing things before it ever happens.

Now, I know you guys have a big responsibility before you when you start looking at the whole. The old quick key question for me is, yea, everybody in the County and the State of Hawaii is really looking at what is true affordability, but if we cannot fix our infrastructure, our roads, our water, ours, especially our sewage. I mean, look at Oahu; they hauling trucks of raw sewage because Sand Island cannot hold the capacity of sewage that's coming from that city or Honolulu itself. We don't want to be stuck in that mess, right?

So, come on, guys. I support you. I trust you. I trust the intent of what you guys are trying to do. Stop giving our money away to outside corporations to get them rich. We need to take care ourselves. We need to take care our people. So, I highly consider, please, let's start fixing those damn pukas in our pipes and start getting our environment back to where it is; sustainable and safe for our people. Mahalo. Thank you.

CHAIR KING: Mahalo, Ke`eaumoku. Any, any questions for the testifier? Seeing none, thank you for being here.

MR. KAPU: Thank you.

COUNTY CLERK: Next testifier is Tova Callender, testifying on County Communication 19-178. To be followed by Robin Knox.



MS. TOVA CALLENDER (testifying on County Communication No. 19-178):

My name is Tova Callender and I coordinate the West Maui Ridge to Reef Initiative which is a collaborative Federal, State, County and community effort to address the sources of land-based pollution impacting our nearshore waters. Thank you for the opportunity to speak.

I'm requesting that you support the proposed resolution of giving the authority of the Council to review all settlement offers in the case of Hawaii Wildlife Fund et al. v. County of Maui pertaining to the Clean Water Act. As an initiative, our decision-making is based on sound science. In the case of the impacts of the injected wastewater from the Lahaina treatment facility, we have plenty to draw from; all which points to the negative impacts this disposal method is having on our coral reefs.

To reference a few, Ross et al. in 2012 provided characterization of "Dead Zones", along the gradient of anthropogenic nutrient input at Kahekili Beach Park. Swarzenski et al. in 2012 found 50 times higher nitrogen loading from the seeps, which is linked to the alarming findings by Prouty et al. in 2017 that these high nutrients combined with the low pH from freshwater inputs are leading to bioerosion or the breakdown of hard ocean substrate by living organisms at rates ten times higher than expected. This means that while that thin exterior layer of living coral tries to survive against all the other threats, the hard structure of the reef providing the support is losing its integrity, now looking like swiss cheese rather than a solid structure of a healthy reef. And there are a dozen more studies posted on our website if you need more information to fill in the story.

I snorkeled Kahekili Reef last week. And in my quick swim past from the bliss that comes from being in the ocean to feeling pleased at the large herbivores that show their protections are working in that area, to dismay at the many, many areas that have crumbled to a pallid gray under a thick mat of turf algae where nothing much can survive. More shocking were the patches of rice coral already bleaching five months before we reached the warmest summer ocean temperatures. With the unfathomable scale of threat looming with climate change, how can we do nothing? How can we not do everything locally to reduce the threat of land-based pollution on reefs?

Through our partnerships, we're doing everything that we can think of to reduce nutrients to nearshore waters; floating wetlands, raingardens, nutrient curtains, but none of it comes close to the nutrient reduction potential of ending injection of treated wastewater effluent.

The County has a great reputation in Hawaii and beyond as leading resource stewardship. So, why would the County want to add to the legal expense, already in millions, to fight the Lahaina injection well case in the Supreme Court where Maui could set the precedent for weakening the Clean Water Act and protection for waters nationwide to defend doing something that is inexorably linked to degrading our coral reef ecosystems so critical for our economic engine and sense of well-being. Thank you for considering adoption of the resolution under discussion as a first step in the right direction.

CHAIR KING: Thank you for your testimony, Ms. Tova.

Mr. Clerk.

COUNTY CLERK: Next testifier is Robin Knox, testifying on County Communication 19-178. To be followed by Hannah Bernard.

MS. ROBIN KNOX (testifying on County Communication No. 19-178):

Aloha, Councilmembers. Thank you for allowing us to testify today. I do support the resolution to allow the Council to have a say in the litigation about the Lahaina injection wells. My qualifications in testifying to you are that I'm a Maui resident for 13 years and I swim in the ocean waters. I'm a qualified environmental professional certified by the Institute of Professional Environmental Practice, 30-plus years as an NPDES compliance expert. And I was on the UH research team that gathered the evidence that EPA cited in requiring an NPDES permit.

I support this resolution because I think the scope of impact profoundly affects the people of Maui County. And as such, our representatives, you Councilmembers, should have a say throughout the course of this issue. The strategy of multiple Administrations has been not advisable or prudent in my expert opinion as an NPDES compliance consultant. A strategy of denial and resistance had led the County to dismiss numerous opportunities to resolve this issues in ways that bring greater benefits to the people of Maui County than litigation.

Without regard to the outcome of this litigation, the County has a public trust duty to care for the water and a legal obligation not to cause or contribute to violations of State water quality standards. Without regard to the outcome of this litigation, the County must reduce the ocean pollution to protect the public health and the very economy of Maui County. The people through the elected Council representatives should have a say in the resolution of this litigation.

Taking this case to the Supreme Court does not benefit Maui County. Spending money on litigation rather than solving our wastewater problems is simply not a good idea. It's not rocket science. We need more treatment to reduce the nitrogen. Reuse is a good idea, but it's not the total answer to the pollution. We need more pollution control. This problem only gets worse as our population increases. And it's not just at Lahaina. There's a real need for comprehensive environmentally driven analysis to look at our wastewater. There's not a real need for litigation. It's fraught with risk and it costs us a lot of money and it doesn't solve the problem. Thank you.

CHAIR KING: Thank you, Ms. Knox. Seeing no questions, we appreciate your testimony.

MS. KNOX: Thank you.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Hannah Bernard, testifying on County Communications 19-175, 176, 177, and 178. To be followed by Lucienne deNaie.

MS. HANNAH BERNARD, HAWAII WILDLIFE FUND (testifying on County Communication Nos. 19-175, 19-176, 19-177, and 19-178):

Good morning. Aloha kakahiaka, Chair King--

CHAIR KING: Good morning.

MS. BERNARD: --Vice-Chair Rawlins-Fernandez and the rest of the Council. It's a pleasure to be here before you today. Mahalo for the opportunity to testify. On the first three on the docket, I'd like to speak in support of Councilmember Sinenci's introduced measures to address food security, cultural component of the Kahului Community Center, and additionally this, the resiliency measure. We need these. This is forward thinking. And I'm excited this Council has already demonstrated that ability. And I encourage you to enthusiastically support the resolution before you regarding the case with Hawaii Wildlife Fund v. the County of Maui.

I am Hannah Bernard, the Executive Director of Hawaii Wildlife Fund and co-founder. And we are the lead plaintiff in this case together with Sierra Club, Surfrider Maui, and West Maui Preservation Association. And you have before you already my testimony that I've submitted via email yesterday that documents the long history of our involvement in this issue dating back to 2007, when we were presented with the findings by DLNR that there was a correlation between degraded reefs, and algae

blooms, and our injection wells, all the way to today. Here we are today, and our case is being elevated to the Supreme Court.

This is a train wreck. If we allow this to happen Maui County is that train. Maui County is headed to a . . . that's out, and if we allow this to happen, we are all contributing to possibly the potential demise of our power of our Clean Water Act. So, I encourage you, be part of this huge community effort. Every one of us with a big log in our hands, and all of us getting in front of that train and, and derailing that train before it goes off the tracks over the, over the cliff into the ditch. That's how we'll stop it. Your weapon is to go ahead and take this resolution and pass it so that you have the power to look at this settlement agreement to stop this case from going and being elevated.

We've already prevailed in two district courts. We've already waited long enough. Meanwhile, ten billion gallons of wastewater have gone into the injection wells and out, and seeped into our reefs while they are dying. And if we can stop it, and we can, at least locally, then we must. We have no choice. Our very lives depend on it, not just the health of the reefs, but our own health and our own future. Thank you so much.

CHAIR KING: Thank you, Ms. Bernard. Any questions for the testifier? Ms. Bernard, will you be here this morning if we get to the, when we get to this item?

MS. BERNARD: Absolutely.

CHAIR KING: Okay. Council, I'd like to designate Ms. Bernard as a resource when we get to the item 178, if there's no objections.

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Thank you. Thank you for your testimony.

MS. BERNARD: Thank you.

COUNTY CLERK: Next testifier is Lucienne deNaie, testifying on County Communications 19-175, 177, and 178. To be followed by David Henkin.

MS. LUCIENNE DENAIE, SIERRA CLUB MAUI (testifying on County Communication Nos. 19-175, 19-177, and 19-178):

Good morning, Councilmembers. Lucienne deNaie, representing Sierra Club Maui Group as it's Conservation Chair. First, I'd like to address the County Communications 19-175, having to do with the matter of food security. I think this would be a great item

to have included in Committee discussion. We really need a masterplan here for food security. We need to know what our resources are, what our, what our possible resources could be, and just look this thing right in the face. It's in our Maui Island Plan that we want to do this, so it's great that the Council is considering it.

As to item 19-177, the idea of establishing an agency to address climate change, sustainability and resiliency, as we see the City and County of Honolulu have done this. Maui County is so at risk. I was just looking at the sea-level rise interactive map that they have on the UH website. Oh my gosh, you know, if the sea-level rises three feet, one meter, just a lot of places are going to change here. So, we should think about it sooner rather than later. So, hopefully this will be a matter that is also seriously discussed by the Council.

And then the matter of County Communication 19-178. And this is the referring to the Council the review of any settlement of the litigation on the Lahaina Wastewater Treatment Plant. Sierra Club is a party to this; reluctantly we were a party to this. We, we tried for years and years to find some other solution; meeting with Mayor Tavares, meeting with the EPA, meeting with then Mayor Arakawa in his first part of his last term, his first four years. It always seemed that there could be a solution. There was 18 months of settlement discussions and back and forth on what we could do to kind of just step back on any expensive litigation and just move forward. And somehow the will was not there at this time.

I believe the will is now here. I think we're seeing that delay is not where we want to go. This Council has the right to take charge and certainly should take charge and move this forward towards a solution. Spending more money on attorneys and, and risking outcomes at the Supreme Court that could affect the whole nation that, that put us as, as the poster child for how pollution could be legally done, wink, wink, is just not where we want to head.

So, I'm happy, if people want more details, it's, it's hard in three minutes to get into this. But in general, I think you've been told that there will be horrendous fines. This is not what we heard from either Department of Health or the EPA. It is not the experience of other municipalities. Basically, if, if, if a municipality is trying to make progress, and that's the key; trying to make progress, which I think is the intention. I see money in the budget to try to make progress on this. Agencies don't want to fine you, they just want you to make progress.

So other, and then there's the matter of the NPDES permit that's, you know, long-sounding alphabet soup of permit. There are other permits like this being issued in Maui County. Unfortunately, the County, I believe from the records I've seen has never really submitted a completed permit to the Department of Health. And yet, I think the

Councils past have been told like, oh gosh, you know, the Department of Health, they don't even know what they want. We submitted a permit and they, they rejected it, and we don't know what we're supposed to do, and this is just too confusing. Well, the Maui Ocean Center has a permit like this, maybe we should go and talk with them.

Anyway, thank you for your consideration and please pass this resolution and move forward. Aloha.

CHAIR KING: Thank you, Ms. deNaie. Seeing no questions. I'm sorry, we have one question.

VICE-CHAIR RAWLINS-FERNANDEZ: Actually, it's a question for you.

CHAIR KING: Oh okay.

VICE-CHAIR RAWLINS-FERNANDEZ: As a petitioner to the case, should we also ask if she would mind staying to be a resource?

CHAIR KING: Would you be able to stay when we get to the item?

MS. DENAIE: Yes, I'd be happy to be of any service I could.

CHAIR KING: Council, are there any objections to having Ms. deNaie? Okay, thank you very much.

MS. DENAIE: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

COUNTY CLERK: The next testifier is David Henkin, testifying on County Communication 19-178. To be followed by Lance Collins.

MR. DAVID HENKIN, EARTHJUSTICE (testifying on County Communication No. 19-178):

Good morning, Chair King, Members of the Council.

CHAIR KING: Good morning.

MS. HENKIN: My name is David Henkin. I'm an attorney with Earthjustice, and since 2012 I've been the lead counsel representing the four Maui community groups in the Lahaina litigation. Really my purpose for being here today is, while I appreciate this opportunity

to speak directly to the Council, because over the course of the litigation, I've been scratching my head as to why this case keeps going on. And I fear that it may be because there's been some miscommunication, something getting lost in the conversation between the Maui groups we represent and the County.

And so I submitted some testimony and I'll just summarize the main points here. Earthjustice and our clients have never had any interest in, first of all going to court. We worked from 2008 to 2012 with two mayoral administrations to try and resolve this issue and get the County to focus on the, what's now scientifically proven adverse effects of the injection wells. And it was only when those administrations refused to do anything about it that we went to court. We went to court and early in the case, the judge indicated we were likely to win, at which point the County asked us if we would put the litigation on hold and try and focus on solving the problems. So, we did; we put the litigation on hold for 18 months because we were hoping that it could be solved. Unfortunately, the former Council rejected the settlement that we had managed to work out.

Well, we have a new Council, we have a new opportunity to move in a new direction. But, I just want to emphasize throughout the case all that we've done is try to focus on investing the County's resources and solving the problems here in Maui. We don't want any penalties going to the U.S. Treasury. We want to focus on solving the problems.

The next issue that's come up is, you know, some have said that the settlement that we've reached in 2018, I'm sorry, 2015, which spells out exactly what measures the County should take, that it requires you to appeal. Well, of course it doesn't require you to appeal. It gives you the right to do that if you think that's the best course for the County and we respectfully submit that we don't think it is.

The next concern is, well, we can't get a permit. We've submitted an application to the Department of Health and they just refuse to process it. I submitted a lot of documents from the Department of Health's website that make it clear that as recently as the end of 2017, the County was asking for yet another extension of time to submit all the required materials. And there's nothing on the website to indicate those materials were ever submitted. So, you just can't expect the department to issue a permit when the application's not complete. But, I also provided an example of where EPA for another wastewater facility has issued a permit for precisely these types of discharges via groundwater. So, it, it can be done. And if we work together, we hope it will be done. Thank you.

CHAIR KING: Thank you, Mr. Henkin. Any questions for the testifier? If not, I have a question for you. I was made aware in the last couple of days that the EPA has actually, I don't

know if I want to say it's maybe relaxed the requirements for NPDES permits so that actually it's not even required anymore. Is that true?

MR. HENKIN: Well, it's, it's, I'll try and give a short answer to a difficult question. The EPA issued a statement on April the 15, that first of all they made clear does not apply to the Ninth Circuit, which is where Hawaii is. So, it doesn't actually apply to Hawaii. It also doesn't apply to the Southeastern U.S. And if this is all sounding a little bit strange, it's because it is.

The Trump Administration has made a statement that is contrary to not only the position of the Obama Administration which filed a brief in support of the Maui parties, but every administration, Republican and Democrat since the Clean Water Act was passed, has said that discharges that reach the ocean or other navigable waters via groundwater require a permit.

So, EPA statement doesn't apply here, and it also says on it's face that it doesn't create any new law. And they recognize that the decision of this, in this case and the decision in a case in South Carolina are the law. And really what the Trump Administration is trying to do is convince the Supreme Court to gut the Clean Water Act.

And you know, we feel that it would be that, that Maui County is sort of serving as the poster child for our nation's polluting industries. The, the briefs that have come in support of Maui County in this case come from every polluting industry under the sun, the chemical industry, the mining industry, the industrial agricultural industry. So, and you really, we have, we have a serious concern about the image that this is projecting to the nation of, of what Maui County is about and we're hoping we can move in a new direction.

CHAIR KING: Okay. Thank you for your testimony. And I would also ask if you can be available as a resource when we get to this item on the agenda?

MR. HENKIN: Absolutely.

CHAIR KING: Okay. Any objections, Councilmembers? Okay, thank you for being here.

MR. HENKIN: Thank you.

CHAIR KING: Mr. Clerk.

DEPUTY CORPORATION COUNSEL EDWARD KUSHI, JR.: Madam Chair, is your, your last statement that Mr. Henkin be a resource person?



CHAIR KING: Yes.

Mr. Clerk.

COUNTY CLERK: The next testifier is Lance Collins, testifying on County Communication 19-178. To be followed by Albert Perez. Mr. Perez is the last individual who has signed up to testify in the Council chamber.

MR. LANCE COLLINS (testifying on County Communication No. 19-178):

Aloha, Chair King and Members of the Maui County Council. It's been I think over ten years since I've given oral testimony, so I mahalo you for allowing me to present today. I'm speaking on behalf of myself as an individual, but I do want to let everyone know that I do represent the West Maui Preservation Association in some shoreline litigation that it has with Na Papa`i Wawae `Ula`ula. I also represent the Puko`a O Kama Alliance which has litigation, State litigation against the County with respect to the Kihei Wastewater Treatment Plant. And I also represent Maui Tomorrow Foundation and the Sierra Club in a lawsuit presently against the County with respect to the Kahului Wastewater Facility.

I support the Council being involved in the resolution of this case. CC 19-178 would add the Council to being a direct party involved in the resolution of this case; that's all that 19-178 does. I think it's okay for the Council to say that the previous Administration may have made a mistake in the direction of this issue and where it has gone. And from my, from where I stand, my perspective is that this is a game where the person who is the game maker has said, "heads the people of the County of Maui lose, tails the people of the County of Maui lose". I, and that to me is a pyrrhic victory if the County of Maui were to win before the U.S. Supreme Court. It would be a sad day. Nobody would win except for the outside law firm that has made millions of dollars in pursuing this.

I think it's very important to not have fear about what the duties and obligations of the Council are. And I'll leave with this quote, that "There is no fear in love; but perfect love casts out fear, because fear has torment. He that fears is not made perfect in love". Thank you.

CHAIR KING: Mahalo, Mr. Collins. Any questions? Oh, we have a question for you.

Councilmember Kama.

COUNCILMEMBER KAMA: Thank you. Good morning and thank you for being here. So, the previous testifier said that, at least the way I sorted it out in my head, that we should not take this issue to the Supreme Court, and I think I heard that in your testimony too; only because they want to gut the Clean Water Act, and gutting of that Act means that we cut off our own heads. Am I interpreting that right?

MR. COLLINS: Yes, that's, that's one, one major reason is for the Maui County not to be involved in the petroleum institute and the chemical ones too, to try and gut the Clean Water Act. But even more concretely because a, a win, official legal win for the Council, excuse me, for the County at the U.S. Supreme Court means that the people of, of Maui lose because without some change out in Honokowai, it, we all lose. And winning at the Supreme Court isn't going to, isn't, isn't going to make that anything better. The only way to make it better is to make solutions, which doesn't involve the U.S. Supreme Court being involved.

COUNCILMEMBER KAMA: So a win at the Supreme Court for Maui actually means a loss for Maui?

MR. COLLINS: Yes, in my view.

COUNCILMEMBER KAMA: Thank you.

MR. COLLINS: Thank you.

CHAIR KING: Thank you, Member Kama.

Seeing no other questions, thank you for being here, Mr. Collins.

MR. COLLINS: Thank you very much.

CHAIR KING: Thank you for your testimony after ten years. Don't wait another ten years.

COUNTY CLERK: Next testifier is Albert Perez, testifying on County Communications 19-170, 171, and 178. Mr. Perez is the last individual who has signed up to testify in the Council chamber or at the District Offices.

MR. ALBERT PEREZ, MAUI TOMORROW FOUNDATION (testifying on County Communication Nos. 19-170, 19-171, and 19-178):

Good morning, Chair King, Councilmembers.

CHAIR KING: Good morning.

MR. PEREZ: Happy day after Earth Day to you. I am Albert Perez. I'm the Director of Maui Tomorrow and I first wanted to testify on the water reports that are submitted by the Director of Water Supply. And just to let you know, I've been keeping track of these, the percentages, in particular, the percentage that is produced by the Kamole Water Treatment Facility. The percentage of the entire Upcountry water system supply. So, by my calculations, sometimes it's as low as three percent. It goes higher. The most recent percentage was about 20. But for some reason, the Olinda Water Treatment Facility wasn't working, so that would bump up the Kamole percentage a little bit higher.

I just want to emphasize that it is nowhere near 80 percent, which is, it's been worded carefully but that's been the impression that's been put out there in the public. So, our own water use and development plan says that if we continue to rely on surface water, then we will always have droughts Upcountry, regard, regardless of any legislation or permits that are granted. So, that's all I have to say about that.

I did want to support, for 19-178, I wanted to support that resolution. And I just was thinking about all these famous court cases that we always hear about, you know, like Citizen's United or whatever. If this resolution passes, then we will be open to settlements that my understanding is they've been offered, and they haven't even been acted upon by the Administrations. This, I don't know about this one, but certainly the past one.

If, if we don't pass this resolution and take charge and abandon this futile pursuit, the County of Maui could go down in history in a Supreme Court case known as Hawaii Wildlife Fund et al. v. County of Maui. So, our name would always be up there as the one, the case that gutted the Clean Water Act. And we don't want that to happen.

I had testified against the previous Council putting more and more millions of dollars into funding this lawsuit. And so, I think this would be a good time to stop doing that. And thank you very much.

CHAIR KING: Thank you, Mr. Perez. Any questions?

Councilmember Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Perez.

MR. PEREZ: Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony. So, you liken this case to a benchmark case Citizen's United, which eroded the integrity of elections . . . see this case as being that, to that level of impact nationwide?

MR. PEREZ: I certainly do. From the little that I know about it, and I haven't become an expert in this case by any means, but there are companies who are looking at this, this case as potentially allowing them to design pollution strategies where they wouldn't be accounted for the pollution just because it migrates to the ocean through the groundwater. And that would be a terrible outcome to have our name attached with.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Perez.

MR. PEREZ: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR KING: Mahalo, Mr. Albert.

Okay, Mr. Clerk, can you, anymore testifiers?

COUNTY CLERK: Madam Chair, there are no other individuals in the District Offices nor the chamber who wish to offer testimony. And we have received written testimony for this meeting.

CHAIR KING: Okay, just make one more pass; does anybody in the chambers like to testify today? If not, we have, Members, we have a file of testimony and there are an additional 92, my staff went through this, 92 testimonies on this same issue about 19-178 in support in written testimony. And so, if there's no objections, we'll, we'll accept that into the record?

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY RECEIVED FROM THE FOLLOWING WERE MADE A PART OF THE RECORD OF THIS MEETING:

1. Hannah Bernard, Hawaii Wildlife Fund;
2. David Lane Henkin, Earthjustice;
3. Anna Barbeau;
4. Michael dAddario;
5. Barbara and Michael Gach;

6. Daniela Minerbi;
7. Jerry Riverstone;
8. Temple Weste;
9. Pete Wilson;
10. R.H. Bennett;
11. Marge Bonar;
12. Matti Christensen;
13. Gerry Dameron;
14. James F. (thebesttreesurgeon@gmail.com);
15. Fahi Sajedi Foadi;
16. Steve Holmes;
17. Mark Hordyszynski;
18. Bianca Isaki;
19. Jacqui (jjinparadise@gmail.com);
20. Linda Jenkins;
21. Hinano Kaleleiki;
22. La`akea Kaufman;
23. Maury King;
24. James Marcus;
25. Kristin Markham;
26. John Naylor;
27. Shawn (shawn@shawnyoga.com);
28. Steve Sipman;
29. Linda Ansai;
30. Barbara Barry;
31. Julie Christine;
32. Kinee Hanson;
33. David Kingdon;
34. Linda Lembeck;
35. Katherine Lilledahl;
36. Sandra Morey;
37. Dennis O'Shea;
38. Paul Solomon;
39. Jeanie Stewart;
40. David Westerfield;
41. Robert Wilcox;
42. Petra Zoeller;
43. Tyler Lewis;
44. Linda Lyerly;
45. Martha E. Martin;

46. Gary Passon;
47. Jason Schwartz;
48. Bob Schmidt;
49. Rob Weltman;
50. Afton Bennett;
51. Teri Corpuz;
52. S. Gilgoff;
53. Angie Hofmann;
54. Sulara James;
55. Lucia Maya;
56. Janet Mercer;
57. James Padgett;
58. Phyllis Robinson;
59. Fred Spanjaard;
60. K. Brown;
61. Co Pegg (copegg6@gmail.com);
62. Sheila McLaughlin;
63. Bill Staley;
64. Helena Weltman;
65. Barry Winfield;
66. yappygr1@aol.com;
67. Iolani Antonio;
68. Bill and Bobbie Best;
69. Maha Conyers;
70. Chris Egan;
71. Peter and Donna Gibson;
72. Matthew Gurewitsch;
73. laurag@divefish.com
74. Halley Prestage;
75. Aerie Waters;
76. Keri Zacher;
77. Anne Allison;
78. George Burnette;
79. Paul Carter;
80. Barbara George;
81. Mary Jo Masters;
82. Diane Shepherd;
83. Edie Van Hoose;
84. Ember Behrendt;
85. Peter W. Cannon;
86. Niu Lani Olaf;

87. Benjamin A. Pittenger;
88. Thomas C. Royer;
89. Jen Azuma Chrupalyk;
90. Eileen Naaman;
91. Stuart H. Coleman, Surfrider Foundation;
92. Tapani Vuori; and
93. Gary Savage.

CHAIR KING: Okay. Thank you.

Okay. Mr. Clerk.

COUNTY CLERK: Madam Chair, may we close public testimony?

CHAIR KING: Okay, any objections to closing public testimony?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Alright, close public testimony.

And proceed with the agenda, Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with minutes.

## MINUTES

The minutes of the Council of the County of Maui's regular meeting of January 11, 2019 was presented at this time.

CHAIR KING: Council Chair *[sic]* Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO ACCEPT THE MINUTES FROM THE JANUARY 11  
REGULAR MEETING.

COUNCILMEMBER KAMA:

SECOND.

CHAIR KING: Okay, moved by Council Chair, Vice-Chair Rawlins-Fernandez, seconded by Councilmember Kama.

Any further discussion? If not, all those in favor say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Measure passes unanimously.

Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with county communications.

### COUNTY COMMUNICATIONS

NO. 19-163 - SCOTT K. TERUYA, DIRECTOR OF FINANCE,  
(dated April 10, 2019)

Transmitting 48 contracts/grants for March 2019.

CHAIR KING: Okay. Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO FILE COUNTY COMMUNICATION 19-163.

COUNCILMEMBER LEE:

SECOND.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Lee.

CHAIR KING: Moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.



VICE-CHAIR RAWLINS-FERNANDEZ: This communication is for informational purposes only and does not require Council action. Nothing further, Chair.

CHAIR KING: Okay. Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Yea, thank you, Chair. May I ask that Contract 6572-1, Time Extension Roundabout at Maui Lani Parkway and Kamehameha Avenue, Fiscal Year 2016 from Department of Public Works, be transmitted to my Committee?

CHAIR KING: Okay, any objections? No objections. You got that, Council? Okay.

COUNCILMEMBER SUGIMURA: Thank you, Members.

CHAIR KING: Any other concerns with the contracts?

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. I'd like this to be referred to my Committee; Contract C6140-2, Time Extension request for a CIP on Lanai. Thank you.

CHAIR KING: For safety on Lanai? Okay. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: No objections. Okay. Let's all then we'll file, the motion is to file the, the contracts that have not been pulled out of the report. All those in favor say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Okay, measure passes unanimously.

Mr. Clerk.

NO. 19-164 - LORI TSUHAKO, ACTING DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated April 1, 2019)

Transmitting a copy of a grant award letter from the Federal Corporation for National and Community Service for the Retired and Senior Volunteer Program (RSVP) for \$65,850.

CHAIR KING: Okay. Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Madam Chair, will you please direct the Clerk to call County Communications 19-165 and 19-166 please?

CHAIR KING: Okay, any objections, Members?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Mr. Clerk.

NO. 19-165 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated April 2, 2019)

Informing of the Police Department's intent to expend \$7,000 in Federal Forfeiture Funds to host an introductory and advanced course in behavioral analysis techniques.

NO. 19-166 - TIVOLI S. FAAUMU, CHIEF OF POLICE,  
(dated March 5, 2019 and resubmitted April 8, 2019)

Informing of the Police Department's intent to expend \$29,449.81 in Federal Forfeiture Funds to purchase a Fourier Transform Infrared Spectrometer (FTIR) used to identify methamphetamine.

CHAIR KING: Okay, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO FILE COUNTY COMMUNICATIONS 19-164,  
19-165, AND 19-166.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. These communications are for informational purposes only and does not require Council action. Nothing further, Chair.

CHAIR KING: Okay. Any other comments or questions? If not, all those in favor of the motion say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Motion passes unanimously.

Mr. Clerk.

NO. 19-167 - MICHAEL P. VICTORINO, MAYOR,  
(dated April 11, 2019)

Informing of a vacancy on the Liquor Control Commission due to the resignation of Jonathan Todd on April 10, 2019.

CHAIR KING: Councilmember Molina.

COUNCILMEMBER MOLINA: Madam Chair, if there are no objections, can we have the Clerk bring up County Communications 19-168 and 19-169?

CHAIR KING: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay, Mr. Clerk.

NO. 19-168 - MICHAEL P. VICTORINO, MAYOR,  
(dated April 12, 2019)

Informing of a vacancy on the Maui Planning Commission due to the resignation of Lawrence Hudson on April 9, 2019.

NO. 19-169 - MICHAEL P. VICTORINO, MAYOR,  
(dated April 12, 2019)

Informing of a vacancy on the Salary Commission due to the resignation of Teddy Espeleta on April 12, 2019.

CHAIR KING: Okay, Councilmember Molina.

COUNCILMEMBER MOLINA:

MADAM CHAIR, IF THERE ARE NO OBJECTIONS, I'D LIKE TO  
MOVE TO FILE COUNTY COMMUNICATIONS NOS. 19-167,  
19-168, AND 19-169.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Councilmember Molina, seconded by Councilmember Lee.

Any further discussion?

COUNCILMEMBER MOLINA: Yes, Madam Chair.

CHAIR KING: Mr. Molina.

COUNCILMEMBER MOLINA: This matter deals with three individuals who have resigned from their respective boards and commissions. First, Jonathan Todd resigned from the Liquor Control Commission on April 10, 2019. Lawrence Hudson resigned from the Maui Planning Commission on April 9, 2019. And Teddy Espeleta resigned from the Salary Commission on April 12, 2019. I'd like to thank all of these individuals for their service to our community. Thank you.

CHAIR KING: Okay. Any other comments or questions, discussion? If not, all those in favor of the motion say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Motion passes unanimously.

Mr. Clerk.

NO. 19-170 - JEFFREY T. PEARSON, DIRECTOR OF WATER SUPPLY,  
(dated April 4, 2019)

Transmitting copies of the Department of Water Supply's Monthly Source Report and Groundwater Use Report for the month ended March 2019.

CHAIR KING: Councilmember Lee.

COUNCILMEMBER LEE: Chair, may I request that County Communication 19-171 also be brought up at this time?

CHAIR KING: Okay, any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Alright, Mr. Clerk.

NO. 19-171 - JEFFREY T. PEARSON, DIRECTOR OF WATER SUPPLY,  
(dated April 11, 2019)

Transmitting copies of the water use reports for the month of February 2019, received from the State of Hawaii Commission on Water Resource Management for all registered well reporters in Maui County.

CHAIR KING: Councilmember Lee.

COUNCILMEMBER LEE:

I MOVE TO FILE COUNTY COMMUNICATIONS 19-170 AND  
19-171.

VICE-CHAIR RAWLINS-FERNANDEZ:

SECOND.

CHAIR KING: Okay, moved by Councilmember Lee, seconded by Vice-Chair Rawlins-Fernandez.

Ms. Lee.

COUNCILMEMBER LEE: The County Communication 19-170 is a monthly report submitted by the Department of Water Supply, relating to source and groundwater use for the month ended March 2019. The report is routinely submitted to the Council for informational purposes.

County Communication 19-171 transmits water use reports pursuant to Section 2.90A.050A, Maui County Code, from the State Commission on Water Resource Management for February 2019 for all registered well reporters in Maui County. The report is routinely submitted to the Council for informational purposes. I ask for the Members support to file County Communications 19-170 and 19-171.

CHAIR KING: Okay, any discussion? Questions? If not, all those in favor of the motion say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Motion carries unanimously.

Mr. Clerk.

NO. 19-172 - KELLY T. KING, COUNCIL CHAIR,  
(dated April 11, 2019)

Transmitting a proposed resolution entitled, "APPOINTING TRACI FUJITA THE DIRECTOR OF COUNCIL SERVICES AND SETTING THE SALARY".

CHAIR KING: Council Chair *[sic]* Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ:

I MOVE TO ADOPT THE PROPOSED RESOLUTION ATTACHED TO COUNTY COMMUNICATION 19-172, AND TO FILE COUNTY COMMUNICATION 19-172.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. A graduate of Golden Gate University School of Law in San Francisco, California, Ms. Fujita's experience at the County of Maui spans for over 22 years; having worked in the Department of the Corporation Counsel, Department of Liquor Control, Department of Public Works, and most recently as a Legislative Attorney in the Office of Council Services. She has served in both the executive and legislative branches and has fostered excellent working relationships throughout the County.

Ms. Fujita's management experience, legal expertise, and mediation skills are a perfect fit for the Director of Council Services. I'd also like to add that she, she has always, since I've joined the Council, she has gone out of her way to help to support me and assist in anyway she can, and she is truly a pleasure to work with. So, I recommend the appointment of Traci Fujita as the Director of Council Services, and I urge your support of this resolution.

CHAIR KING: Thank you, Vice-Chair Rawlins-Fernandez.

Councilmember Lee.

COUNCILMEMBER LEE: No.

CHAIR KING: You had your light on, so I was--

COUNCILMEMBER LEE: Oh sorry.

CHAIR KING: Any other comments or discussion? If not, I would just like to add my, my support for Ms. Fujita as well. I've been on the, this is my third year on the Council and I've experienced nothing but cooperation and hard work. Ms. Fujita has been, made herself available in the late evening hours and the early mornings when I've had questions. And I've observed how hard she's worked and how well she works with the team on, on the seventh floor. So, I urge Councilmembers to support Traci Fujita as our next Office of Council Services Director.

She would be, she would be taking over, I believe immediately, is that what we're looking at? May 1, which is when our current Office of Council Services Director has her last day. And actually, she's going to be stepping down a couple days or, or vacating the office a couple days before that because she's got some vacation time. So, this is, this is why I wanted to bring this up and make sure we get the adoption, so we have some overlapping time. So, if there are any other, no other?

Okay, Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: I'd like to just express my appreciation to Traci as through the, I'm going into my third year, so the years that I've worked here. And special projects that I've picked up that I needed some legal advice, she's helped me a lot. I just wanted to extend my appreciation. I look forward to working with her and her leadership. I think, you know, it'll be appreciated in ways that I've seen her work already. So, thank you, Traci, for stepping up, and everyone, thank you.



CHAIR KING: Okay, thank you. And she actually is in the chambers if anyone has any direct questions.

Councilmember Molina.

COUNCILMEMBER MOLINA: Yes, thank you, Madam Chair. I would also like to express my support for Ms. Fujita and hope that she understands the full responsibilities that goes with this job; the importance of being accessible and being around. And I guess I'll just speak for myself, but we can be very demanding at times when, for requests from our Council Services Director. So, and I've worked with Traci before when, on my prior tenure on the Council when she was in the Corporation Counsel's Office and she responded to my questions. So, I'm confident she will retain that and just, you know, continue to work hard and be there for us. Thank you.

CHAIR KING: Thank you, Mr. Molina.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Do we have an opportunity to speak to the candidate?

CHAIR KING: She's here if you would like to. I think we--

COUNCILMEMBER HOKAMA: I have one question regarding how she would look at an issue.

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: If that's, you would allow that, Chair?

CHAIR KING: I would allow that.

Ms. Fujita, would you like to come down? And, we might, we might end up having other questions.

And while she's making her way down, I would just also add that I, I appreciate all the hard work and energy that our outgoing director has put into the job; Maria Zielinski. And also, I appreciate greatly that she realized the limitations in that job of not having somebody with a legal background. And so, her, one of her first recommendations to me was that the next director should be an attorney. So, we are, are very lucky to have an attorney from our own offices step up.

And, Mr. Hokama, would you like to ask her a question?

COUNCILMEMBER HOKAMA: Yes, thank you. I'm going to ask Ms. Fujita, what is your policy on comp time?

MS. TRACI FUJITA: Comp time is being, currently being reviewed in OCS. And a formal--

CHAIR KING: Could you come a little closer to the microphone?

MS. FUJITA: Oh, sorry.

CHAIR KING: Thank you.

MS. FUJITA: Comp time is currently being reviewed in OCS. And a formal policy should be established dealing with comp time. Comp time is a form of payment for overtime. So, employees, when they do work approved overtime can either earn cash or, or comp time. So, it's a, it's a form of payment for overtime. But, a formal policy needs to be established for the office.

COUNCILMEMBER HOKAMA: Cause I heard the current director say that we don't do overtime. So, I find it interesting now about this discussion about now creating a policy for comp time which is over, overtime.

MS. FUJITA: There's currently overtime that's approved for some of the staff in the office. But, I know if you're speaking about for the attorneys; for the attorneys, my understanding that at least--

COUNCILMEMBER HOKAMA: For everybody. I look at the staff in totality.

MS. FUJITA: Then I'm not aware of that policy of no overtime for staff.

COUNCILMEMBER HOKAMA: Okay. Thank you for your response.

Chair, I would just note that, am I wrong that you're setting the pay scale equal to the County's Corporation Counsel?

CHAIR KING: Yes.

COUNCILMEMBER HOKAMA: And that is because?

CHAIR KING: Because we actually have an attorney in that position.

COUNCILMEMBER HOKAMA: Yea, but they're not the Corporation Counsel representing the County. Thank you, Chair.

COUNCILMEMBER SUGIMURA: May I ask a question also?

CHAIR KING: Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: So, nice seeing you here, Traci. I hope you realize your life has just changed where you won't see your family as much as you have. Just kidding. But, I wonder if you could work on also if you are working on CTO or overtime, if you could work on a policy so that Councilmembers would understand ceremonial resolutions and certificates as the last document that we have in our files was approved by then Council Chair Gladys Baisa? So, I think it's something that's, you know, it needs to be looked at and revised so that we consistently have information that we can, we can rely on to take action. So, I wonder if I could ask you to look at that and work with whoever you need to also?

MS. FUJITA: Yea, one of my goals is to establish policies and procedures handbook or manual for OCS. We don't have a central, like a, or we may have one, but I think it's very outdated, so it probably needs to be updated. But to have a central, you know, document that everybody can refer to and everybody can be on the same page I think would be helpful.

COUNCILMEMBER SUGIMURA: Appreciate that. And I also appreciate David Raatz as, as I, my office has reached out to him for information. So, I think that you both have a good working relationship and we look forward to some consistency in the Office of Council Services. So, thank you. Thank you, Traci.

CHAIR KING: Thank you, Councilmember Sugimura. Any other discussion? If not, I'll call for the question. All those in favor of appointing Traci Fujita the Director of Council Services and setting the salary, say "aye".

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: COUNCILMEMBER HOKAMA.

CHAIR KING: Okay, measure passes eight "ayes" to one "no"; Mr. Hokama.

Congratulations, Ms. Fujita. Thank you for stepping aboard. And congratulations to Ms. Zielinski. Now we can let you go. We were a little worried about the end of this month.

Okay, Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 19-76.

NO. 19-173 - KELLY T. KING, COUNCIL CHAIR,  
(dated April 11, 2019)

Transmitting a proposed resolution entitled "APPROVING THE APPOINTMENT OF JULIE M. REED AS A LEGISLATIVE ANALYST IN THE OFFICE OF COUNCIL SERVICES".

CHAIR KING: Okay, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO ADOPT THE PROPOSED RESOLUTION  
ATTACHED TO COUNTY COMMUNICATION 19-173, AND TO  
FILE COUNTY COMMUNICATION 19-173.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Julie M. Reed is a graduate of the University of Northern Colorado, having received a Bachelor's of Arts Degree in Psychology and a minor in human rehabilitation services. She is also a graduate of the University of Phoenix, with a Master's Degree in Education.

Ms. Reed was employed as a quality performance section manager for the State of Colorado, Department of Health Care Policy and Financing since June 2015. In that capacity, she was responsible for drafting and revising statewide policy and was engaged in State legislative and budgetary processes. A graduate of Lahainaluna

High School, Ms. Reed is excited for the opportunity to return to Maui to, and to live, to live and work.

I met with Ms. Reed and she really is welcoming, and friendly, and I'm excited to work with her. And as I understand it, she may be assigned to my Committee. And she's very easy to work with and has a lot of experience that I think would greatly contribute to our Council. So, I recommend the appointment of Julie M. Reed as the Legislative Analyst in the Office of Council Services, and respectfully request your support of this proposed resolution. Mahalo.

CHAIR KING: Okay, mahalo, Vice-Chair Rawlins-Fernandez.

Any other discussion? If not, all those in favor of the motion on the floor, say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Okay, motion passes nine to zero.

Clerk.

DEPUTY COUNTY CLERK: For the record, RESOLUTION 19-77.

Madam Chair, proceeding with county communications for referral. The following county communications are recommended for referral to the following Committees as noted.

NO. 19-174 - LANCE T. TAGUCHI, COUNTY AUDITOR,  
(dated April 4, 2019)

Transmitting the Financial Data Schedules for Section 8 and Family Self-Sufficiency Programs of the County of Maui for the Fiscal Year Ended June 30, 2018.

The recommended action is that County Communication No. 19-174 be referred to the Affordable Housing Committee.

NO. 19-179 - LORI TSUHAKO, ACTING DIRECTOR OF HOUSING AND HUMAN CONCERNS, (dated April 15, 2019)

Transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION REGARDING THE CONSTRUCTION OF EMERGENCY HOUSING AT THE UNIVERSITY OF HAWAII, MAUI COLLEGE, DORM SITE".

The recommended action is that County Communication No. 19-179 be referred to the Affordable Housing Committee.

NO. 19-175 - SHANE M. SINENCI, COUNCILMEMBER,  
(dated April 16, 2019)

Relating to the matter of food security for the County of Maui.

The recommended action is that County Communication No. 19-175 be referred to the Environmental, Agricultural, and Cultural Preservation Committee.

NO. 19-176 - SHANE M. SINENCI, COUNCILMEMBER,  
(dated April 16, 2019)

Relating to the cultural components of the Kahului Community Center project design.

The recommended action is that County Communication No. 19-176 be referred to the Environmental, Agricultural, and Cultural Preservation Committee.

NO. 19-177 - SHANE M. SINENCI, COUNCILMEMBER,  
(dated April 16, 2019)

Relating to the matter of establishing an agency to address climate change, sustainability, and resiliency.

The recommended action is that County Communication No. 19-177 be referred to the Environmental, Agricultural, and Cultural Preservation Committee.

NO. 19-178 - KELLY T. KING, COUNCIL CHAIR,  
(dated April 15, 2019)

Transmitting a proposed resolution entitled, "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL".

The recommended action is that County Communication No. 19-178 be referred to the Governance, Ethics, and Transparency Committee.

(See pages 35 through 62 for discussion and action.)

NO. 19-180 - MICHAEL P. VICTORINO, MAYOR,  
(dated April 16, 2019)

Transmitting a proposed resolution entitled, "URGING THE HAWAII STATE LEGISLATURE TO EXTEND THE DEADLINE TO ESTABLISH A SURCHARGE ON GENERAL EXCISE TAX".

The recommended action is that County Communication No. 19-143 be referred to the Governance, Ethics, and Transparency Committee.

(THE RESOLUTION ATTACHED TO COUNTY COMMUNICATION NO. 19-180 WAS ADOPTED LATER IN THE MEETING AND ASSIGNED RESOLUTION NO. 19-78. COUNTY COMMUNICATION NO. 19-62 WAS THEN FILED. See pages 62 through 68 for discussion.)

CHAIR KING: Thank you, Clerk. Are there any objections to the referrals?

Councilmember Rawlins-Fernandez.

**DISCUSSION AND ACTION RELATING TO  
COUNTY COMMUNICATION NO. 19-178**

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO WAIVE THE REQUIREMENT OF COMMITTEE REFERRAL AND REPORT OF THE RESOLUTION ATTACHED TO COUNTY COMMUNICATION 19-178, PURSUANT TO RULE 7(G) OF THE RULES OF THE COUNCIL.

COUNCILMEMBER PALTIN:

SECOND.

CHAIR KING: Okay, moved by Vice-Chair Rawlins-Fernandez, seconded by Member Paltin.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Approval of this motion by a two-third vote of the membership will allow the Council to consider the resolution today. It is a time-sensitive matter because the case referenced in the resolution, Hawaii Wildlife Fund, et al. v. County of Maui is now pending before the U.S. Supreme Court with legal briefs due early next month.

As you heard from over 100 testifiers, written and oral, we do not want to be the case used by the Trump Administration to gut the Clean Water Act. We are a place and a people of aloha aina and malama aina, and this should not be our legacy. Mahalo, Chair.

CHAIR KING: Thank you.

Councilmember Lee.

COUNCILMEMBER LEE: Madam Chair, I'll be voting no on this motion because I really need to be more informed on this issue, and I can't help but wonder if we may have to go into executive session. And I think this is a little unusual that we will be, seems to be that we will be considering contradicting what the County has already done in terms of settlement and what our Corporation Counsel has already represented for us. So, I have millions of questions.

CHAIR KING: Okay. And, let me just, to explain to Councilmembers. We can have Mr. Raatz up here to, to further explain the ordinance that this is a motion to enact an ordinance that gives the County the control of this case. We're not deciding this case today. This will be in a future meeting, but this gives the authority to the Council.

COUNCILMEMBER KAMA: Chair.



CHAIR KING: Councilmember Kama.

COUNCILMEMBER KAMA: I just want to go on record to say that I support this resolution. In my head it's very clear that if we, if we don't pass it, we, this Council doesn't take the authority that we have to do what's right. I mean, it's wrong, it is wrong to pollute our waters. It is wrong for this Council not to take a position to make things right that have been wrong for so many years. And if previous Councils didn't take the initiative, then we have to. If you love your island and you love your people, I mean, you are talking about people not yet born. How are they going to be able to survive on our ocean if we have nothing for them? So, I am totally in support of this. I am not in favor of going into executive session, but whatever the will of the Council is I support that. Thank you.

CHAIR KING: Councilmember Sugimura. I'm just going to go down the row, the line.

COUNCILMEMBER HOKAMA: Chair.

CHAIR KING: Okay, Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you. I will not support this motion at this time. And, hearing my colleagues give their comment, I believe we need to take it to Committee and go into the appropriate executive session because there's information they need to know from 2007, why we are here today, okay. I don't think there's enough information given in the testimony portion that fully explains the case to, for the Members requirements to make a determination. I understand what this resolution is about. And when we get to executive session with the appropriate counselors, they can tell us why or why not, because I believe every settlement offer has to come before us that is presented to our attorneys.

Second, this is not about also so-called U.S. conglomerates, okay, Chair. This is about what we have done and why we are in court today. This is not about whether we care about the island or not. We've shown it; we've put monies into projects, we've supported your idea that we should be proactive. And that's why in just last night's actions, we've placed millions of dollars to work on this issue to clean and make sure that we do our processing appropriately. And we've done it by action, okay.

Now, they've talked about the other big entities. I can tell you how many of our own sister counties are depending upon this ruling also, because it impacts their counties, their communities, and they need clarification. Because the circuits have ruled contrary to each other. I think we need one set of direction and . . . for the country so that all the circuits can follow accordingly, okay. So, I believe there is still merit for a Supreme Court decision.

And we are not asking the Supreme Court to gut the Clean Water Act; we're asking them to clarify it so that we can have unified and consistent rulings on any adjudicated request. Congress still has the overall power to amend it if they feel to do so. This is a congressional public law. So, the vote, the House, U.S. House and the U.S. Senate still has determination of adjusting national policy. We are just addressing our case as how we want to go forward, okay.

That's keiki o ka aina of all of us. We understand about the mauka-makai connection. We understand about the reefs, the fish; we've all lived it. That is not why we are going to court. And I think that other Members need to know the facts of why we are here today, okay. And I believe that that is important before we make final determinations on this motion by this request of this resolution. Thank you, Chair.

CHAIR KING: Thank you, Mr. Hokama. And it is the intent to have that information before the actual decision is made. So, this is a preliminary decision. But, I also want to ask our OCS counsel, because it was my understanding that this resolution didn't need a waiver from Committee structure. So, Mr. Raatz, can you maybe explain, or Ms. Zielinski, can you maybe explain . . . that this was originally a resolution. My understanding that could be dealt with on the floor without a Committee waiver.

SUPERVISING LEGISLATIVE ATTORNEY DAVID RAATZ: Thank you, Chair. It's a procedural call by the presiding officer subject to overrule by the body. But, I think there is a strong argument that this resolution could be considered to having legal effects. And if so, the Council Rules specify that a waiver would be required for action on the floor if you're not having the benefit of a Committee report.

CHAIR KING: Okay. Otherwise it needs to go to Committee?

SUPERVISING LEGISLATIVE ATTORNEY: That's correct, Chair.

CHAIR KING: Okay. Well, I'll leave it up to the body then if you want to withdraw the motion and make a new motion or to pass this on the floor, or if you want to stick with the waiver request.

Councilmem, Council Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: I'm just, I'm on a, seek clarification on what my option is.

CHAIR KING: Okay. We'll take, we're going to take a brief recess, recess for clarification.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair.

CHAIR KING: Recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:10 A.M., AND WAS RECONVENED AT 10:19 A.M., WITH ALL MEMBERS PRESENT, EXCEPT.)

CHAIR KING: Alright the regular Council meeting of April 23 will come back to order. It's 10:19, and we're on item 19-178. We have a motion on the floor and we'll go back to Vice-Chair Rawlins-Fernandez. We're going to just explain that we're going to, we're going to stick with this motion.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Yea, so I'll keep the motion as I made it, to waive the requirement of Committee referral. And I'll, I will yield the floor to my colleagues before taking my last and final opportunity to speak.

CHAIR KING: Okay. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR KING: Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, Members. Good discussion. I think we hear the, the hearts and souls of, of our Members for our community. And I just wanted to get clarification. So, basically what the resolution does, your intent is that any matter, anytime this matter comes up, that it'll be referred to Council and not go to Corp. Counsel. Is that what your intent is?

CHAIR KING: No, it, it, it, we will have Corp. Counsel as part of the discussion. It, it brings the authority to make that decision into the Council versus the Mayor. Right now, the Mayor has unilateral authority, is my understanding, to, if he wanted to withdraw the case he could do it. That has not happened. So, this would give that authority to the Council. It's not, we're not making a decision on whether we're going to do that or not today; we're just evoking an ordinance that gives us that authority.

COUNCILMEMBER SUGIMURA: Oh.

CHAIR KING: So, if you would like to, we could have Mr. Raatz explain the ordinance to you if that, if that helps.

COUNCILMEMBER SUGIMURA: Sure, if it'll help the Council.

CHAIR KING: Okay, Mr. Raatz.

SUPERVISING LEGISLATIVE ATTORNEY: Thank you, Chair and Councilmembers. So, this resolution derives from the provision in the County Code 3.16.020 that hasn't been previously invoked. It, it mimics an ordinance from the revised ordinances of Honolulu which was the subject of a Supreme Court opinion almost 20 years ago. And after that opinion, the Council at that time decided to enact the similar law so that the Council would have the authority in a future circumstance, potentially such as this matter where the Council wants to have the ability to make a final decision to accept or to not accept any settlement offers for a particular case.

It arose in, in the City and County of Honolulu because of cases in which the Corporation Counsel there was not transmitting settlement offers to the City Council for action because the Corporation Counsel didn't want the cases to be settled. So, the City Council enacted this ordinance saying that for certain cases, if we designate them by resolution, we will have the authority to make the final settlement decisions.

And the Hawaii Supreme Court said that was an appropriate exercise of legislative authority because ultimately the Council is the budget-maker and the policy-maker for the local government. And that's part and parcel of being able to settle cases. So, again, we have this provision for circumstances in which the Council wants to take the final decision, final action on it, a proposed settlement over the objections of the Corporation Counsel. Thank you.

CHAIR KING: Councilmember Lee.

Oh, I'm sorry. Councilmember Sugimura, do you have a--

COUNCILMEMBER SUGIMURA: Yea, so, I, I cannot support this. I would really love to get into executive session to discuss it more in detail, so we could get the facts before us, before we make this kind of decision. So, that's my decision.

CHAIR KING: Decision to waive the Committee structure?

COUNCILMEMBER SUGIMURA: Or, this item to go to Committee is what I would like.

CHAIR KING: Okay. Are, but you're, we're not talking about the item of the court case. We're talking about the ordinance that Mr. Raatz just explained. So, we won't be going, that's not an executive session item.

COUNCILMEMBER SUGIMURA: Okay. So, when we get into the, the resolution.

CHAIR KING: We, we don't have that resolution today. The resolution is to evoke the ordinance 3.16.020. So, today we're make, not making a decision on the court case. We're making a decision on whether the Council wants to take the authority for the court case.

COUNCILMEMBER SUGIMURA: On the case right? On the case?

CHAIR KING: Right. And then--

COUNCILMEMBER SUGIMURA: So, we are kind of talking about the case, which I think is an important--

CHAIR KING: Well, when we get to the resolution on the case, then we can go into executive session.

COUNCILMEMBER SUGIMURA: Okay, we will. Thanks.

CHAIR KING: But we won't get to that today is what I'm saying unless we, unless we pass this resolution, we won't be, we won't be getting to that part of the, that's a second resolution.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR KING: Okay, Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. David, okay, we, I think all of us weren't here in 2015, except for Mr., Mr. Hokama. But, my understanding is that the Council at that time, in that year, took up this matter and actually rejected a settlement offer that the Mayor at that time transmitted to the Council.

So, so, the impression you give is that, especially when you cite the Oahu example, that the Administration did not transmit this to the Council for any kind of consideration or action and that's why they, they passed that ordinance; so that they might be able to extract this from the Administration and deal with it, right.

But, that's not really the case here in that it was transmitted to the Council, the Council made a decision, the Council deliberated on this matter, and so it gives me the impression that whatever a previous Council got, we're not doing anything against the Administration. What we are trying to overturn is a previous decision by a previous Council, is that what you're saying?

CHAIR KING: Mr. Raatz.

SUPERVISING LEGISLATIVE ATTORNEY: Thank you, Chair and thank you, Councilmember Lee. I think you cited the facts accurately. I think there are a couple of underlying assumptions behind this resolution. One is that there will be one or more new settlement offers coming in. And number two, that the Corporation Counsel, based on public comments and previous positions in the case, is unlikely to recommend approval of any forthcoming settlement offers and may not transmit those to the Council for the Council to take final action. So, if that's, if that's not the case, if it's clear that Corporation Counsel will transmit any future settlement offers and allow the Council to make a final decision, then probably this resolution would be superfluous.

COUNCILMEMBER LEE: Because Mr., Mr. Raatz, you're asking us, well you're not asking us, but what's on the table is that we would be taking action on something that may or may not happen in the future, that in case the Mayor doesn't transmit, this is the action available to us today? You know, I can see us taking a more serious look at this if the Mayor refused to transmit something or impeded the transmittal of something to us. But, he, he doesn't even know what we're doing, right, at this point? So, it's--

CHAIR KING: Member Lee, he does, he does know. He's not on island this week, but he does, he is aware of what this, that this resolution is on here. And, he had, he does have the authority to withdraw the appeal if he wants to, but has not made that move. And so, that's why I brought this before the Council.

COUNCILMEMBER LEE: Yea. Okay, again, again, this is not, as you said Mr. Raatz, this is something that may happen in the future, but may not happen in the future as far as the Mayor not transmitting something; any new information or, or anything having to do with the settlement. I feel really uncomfortable taking this on the floor, dealing with this on the floor, because we haven't had a chance to even delve into all the facts and the background of this. And we certainly shouldn't be relying only on one side. We don't have any resources on the other side of the issue. So, that's my reason for voting no.

CHAIR KING: Okay. Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Just hearing the exchange that's going on between Mr. Raatz, Council colleagues, yourself, this is Committee work already. And this is a landmark, potentially landmark case. And we talk about transparency and giving, getting maximum input from the public. And if there is this proposal to, I guess, give us the authority to help settle, so be it. But it should be done in Committee; that's where it should be at. And as the lucky person that chairs this

Committee, I, I would welcome taking it in. But, you know, this, Committee is the place where a lot of questions can be answered, can be vetted.

And it's unfortunate that this comes at the most busy and critical time of year for this Council. We're deliberating on the budget, we've been, we got off work last night 11:30 at night, and here it is 10:30, and we got a 1:30 budget meeting coming up. Our minds are tired. I would think the public would expect us to have well-rested minds to be clear, to make any decisions related to a very, very important case like this. This is a Federal case, you know. So, to me, let's do the appropriate thing, the right thing; send it to Committee where we can hash things out, get a lot of these questions answered. That's, to me, the responsible thing to do. So, with all due respect to you and my colleagues who want to maybe move this forward, I cannot support this.

And I certainly respect the, the concerns from our County Administration, as well as the plaintiffs, because in general we all wants, want what is best for Maui County as it relates to our environment. But, again, because of the magnitude of this case, to just act on it today without having maximum public input on it, to me, is not the right thing to do. Let's send it to Committee where we can hash things out. And whatever happens in Committee, then it goes to Council for one more opportunity for the public to weigh in. So, that's, that's, that's my issue for not supporting the waiver of referral to Committee. Thank you, Madam Chair.

CHAIR KING: Alright, thank you--

VICE-CHAIR RAWLINS-FERNANDEZ: Point of clarification, Chair.

CHAIR KING: --Councilmember Molina.

Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: I, I, I want, I was hoping that Mr. Raatz would be able to clarify, cause that, it's, what I'm hearing is the Members may still be unclear about what this process is. This is a two-step process. This first process isn't us deciding upon whether we're going to withdraw the case. This first step is only to give us the authority to, to withdraw the case if we then choose in the second step. So, can I ask Mr. Raatz to please explain that to the Council so that perhaps it'll kind of clear up the understanding a little better.

CHAIR KING: Sure. Mr. Raatz.

SUPERVISING LEGISLATIVE ATTORNEY: Thank you, Chair and Councilmember for the question. And for the record, I again refer to Section 3.16.020 of the Maui County

Code; specifically, Subsections D and E layout the two-step process. Subsection D gives the Council the authority to adopt a resolution specifying a case for which all future settlement offers will be transmitted to the Council for final action, approval or disapproval. Then Subsection E, states that the Council, after conducting an executive session on the settlement offer, then will take a final action by resolution to either approve or disapprove the resolution. So, you're correct, there are two steps. First, to grant, for the Council to grant itself the authority for a particular case. And then, second, to exercise the authority by either approving or disapproving a proposed settlement by resolution. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

CHAIR KING: Ms. Rawlins-Fernandez. You still have the floor. Do you want--

VICE-CHAIR RAWLINS-FERNANDEZ: I think Member Paltin.

CHAIR KING: Okay. Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I would like to urge my colleagues to reconsider because, you know, I, I agree that this should be done in Committee, but there's extenuating circumstances. It's, it's a very, very important case that delay might cause us to lose it because of the time factor and, you know, we recently seen that happen already with the Planning Commission. They waited on a vote and they ended up losing their, their timeline.

And, you know, even though the Council in 2015 rejected the settlement, things have changed drastically on the United States level since 2015. Our Federal and national situation is drastically different than it was under the Obama Administration. For me, this is my area that I represent. I was there in 2007. I was there at Lahaina Civic when the EPA came to talk to our community. And I was involved in a lot of things at that time. And everybody in the room of Lahaina Civic was not for continuing the use of injection wells. And in my testimony to the EPA, I told them that because they're from the mainland, they might not realize that everybody in the room being against injection wells is like a miracle because nobody in that room ever agreed on everything, anything in the past. We are all on different sides of the issue. And, the facts of why we are here today is because the ocean is so degraded.

My husband was born in the Territory of Hawaii. He grew up in Lahaina. He dove all his life growing up. And we were at the beach this weekend, and he said, it's way different. It's way different than it was 50 years ago. It's not abundant like it is. He still dive every day. My family eats from the ocean every week. And this is what is the right thing to do for us, Maui County. It's not our kuleana to care about what the other



cities in the U.S. need. If they need the policy straightened out, let them pursue it to the Supreme Court.

This resolution is about us making the, the authority to decide on a settlement. It's not taking that authority. And I think with the political landscape locally and nationally, it's about moving forward on the solution. Nobody has ever said keep injecting our wastewater into the ocean. So why are we still discussing it. It's a waste of time. The best thing for Maui County is to protect Maui County, otherwise we're going to have to spend a lot more than \$4 million to tell people to come and swim in our polluted waters. Thank you.

CHAIR KING: Thank you, Member Paltin.

Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I would like to ask Corporation Counsel for their input on this matter; Moana or Mr. Kushi.

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL MOANA LUTEY: Thank you, Chair. On whether or not you should pass this resolution, or are you asking me about the litigation itself?

COUNCILMEMBER LEE: Well, apparently, everybody is mixing the two together. But, can we start on, with the procedural matter first?

CHAIR KING: Do you have a specific question, Councilmember Lee?

COUNCILMEMBER LEE: Do you concur with Mr. Raatz's interpretation of the Code? And is this situation pertinent to the section he's citing?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL LUTEY: Thank you, Chair.

COUNCILMEMBER LEE: And then, if you--

CHAIR KING: Oh.

COUNCILMEMBER LEE: --if you have any other comments on, on whether some of these issues need to be discussed in executive session?

CHAIR KING: Ms. Lutey. And try to, try to keep to the actual resolution that we're discussing today. Thank you.

ACTING CORPORATION COUNSEL LUTEY: Thank you, Chair. Councilmember Lee, I actually signed off on the resolution for this after reviewing the County Code section that Mr. Raatz has referred to, 3.16.020. That does give the Council the ability to take control of, of the settlements.

In terms of the procedure by which he's explained it, I mean, clearly the Code allows it. But, what concerns me is that we always do bring settlement offers up here pursuant to the same Code section, so that is somewhat unclear to me. But, that's for this body to decide on how they want to proceed with this matter.

There is a settlement currently in place in this litigation. So, that's, I hear it sort of go back and forth, but there is a settlement in place currently. We have not received any other settlement offers, but, or demands, but there is discussion ongoing currently.

COUNCILMEMBER LEE: Follow up.

CHAIR KING: Continue.

COUNCILMEMBER LEE: So, how do we take this case? How do, how do I just take that case from, from where it is? And then what do we do with it after that? I mean, we're not the executive branch, so what do we do when we decide to take this case?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL LUTEY: Thank you, Chair. I don't think most of you were here back when a lot of this was ongoing. And because of that and because of how many facts are out there and so forth and the procedural history of it, I would agree with Councilmember Molina in having some at least opportunity to get that information. But, in terms of whether or not you can take hold of it, that's really a decision for this body to make today. But, I absolutely understand where Councilmember Molina is coming from at this point. Not all of you were here for this.

COUNCILMEMBER LEE: Matter of executive session; is there any need for that?

CHAIR KING: For Ms. Lutey, for this, this resolution.

ACTING CORPORATION COUNSEL LUTEY: If you would like to enter in executive session, I'm happy to do that with you. We won't be discussing the actual settlement today,

though. We're sticking with just the resolution issue. If we were in Committee, we would need executive session; if it went to Mr. Molina's Committee.

COUNCILMEMBER LEE: Okay, Madam Chair, if we were to vote to take this out of Committee, what is your next step?

CHAIR KING: We would, we would vote to, to take the authority for this case. There would be a resolution on the next Council meeting on the actual case. And at that point, we would be addressing the actual case. So, I would do, I would approach it like the previous Chair approached the ban on Styrofoam; when he brought it to Council level. And he had a panel. He had the, you know, both views, the opposing views being able to present their cases.

COUNCILMEMBER LEE: At a Council meeting?

CHAIR KING: At a Council meeting; it was a full Council meeting. That's how we passed that ban.

COUNCILMEMBER LEE: So, not this meeting, the next Council meeting?

CHAIR KING: Right. This meeting is only to decide on the procedure, and if we take control of that procedure. And the reason that I brought this up is because I didn't see this happening through the executive branch. And I knew that there were attempts to work with the Mayor. And the Mayor's gone this week, through the end of this week.

The reason this is coming up so quickly and during this time is because there is a deadline in early May that the, the first briefing has to be made to the Supreme Court. So, if we want to continue on that path and have these attorneys continue to spend the money without our consent, then that's, that's where the previous Councils have led this. There's a Supreme Court case going forward.

My personal opinion, and it was going to take a vote of the Council, would be to withdraw the appeal and settle this case so we can actually promulgate the actual solution and not be part of. I know that the, the, the cities and counties across the United States are watching this. I was at a, a breakout session at the National Association of County Organizations. There was an update on Supreme Court cases, and ours is front and center. So, all the counties across the United States are watching this, and if this does go to appeal and pass, and I personally believe it will looking at the makeup of this current Supreme Court, then this gives the authority to other counties to not consider groundwater as a conduit for polluting the ocean.

And I personally think that Maui County should not be in that position of leading the charge to make that happen. But, of course, it would be up to the body. We're not deciding whether or not we're going to do the withdrawal today or, or approve the settlement. I guess my, my question to Ms. Lutey would be, at what point does that settlement, if you're in discussion, come back to this Council as a new Council?

ACTING CORPORATION COUNSEL LUTEY: Thank you, Chair. We have not received a demand, so we have nothing to present to this Council other than if we went into Committee to show you the current settlement as it exists from 2015.

CHAIR KING: And, and could the Committee decide to accept that settlement in Committee?

ACTING CORPORATION COUNSEL LUTEY: That settlement was already approved by the Council.

CHAIR KING: By the, in this Council?

ACTING CORPORATION COUNSEL LUTEY: So, we have an existing settlement agreement right now.

CHAIR KING: Okay, so, okay, but then there was an appeal to go forward.

ACTING CORPORATION COUNSEL LUTEY: Right.

CHAIR KING: And, who's, I mean the Council, the Council accepted the settlement and then the Council decided to appeal it.

ACTING CORPORATION COUNSEL LUTEY: The, the reason the appeal was done was because both sides wanted this matter decided at the Supreme Court. The odds of us getting there are slim.

CHAIR KING: Okay, I, I, I think if we are going to say that the other side wanted us to go to the Supreme Court, we should bring them down and ask them, ask them for their opinion.

ACTING CORPORATION COUNSEL LUTEY: Well, we're outside of the agenda, currently, for Sunshine Law purposes. If you want to agenda it for that, I think we could do an informational session maybe.

CHAIR KING: Right.

ACTING CORPORATION COUNSEL LUTEY: Or go to Committee.

CHAIR KING: Okay. Anyway, I've just, I've seen a lot of reaction to that statement.

ACTING CORPORATION COUNSEL LUTEY: So did I.

CHAIR KING: So, I think it, it's wiser not to put words in, in the other side's mouth.

COUNCILMEMBER KAMA: Chair.

CHAIR KING: Councilmember Kama.

COUNCILMEMBER KAMA: Thank you. So, in listening to the conversation, it seems that the settlement has been approved and, and those who are, who may have appealed it prior to are now, and you're saying has not come back for another settlement, or they haven't come back and had more discussions. But, they're here and they're waiting. So, maybe they're just waiting for us to do our jobs before they decide to super sue us.

That's, that's my whole sense of this; that if they're waiting and they're urging and coming here and telling us we just want you folks to do the right thing; clean it up. You guys take it back, do the authority, and let's all work together to making our reefs clean for our future generations. So, that's my whole sense in listening to all of this. They're, they're here and this is what they're telling us. They're the guys who are suing us, but they're saying, you know what, this is, this, you've already settled it so can we just take care of this issue right that we have before us.

So, we could do the waiver, bring it up, bring our, the first step of what we have to do and then complete it. And do, if we gotta go into more information then I'm okay with that. but, I think we just need to move this. We need, every day we sit here, and we just talk, talk, talk. Our oceans are decaying. So, we're either going to put some pep in our step, put our foot to the metal, fish or cut bait, sink or swim; but we gotta do something and not do nothing. That's my sense. Thank you, Chair.

CHAIR KING: Thank you, Councilmember Kama. Okay, let's see, any, any other comments?

Councilmember Sinenci, do you, did you have a comment on this? You hadn't, probably the only one who hasn't spoken yet.

COUNCILMEMBER SINENCI: Yea, so the question was, so today's vote is not, we're not determining anything about the case? We're just asking that the, like, like, Ms. Lutey said, that the Council take control of the settlement section. Is that correct?

CHAIR KING: Correct.

COUNCILMEMBER SINENCI: Okay. Thank you.

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I first have a question that I'm not sure who would be able to answer, so I'll pose it and then whoever can answer my question I'd appreciate it. My first question is, how, is special counsel allowed to use funding that the previous Council allocated specifically for litigation in the Ninth Circuit Appeal for drafting briefs for the Supreme Court? Because that is not what that funding was allocated for. Anyone? Can someone answer my question?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL LUTEY: Chair, Richelle Thomson, from my office, is present. She was involved in this case almost from the get-go. So, with your consent.

COUNCILMEMBER HOKAMA: Point of order. We are not, the case is not on the agenda.

ACTING CORPORATION COUNSEL LUTEY: That's true.

COUNCILMEMBER HOKAMA: So, why are you guys talking about the case when it's not agendized? We are violating State law.

ACTING CORPORATION COUNSEL LUTEY: Sunshine Law.

COUNCILMEMBER HOKAMA: So, let's just move on the motion and vote.

CHAIR KING: Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: It relates to the time sensitivity of this issue. Because if they're allowed to use funding, which is illegal in, in, in my point of view, that, that shouldn't be used. That money was specifically for the Ninth Circuit Appeal, not for Supreme Court. And so, the time sensitivity that we're discussing right now is, because, the urgency of it is because they're going to use that funding to go and draft briefs for the Supreme Court. And that's why we, we are trying to take action today, because that, that should not have be allowed at all. And--

CHAIR KING: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: --I'm wondering what our recourse is if that funding is used. That shouldn't be, it shouldn't be used.

CHAIR KING: Okay. We'll ask for an answer to that. It's relevant to the actual urgency of the resolution on the floor.

Ms. Thomson. Did you get the whole question?

COUNCILMEMBER HOKAMA: Chair, I'm going to object for the record, that I believe we are in violation of State law currently, and that all action regarding this discussion should be notify with OIP.

CHAIR KING: So noted.

DEPUTY CORPORATION COUNSEL RICHELLE THOMSON: Thank you, Chair. Thank you, Councilmember Rawlins-Fernandez for the question. As far as the last funding increase request, I believe that it was clear that that involved the U.S. Supreme Court action.

CHAIR KING: Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: So, you're saying that the last increase was specifically for Hawaii Supreme Court? Because, that, that's not my understanding.

CHAIR KING: Ms. Thomson.

DEPUTY CORPORATION COUNSEL THOMSON: I believe that if you give us a little bit of time, staff can pull up that last funding resolution. But it did mention the U.S. Supreme Court Case number.

VICE-CHAIR RAWLINS-FERNANDEZ: Because I remember Chair King in that Council meeting saying that this is the last time she would be voting for an increase of funding, and that was only for the Ninth Circuit Appeal.

CHAIR KING: Okay. I think what we'll do is we'll take our morning break, and we'll give Corp. Counsel a chance to do their research on that. Because I do think it's relevant as far the urgency of this, today's resolution has come up several times. Many, many members on both sides of this issue have mentioned the case as relevant to the resolution for the process. So, we're going to take our morning break and recess until 11:00 and then we'll, we'll reconvene, okay.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:50 A.M., AND WAS RECONVENED AT 11:05 A.M., WITH ALL MEMBERS PRESENT, EXCEPT COUNCILMEMBER HOKAMA, EXCUSED.)

CHAIR KING: Okay, will the Council meeting of April 23, come back to order. It is 11:05, and we're on County Communication 19-178, which is a proposed resolution, entitled "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND, AT AL. V. COUNTY OF MAUI, RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL".

(Councilmember Hokama returned to the meeting at 11:06 a.m.)

CHAIR KING: We have a motion on the floor to waive Committee requirements. And we have some new information that was gathered, and there's two pieces of information. One is that the, the action that was taken in November 2018 on, was on a resolution that did authorize increase in funding related to the employment of special counsel in Hawaii Wildlife Fund, et al. v. County of Maui, Docket No. 18-260 Supreme Court of the United States. So, that one was authorizing the United States.

I also have new information that there was, and I'm going to ask the attorney for Earthjustice to join us again as a resource, information that there was a new settlement offered March 15 of this year with the Mayor and with Corp. Counsel that was not brought to the Council. So we may have a case just exactly like that case in Oahu that caused this ordinance. And I would like to ask Mr. Henkin to come down and share that with us and then we'll ask Corp. Counsel to respond. And this is, this is pertinent to the original reason that this ordinance was created.

SUPERVISING LEGISLATIVE ATTORNEY: Chair, if I may. Staff would just like to call the body's attention to the Council Rule on resource persons that you're invoking. Rule 18A says a presiding officer may allow individuals who have special expertise in the subject matter to participate in meetings as resource persons for the purpose of providing information to facilitate the deliberative process. The provi, excuse me, the presiding officer shall state the resource person's special expertise and state whether the resource person is a paid lobbyist.

CHAIR KING: Okay. So, the, the resource person, special expertise is the attorney for Earthjustice et al. in the case against Maui County. And please state, Mr. Henkin, if you are a paid lobbyist.

MR. DAVID HENKIN: Well, I am paid by Earthjustice. And that includes, I get a salary, and so I have registered, I've submitted the lobbying form because I think within the County's Rules, technically this is lobbying. Although, that's not really how I'd conceptualize it, but, sharing information. But, I, I have registered as a lobbyist with the County.



CHAIR KING: Okay. Thank you. Proceed.

MR. HENKIN: I'd like, I'd like to clarify. We did not have an opportunity to make a settlement offer, an additional one. So as has previously been noted, in 2015, the District Court for the trial court in Honolulu ruled in our favor that the County was violating the Clean Water Act. And that resolved the liability phase of the case. You normally then move onto what's called the penalty phase of the case where the court would decide what type of a civil fine to impose on the County.

And as mentioned in my testimony, we have no interest in the County paying any fines. We want the County to invest in, in fixing the problem. So, at that time in 2015, we approached the County's lawyers and said we don't really want the judge to, to set a fine. We want to agree on a set of environ, they're called supplemental environmental projects, or SEP's, that the County will invest in the County to address the, the problem with the injection wells.

We were told by the County's lawyers at that time, we intend to appeal to the Ninth Circuit and onto the Supreme Court, this ruling against us. And so, we can't negotiate a settlement on the penalty. I responded that the District Court is going to have to reach the penalty phase before you can move on to the Ninth Circuit, and ultimately, potentially the Supreme Court. And I don't think it's in anyone's interest for you to pay money to the U.S. Treasury, so what if we reach an unusual settlement? And I'll grant you its unusual settlement, but this case has been pretty unusual.

The settlement would provide that the County would reserve its right to appeal. So, a little different than what Ms. Lutey said. We didn't want them to appeal, in fact, we wanted, we didn't even want to bring the case in the first place. We wanted them to focus on fixing the problem. But we said, you have a right to appeal, we can't keep you from appealing. So, the settlement is unusual. It preserves the County's right to appeal, but it says if the County ever stops appealing, or there's ultimately a final judgment that says you're violating the Clean Water Act, they will invest \$2.5 million in projects instead of paying potentially hundreds of millions of dollars to the U.S. Treasury; \$2.5 million as a down payment on fixing this problem and identify projects to reuse the wastewater. That is the settlement that's been referred to. It was entered by the District Court. It's in agreement of the parties. I have copies of it here if anyone wants to look at it. That is the deal that we all agreed on.

Last month, we reached out to the Mayor, and Isaac Moriwake, who's our managing attorney, who's in the back of the room, met with the Mayor, and Richelle Thomson was in that meeting, and talked about whether it really, you know, now that there's a new Administration and a new Council, whether the County wants to persist in pursuing this appeal that in our view is not in the County's best interest. We represent Maui

residents. And in our view, not only it's not the County's best interest, but runs the risk of causing great harm to environmental protection here in Hawaii and elsewhere in the nation.

The Mayor instructed Ms. Thomson to follow up with me to talk about how we could do that, how we could resolve this and have the case dropped. I provided to Chair's assistant, the email exchange that I had with Ms. Thomson. I sent an email on March 12, and I said, "Richelle, I'm following up on yesterday's meeting between the Mayor and Isaac Moriwake, our new managing attorney. Isaac suggested I reach out to you to find a time to discuss possible settlement of the Lahaina Wastewater Reclamation Facility case. Please let me know your availability to talk next week."

Richelle got back to me on the 15th, apologizing for the delay and said, "as far as the Lahaina Injection Well case", well, she indicates that there was a misunderstanding. The Mayor actually wanted us to discuss possible settlement in a case involving street lights and seabirds. She says, "as far as the Lahaina Injection Well case, the purpose of our existing settlement – in other words the 2015 – was expressly to facilitate appeal to the Ninth Circuit and onto the Supreme Court if necessary. The Ninth Circuit's ruling, if allowed to stand will harm the County and its residents. The Mayor understands this, and I believe made that clear in our meeting."

She said that she was cognoscente of the obligation to identify projects valued at 2.5 million and we can discuss that, but not going to talk about settlement otherwise of this case. So, we have not made another settlement offer. We reached out to the Mayor, the Corporation Counsel, and were told they don't want to talk.

CHAIR KING: Okay, thank you for that. Any--

DEPUTY CORPORATION COUNSEL THOMSON: Chair, if I, if I might.

CHAIR KING: Okay.

DEPUTY CORPORATION COUNSEL THOMSON: Since we're talking about--

CHAIR KING: Corp. Counsel.

DEPUTY CORPORATION COUNSEL THOMSON: --communications in which I was actually involved. May I respond?

CHAIR KING: Please.

DEPUTY CORPORATION COUNSEL THOMSON: Mr. Henkin is absolutely mischaracterizing that communication. They are not tied; their hands are not tied by anything. If they want to propose some new settlement agreement or some modification of the existing settlement agreement, they are the opposing counsel, they are representing their party's interests, okay. We are representing the County, as a whole, their interests. And that's where our advice comes from. If they have a settlement proposal to put on a table, they may put it on the table. Nothing is preventing them from doing that. We have not received anything to date.

CHAIR KING: Okay. Ms., Ms. Thomson, so for the record, you did, did you discourage the, the, the, Mr. Henkin from pursuing a settlement?

DEPUTY CORPORATION COUNSEL THOMSON: Absolutely not. That's not my job. And I think that he's an experienced attorney who knows that if his parties wish him to propose a settlement agreement, that he has the obligation to do so.

CHAIR KING: Mr. Henkin.

MR. HENKIN: Well, I think the email exchange speaks for itself, Madam Chair. We do have an existing settlement. We believe that it is an equitable and fair settlement. And it says that if the County ever stops litigating this case, they're going to invest in the County.

Mr. Moriwake met with the Mayor. The Mayor indicated he might want to address some other issues and said that I was to follow up with Ms. Thomson. And when I did, she said we already have the settlement, nothing more to talk about. I am an experienced counsel and in my experience that means they don't want to talk. And so I, I think the email exchange speaks for itself.

CHAIR KING: Okay, thank you, Mr. Henkin.

Any other questions for either Corp. Counsel or, oh, Ms. Thomson, you have another response?

DEPUTY CORPORATION COUNSEL THOMSON: One of the things that Mr. Henkin is not bringing up as far as the existing settlement agreement is that if the County withdraws its appeal to the U.S. Supreme Court or if we do not prevail at the U.S. Supreme Court, that we're immediately liable to pay their attorney's fees. So, these are not insubstantial, and I think that, although he's characterizing the settlement agreement as, you know, a down payment on things that we're going to do already toward water reuse on West Maui. You know, for a full disclosure, I think he needs to tell you that

we withdraw the settlement agreement, we withdraw the appeal, the current settlement agreement is in place, and their attorney's fees are immediately due and payable. So, he needs to share that with you.

CHAIR KING: Okay. Thank you.

MR. HENKIN: I'd, I'd--

CHAIR KING: Mr. Henkin.

MR. HENKIN: I'd be happy to if I may. The Clean Water Act provides that if citizens like the people we represent hire a lawyer, go to court, and prove that someone's violating the Clean Water Act, then the defendant, who's been found to have been damaging the public trust, pays the attorney's fees for the plaintiffs. That's something that's in, in the law, in many environmental laws.

We did enter into an agreement, having prevailed in the District Court and prevailed in the Court of Appeals, that the County would reimburse us for our client's attorney's fees; absolutely correct. I would note that the total bill is about \$1 million, so not insubstantial. I would also note it's less than a quarter of what your lawyers have charged you.

And if you add the \$2.5 million, well first of all, if you had litigated this to completion in the District Court and in the Court of Appeals, we didn't even want to go to court in the first place. So, there would have been zero attorney's fees. But even if you add them altogether, there's still a fraction of what your lawyers have charged you to bring this case that, in our view, was not in the interest of the people of Maui.

CHAIR KING: Okay, thank you.

Councilmember Lee, questions?

COUNCILMEMBER LEE: Could we have a response from Ms. Thomson?

CHAIR KING: Ms. Thomson.

FIRST DEPUTY CORPORATION COUNSEL EDWARD KUSHI, JR.: Madam Chair, if I may, or Member Lee, I'm going to cut her off shortly, because I believe, and I agree with Mr. Hokama, we're getting into the merits of the case.

If I may address the motion on the table, the item on the table, which is to pass this proposed resolution. And I, I urge the Committee to, to refer this to, to Mr. Molina's

Committee because I believe discussion needs to be had as to why the resolution incurred in the first place. In my mind, Mr. Raatz is correct, there's a purpose for that Maui County Code section, and it hinges on – I hate to say this – the lack of trust in our department. The Council, by this resolution, wants to control any and all offers of settlement. If it's a amended settlement, so be it. But any and all offers, that's fine but it still has to come to this body as a whole.

And I, I, part of the other section of the Maui County Code is that if it's not in the Council's purview, any and all settlements received by the Administration and is forwarded to our office, as lawyers, we're under the obligation by the rules of professional conduct to bring any and all offers of settlement before the body, this body. So, we're duty-bound as attorneys to bring offers of settlement, regardless whether the Council gets it or not. Now, I, I urge this body to look at the resolution for what it's worth. And if you want to pass it, that's fine with us, because we still have the opportunity to bring it before this body and make comments that is not addressing the merits of this case.

And my last comment is, I was in that meeting with the Mayor and Earthjustice's attorney, which is Mr. Moriwake. I, I don't know this guy, Henkin. I wasn't involved from the very beginning and I don't recall him sitting in on the meetings. And that's my last comment.

CHAIR KING: Okay. So, if there are no other comments or questions, are we ready to address the question?

Vice, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

COUNCILMEMBER HOKAMA: Point of order, Chair. We have a rule; maximum two times on a motion.

VICE-CHAIR RAWLINS-FERNANDEZ: My, I was interrupted.

CHAIR KING: I, I understand, but I, we've allowed other Councilmembers to speak more than twice and to ask many, many questions. So, at the--

COUNCILMEMBER HOKAMA: The point is, we still need to enforce our rules, Chair.

CHAIR KING: Well, it--

COUNCILMEMBER HOKAMA: Why the hell do we have rules?

CHAIR KING: Well--

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, my, I, I did have the floor and, and for my second and final. And we took a recess, so my time was interrupted by the recess. I agree that we should, you know, uphold our rules and I, I think that my opportunity to speak stands and would be following the rules, because my opportunity to speak was interrupted by the recess.

CHAIR KING: Okay, proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, I wanted to quickly go over the different scenarios of what would happen so that Members have an idea of how long this would take for us to take action. So, best case scenario is we pass this resolution today, and at the next full Council meeting on May 3, we would pass the second resolution. That second resolution cannot be drafted until this first resolution is passed. And so, we wouldn't get an opportunity to speak on the merits of this until that second resolution is drafted and brought to us.

Worst case scenario is we do not pass this today and it gets sent to Committee. It goes to GET on May 14, and then it would come to the full Council on June 7. And if we pass it at that point, then we would be allowed to draft the second reso. That second reso wouldn't come to us until the June 21 full Council meeting. And if then it gets referred to Committee, which I would understand it going to Committee at that point because it would be at that point that we would discuss the merits of the case. Then it would go to the GET Committee on July 2. And if we're able to come to some conclusion at that Committee meeting on July 2, then it would go to full Council on July 26. And if we're not able to come to some conclusion at the GET Committee on July 2, then we may not get to this until August or later.

A compromise would be to pass this reso today so that we can introduce the second reso on May 3. And it would be that reso, as I said, that we would discuss the merits of this case and go into exec, executive session so that Members can get more of their questions answered. And at that May 3 full Council meeting, if Members at that point wanted to send it to Committee, then it would go to Committee on May 14. And we can discuss it then.

So, I understand that getting granted certiorari by the Supreme Court is considered special. In this case, I, I, I wouldn't want to be considered special. This is not the kind of case that I would want to be associated with. I wasn't on the Council at the time that

this case was moving forward, so I didn't get an opportunity to vote no in the past. But, I'm on the Council now and I'm going to do what I can to stop this. As Member Paltin mentioned, and we all know, the Supreme Court right now is not a friendly to our aina. And we should stop the erosion of our laws that protect our environment.

If our sister counties are polluting their area, they should stop too. I don't want to be the County that protects them from continuing to pollute our, our earth. We have one earth. Again, like I said it's, it's time-sensitive and perhaps Members would be willing to come to a compromise and pass this first resolution today. And then when the second resolution comes up on May 3, then we send that resolution to Committee to fully vet and discuss and deliberate and go into executive session if necessary.

We are a different Council and I'm proud to be a part of this Council. I believe that this Council is more aloha aina conscience. And, as Member Paltin said, we need to continue to stop wasting time and wasting money. This body struggled when I brought forward a resolution to allocate \$30,000 for special counsel and here we are. And as I understand it, we've already spent \$4.2 million on this. And if we lose, then we're going to pay another million dollars for attorney's fees. And I looked it up, and Ms. Richelle was correct, the Council did approve funding for an additional \$500,000 to go to Supreme Court. So, I stand corrected. Mahalo.

So, Members, with that information, I hope and I, and I urge you, strongly urge you to pass this resolution today so that we can discuss the merits on the second resolution, because that's where that discussion really should take place. And that will come up on May 3 and then we can send it to Committee. Mahalo, Chair.

CHAIR KING: Mahalo, Vice-Chair Rawlins-Fernandez. I echo your thoughts. And I think sometimes we have to be bold and not afraid and step up and do what's right. This is a, this is, and, and we can amend the, when we get to, right now we're only on the Committee waiver, so we can amend the resolution when we, if we pass the, the motion to waive Committee requirements. We can amend the motion to indicate what you just said; that the, that if we pass this motion that the next step will go to Committee. But right now we're on the, the motion to waive the Committee requirements. And, do you, do you--

DEPUTY CORPORATION COUNSEL THOMSON: Chair, may I, may I offer something?

CHAIR KING: Ms. Thomson, do you have a comment on the waiver?

DEPUTY CORPORATION COUNSEL THOMSON: Yes.

CHAIR KING: Okay.

DEPUTY CORPORATION COUNSEL THOMSON: Thank you. For the, for this Council's consideration, our office has not had the opportunity to review the Supreme Court case that Mr. Raatz mentioned, and also the legislative history of 3.16, specifically, that, the resolution that's before you today. And I think that this--

CHAIR KING: Ms. Thomson, let me just stop you because this was signed, the resolution was signed off for form and legality by Corp. Counsel. So, that's what, that's what we need to put a resolution forward. Okay, that was done.

Alright, I'm going to call for the question and we'll figure out how we're going to go forward from here. The motion on the floor is to waive Committee requirement so that we can consider the resolution 19-178. All those in favor say "aye".

COUNCILMEMBER PALTIN: Aye.

CHAIR KING: Aye.

VICE-CHAIR RAWLINS-FERNANDEZ: Aye.

COUNCILMEMBER SINENCI: Aye.

CHAIR KING: Any opposed?

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER LEE: No.

COUNCILMEMBER SUGIMURA: No.

CHAIR KING: Okay, roll call, Mr. Clerk?

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: NO.

COUNTY CLERK: Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: AYE.



COUNTY CLERK: Councilmember Riki Hokama.  
COUNCILMEMBER HOKAMA: NO.  
COUNTY CLERK: Councilmember Alice Lee.  
COUNCILMEMBER LEE: NO.  
COUNTY CLERK: Councilmember Mike Molina.  
COUNCILMEMBER MOLINA: NO.  
COUNTY CLERK: Councilmember Shane Sinenci.  
COUNCILMEMBER SINENCI: AYE.  
COUNTY CLERK: Presiding Officer Pro Temp Tasha Kama.  
COUNCILMEMBER KAMA: AYE.  
COUNTY CLERK: Vice-Chair Keani Rawlins-Fernandez.  
VICE-CHAIR RAWLINS-FERNANDEZ: AYE.  
COUNTY CLERK: Chair Kelly T. King.  
CHAIR KING: AYE.

AYES: COUNCILMEMBERS KAMA, PALTIN, SINENCI,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

NOES: COUNCILMEMBERS HOKAMA, LEE, MOLINA,  
AND SUGIMURA.

COUNTY CLERK: Madam Chair, there's five "ayes", four "noes"; motion fails.

CHAIR KING: Okay. Alright, Mr., Mr. Clerk, we'll continue on with the agenda.

COUNTY CLERK: Madam Chair, if there's any further request for consideration from the Members for the referrals as read by the Clerk.

CHAIR KING: Councilmember Lee.

COUNCILMEMBER LEE: Move to send this item to Committee, the GET Committee.

CHAIR KING: It, it will go to Committee. The, the, the waiver did not pass so the referral stands.

COUNCILMEMBER LEE: Okay, thank you.

CHAIR KING: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair.

CHAIR KING: Ms. Rawlins-Fernandez.

**DISCUSSION AND ACTION RELATING TO  
COUNTY COMMUNICATION NO. 19-180**

VICE-CHAIR RAWLINS-FERNANDEZ: Consideration on 19, CC 19-180.

CHAIR KING: Make a motion.

VICE-CHAIR RAWLINS-FERNANDEZ:

I MOVE TO ADOPT THE PROPOSED RESOLUTION  
ATTACHED TO COUNTY COMMUNICATION 19-180, AND TO  
FILE COUNTY COMMUNICATION 19-180.

CHAIR KING: Is there a second?

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Councilmember, or Council Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Council Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. This resolution seeks an extension for the Hawaii State Legislature to May 31, 2019 deadline for the County to establish a

surcharge on the General Excise Tax. The extension is needed to enable the County to act. Because of the eminent deadline, action on the floor is needed today. I urge the support of my colleagues in adopting this resolution seeking additional time for the County to pursue this option. Mahalo, Chair.

CHAIR KING: Okay, thank you.

Mr. Raatz, do we need to get a Committee waiver on this one?

SUPERVISING LEGISLATIVE ATTORNEY: Thank you, Chair. The, the rules say for the resolutions having the force and effect of law, that Committee waiver is required before taking action. Our office's advice has been if it's a resolution merely urging someone to do something as opposed to requiring action, then it doesn't have the force and effect of law and waiver isn't required.

CHAIR KING: Okay. Okay, thank you. Any other comments or questions on this resolution?

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. Just be very upfront with my colleagues. I have lobbied to not, to kill the legislation to extend the deadline. Our position has been, in the past and my position currently, that if the State would give us our fair share of TAT that we generate, we wouldn't need this consideration.

Second, the State already has the authority, if they wish, to enact a law that would give Maui County a half percent of General Excise Tax that is within their purview and current authority. So, I've always asked them, why haven't you passed it from your side as State Legislature if you believe this is the right thing to do? I don't feel it's appropriate for the County to pass for the State an excise tax increase to our residents when they're unwilling to do it within their own authority. I find it quite interesting their technique on how to stop providing counties our fair share of revenues that we have generated through the current taxation system.

And so, I've lobbied the, both House and Senate leadership that this is not something that I would like for Maui to have. And if they want it, they can do it. Thank you.

CHAIR KING: Thank you, Mr. Hokama. And you've lobbied on, in your, behalf of yourself, not the County. Okay.

Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to add that in the meanwhile, our residents of Lahaina are faced with a very dangerous situation at Keawe Street, where the bypass currently ends, and the northern terminus. It's near impossible to turn left out of Island Grocery Depot, Walgreens, Foodland Farms. There's been many accidents already. There's been people hit.

And sometimes, the reason why we are given these opportunities is to make the quality of life better for our people. The North-South Collector Road, the southern terminus of the bypass to the Pali is going to be under water soon. The Paia bypass, these are all things that affect the quality of life of our residents and visitors.

And I think that to not be able to discuss this is a grave disservice to the people of Maui County. The opportunity presented itself. If we decide yes or no, we should at least have the opportunity to discuss it as a body. So, I, I would support it.

CHAIR KING: Thank you, Councilmember Paltin.

Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I'm a little, you know, unsure about this one. Mainly because I'm hoping that somebody's going to be proposing that we pass this General Excise Tax, otherwise, if we ask for an extension and then nobody brings it up, I mean that makes us look pretty bad. I'm not a big fan of, you know, of establishing this General Excise Tax. But, I'm sure would like to hear, you know, a full discussion on it. I mean, I might change my mind. So, I mean does, is anybody going to be bringing this up?

CHAIR KING: Alright. Councilmember Lee, this, the, the deadline has already passed so if they don't extend the deadline then we have no chance to discuss it. And from my talks with State Legislators, they want to see us pass this resolution as a good show of faith that we will bring it up in Committee if they, if they extend it. So, so they're sort of waiting to, waiting for us to urge them to extend the deadline to making, to be an indication that we actually will bring it up for discussion in our Council. Otherwise they, you know, there's no point.

We're the only County that has not passed this half percent. All the other three counties have passed it. So, this could also affect the Big Island if they decide, because they, when they passed theirs, they passed it only for two years. So, this extension could affect them, they could extend the deadline of their GET which is what their Mayor wants to do now. But, and I would just say if we don't pass this, we're basically showing the State Legislature that we don't want an opportunity to discuss this half percent.

COUNCILMEMBER LEE: I understand. I will support it.

CHAIR KING: Thank you. Let's see, who else.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: So, it's just a question. So, basically, the, the Legislature has an item in, in that basically says to extend the deadline to file for this till December of this year, is that correct?

CHAIR KING: Correct.

COUNCILMEMBER SUGIMURA: And, that we could have passed something with this new Council from January till March 31, because that's what the law currently says which got extended. So, I wonder why we didn't and take it up in Committee?

CHAIR KING: Well, there, mostly because of time, the time constraints of being a new Council, getting, you know, our feet underneath us, preparing for budget. This, we knew we were going to be in budget when the deadline was approaching and so that's why there's been a lobby on the other side of Mr. Hokama asking for this extension. And this is actually something that, and to his point, if the Legislators want us to be able to pass the half percent and then, but the, the, as you recall, the Metropolitan Planning Organization last year was unanimous in its support to bring this to the Council. It did not get heard in the last term.

COUNCILMEMBER SUGIMURA: And I think it was sitting in, in a Committee that got transferred forward. So, you're saying we didn't have enough time to take it up?

CHAIR KING: It just was, it was Budget Committee and the, it's the Chair's purview whether to bring it up, so it didn't get brought up.

COUNCILMEMBER SUGIMURA: Have we had an opportunity to speak to the community about this, about this additional tax?

CHAIR KING: Well, we will if we, if it gets extended, we will have an opportunity to speak to the community when we put it on the agenda. Right now, there's nothing to talk about because if it, if it doesn't get extended there's no possibility of passing it anyway, because the deadline was, has already passed.

COUNCILMEMBER SUGIMURA: Oh, so the original item that sat in the Budget Committee, it, it terminated or, or was to only March 31? So, that's what we're trying to extend?

CHAIR KING: That's, well, we're just urging the Legislature to extend it. And this is, this actually is coming from the Mayor as well.

COUNCILMEMBER SUGIMURA: So, I have a, a general philosophy, I mean, about GET tax of this nature which is a regressive tax. And--

CHAIR KING: Well, I think that, yea, I mean, you know, your, I guess you can go into your, your points, but right now we're just like passing a resolution asking them to extend the deadline to let us consider it.

COUNCILMEMBER SUGIMURA: So, the, the, basically the Legislature has an item that, is it dead?

CHAIR KING: No.

COUNCILMEMBER SUGIMURA: Or is it, it's alive? So, why, what is the urgency for this then if it's alive?

CHAIR KING: Did you hear what I just shared with Councilmember Lee; that there are Legislators that want to hear support from the Council before, from the Maui County Council, specifically, before they pass this because there's no point in passing it if we're not supportive of it. We're the only County left to, to pass a, the half percent GET.

COUNCILMEMBER SUGIMURA: Thank you. I, I did hear you say that.

CHAIR KING: Yea. Councilmember Kama and then Councilmember Molina.

COUNCILMEMBER KAMA: Thank you, Chair. So, I'm just reading the, the resolution. And it says that:

"WHEREAS, the County now desires to establish a surcharge on general excise tax; and

WHEREAS, in order for the County to establish said surcharge it needs an extension of the deadline."

So, if you say yes to the extension that's what we're saying we're going to do. Is that correct?

CHAIR KING: Well, we, this is coming from the Mayor. We are, we're ratifying his resolution. But, it won't happen if it's not, when it comes to Committee it has to be voted on through Committee, then it has to go to the full Council.

COUNCILMEMBER KAMA: I can support this. Thank you.

CHAIR KING: Thank you.

Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Happy to take action on this. One less thing for my already busy Committee, so therefore I call for the question.

CHAIR KING: Okay. Councilmember Hokama, followed by Councilmember Paltin.

COUNCILMEMBER HOKAMA: Thank you, Chair, for my second and final time. I can appreciate my fellow colleagues' comments and positions. I would tell you though, I find it interesting that I've already visited Big Island, and I already have talked with Mr. Kaneshiro, the Chair of Kauai Council who's looking at implementing what we have done for the last 20 years regarding fiscal discipline and fiscal approach which I've worked hard to establish. Because they have found that it isn't a position that they enjoy having no options. I've worked hard to allow this County to have choices and options, and not be dependent upon the heavy handedness of the State government, okay.

And so, I believe that this is part of our independence, our home rule efforts to stay within our own control. And that if we get again our fair share, and that is why I had hoped for a constitutional convention to readjust governance and hold the Legislature accountable since they won't even listen to their own tax commission recommendations, that I still feel that we should not fall into this, what I call it a narrow corner whereby the State now has another reason not to provide adequate required funding for mandates that they pass along to this County. Thank you.

CHAIR KING: Thank you, Mr. Hokama.

Any other comments or questions? Okay, I will just close by saying I don't see this as heavy handedness. I see this as choices. It's another choice that we have going forward. And I appreciate Councilmember Molina being willing to put it on the agenda for further discussion.

And with that, I will call for the question. All those in favor of passing the resolution before you, say "aye".

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, VICE-CHAIR RAWLINS-  
FERNANDEZ, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: COUNCILMEMBERS HOKAMA AND SUGIMURA.

CHAIR KING: Okay, measure passes seven "ayes", two "noes"; Councilmember Hokama,  
Councilmember Sugimura. Thank you, Council.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 19-78.

Madam Chair, if we can just get approval of the referrals, the remaining referrals as  
read by the Clerk.

CHAIR KING: Oh, I'm sorry. Okay, all other referrals, no objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay.

COUNCILMEMBER KAMA: Chair. I'm sorry.

CHAIR KING: Councilmember Kama.

COUNCILMEMBER KAMA: Did I miss 19-179?

COUNCILMEMBER SUGIMURA: Yes.

CHAIR KING: Uh, 17--

COUNCILMEMBER KAMA: Oh, okay. Okay.

CHAIR KING: 179 was referred.

COUNCILMEMBER KAMA: Okay, thank you.



CHAIR KING: And I think you have a, you have a poll out for your committee meeting.

Okay, Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with committee reports.

### COMMITTEE REPORTS

COMMITTEE REPORT  
NO. 19-46 - GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE:

Recommending the following:

1. That Resolution 19-79, entitled "APPROVING THE MAYOR'S APPOINTMENT OF LORI ANN TSUHAKO FOR DIRECTOR OF HOUSING AND HUMAN CONCERNS," be ADOPTED; and
2. That the proposed resolution, entitled "DISAPPROVING THE MAYOR'S APPOINTMENT OF LORI ANN TSUHAKO FOR DIRECTOR OF HOUSING AND HUMAN CONCERNS," be FILED.

CHAIR KING: Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

MOVE TO ADOPT COMMITTEE REPORT NO. 19-46.

COUNCILMEMBER SINENCI:

SECOND.

CHAIR KING: Okay, motion by Councilmember Molina, seconded by Councilmember Sinenci.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Your GET Committee met on April 4, and vetted out the Mayor's appointment of Ms. Lori Ann Tzuhako as the Director of the Department of Housing and Human Concerns and approved her

unanimously 9-0. I want to thank Ms. Tshako for making the effort to be our leader of the that particular department. Thank you.

CHAIR KING: Okay, thank you, Mr. Molina.

Any other comments or questions? If not, I will call for the question. All those in favor of approving the Mayor's appointment of Lori Ann Tshako for Director of Housing and Human Concerns say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Measure passes unanimously.

Welcome and congratulations, Ms. Tshako. Thank you for your patience.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 19-79.

COMMITTEE REPORT

NO. 19-47 - GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE:

Recommending that Resolution 19-80, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL TO ADVISE AND REPRESENT THE COUNCIL ON THE MAYOR'S APPOINTMENT AS 'INTERIM' ADMINISTRATIVE HEADS THE SAME INDIVIDUALS DISAPPROVED BY THE COUNCIL," be ADOPTED.

CHAIR KING: Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair.

MOVE TO ADOPT COMMITTEE REPORT NO. 19-47.

VICE-CHAIR RAWLINS-FERNANDEZ:

SECOND.

CHAIR KING: Okay, moved by Councilmember Molina, seconded by Vice-Chair Rawlins-Fernandez.

Mr. Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Your GET Committee met on April 4, 2019 to discuss authorizing the employment of special counsel to advise and represent the Council on the Mayor's appointment as "interim" administrative heads the same individuals disapproved by the Council. Your Committee voted 6 to 3 to approve the measure. Thank you.

CHAIR KING: Okay, thank you, Mr. Molina.

Vice-Chair Rawlins-Fernandez, would you like to speak to the motion?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'd like to first thank the Committee for, and Committee Chair for taking quick action in scheduling this resolution. And, thank you to the body for supporting it. If the body continues to support the hiring of the outside legal counsel, the appropriate course of action would be filing a declaratory judgment action to have a court definitively resolve the issue.

Declaratory relief refers to a judgment of a court, which determines the rights of parties without ordering anything be done or awarding damages. By seeking a declaratory judgment, the party making the request is seeking an official declaratory declaration of status of a matter in controversy. In other words, declaratory actions resolve disputes and clarify legal rights.

I do not believe the resolution attached to the committee report requires an amendment because of the flexibility of language, and determined the options afforded to special counsel and that they should report to the Committee before action is taken. The resolution states that the total compensation for the employment of special counsel shall not exceed 30,000. Since there was some concern that we might exceed that amount, and at least one Member stated that they would not support any additional monies more than 30,000, I have spoken with an attorney and inquired about a true figure and cost for an action such as this and have been informed that a realistic amount would be approximately 10 to 15,000. Since the facts of the case are not in dispute, there will be no need for discovery or a hearing. We are only requesting a determination.

Although a few Councilmembers have been on the record stating that they feel the Charter is unclear and should be amended, I would argue that the Charter is clear and should be defended. I believe the prudent thing to do would be to allow the courts to decide if the Charter is clear and if it should be amended in the next election cycle.

I respectfully request that my colleagues vote in favor to approve legal counsel with the intent of requesting the filing for a declaratory judgment action and have the courts definitively resolve the issue. And to the extent it might be moot at this moment in time, it's clearly capable of repetition, by evading review since the turn around time is so short. Mahalo, Chair.

CHAIR KING: Okay, mahalo, Vice-Chair.

Any other comments or questions?

Discussion, Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I will stay with my "no" vote for all the reasons that my colleague gave; that I believe that a Charter amendment is warranted and that the matter is moot. So, we just have a difference of opinion. Thank you.

CHAIR KING: Okay, thank you.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. I'm going to stick with my original vote also. This morning, we did something which was I think important to this discussion, was that we now have an attorney who is our Director of Council Services. And that person has been promoted to a level of, like Corp. Counsel status, right, is what the discussion was this morning. And, I would love to take that 30,000 and give it to our existing legis, attorneys in our Corp. Counsel to have them do whatever is needed legally, because I think there, as from what I was told, that they are capable of doing that instead of hiring outside if, if it's that important to this body. But, I am going to stick to my original vote and, and vote against this measure. So, thank you.

CHAIR KING: Alright, thank you. Any other comments? If not, I will just say that I support this measure as I did in Committee. And one of the reasons that we, that this came up was because we did get opposing opinions from Corp. Counsel within the space of about a week or two. And so, we do need to get outside opinion and we need to have this settled by a judge. And I think it would be really advantageous for us to find out if, do we need a Charter amendment? If we don't, let's not do it. We have a lot of other

things we can put on as Charter amendments. And we know we have limited capacity to address this next ballot. So, I will stick with my original vote as well.

Councilmember Molina.

COUNCILMEMBER MOLINA: Yea, thank you very much, Madam Chair. And for the reasons you stated, you know, as the subject Committee Chair, we, we did the vetting of all, a lot of the directors, the Mayor's nominees so far. And the Council had confirmed two of the Mayor's nominees and since then, the two of them, two individuals have resigned for various reasons. And my support forward in Committee, although with some reservation, was based on the fact that we do this now, we get an answer a lot quicker than versus a Charter amendment, which I, I certainly respect that process.

But, realistically you look at the Charter amendment being voted on next November 2020, by the, depending on the outcome either way is, it's, any interpretations of the Charter whether it's changed or not, or voted on by the public, it won't happen until 2021. That's a little too long for me, and we may have along the way, another director to resign for whatever reason. Then this continuing debate between the majority of Members of this Council and the Administration will continue as it relates to the appointment of interim administrative heads being the same individuals that may have been rejected.

So, basically, I want to just do it as soon as possible, put some closure to this debate, the dark cloud of debate, I guess. And, and I was the one that Member Rawlins referred to as the 30,000 limits. And I'm glad to hear that someone will do it for less than that because if it does, if this measure does pass, whoever we hire, they may come back and tell us we need more than 30,000, I'm not going to support it.

So, that's my rationale for supporting this. And, I'm certainly respect my other colleagues who see it differently. But, these are the reasons why I think we just need to bring some closure to this and, and so therefore we can all move forward and hopefully whatever it, if there is a declaratory judgement made, that any attempts to appeal it can be just put aside; let's just move on forward.

And then if there is a, a need for a Charter amendment along the way, then so be it. But, at this point I just want to have this dark cloud dissipate from us. So, thank you, Madam Chair.

CHAIR KING: Thank you, Councilmember Molina.

Okay, we are going to go ahead and try a voice vote on this motion. All those in favor say "aye".

VICE-CHAIR RAWLINS-FERNANDEZ: Aye.

COUNCILMEMBER PALTIN: Aye.

CHAIR KING: All those opposed.

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER SUGIMURA: No.

COUNCILMEMBER LEE: No.

CHAIR KING: Okay, we'll do roll call.

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: NO.

COUNTY CLERK: Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: AYE.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: NO.

COUNTY CLERK: Councilmember Alice Lee.

COUNCILMEMBER LEE: NO.

COUNTY CLERK: Councilmember Mike Molina.

COUNCILMEMBER MOLINA: AYE.

COUNTY CLERK: Councilmember Shane Sinenci.

COUNCILMEMBER SINENCI: AYE.

COUNTY CLERK: Presiding Officer Pro Temp Tasha Kama.

COUNCILMEMBER KAMA: AYE.

COUNTY CLERK: Vice-Chair Keani Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: AYE.

COUNTY CLERK: Chair Kelly T. King.

CHAIR KING: AYE.

AYES: COUNCILMEMBERS KAMA, MOLINA, PALTIN,  
SINENCI, VICE-CHAIR RAWLINS-FERNANDEZ,  
AND CHAIR KING.

NOES: COUNCILMEMBERS HOKAMA, LEE, AND  
SUGIMURA.

COUNTY CLERK: Madam Chair, there's six "ayes", three "noes"; motion passes.

CHAIR KING: Okay, thank you, Council.

Mr. Clerk.

COUNTY CLERK: Madam, Chair, for the record, RESOLUTION 19-80.

Madam Chair, proceeding with ordinances, second and final reading.

## ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 23 (2019)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2019 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX A, PART I,  
GRANTS AND RESTRICTED USE REVENUES – SCHEDULE OF GRANTS AND  
RESTRICTED USE REVENUES BY DEPARTMENTS AND PROGRAMS,  
DEPARTMENT OF HOUSING AND HUMAN CONCERNS  
(HOME DELIVERED MEALS PROGRAM)

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. May I ask, may I request that you ask the Clerk to call up Bill No. 24 as well?

CHAIR KING: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: No objections.

Okay, Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 24 (2019)

A BILL FOR AN ORDINANCE AMENDING  
THE FISCAL YEAR 2019 BUDGET FOR THE COUNTY OF MAUI  
AS IT PERTAINS TO APPENDIX C – CAPITAL IMPROVEMENT PROJECTS,  
DEPARTMENT OF PUBLIC WORKS, COUNTYWIDE,  
COUNTYWIDE FEDERAL AID PROGRAM

CHAIR KING: Sorry, Vice-Chair Rawlins-Fernandez. I thought there was a third one, but, there's only two.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO PASS BILLS NO. 23 AND 24 ON SECOND AND  
FINAL READING.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Council Chair [sic] Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Bill No. 23 increases an appropriation entitled "Home Delivered Meals Program" by \$42,207 for a total grant amount of \$98,000.



And Bill No. 24 adds "Old Haleakala Highway Traffic Signal Update at Pukalani Street" and deletes "Papalaua Street and Wainee Street Traffic Signal Upgrades". And the Members unanimously supported both Bill No. 23 and 24 on first reading.

CHAIR KING: Okay, thank you. Any other further discussion? If not, call for the question; all those in favor say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: All those opposed?

NOES: NONE.

CHAIR KING: Motion passes unanimously for Bill No. 23 and 24.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 25 (2019)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO (1) ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE NATIONAL CEMETERY ADMINISTRATION OF THE U.S. DEPARTMENT OF VETERANS AFFAIRS, THE HAWAII STATE HISTORIC PRESERVATION OFFICER, THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, THE STATE OF HAWAII DEPARTMENT OF DEFENSE AND OFFICE OF VETERANS SERVICES REGARDING A GRANT TO SUPPORT IMPROVEMENTS TO THE MAUI VETERANS CEMETERY, MAKAWAO, MAUI, HAWAII; (2) ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII OFFICE OF VETERANS SERVICES REGARDING THE MAINTENANCE OF THE MAUI VETERANS CEMETERY; AND (3) APPROVE THE MAUI VETERANS CEMETERY GROUNDS MANAGEMENT AND MAINTENANCE PLAN – STANDARD OPERATING PROCEDURES ("PLAN") TO MAINTAIN THE CEMETERY AT "SHRINE STATUS"

CHAIR KING: Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair.

I MOVE TO PASS BILL 25 ON SECOND AND FINAL READING.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Councilmember Molina, seconded by Councilmember Lee.

Mr. Molina.

COUNCILMEMBER MOLINA: No further discussion, Madam Chair.

CHAIR KING: Okay, any questions or discussion? If not, all those in favor of the motion on the floor say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed?

NOES: NONE.

CHAIR KING: Motion passes unanimously.

Okay, Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with unfinished business.

## UNFINISHED BUSINESS

## COMMITTEE REPORTS

### COMMITTEE REPORT

NO. 19-41 - ENVIRONMENTAL, AGRICULTURAL, AND CULTURAL PRESERVATION COMMITTEE:

Recommending the following:

1. That Bill 26 (2019), entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH THE STATE OF HAWAII DEPARTMENT OF HEALTH RELATING TO CONTRACTS FOR GLASS RECYCLING AND E-WASTE," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 19-85, from the Acting Director of Environmental Management, be FILED.

COUNTY CLERK: And, Members, for the record, we currently have a motion pending by Councilmember Sinenci, and seconded by Presiding Officer Pro Temp Kama to adopt the recommendations in Committee Report 19-41.

CHAIR KING: Okay, Mr. Sinenci, did you want to address this?

COUNCILMEMBER SINENCI: Thank you, Chair. At the April 5 meeting, the Council postponed this item pending a response from the Acting Director of Environmental Management regarding questions raised by the Councilmembers at that meeting. Today, we have Acting Director Nakagawa and Acting Corp., Corporate Counsel Moana Lutey here in the chamber to address any additional questions that Members may have.

CHAIR KING: Okay, thank you, Councilmember Sinenci.

Can we ask Mr. Nakagawa to come down? And, Mr. Hokama, I think that question originally came from you.

COUNCILMEMBER HOKAMA: Chair, thank you very much. And to my colleague, Mr. Sinenci, I appreciate your patience with me on this. Chair, I brought up my

concerns during the last Council meeting whereby the Council agreed to defer to this meeting for a final decision.

I also have read the responses, and I thank you for sending the Department the questions in advance. And, I appreciate the Director responding in writing regarding the status of the funds, as well as giving us additional information of what he intended, or intends to use the money for, which is I understand a baler, right?

So, couple things I would just like to say. I am appreciative of the responses, Director. I understand it. As my point in the past has been one, \$200,000 is not going to break this County's bank. And, secondly, Chair, it's a continuing battle that I deal with, others may not. But the inconsistency of the State Attorney General's Office on application of indemnification times not required. Sometimes, yes, required. I would hope the Attorney General would inform his deputies that there should be only one way we look at these type of issues from a government to government agreement. And this is what it is; government to government agreement.

I find it interesting that for this we need to, as an agent using State funds on behalf of the State from their program, that we need to indemnify the State. And yet, we do it as an agent for the State also in protecting Makena State Park, and yet, we get, they take away our protection of our own employees. And therefore, they won't indemnify us. So, it's part of my continuing battle with the State government.

I am satisfied with the responses from the Department regarding the questions that were posed. And I have talked to Chairman Sinenci. But, I will say that if the Committee Report is detailed enough to give us the information up front, we would not have to had to defer this item, as well as give each Member, through their desire, their right to file a minority report attached to the committee report. That was something that was done in the past when Members disagreed. I'm not too sure if Ms. Lee remembers, but I remember minority reports, because they were able to read a detailed committee report and find areas of disagreement that is stated and therefore was allowed as an attachment to the overall item that was before Council for final decision.

So, saying that, Chair, with the other Members pleasure, I am happy to vote on this matter immediately.

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR KING: Thank you. And, Mr. Hokama, if you want, I mean, I, I recall, just to address your issue of the, the minority report, that the NACo Committees have a policy of, I

think it's one-third, if one-third of the members are voting alike, if they're in the minority then they're allowed to write a minority report. So, that could be something we look at if you would like to address that, you know, as a county communication, put it on the agenda.

COUNCILMEMBER HOKAMA: Well, again Chair, since it's not in the rules, we follow what's allowed to Robert's Rules of Order. I don't know what edition, but in that, it allows Member, a Member, if so desired within the proper timing to file such report attached to our own committee reports. Thank you.

CHAIR KING: Thank you. Okay, any other comments or questions or discussion on this item?

COUNCILMEMBER MOLINA: Madam Chair, question for the Department.

CHAIR KING: Member Molina.

COUNCILMEMBER MOLINA: Yes. If I could ask questions--

CHAIR KING: Sure.

COUNCILMEMBER MOLINA: --of Mr. Nakagawa. Mr. Nakagawa, you know, if we don't pass this today, and I know in your response you said that we would not, you would not have the funding, so you'd have to come and ask us for basically 160,000, am I correct, to provide this service?

ACTING DIRECTOR OF ENVIRONMENTAL MANAGEMENT ERIC NAKAGAWA: Yes, sir. Yes, that is correct.

COUNCILMEMBER MOLINA: Okay. Yea, because I'm looking at the tradeoff here. I mean, it's 275,000 if we agreed to this. We don't, you just come to see us for the funding. So, yea, I'm a little bit concerned about the, you know, us taking on the, you know, indemnifying the State taking on more responsibility in exchange for 275,000. If it was two million, maybe that's a different story. But, anyway, I'll just leave it at that. Thank you, Mr. Nakagawa. Thank you, Madam Chair.

CHAIR KING: Okay, thank you. And that's the second question on the response was, yea the, there's no guarantees. The likelihood of legal action is low but can never be guaranteed as zero. So, basically, it's our decision whether we, I think, 275 is worth taking potential liability.

Is, any other further questions or comments? If not, I'll call for the question; all those in favor of the proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO INTERGOVERNMENTAL AGREEMENTS WITH THE STATE OF HAWAII DEPARTMENT OF HEALTH RELATING TO CONTRACTS FOR GLASS RECYCLING E-WASTE", be passed on first reading and be ordered to print. And County Communication 19-85 be filed. And this is the motion that's on the floor made by Councilmember Sinenci, seconded by Presiding Officer Pro Temp Kama. All those in favor say "aye".

COUNCILMEMBER SINENCI: Aye.

COUNCILMEMBER LEE: Aye.

COUNCILMEMBER PALTIN: Aye.

COUNCILMEMBER KAMA: Aye.

CHAIR KING: Any opposed?

COUNCILMEMBER MOLINA: No.

COUNCILMEMBER HOKAMA: No.

CHAIR KING: It's, is that two? Go ahead with the roll call. I'm not sure who it was.

COUNTY CLERK: Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: AYE.

COUNTY CLERK: Councilmember Tamara Paltin.

COUNCILMEMBER PALTIN: AYE.

COUNTY CLERK: Councilmember Riki Hokama.

COUNCILMEMBER HOKAMA: NO.

COUNTY CLERK: Councilmember Alice Lee.

COUNCILMEMBER LEE: AYE.

COUNTY CLERK: Councilmember Mike Molina.  
COUNCILMEMBER MOLINA: NO.  
COUNTY CLERK: Councilmember Shane Sinenci.  
COUNCILMEMBER SINENCI: AYE.  
COUNTY CLERK: Presiding Officer Pro Temp Tasha Kama.  
COUNCILMEMBER KAMA: AYE.  
COUNTY CLERK: Vice-Chair Keani Rawlins-Fernandez.  
VICE-CHAIR RAWLINS-FERNANDEZ: NO.  
COUNTY CLERK: Chair Kelly T. King.  
CHAIR KING: AYE.

AYES: COUNCILMEMBERS KAMA, LEE, PALTIN,  
SINENCI, SUGIMURA, AND CHAIR KING.

NOES: COUNCILMEMBERS HOKAMA, MOLINA, AND  
VICE-CHAIR RAWLINS-FERNANDEZ.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Madam Chair, that's six "ayes", three "noes"; motion passes.

CHAIR KING: Okay, thank you.

COUNTY CLERK: Madam Chair, for the record, BILL 26 (2019).

And there's no further business before the Council.

CHAIR KING: Alright, Councilmembers, we did pretty good. We're, we can go onto the 1:30 budget meeting, which hopefully will not last till 11 o'clock tonight. Thank you so much for your work, Councilmembers. And it's been a long three hours after a very late night and so I won't, without further ado, I will adjourn.

ADJOURNMENT

The regular meeting of April 23, 2019 was adjourned by the Chair at 12:05 p.m.



---

JOSIAH K. NISHITA, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII



**County Clerk**

---

**From:** Hannah Bernard <bernardhannah@icloud.com>  
**Sent:** Monday, April 22, 2019 12:26 AM  
**To:** County Clerk  
**Subject:** Testimony for Tuesday, April 23  
**Attachments:** countyreso.pdf

P.O. Box 790637 • Paia • HI • 96779 • (808) 280-8124 • [wild@aloha.net](mailto:wild@aloha.net) • [www.wildhawaii.org](http://www.wildhawaii.org)

April 21, 2019

TO: Maui County Council Chair Kelly King  
Vice Chair Keani Rawlins-Fernandez  
Council Members

SUBJECT: Support for the proposed resolution: "REQUIRING SETTLEMENT OFFERS IN HAWAI'I WILDLIFE FUND. ET AL. V. COUNTY OF MAUI. RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL,"

Aloha Chair King, Vice Chair Rawlins-Fernandez, and members of the Council,

My name is Hannah Bernard and I am Executive Director and Co-Founder of Hawai'i Wildlife Fund, the lead plaintiff in *Hawai'i Wildlife Fund, et al., v. County of Maui* in the proceedings before the district court and on appeal to the Ninth Circuit Court of Appeals.

Thank you for the opportunity to submit my support for the proposed resolution intended to provide the Maui County Council with the authority to approve or disapprove settlement agreement offers in this case relating to the Clean Water Act.

Starting in 2007, community groups such as ours including Sierra Club, Surfrider, West Maui Preservation Association, the DIRE Coalition, the Maui Reef Fund, the 'Ohana Coalition, and others unified in our concern for the impact that injection wells in the Lahaina Wastewater Treatment Plant were having on the reef ecosystem in the receiving waters at Kahekili. When presented with a DLNR study that the injection wells were correlated with reef declines, we became alarmed and started hosting numerous community meetings. Six different scientific studies were initiated and as the results began to come in showing that indeed, the wastewater was moving from the injection wells out into the nearshore waters, our community groups began to seek help from the US Environmental Protection Agency (EPA), orchestrating two public meetings with the agency's Region 9 staff in 2008 and 2009, and subsequent meetings with two different Maui county mayors and members of the EPA. Looking back at the records and videos from these meetings, P.O. Box 790637 • Paia • HI • 96779 • (808) 280-8124 • [wild@aloha.net](mailto:wild@aloha.net) • [www.wildhawaii.org](http://www.wildhawaii.org)

the sense of urgency is palpable. Ten years ago, we talked about phasing out and ending injection of wastewater in five years. Former Mayors Tavares and Arakawa publicly endorsed this concept of ending wastewater injection. *Yet it still goes on.*

Only after three years of fruitless discussions and billions of gallons of wastewater continued to pour down the wells and seep into the reefs, four community groups including ours were forced to seek support from Earthjustice and file this suit as a last-ditch effort to save our reefs from slow death by pollution. Seven more years have rolled by and two court decisions have been made in our favor. More than ten billion gallons of wastewater have been pumped into the Lahaina injection wells since we started the process of public awareness-raising and activism which led to the lawsuit, and our settlement agreement is not enacted. Instead, the County of Maui pushes for a final appeal by taking this case to the US Supreme Court.

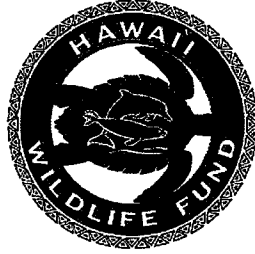
We have been more than patient, acting in good faith for more than a decade, motivated only by the desire to protect the health of our nearshore waters and reefs, not only for its intrinsic value, but for our own health and for future generations to enjoy. We urge this Council to support this Resolution and step up to protect Maui's waters as well as the Clean Water Act.

Mahalo for your consideration

Hannah Bernard

Executive Director Hawai'i Wildlife Fund

RECEIVED  
2019 APR 22 AM 9:12  
OFFICE OF THE  
COUNTY CLERK



April 21, 2019

TO: Maui County Council Chair Kelly King  
Vice Chair Keani Rawlins-Fernandez  
Council Members

SUBJECT: Support for the proposed resolution: "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND. ET AL. V. COUNTY OF MAUI. RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL,"

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We have been more than patient, acting in good faith for more than a decade, motivated only by the desire to protect the health of our nearshore waters and reefs, not only for its intrinsic value, but for our own health and for future generations to enjoy. We urge this Council to support this Resolution and step up to protect Maui's waters as well as the Clean Water Act.

Mahalo for your consideration



Hannah Bernard  
Executive Director  
Hawai'i Wildlife Fund



TESTIMONY REGARDING COMMUNICATION NO. 19-178  
 RESOLUTION "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND ET AL.  
V. COUNTY OF MAUI, RELATING TO THE CLEAN WATER ACT,  
 TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL"

OFFICE OF THE  
COUNTY CLERK

Regular Meeting of April 23, 2019  
9:00 a.m.

Good morning Chair King, Vice-Chair Rawlins-Fernandez, and members of the Council:

My name is David Lane Henkin, I am an attorney with Earthjustice, and I represented the plaintiffs in *Hawai'i Wildlife Fund, et al., v. County of Maui* in the proceedings before the federal district court and on appeal to the Ninth Circuit Court of Appeals. I continue to represent these Maui community groups—Hawai'i Wildlife Fund, Sierra Club-Maui Group, Surfrider Foundation and West Maui Preservation Association—in the current proceedings before the U.S. Supreme Court.

I am aware that members of the Council and other County leaders may have questions regarding the *Hawai'i Wildlife Fund* case and, in particular, the views of Earthjustice and the Maui community groups we represent. Particularly given that this Council has several newly elected members, I would like to take this opportunity to present this testimony, which hopefully provides you with information that may be helpful to your deliberations.

I. NEITHER EARTHJUSTICE NOR ANY OF THE PLAINTIFFS HAVE ANY INTEREST IN HAVING THE COUNTY PAY CIVIL PENALTIES; RATHER, WE JUST WANT THE COUNTY TO ADDRESS THE PROBLEM

In the past, some have expressed concerns that, if the County does not continue the litigation over the LWRF injection wells, the County will be subjected to hundreds of millions of dollars in fines for continued operation of its various wastewater treatment facilities. Please rest assured that neither Earthjustice nor any of our community clients has any interest in having the County subjected to civil penalties for its Clean Water Act violations. All of our clients are Maui community groups made up of Maui taxpayers. They do not want their tax dollars sent to the U.S. Treasury in the form of penalties. Rather, they want the County to invest their tax dollars to fund projects to put treated wastewater to beneficial reuse (and, in the process, to help alleviate the County's chronic shortages of fresh water), rather than injecting that wastewater, where it ends up on the reef, causing extreme environmental damage.

You don't have to take my word for it, because the record is very clear on this point. For four years before we headed to court, Earthjustice and our community clients tried to convince the County to take seriously the harm from the operation of the LWRF injection wells and to take

steps to increase reuse of the facility's treated wastewater. In November 2011, after more than three years without making any headway, we sent the County the required notice of intent to sue under the Clean Water Act. Even then, we tried to get the County to commit to addressing the problems posed by the LWRF injection wells without going to court, waiting nearly ten months (rather than the 60 days required by law) before filing suit.

After we got to court and the court rejected the County's motion to dismiss our case, we welcomed the County's suggestion that the parties attempt to find a mutually acceptable settlement that would avoid the need to spend time and money on litigation, agreeing to put our case on hold for nearly a year and a half while the parties negotiated. All of our settlement proposals focused on identifying feasible projects to reuse treated wastewater from the LWRF. It was only when the County refused to fund any of those projects that we returned to active litigation.

After the district court ruled in our favor, holding that the County was violating the Clean Water Act, we again focused on trying to convince the County to fund wastewater reuse projects, not on seeking penalties. The settlement agreement we reached in September 2015 reflects that focus, with the agreement calling for the County to invest at least \$2.5 million on wastewater reuse.

The September 2015 settlement does oblige the County to pay \$100,000 in the form of a monetary penalty, but that is only because the Clean Water Act settlement policy requires at least a nominal fine as part of any settlement, not because we wanted to impose a fine. Please bear in mind that the settlement resolved over eight years of nearly daily Clean Water Act violations at each of four injection wells. The penalty in the settlement represents a fine of only a few dollars per violation, which is truly nominal.

The bottom line is that all Earthjustice and our community clients want is for the County to invest in projects addressing the environmental problems posed by the County's injection wells, not pay fines to the U.S. Treasury.

## II. THE SETTLEMENT DOES NOT REQUIRE THE COUNTY TO PURSUE THIS APPEAL

In the past, some County leaders have suggested that the September 2015 settlement requires the County to pursue appeals. That is simply not the case. The settlement preserves the County's right to appeal the district court's rulings, but it does not *oblige* the County to do so. As mentioned, it has always been our desire that the parties focus on finding solutions to environmental harm caused by using the LWRF injection wells, not on endless litigation.

### III. THE HAWAII DEPARTMENT OF HEALTH IS NOT REFUSING TO PROCESS THE COUNTY'S APPLICATION FOR A CLEAN WATER ACT PERMIT

In the past, County representatives have claimed the Hawai'i Department of Health (HDOH) refuses to issue a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act for the LWRF injection wells or even to process the County's permit application. This is untrue.

While the County's Department of Environmental Management did submit an application for an NPDES permit, HDOH made clear more than three years ago that the County's application was so deficient, lacking the most basic information, that HDOH could not process it. *See* 2/25/16 HDOH Letter (attached). HDOH identified a long list of missing, "required information" and set a deadline of May 31, 2016 for the County to provide it. *Id.* at 4.

Rather than comply with HDOH's information requests in a timely fashion, the County's Department of Environmental Management has asked for extension after extension of the deadline. *See* 5/16/16 DEM Letter (attached); 10/27/16 DEM Letter (attached). Most recently, the Department of Environmental Management asked for yet another extension, this time until the end of 2018. *See* 11/29/17 DEM Letter (attached); 12/5/17 DEM Letter (attached). Based on the information available on the HDOH permitting website, it appears that the County has yet to provide all of the information required to complete its application.

The County cannot fault HDOH for failing to take action on the County's NPDES permit application when the County has failed to provide all of the information HDOH identified over three years ago as essential to review of the County's application.

### IV. THE COUNTY CAN SECURE CLEAN WATER ACT PERMIT COVERAGE FOR INJECTION WELL DISCHARGES

Another major theme of past Council discussions is that it is allegedly impossible to secure an NPDES permit for the LWRF injection wells because, supposedly, no one knows how to design a permit for discharges via groundwater to navigable waters like the Pacific Ocean off Kahekili Beach. That is also untrue. The Environmental Protection Agency has issued such permits, and has offered repeatedly to assist HDOH and the County to develop a legally adequate permit for the LWRF injections wells. *See, e.g.,* EPA, NPDES Permit #WA0023434 Fact Sheet (discussing permit for rapid infiltration basins at wastewater treatment plant that discharge to river via groundwater) (attached).

NPDES permits can be developed and issued to address discharges to navigable waters via hydrologically connected groundwater. The County is not, as many have alleged, in an impossible situation.

V. PEOPLE WHO IRRIGATE WITH RECYCLED WATER FROM THE LAHAINA FACILITY WILL NOT BE SUBJECTED TO CIVIL PENALTIES

Some County representatives have claimed that, unless the County fights to overturn the Ninth Circuit's decision, businesses and others who irrigate with recycled water from the LWRF will be subjected to civil penalties for Clean Water Act violations, creating obstacles to increasing reuse of treated wastewater. This concern lacks any basis.

When businesses and other consumers irrigate their landscaping and golf courses, they are careful to use only as much water as is needed to soak into the root zone so their grass and other plants will stay alive. After all, they are paying for the water they use. Thus, there is no reason to believe that consumers of the LWRF's recycled water would overwater their landscaping and golf courses so as turn their properties into bogs, with a stream of excess irrigation water flowing into the ocean through the ground. There is simply no parallel with the LWRF injection wells, which were intentionally designed to dispose of millions of gallons of treated wastewater each day into the ocean via groundwater.

In the unlikely event that a business accidentally overwatered, such that large quantities of excess recycled water reached the ocean via groundwater, that business would have ample opportunity to correct the problem. The Clean Water Act requires 60-days advance, written notice before any citizen suit can be brought. The purpose of that notice requirement is to give people the chance to come into compliance, without any prospect for being subjected to penalties. Again, consumers of LWRF recycled water would have every incentive not to overwater—not just to avoid any pollution, but to also not to waste money paying for that water.

Finally, it bears emphasizing that Earthjustice and our community clients are deeply committed to increasing the amount of LWRF wastewater that is recycled, rather than injected. *That has been the sole focus of our advocacy for more than a decade.* We simply have no possible interest in creating any disincentive for business and others to use treated wastewater to meet their irrigation needs.

VI. CONCLUSION

I hope this information is helpful to this Council in refocusing on the available and necessary solutions in this case, rather than on counterproductive litigation. Earthjustice and its community clients would welcome the opportunity to work with the Council to find solutions to the challenges posed by the County's injection wells. I can be reached via email at [dhenkin@earthjustice.org](mailto:dhenkin@earthjustice.org) or via telephone at 808-599-2436, ext. 6614.

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
EMD/CWB

02046PDCL.16

February 25, 2016

Mr. Stewart Stant  
Director  
Department of Environmental Management  
County of Maui  
2050 Main Street, Suite 1C  
Wailuku, Hawaii 96793

Attention: Mr. Eric Nakagawa  
Wastewater Division Chief

Dear Mr. Stant:

**Subject: Incomplete National Pollutant Discharge Elimination System (NPDES)  
Application for Lahaina Wastewater Reclamation Facility (WRF)  
Injection Wells 1-4  
Permit No. HI 0021848**

The Department of Health (DOH), Clean Water Branch (CWB) has the following comments on your NPDES application:

1. Signatory and Certification Statement to National Pollutant Discharge Elimination System (NPDES) Permit Applications and NPDES Form 2A, Part C. Certification

HAR 11-55-07(a)(3), identifies signatories to NPDES forms for a municipality, state, federal, or other public agency as a principal executive officer or ranking elected official. Please revise the application such that the certifying person meets the requirement of HAR 11-55-07(a)(3) (e.g., the Director).

2. NPDES Form 2A Application Overview, Part A.8

The Yes choice should be checked if the treatment works discharges effluent to waters of the U.S and NPDES permit coverage is being requested. If the treatments works does not discharge effluent to waters of the U.S. (No choice selected in Part A.8), NPDES coverage is not required and your application should be withdrawn.



3. NPDES Form 2A Application Overview, Parts A.9 through A.12

Any treatment works that discharges effluent to surface waters of the U.S. must answer questions A.9 through A.12. Please provide the required information for Parts A.9 through A.12 including: identification of a receiving water and effluent testing information.

4. NPDES Form 2A, Part B.6

All treatment works that have a design flow greater than or equal to 0.1 MGD must complete questions B.1 through B.6. Applicants that discharge to waters of the U.S. must provide effluent testing data for the parameters listed in this part. Please provide the required information.

5. NPDES Form 2A, Part D

A treatment works that discharges effluent to surface waters of the U.S. and has a design flow rate greater than or equal to 1 MGD must provide the expanded effluent testing data specified in this part. Please provide the required information.

6. NPDES Form 2A, Part E

Per Part E of Form 2A, Publicly Owned Treatment Works (POTWs) with a design flow rate greater than or equal to 1.0 mgd must provide the results of whole effluent toxicity test for acute or chronic toxicity for each of the facility's discharge points. Please provide the required information.

7. Forms not received with the application submittal:

- a. An EPA Application Form 1 - General Information was not provided with the application. The CWB Individual NPDES Form has since replaced this form for NPDES submittals to the Clean Water Branch. Please complete and submit.
- b. Form 2S is required for Sewage sludge (biosolids) for new and existing treatment works treating domestic sewage. Please complete and submit Form 2S.
- c. Form B is required for discharges of storm water associated with industrial activities. NPDES permit coverage is required for discharges of storm water runoff associated with industrial activity(ies) as categorized in 40 CFR 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122.26(b)(14)(xi). If your facility is not covered under another permit for storm water, please verify your facility applicability and submit this form, as required.

- d. Per HAR 11-54-9 Zone of Mixing (ZOM), every application for a ZOM shall be made on forms furnished by the director and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and other information as the director may prescribe. Please complete and submit the DOH Clean Water Branch ZOM Form to request a ZOM.
  - i. Specify the specific pollutant parameters for which you are requesting a ZOM. Note: A ZOM for a specific pollutant cannot be granted if the receiving water does not have assimilative capacity for that pollutant.
  - ii. Please also specify your minimum dilution, average dilution, and dilution at the edge of the ZOM. Provide your data and calculations used to derive the dilution values.

The various CWB NPDES application forms (including those specified in the preceding comments) are accessible through the e-Permitting Portal website at: <https://eha-cloud.doh.hawaii.gov/epermit/View>

8. Please be aware that HAR Section 11-54-4 requires dilution to be calculated using EPA approved models. Per HAR, Section 11-54-4(c)(1),

*"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.*

As the aforementioned models are older and there has been development of newer models, in some cases, the applicant has proposed to use the specified models for toxics and a newer 3-dimensional model for nutrients. EPA has okayed such models. In the past, EPA has requested more information (justification, appropriateness of the model for the particular situation, etc.) if the model is not one of the commonly used models. Other permittees have also proposed to evaluate both CORMIX 1 (for submerged diffusers) and CORMIX 3 (for surface discharge) and select the one shown to best represent the thermal plume dynamics.

A study (e.g., sampling, etc.) could then be used for confirmation of the modeled dilution.

9. HAR 11-54-1.1 provides the State's general policy of water quality antidegradation. U.S. EPA Region 9 Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12 dated June 3, 1987, includes adoption of a mixing zone as one of the actions which trigger an antidegradation analysis. Please provide an antidegradation analysis as part of your request for the adoption of a mixing zone.

10. In addition to listing Kaanapali (Kahekili Beach) as impaired for turbidity, the 2014 State of Hawaii Water Quality Monitoring and Assessment Report also identifies the following:
- Honokowai Point to Kaanapali as impaired for total nitrogen and ammonia-nitrogen.
  - West Maui Coast-near shore waters to 60' from Honolua-Lahaina as impaired for total nitrogen, nitrate + nitrite nitrogen, total phosphorus, and TSS.

Please verify if your discharge is in these areas. ZOMs are not allowed for pollutants for which the receiving water is impaired.

11. The federal CWA Section 307(b), and federal regulations, 40 CFR 403, require POTWs to develop an acceptable industrial pretreatment program. Please verify if your facility meets the applicability for the industrial pretreatment requirements.
12. Please clarify if the effluent from the seeps is only from the Lahaina WRF and natural groundwater. If there are other contributors to the effluent, please specify these sources.

In order to continue processing the NPDES Application, we request that you send us a transmittal letter (including your responses to our comments, **Permit No. HI 0021848**, the certification statement below, and your original signature) and a CD or DVD with the following information attached:

1. Revised NPDES Application in pdf format (minimum 300 dpi).
2. Attachments to support your submittal in pdf format (minimum 300 dpi).

The CWB expects to receive the required information by **May 31, 2016**. Additional time may be granted upon receipt of a valid written request from you or the Director of the Department of Environmental Management, County of Maui (COM). If the CWB does not receive the required information or a valid written request by **May 31, 2016**, we will assume that you are no longer interested in obtaining NPDES Permit coverage for the subject project. Consequently, the processing of your NPDES Permit Application will be automatically terminated. You may resubmit a complete NPDES Permit Application with the required filing fee.

Please include **Permit No. HI 0021848** and the following certification statement in all future correspondence with the DOH for the subject project:

**“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”**

If you have any questions, please contact Mr. Darryl Lum or Mr. Shane Sumida of the Engineering Section, CWB, at (808) 586-4309.

Sincerely,

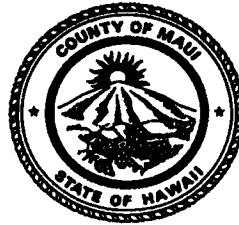


STUART YAMADA, P.E., CHIEF  
Environmental Management Division

DCL:bk

- c: Water Division (WTR-5), CWA Standards and Permits Office, EPA, Region 9  
[via e-mail [sablad.elizabeth@epamail.epa.gov](mailto:sablad.elizabeth@epamail.epa.gov) only]  
Mr. Eric Nakagawa, COM [via e-mail [Eric.Nakagawa@co.maui.hi.us](mailto:Eric.Nakagawa@co.maui.hi.us)]  
Mr. Scott Rollins, COM [via e-mail [Scott.Rollins@co.maui.hi.us](mailto:Scott.Rollins@co.maui.hi.us) only]  
Mr. Edward Bohlen, Deputy Attorney General [via e-mail only]

ALAN M. ARAKAWA  
Mayor  
STEWART STANT  
Director  
MICHAEL M. MIYAMOTO  
Deputy Director



MICHAEL RATTE  
Solid Waste Division  
ERIC NAKAGAWA, P.E.  
Wastewater Reclamation Division

2016 MAY 20 1:39pm

**COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

2050 MAIN STREET, SUITE 2B  
WAILUKU, MAUI, HAWAII 96793

CERTIFIED MAIL RECEIPT  
7010 1060 0000 7456 8784  
Return Receipt Requested

May 16, 2016

Stuart Yamada, P.E. Chief  
State of Hawaii  
Department of Health  
Environmental Management Division  
P.O. Box 3378  
Honolulu, HI 9680-3378

Attention: Mr. Darryl Lum  
Engineering Section, Clean Water Branch

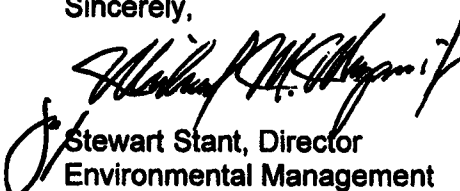
Dear Mr. Yamada,

**SUBJECT: NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)  
APPLICATION FOR LAHAINA WASTEWATER RECLAMATION FACILITY  
LAHAINA, ISLAND OF MAUI, HAWAII  
PERMIT NO. HI 0021848**

The County of Maui appreciates your staff meeting with us April 29, 2016 to discuss the comments in your February 25, 2016 letter regarding the subject permit application. Based on these discussions we have a clearer understanding of your department's goals and required revisions. The County of Maui through submission of this letter requests a six month time extension in order to plan necessary testing and compile the additional information needed to complete revisions to the subject application.

**"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."**

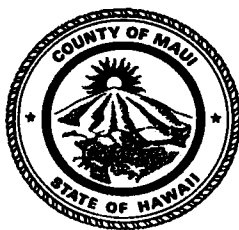
Sincerely,

  
Stewart Stant, Director  
Environmental Management

DCL  
S S

H10021848

ALAN M. ARAKAWA  
Mayor  
STEWART STANT  
Director  
MICHAEL M. MIYAMOTO  
Deputy Director



MICHAEL RATTE  
Solid Waste Division  
ERIC NAKAGAWA, P.E.  
Wastewater Reclamation Division

**COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

2050 MAIN STREET, SUITE 2B  
WAILUKU, MAUI, HAWAII 96793

2016 OCT 28 10:47AM

October 27, 2016

Stuart Yamada, P.E. Chief  
State of Hawaii  
Department of Health  
Environmental Management Division  
P.O. Box 3378  
Honolulu, Hi 96801-3378

Attention: Mr. Darryl Lum / Mr. Shane Sumida  
Engineering Section, Clean Water Branch

Dear Mr. Yamada,

**SUBJECT: NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)  
APPLICATION FOR LAHAINA WASTEWATER RECLAMATION FACILITY  
LAHAINA, ISLAND OF MAUI, HAWAII  
PERMIT NO. HI 0021848**

The County of Maui is proceeding with obtaining the requested data and revising the subject permit application per your previous correspondence. To that end, we have re-staffed our Wastewater Division laboratory and obtained funding in our fiscal year 2017 budget for sampling, required effluent analysis, toxicity testing and other field work necessary to fully complete the permit application.

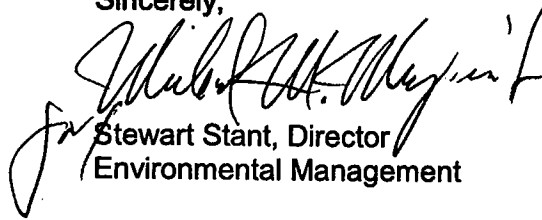
We intend to make one submittal once our data is complete and not make partial submittals over time. We therefore, would like to request a one (1) year extension on the application process. This time will allow us to:

- A. Complete the toxicity testing requested in the NPDES Application. The County would like to discuss issues related to the type of testing required and the effect on results.
- B. Complete the sampling and analysis of effluent over a one year period in order to determine if there are any seasonal effects.
- C. Perform field studies as necessary to provide the information requested by DOH related to the application.

We appreciate your consideration of this request and are available to meet if you wish to discuss further.

**"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."**

Sincerely,

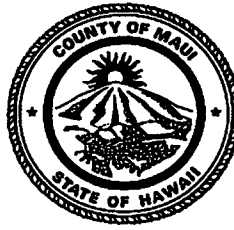


Stewart Stant, Director  
Environmental Management

SC

HI 0021848

ALAN M. ARAKAWA  
Mayor  
STEWART STANT  
Director  
MICHAEL M. MIYAMOTO  
Deputy Director



MICHAEL RATTE  
Solid Waste Division  
ERIC NAKAGAWA, P.E.  
Wastewater Reclamation Division

**COUNTY OF MAUI  
DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**  
2050 MAIN STREET, SUITE 2B  
WAILUKU, MAUI, HAWAII 96793

2017 DEC 5 3:11PM

November 29, 2017

CERTIFIED MAIL  
7014 2870 0001 3379 7386  
Return Receipt Requested

Stuart Yamada, P.E. Chief  
State of Hawaii  
Department of Health  
Environmental Management Division  
P.O. Box 3378  
Honolulu, HI 96801-3378

Attention: Mr. Darryl Lum / Mr. Shane Sumida  
Engineering Section, Clean Water Branch

Dear Mr. Yamada,

**SUBJECT: NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES)  
APPLICATION FOR LAHAINA WASTEWATER RECLAMATION FACILITY  
LAHAINA, MAUI, HAWAII  
PERMIT NO. HI 0021848**

The County of Maui is proceeding with obtaining the requested data and has revised the subject permit application per your February 25, 2016 and November 10, 2016 correspondences. We have amended the application by creating an e-form on your website, added or revised forms and exhibits based on your comments and new information gathered since our last submittal. We regret that we have been unable to gather all of the data required. We therefore, would like to request a second one (1) year extension on the application process. This time will allow us to complete the design and perform field studies for this complex disposal scenario.

Note the status of the items in your February correspondence below:

1. Signatory and Certification Statements – Have been updated to the current director.
2. NPDES Form 2A Part A.8 Discharges and Other Disposal Methods – We do not discharge wastewater to waters of the U.S. As a final component of our publicly owned treatment works, treated water is disposed via injection wells to groundwater, not to a surface water. It is hypothesized that after mixing with groundwater, some or all of the discharge may eventually reach the Pacific Ocean in a broad and diffuse manner. Please confirm whether you are concluding that this disposal method does not require an NPDES permit.



3. NPDES Form 2A Part A.9 through 12– Part A.9: We do not have an outfall, see number 2 above for type of discharge. We have completed Section A.10 through A.12
4. NPDES Form 2A, Part B.6 – Effluent Testing Data – We have added all of the required testing data of our effluent.
5. NPDES Form 2A, Part D – Effluent testing was completed and has been updated to reflect new data.
6. NPDES Form 2A, Part E – Toxicity tests were completed and results were included.
7. Forms not received with the application – a. & b. The CWB Individual NPDES Form and Form 2S were completed and included with this submittal. c. The sewer system is not combined; no storm water influent is received at the POTW. d. We are investigating the applicability of a ZOM as it may relate to the ultimate fate of recycled water/groundwater migration to the Pacific Ocean. Alternatively, we are considering other disposal possibilities.
8. Dilution studies have not been initiated pending ZOM analysis.
9. Anti-degradation studies have not been initiated pending ZOM analysis.
10. Discharge Area – It appears that many of the water bodies overlap with differing impairments. Please provide a map (or preferably a GIS layer) showing the extents of the various water bodies to aid in our interpretation. Additionally, should we follow the 2014 DOH WQ Monitoring and Assessment Report or is the 2016 report expected to be approved soon? Please see the response to Item 2 above for further information. The facility discharges to groundwater, which has been modeled to move in a broad and diffuse manner toward the coastline and enter the Pacific Ocean over approximately 2 miles. There is no current data on the outer extent of the groundwater migration.

The Department of Health Water Quality Monitoring and Assessment Report indicates:

- a. Kaanapali (Kahekili Beach) (HI643627)  
2014 list: Turbidity      2016 list: NO<sub>3</sub>+NO<sub>2</sub>, NH<sub>4</sub>, Turbidity
  - b. Honokowai Point to Kaanapali (HIW00139)  
2014 List: TN, NH<sub>4</sub>      2016 List: TN, NH<sub>4</sub>
  - c. West Maui Coast-near shore waters to 60' from Honolua to Lahaina (HIW00060)  
2014 List: Turbidity      2016 List: Turbidity
11. Pretreatment Program – The County of Maui has a Pretreatment Program. We permit dischargers with grease waste interceptors and waste haulers related to operation of commercial food establishments. The County has not identified any other industrial users in the service area for the Lahaina WWRF.
  12. There are multiple other possible contributors to the underground effluent mix, including mixed-use areas nearby that use septic systems and/or cesspools for sewage disposal, as well as several stream/gulch outlets. The Wahikuli-Honokowai Watershed Management Plan, available at <http://www.westmauir2r.com/watershed-management-plans.html>, prepared for the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, includes data and information on the land-based sources of pollution to near-shore waters via surface runoff or groundwater migration.

We revised the application and submitted via your e-permitting web-site. We do not anticipate paying any fees as this was a resubmittal. Attached are the signature sheets and the required disk copy of the recent submittal. We appreciate your consideration of this request and are available to meet if you wish to discuss further.

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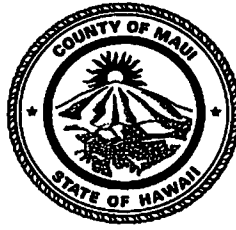


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Sincerely,



Stewart Stant, Director  
Environmental Management



# Fact Sheet

The U.S. Environmental Protection Agency (EPA)  
Proposes to issue a National Pollutant Discharge Elimination System (NPDES) Permit to  
Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:

**Taholah Wastewater Treatment Plant  
Quinault Indian Nation  
P.O. Box 189  
Taholah, Washington 99587**

Public Comment Start Date: April 21, 2015  
Public Comment Expiration Date: May 21, 2015

Technical Contact: Kai Shum  
(206) 553-0060  
800-424-4372, ext. 0060 (within Alaska, Idaho, Oregon and Washington)  
Shum.Kai@epa.gov

## **The EPA Proposes To Issue NPDES Permit**

The EPA proposes to issue the NPDES permit for the facility referenced above. The draft permit places conditions on the discharge of pollutants from the wastewater treatment plant to waters of the United States. In order to ensure protection of water quality and human health, the permit places limits on the types and amounts of pollutants that can be discharged from the facility.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures
- a listing of proposed effluent limitations and other conditions for the facility
- a map and description of the discharge location
- technical material supporting the conditions in the permit

## **401 Certification**

The Quinault Indian Nation (QIN) has not yet taken on Section 401 certification under the CWA. Therefore, EPA is responsible for issuing 401 certification in this case.

**Tribal Coordination and Consultation**

In the course of issuing this NPDES Permit, EPA coordinated with the Quinault Indian Nation (QIN).

**Public Comment**

Persons wishing to comment on, or request a Public Hearing for the draft permit for this facility may do so in writing by the expiration date of the Public Comment period. A request for a Public Hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to the EPA as described in the Public Comments Section of the attached Public Notice.

After the Public Notice expires, and all comments have been considered, the EPA's regional Director for the Office of Water and Watersheds will make a final decision regarding permit issuance. If no substantive comments are received, the tentative conditions in the draft permit will become final, and the permit will become effective upon issuance. If substantive comments are received, the EPA will address the comments and issue the permit. The permit will become effective no less than 30 days after the issuance date, unless an appeal is submitted to the Environmental Appeals Board within 30 days pursuant to 40 CFR 124.19.

**Documents are Available for Review**

The draft NPDES permit and related documents can be reviewed or obtained by visiting or contacting the EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday at the address below. The draft permits, fact sheet, and other information can also be found by visiting the Region 10 NPDES website at "<http://EPA.gov/r10earth/waterpermits.htm>."

United States Environmental Protection Agency  
Region 10  
1200 Sixth Avenue, OWW-130  
Seattle, Washington 98101  
(206) 553-0523 or  
Toll Free 1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The fact sheet and draft permits are also available at:

The Quinault Indian Nation  
1214 Aalis Drive  
Taholah, Washington 98587  
Attention: Dave Hinchey, (360) 276-0074

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## Acronyms

1Q10	1 day, 10 year low flow
7Q10	7 day, 10 year low flow
30B3	Biologically-based design flow intended to ensure an excursion frequency of less than once every three years, for a 30-day average flow.
30Q10	30 day, 10 year low flow
ACR	Acute-to-Chronic Ratio
AML	Average Monthly Limit
ASR	Alternative State Requirement
AWL	Average Weekly Limit
BA	Biological Assessment
BAT	Best Available Technology economically achievable
BCT	Best Conventional pollutant control Technology
BE	Biological Evaluation
BO or BiOp	Biological Opinion
BOD <sub>5</sub>	Biochemical oxygen demand, five-day
BOD <sub>5u</sub>	Biochemical oxygen demand, ultimate
BMP	Best Management Practices
BPT	Best Practicable
°C	Degrees Celsius
C BOD <sub>5</sub>	Carbonaceous Biochemical Oxygen Demand
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
COD	Chemical Oxygen Demand
CSO	Combined Sewer Overflow
CV	Coefficient of Variation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DO	Dissolved oxygen
EA	Environmental Assessment
EFH	Essential Fish Habitat

EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FOTW	Federally Owned Treatment Works
FR	Federal Register
gpd	Gallons per day
HUC	Hydrologic Unit Code
IC	Inhibition Concentration
ICIS	Integrated Compliance Information System
I/I	Infiltration and Inflow
LA	Load Allocation
lbs/day	Pounds per day
LTA	Long Term Average
LTCP	Long Term Control Plan
mg/L	Milligrams per liter
ml	Milliliters
ML	Minimum Level
µg/L	Micrograms per liter
mgd	Million gallons per day
MDL	Maximum Daily Limit or Method Detection Limit
MF	Membrane Filtration
MPN	Most Probable Number
N	Nitrogen
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NOEC	No Observable Effect Concentration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NSPS	New Source Performance Standards
OWW	Office of Water and Watersheds
O&M	Operations and maintenance
POTW	Publicly owned treatment works

PSES	Pretreatment Standards for Existing Sources
PSNS	Pretreatment Standards for New Sources
QAP	Quality assurance plan
RP	Reasonable Potential
RPM	Reasonable Potential Multiplier
RIB(s)	Rapid Infiltration Basin(s)
SIC	Standard Industrial Classification
SPCC	Spill Prevention and Control and Countermeasure
SS	Suspended Solids
SSO	Sanitary Sewer Overflow
s.u.	Standard Units
TKN	Total Kjeldahl Nitrogen
TMDL	Total Maximum Daily Load
TOC	Total Organic Carbon
TRC	Total Residual Chlorine
TRE	Toxicity Reduction Evaluation
TSD	Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001)
TSS	Total suspended solids
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
UV	Ultraviolet
WET	Whole Effluent Toxicity
WLA	Wasteload allocation
WQBEL	Water quality-based effluent limit
Water Quality Standards	Water Quality Standards
WWTP	Wastewater treatment plant

## I. Applicant

### A. General Information

This fact sheet provides information on the draft NPDES permit for the following entity:

Physical Address:  
Taholah Village Wastewater Treatment Plant  
114 Quinault Street  
Taholah, Washington 98587

Mailing Address:  
Taholah Village Wastewater Treatment Plant  
Quinault Indian Nation  
P.O. Box 189  
Taholah, Washington 99587

NPDES Permit Number: WA0023442

Contact:  
Dave Hinchey  
Wastewater Treatment Plant Supervisor  
(360)276-0074

### B. Permit History

The most recent NPDES permit for the Taholah Village Wastewater Treatment Plant (WWTP) was issued on September 27, 2005, became effective on November 1, 2005, and expired on October 31, 2010. A complete NPDES application for permit issuance was submitted by the permittee on December 2, 2014.

## II. Facility Information

### A. Treatment Plant Description

#### *Service Area*

The Quinault Indian Nation (QIN) owns and operates the Taholah Village Wastewater Treatment Plant (WWTP) located in Taholah, Grays Harbor County, Washington. The collection system has no combined sewers. The facility serves a resident population of 1500.

#### *Treatment Process*

The WWTP was constructed and operational in 2006 with a design flow of 0.2 mgd. In a 2008 agreement between QIN and the U.S. Indian Health Service (IHS), the treatment system was improved in 2009 to include the addition of a UV disinfection system. At present, the treatment process consists of a four-celled lagoon system with UV disinfection and discharge into groundwater via a four celled Rapid Infiltration Basin (RIB) system. The four-celled lagoon system consists of three aerated cells, and one settling basin. Details about the wastewater treatment process and a map showing the location of the treatment facility and

discharge are included in Appendix A. EPA regards facilities that have a design flow of less than 1.0 mgd as minor facilities. Because the design flow of the Taholah Village WWTP is 0.2 mgd, the facility is considered a minor facility.

### **B. Outfall Description**

The discharges from Outfall 001 go into a four celled RIB system that is approximately 505 feet from the banks of the Quinault River. The RIB system is believed to discharge into a likely tidally influenced brackish water table. The wastewater discharged into the RIB system is mixed and diluted into a groundwater plume prior to entering the Quinault River as surface water. The bottom of the RIB system is approximately 7 feet below surface, and the groundwater table is approximately 13 feet below surface. The RIBs are located at the following coordinates: 47° 20' 34" N, 124° 17' 00" W. Based on aerial mapping, the groundwater plume from the RIB system would travel at least 505 feet, the closest distance from the RIB system into the Quinault River, and from there, the distance to the mouth of the Quinault River is approximately 1.16 miles.

### **C. Background Information**

#### ***Effluent Characterization***

In order to determine pollutants of concern for further analysis, EPA evaluated the application form, additional discharge data, and the nature of the discharge. The wastewater treatment process for this facility includes both primary and secondary treatment, as well as UV disinfection. Pollutants typical of a sewage treatment plant include five-day biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS), fecal coliform bacteria, pH, ammonia, temperature, and dissolved oxygen (DO).

The Taholah Village WWTP receives a small volume of process wastewater from a fish processing plant. According to QIN, the fish processing plant sends fish waste offsite, and the only wastewater directed to the WWTP consists of water used for washing equipment, and sanitary waste from the facility.

The concentrations of pollutants in the discharge were reported in the NPDES application and were used in determining reasonable potential for several parameters (see Appendix D).

#### ***Compliance History***

The facility's last NPDES Permit expired on October 31, 2010. No new permit application was received until January 17, 2014. A complete NPDES application for permit issuance was submitted by the permittee on December 2, 2014.

The EPA conducted inspections at the facility in 2008, 2009, and 2010. The inspections revealed that there had been various exceedances of permit limits and incorrect reporting by the facility. The EPA made recommendations to QIN for improving compliance with its NPDES Permit.

On January 7, 2015, according to David Hinchey, QIN Wastewater Treatment Plant Supervisor, there has not been any citizen complaints concerning this WWTP.

#### **D. Environmental Justice**

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs each federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities.” EPA is striving to enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits, including NPDES permits. “Overburdened” communities can include minority, low-income, tribal, and indigenous populations or communities that potentially experience disproportionate environmental harms and risks. As part of an agency-wide effort, EPA Region 10 will consider prioritizing enhanced public involvement opportunities for EPA-issued permits that may involve activities with significant public health or environmental impacts on already overburdened communities. For more information, please visit <http://www.epa.gov/compliance/ej/plan-ej/>.

As part of the permit development process, EPA Region 10 conducted an “EJSCREEN” to determine whether a permit action could affect overburdened communities. EJSCREEN is a nationally consistent geospatial tool that contains demographic and environmental data for the United States at the census block group level. As a pre-decisional tool, EJSCREEN is used to highlight permit candidates for additional review where enhanced outreach may be warranted.

The EPA also encourages permittees to review (and to consider adopting, where appropriate) Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways To Engage Neighboring Communities (see <https://www.federalregister.gov/articles/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process#h-13>). Examples of promising practices include: thinking ahead about community’s characteristics and the effects of the permit on the community, engaging the right community leaders, providing progress or status reports, inviting members of the community for tours of the facility, providing informational materials translated into different languages, setting up a hotline for community members to voice concerns or request information, follow up, etc.

EPA’s EJSCREEN tool identified the Quinault Indian Nation (QIN) as a potentially overburdened community because the WWTP discharges within the boundaries of the Quinault Indian Reservation. During the screening process, EPA considered specific case-by-case circumstances, and EPA concluded that there is no indication that the issuance of this permit would trigger significant environmental justice concerns. Separate from the environmental justice screening effort, EPA also conducted tribal coordination with QIN.

### **III. Receiving Water**

This facility discharges into groundwater via a RIBs system with expected hydrogeologic connection to the Quinault River. Wastewater discharged into the RIBs are initially diluted within the groundwater body, forming a groundwater plume prior to reaching the Quinault River. Based on aerial mapping, the groundwater plume from the RIBs system would travel

at least 505 feet, the closest distance from the RIB system into the Quinault River, and from there, the distance to the mouth of the Quinault River is approximately 1.16 miles.

### ***Low Flow Conditions***

There is no information concerning the low flow conditions in the Quinault River perpendicular to the RIBs, accordingly, EPA estimated the low flow conditions based on an existing USGS Gauge that is 13.6 miles upstream.

The low flow conditions of the Quinault River is obtained from the upstream USGS Gauge #12039500, "Quinault River near Quinault Lake". This location is significantly upstream from the RIBs, where the Quinault River is a much smaller waterbody. The Quinault River above the RIBs is a gaining stream, but there is no gauge to measure the river flow rate near the RIBs. Therefore, low flow conditions can only be determined at the river near the Quinault Lake location. As a comparison, EPA expects that low flow are significantly higher on the river near the RIBs. The low flow values on Table 1 were obtained from USGS Gauge #12039500 and were used to determine dilution from the WWTP. In addition, because the WWTP discharges into the RIBs, the wastewater from the RIBs is first diluted in the groundwater plume prior to reaching the river. Accordingly, because of the location the low flow values were obtained and of the initial dilution in the groundwater plume prior to reaching the river, the dilution factors used are conservative.

The low flow conditions of a water body are used to assess the need for and develop water quality based effluent limits (see Appendix B of this fact sheet for additional information on flows). The EPA used ambient flow data collected at the Quinault River and the EPA's DFLOW 3.1b model to calculate the low flow conditions.

The *Technical Support Document for Water Quality-Based Toxics Control* (hereafter referred to as the TSD) (EPA, 1991) and the State of Washington Water Quality Standards (WQS) recommend the flow conditions for use in calculating water quality-based effluent limits (WQBELs) using steady-state modeling. The TSD and the Washington State WQS state that WQBELs intended to protect aquatic life uses should be based on the lowest seven-day average flow rate expected to occur once every ten years (7Q10) for chronic criteria and the lowest one-day average flow rate expected to occur once every ten years (1Q10) for acute criteria. The flow data in Table 1 below is generated from the USGS data from April 1, 2001 to April 1, 2014, and analyzed by EPA's DFLOW program.

<b>Table 1: Calculated Low Flow Values</b>			
<b>Units</b>	<b>1Q10</b>	<b>7Q10</b>	<b>30B3</b>
<b>USGS data in cfs</b>	<b>238</b>	<b>291</b>	<b>428</b>
<b>In mgd</b>	<b>153.5</b>	<b>187.7</b>	<b>276.1</b>

### **A. Receiving Water Quality**

The EPA reviews receiving water quality data when assessing the need for and developing water quality based effluent limits. In granting assimilative capacity of the receiving water, the EPA must account for the amount of the pollutant already present in the receiving water. In situations where some of the pollutant is actually present in the upstream waters, an assumption of "zero background" concentration overestimates the available assimilative



capacity of the receiving water and could result in limits that are not protective of applicable water quality standards.

The existing permit required the permittee to perform upstream receiving water monitoring on the Quinault River. Table 2 below summarizes the receiving water data reported by the WWTP during the last permit cycle.

<b>Parameter</b>	<b>Units</b>	<b>Percentile</b>	<b>Value</b>	<b>Source</b>
Temperature	°C	95 <sup>th</sup>	14.94	Facility
pH	Standard units	5 <sup>th</sup> – 95 <sup>th</sup>	6.54 – 7.47	Facility
Phosphorus	mg/L	maximum	0.4	Facility
Ammonia	mg/L	maximum	0.3	Facility

**B. Water Quality Standards**

The Quinault Indian Nation does not currently have EPA-approved water quality standards. Until they establish their own regulations for water quality, Washington State’s standards will be used as a reference to protect downstream uses in Washington waters.

The State of Washington’s Water Quality Standards are composed of use classifications, numeric and/or narrative water quality criteria, and an anti-degradation policy. The use classification system designates the beneficial uses (such as cold water aquatic life communities, contact recreation, etc.) that each water body is expected to achieve. The numeric and/or narrative water quality criteria are the criteria deemed necessary to support the beneficial use classification of each water body. The anti-degradation policy represents a three tiered approach to maintain and protect various levels of water quality and uses.

Section 301(b)(1)(C) of the Clean Water Act (CWA) requires the development of limitations in permits necessary to meet water quality standards. Federal regulations at 40 CFR 122.4(d) require that the conditions in NPDES permits ensure compliance with the water quality standards of all affected States. A State’s water quality standards are composed of use classifications, numeric and/or narrative water quality criteria and an anti-degradation policy.

The use classification system designates the beneficial uses that each water body is expected to achieve, such as drinking water supply, contact recreation, and aquatic life. The numeric and narrative water quality criteria are the criteria deemed necessary by the State to support the beneficial use classification of each water body. The anti-degradation policy represents a three-tiered approach to maintain and protect various levels of water quality and uses.

The Quinault River is located within the Washington State Department of Ecology’s “Queets/Quinault Water Resources Inventory Area (WRIA) #21”. The Quinault River is specifically named on Department of Ecology’s use designation for fresh waters found at WAC 173-201A-602, Table 602. These designations are described below.

***Designated Beneficial Uses***

EPA considered WAC 173-201A-602, Table 602: Use designations for fresh waters by water resource inventory area (WRIA). For “WRIA 21 Queets-Quinault”, and the applicable

segment is described as, “Quinault River and tributaries from mouth to the confluence with the North Fork Quinault River”, the following water quality use designations apply:

Aquatic Life Uses: Core Summer Habitat;  
 Recreational Uses: Extraordinary Primary Contact  
 Water Supply Uses: Domestic Water; Industrial Water; Agricultural Water; Stock Water  
 Misc. Uses: Wildlife Habitat; Harvesting; Commerce/Navigation; Boating; and Aesthetics.

In reference to WAC 173-201A-600(1)(a)(iv), because the groundwater table is believed to be brackish beneath the RIB, and the designation of extraordinary quality marine waters off the Pacific coast, this segment of the Quinault River should also be protected for Core Summer Salmonid Habitat and Extraordinary Primary Contact recreation.

The point of discharge appears to be to an estuary and the receiving water is believed to be brackish from tidal flow carrying salt water up the Quinault River.

WAC 173-201A-260 Natural conditions and other water quality criteria and applications states:

“(e) In brackish waters of estuaries, where different criteria for the same use occurs for fresh and marine waters, the decision to use the fresh water or the marine water criteria must be selected and applied on the basis of vertically averaged daily maximum salinity, referred to below as "salinity."

- (i) The fresh water criteria must be applied at any point where ninety-five percent of the salinity values are less than or equal to one part per thousand, except that the fresh water criteria for bacteria applies when the salinity is less than ten parts per thousand; and
- (ii) The marine water criteria must apply at all other locations where the salinity values are greater than one part per thousand, except that the marine criteria for bacteria applies when the salinity is ten parts per thousand or greater.”

EPA does not currently have salinity data to make a determination if applying marine water criteria would be appropriate. Therefore, EPA is requiring the collection of salinity data during this permit cycle so that a determination can be made for the next permit cycle. For the proposed permit, EPA is applying Washington State Water Quality Standards for freshwater.

If marine water quality standards apply the EPA may apply WAC 173-201A-612, Table 612 — Use designations for marine waters and the applicable segment is described as “Coastal waters: Pacific Ocean from Ilwaco to Cape Flattery”. The following water quality use designations would apply:

Aquatic Life Uses: Extraordinary, Shellfish harvesting  
 Recreational Uses: Primary Contact  
 Misc. Uses: Wildlife Habitat, Harvesting, Commerce/Navigation; Boating; and Aesthetics

WAC 173-201A-610, Use designations — Marine waters, assigns the following aquatic life uses under Extraordinary:

Salmonid and other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.

Salinity surface water monitoring is added to determine if the receiving water is brackish.

The criteria for the State of Washington Water Quality Standards to protect the beneficial uses for the Quinault River off the reservation, and the State's anti-degradation policy are summarized below.

### ***Antidegradation***

The proposed issuance of an NPDES permit triggers the need to ensure that the conditions in the permit ensure that Tier I, II, and III of the State's antidegradation policy are met. An anti-degradation analysis was conducted by EPA (see Appendix D), which concluded that the permit would not result in deterioration of water quality. This is because there is no measurable change caused to the water quality of the Quinault River, and the analysis concluded that a Tier 2 review is not warranted. In addition, there is no loss of beneficial uses in the Quinault River.

### **C. Water Quality Limited Waters**

Any waterbody for which the water quality does not, and/or is not expected to meet, applicable water quality standards is defined as a "water quality limited segment."

Section 303(d) of the CWA requires states to develop a Total Maximum Daily Load (TMDL) management plan for water bodies determined to be water quality limited segments. A TMDL is a detailed analysis of the water body to determine its assimilative capacity. The assimilative capacity is the loading of a pollutant that a water body can assimilate without causing or contributing to a violation of water quality standards. Once the assimilative capacity of the water body has been determined, the TMDL will allocate that capacity among point and non-point pollutant sources, taking into account natural background levels and a margin of safety. Allocations for non-point sources are known as "load allocations" (LAs). The allocations for point sources, known as "waste load allocations" (WLAs), are implemented through effluent limitations in NPDES permits. Effluent limitations for point sources must be consistent with applicable TMDL allocations.

The area where the WWTP discharges is categorized by Ecology at Water Resource Inventory Area 21 (WRIA 21). Ecology on January 12, 2015, stated by email there are no TMDLs completed in this area; accordingly, there are no WLA applicable to this NPDES Permit in WRIA 21. However, Ecology has identified the area where this facility is discharging as having one 303(d) listing for PCB in fish tissue (Ecology listing #52686). Ecology listing #52686 can be found at:

[http://apps.ecy.wa.gov/wats/ViewListing.aspx?LISTING\\_ID=52686](http://apps.ecy.wa.gov/wats/ViewListing.aspx?LISTING_ID=52686) ; a screen shot from this Ecology webpage is shown below. On January 15, 2015, EPA approached QIN about possible sources of PCB that may be the cause of this PCB listing. QIN responded that it has no information of local sources of PCB pertaining to Ecology's listing.

On January 15, 2015, in tribal consultation with QIN concerning possible sources of PCBs in fish tissue from Quinault River, Mr. Dave Bingaman, Quinault Nation’s Director of Natural Resources. The QIN does not know of any sources of PCBs in the watershed. In addition, the WWTP is not a source of PCBs. Accordingly the EPA is not proposing PCB monitoring at the WWTP.

<a href="#">Return to Listing</a>		<a href="#">Print</a>	
<b>Listing ID:</b> 52686		<b>2012 Category:</b> 5	
<b>Medium:</b> Tissue		<b>2008 Category:</b> 5	
<b>Parameter:</b> PCB		<b>2004 Category:</b> 3	
<b>CAS:</b> 1336-36-3		<b>On 1998 303(d) List?:</b> N	
<b>Waterbody Name:</b> QUINAULT RIVER		<b>On 1996 303(d) List?:</b> N	
<b>Waterbody Type:</b> Rivers		<b>County:</b> Grays Harbor	
<b>Waterbody Class:</b> RAA		<b>Township/Range/Section:</b> 22N-13W-36	
<b>Collection Date:</b> N/A		<b>Grid Cell:</b> None	
<b>WRIA:</b> 21 - Queets-Quinault		<b>Grid Cell Latitude:</b> None	
<b>PSAA:</b> None		<b>Grid Cell Longitude:</b> None	
<b>WASWIS:</b> None		<b>LLID:</b> 1242991473493	
<b>WASWIS Upper Route:</b> None		<b>LLID Upper Route:</b> 1.526	
<b>WASWIS Lower Route:</b> None		<b>LLID Lower Route:</b> 0.816	
<hr/>			
<b>Basis:</b>			
Data from 2004 :			
User Location ID [QuinaultR-F] - Fillet samples of chinook salmon exceeded the National Toxics Rule criterion for Total PCBs based on the sum of PCB aroclors.			
User Location ID [QuinaultR-F] - Fillet samples of chinook salmon did not exceed the National Toxics Rule criterion for Total PCBs based on the sum of PCB congeners.			
<hr/>			
<b>Remarks:</b>			
The water quality assessment category 5 was based on results indicating an exceedance of Total PCBs based on the sum of PCB aroclors in fillet samples of chinook salmon.			
<hr/>			
<b>EIM:</b>			
<b>EIM Study ID:</b>		<b>EIM Location ID:</b>	
WSTMP04		QuinaultR-F	

#### **IV. Effluent Limitations**

##### **A. Basis for Effluent Limitations**

In general, the CWA requires that the effluent limits for a particular pollutant be the more stringent of either technology-based limits or water quality-based limits. Technology-based limits are set according to the level of treatment that is achievable using available technology. A water quality-based effluent limit is designed to ensure that the water quality standards applicable to a waterbody are being met and may be more stringent than technology-based effluent limits. The basis for the effluent limits proposed in the draft permit is provided in Appendix B.

##### **B. Proposed Effluent Limitations**

The following summarizes the proposed effluent limits that are in the draft permit.

1. The permittee must not discharge floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.
2. The pH range shall be between 6.5 to 8.5 standard units.

**Numeric Limitations**

Table 3 below presents the proposed effluent limits for BOD<sub>5</sub>, TSS, and fecal coliform.

<b>Table 3: Proposed Effluent Limits</b>				
<b>Parameter</b>	<b>Units</b>	<b>Effluent Limits</b>		
		<b>Average Monthly Limit</b>	<b>Average Weekly Limit</b>	<b>Maximum Daily Limit</b>
Five-Day Biochemical Oxygen Demand (BOD <sub>5</sub> )	mg/l	30	45	
	lb/day	50	75	
BOD <sub>5</sub> Removal	percent	85 minimum		
Total Suspended Solids (TSS)	mg/l	30	45	
	lb/day	50	75	
TSS Removal	percent	85 minimum		
Fecal coliform bacteria (geometric mean)	#/100 ml	50 <sup>1</sup>		100

1. Fecal coliform organism levels must not exceed a geometric mean value of 50 colonies/100 mL, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 100 colonies/100 ml.

**C. Changes in Effluent Limits From the Previous Permit**

<b>Table 4. Changes in Permit Effluent Limits</b>			
<b>Parameter</b>	<b>Previous Permit</b>	<b>Draft Permit</b>	<b>Reason</b>
Bacteria, colonies/100ml (Geometric Mean)	E.coli bacteria Ave. Monthly Limit, 126	Fecal Coliform bacteria, Ave. Monthly Limit, 50	Compliance with current Washington State Water Quality Standards for Extraordinary Primary Contact Recreation, WAC 173.201A.200 (2), Table 200(2) (b)
	E.coli bacteria Max. Daily Limit, 576	See Footnote 1	
pH, standard units	6.0 to 9.0	6.5 to 8.5	Compliance with current Washington State Water Quality Standards, for pH criteria for Core summer salmonid habitat, WAC173.201A.200(1)(g)
Footnote:			

1. Fecal coliform organism levels must not exceed a geometric mean value of 50 colonies/100 ml, with not more than 10 percent of all samples (or any single sample when less than ten sample points exist) obtained for calculating the geometric mean value exceeding 100 colonies/100 ml.

## V. Monitoring Requirements

### A. Basis for Effluent and Surface Water Monitoring

Section 308 of the CWA and federal regulation 40 CFR 122.44(i) require monitoring in permits to determine compliance with effluent limitations. Monitoring may also be required to gather effluent and surface water data to determine if additional effluent limitations are required and/or to monitor effluent impacts on receiving water quality.

The permit also requires the permittee to perform effluent monitoring required by the NPDES Form 2A application, so that these data will be available when the permittee applies for a renewal of its NPDES permit.

The permittee is responsible for conducting the monitoring and for reporting results on DMRs or on the application for renewal, as appropriate, to the EPA.

### B. Effluent Monitoring

Monitoring frequencies are based on the nature and effect of the pollutant, as well as a determination of the minimum sampling necessary to adequately monitor the facility's performance. Permittees have the option of taking more frequent samples than are required under the permit. These samples must be used for averaging if they are conducted using the EPA-approved test methods (generally found in 40 CFR 136) or as specified in the permit.

Table 5, below, presents the proposed effluent monitoring requirements in the draft permit. The sampling location must be after the last treatment unit and prior to discharge to the receiving water. The samples must be representative of the volume and nature of the monitored discharge. If no discharge occurs during the reporting period, "no discharge" shall be reported on the DMR.

Parameter	Units	Sample Location	Sample Frequency	Sample Type
Flow	Mgd	Effluent	Continuous	recording
Temperature	°C	Effluent	1/week	grab
BOD <sub>5</sub>	mg/L	Influent & Effluent	1/week	24-hour composite
	lb/day	Influent & Effluent	1/week	calculation <sup>1</sup>
	% Removal	--	1/month	calculation <sup>2</sup>
TSS	mg/L	Influent & Effluent	1/week	24-hour composite
	lb/day	Influent & Effluent	1/week	calculation <sup>1</sup>
	% Removal	--	1/month	calculation <sup>2</sup>
pH	standard units	Effluent	5/week	grab
Fecal coliform bacteria	#/100 ml	Effluent	5/month	grab
Total Ammonia as N	mg/L	Effluent	1/quarter	24-hour composite
	lb/day	Effluent		calculation <sup>1</sup>
Copper, Total Recoverable	µg/l	Effluent	1/quarter	grab
Zinc, Total Recoverable	µg/l	Effluent	1/quarter	grab

<b>Table 5: Effluent Monitoring Requirements</b>				
Parameter	Units	Sample Location	Sample Frequency	Sample Type
NPDES Application Form 2A (Part B.6) Effluent Testing Data	mg/l	Effluent	3 times <sup>3</sup>	24-hour composite
Notes:				
1. Loading is calculated by multiplying the concentration (in mg/l) by the flow (in mgd) on the day sampling occurred and a conversion factor of 8.34. 2. The monthly average percent removal must be calculated from the arithmetic mean of the influent values and the arithmetic mean of the effluent values for that month, i.e.: $(\text{average monthly influent} - \text{average monthly effluent}) \div \text{average monthly influent}$ Influent and effluent samples must be taken over approximately the same time period. 3. In accordance with instructions in NPDES Application Form 2A, Part B.6, Part D, and where a minimum of one scan for each test to be conducted during years 2015, 2016, and 2017.				

***Monitoring Changes from the Previous Permit***

Monitoring frequencies for certain parameters have been changed, relative to the previous permit. Table 6, below, summarizes the changes in monitoring.

<b>Table 6: Changes in Monitoring Requirements</b>		
Parameter	Previous Permit	Draft Permit
Flow	Continuous recording, influent	Continuous recording, effluent
BOD <sub>5</sub> and TSS	1/week, grab sampling	1/week, 24-hour composite
Temperature	5/month, grab	1/week, grab
pH	1/week, grab sampling	5/week, grab
Bacteria	E.coli, 5/month, grab sampling	Fecal coliform, 5/month, grab sampling
Total Ammonia as N	1/month, grab	1/quarter 24-hour composite
Copper, Total Recoverable	None	1/quarter, grab
Zinc, Total Recoverable	None	1/quarter, grab

**C. Surface Water Monitoring**

Table 7 presents the proposed surface water monitoring requirements for the draft permit. The EPA requires the permittee to conduct surface water monitoring at an upstream station at the Quinault River. Surface water monitoring must be conducted for the duration of the permit. Surface water monitoring results must be submitted with the DMR in the month following the monitoring period.

<b>Table 7: Surface Water Monitoring Requirements</b>				
Parameter	Units	Upstream Sample Locations	Sample Frequency	Sample Type
Temperature	°C	Quinault River	1/quarter	Grab

<b>Table 7: Surface Water Monitoring Requirements</b>				
Parameter	Units	Upstream Sample Locations	Sample Frequency	Sample Type
Total Ammonia as N	mg/l		1/quarter	Grab
pH	standard units		1/quarter	Grab
Salinity	Part per Thousand		1/quarter	Grab
Hardness	mg/L		1/quarter	Grab

**D. Electronic Submission of Discharge Monitoring Reports**

The draft permit includes new provisions to allow the permittee the option to submit DMR data electronically using NetDMR. NetDMR is a national web-based tool that allows DMR data to be submitted electronically via a secure Internet application. NetDMR allows participants to discontinue mailing in paper forms under 40 CFR § 122.41 and § 403.12. The permittee may use NetDMR after requesting and receiving permission from the EPA Region 10.

Under NetDMR, all reports required under the permit are submitted to the EPA as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it is no longer required to submit paper copies of DMRs or other reports to the EPA.

The EPA encourages permittees to sign up for NetDMR, and currently conducts free training on the use of NetDMR. Further information about NetDMR, including upcoming trainings and contacts, is provided on the following website: <http://www.EPA.gov/netdmr>.

**VI. Sludge (Biosolids) Requirements**

The EPA Region 10 separates wastewater and sludge permitting. The EPA has authority under the CWA to issue separate sludge-only permits for the purposes of regulating biosolids. The EPA may issue a sludge-only permit to each facility at a later date, as appropriate.

Until future issuance of a sludge-only permit, sludge management and disposal activities at each facility continue to be subject to the national sewage sludge standards at 40 CFR Part 503 and any requirements of the State’s biosolids program. The Part 503 regulations are self-implementing, which means that facilities must comply with them whether or not a permit has been issued.

**VII. Other Permit Conditions**

**A. Quality Assurance Plan**

In order to ensure compliance with the federal regulation at 40 CFR 122.41(e) for proper operation and maintenance, the draft permit requires the permittee to develop procedures to ensure that the monitoring data submitted is accurate and to explain data anomalies if they occur. The permittee is required to develop or update the Quality Assurance Plan within 180 days of the effective date of the final permit. The Quality Assurance Plan must include standard operating procedures the permittee must follow for collecting, handling, storing and



shipping samples, laboratory analysis, and data reporting. The plan must be retained on site and be made available to the EPA upon request.

### **B. Operation and Maintenance Plan**

The proposed permit requires the permittee to properly operate and maintain all facilities and systems of treatment and control. Proper operation and maintenance is essential to meeting discharge limits, monitoring requirements, and all other permit requirements at all times. The permittee is required to develop and implement an operation and maintenance plan for their facility within 180 days of the effective date of the final permit. The plan must be retained on site and made available to the EPA upon request.

### **C. Sanitary Sewer Overflows and Proper Operation and Maintenance of the Collection System**

Untreated or partially treated discharges from separate sanitary sewer systems are referred to as sanitary sewer overflows (SSOs). SSOs may present serious risks of human exposure when released to certain areas, such as streets, private property, basements, and receiving waters used for drinking water, fishing and shellfishing, or contact recreation. Untreated sewage contains pathogens and other pollutants, which are toxic. SSOs are not authorized under this permit. Pursuant to the NPDES regulations, discharges from separate sanitary sewer systems authorized by NPDES permits must meet effluent limitations that are based upon secondary treatment. Further, discharges must meet any more stringent effluent limitations that are established to meet the EPA-approved state water quality standards.

The permit contains language to address SSO reporting and public notice and operation and maintenance of the collection system. The permit requires that the permittee identify SSO occurrences and their causes. In addition, the permit establishes reporting, record keeping and third party notification of SSOs. Finally, the permit requires proper operation and maintenance of the collection system. The following specific permit conditions apply:

**Immediate Reporting** – The permittee is required to notify the EPA of an SSO within 24 hours of the time the permittee becomes aware of the overflow. (See 40 CFR 122.41(l)(6)).

**Written Reports** – The permittee is required to provide the EPA a written report within five days of the time it became aware of any overflow that is subject to the immediate reporting provision. (See 40 CFR 122.41(l)(6)(i)).

**Third Party Notice** – The permit requires that the permittee establish a process to notify specified third parties of SSOs that may endanger health due to a likelihood of human exposure; or unanticipated bypass and upset that exceeds any effluent limitation in the permit or that may endanger health due to a likelihood of human exposure. The permittee is required to develop, in consultation with appropriate authorities at the local, county, tribal and/or state level, a plan that describes how, under various overflow (and unanticipated bypass and upset) scenarios, the public, as well as other entities, would be notified of overflows that may endanger health. The plan should identify all overflows that would be reported and to whom, and the specific information that would be reported. The plan should include a description of lines of communication and the identities of responsible officials. (See 40 CFR 122.41(l)(6)).

**Record Keeping** – The permittee is required to keep records of SSOs. The permittee must retain the reports submitted to the EPA and other appropriate reports that could include work orders associated with investigation of system problems related to a SSO, that describes the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the SSO. (See 40 CFR 122.41(j)).

**Proper Operation and Maintenance** – The permit requires proper operation and maintenance of the collection system. (See 40 CFR 122.41(d) and (e)). SSOs may be indicative of improper operation and maintenance of the collection system. The permittee may consider the development and implementation of a capacity, management, operation and maintenance (CMOM) program.

The permittee may refer to the Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (EPA 305-B-05-002). This guide identifies some of the criteria used by the EPA inspectors to evaluate a collection system's management, operation and maintenance program activities. Owners/operators can review their own systems against the checklist (Chapter 3) to reduce the occurrence of sewer overflows and improve or maintain compliance.

#### **D. Design Criteria**

The permit includes design criteria requirements. This provision requires the permittee to compare influent flow and loading to the facility's design flow and loading and prepare a facility plan for maintaining compliance with NPDES permit effluent limits when the annual average flow or loading exceeds 85% of the design criteria values for three consecutive months.

#### **E. Industrial Waste Management Requirements**

EPA implements and enforces the National Pretreatment Program regulations of 40 CFR 403, per authority from sections 204(b)(1), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304(e) and (g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollutant Control Act as amended by the CWA of 1977.

Because QIN does not have an approved pretreatment program per 40 CFR 403.10, EPA is the Approval Authority for QIN's POTWs. In addition, because the QIN does not have an approved POTW pretreatment program per 40 CFR 403.8, the EPA is also the Control Authority of industrial users that might introduce pollutants into the Taholah Village Wastewater Treatment Plant.

Per 40 CFR 122.44(j)(1), all POTWs need to identify, in terms of character and volume of pollutants, any significant industrial users (SIUs) discharging into the POTW. This condition is included as Special Condition C.1 of the draft permit with a due date 90 days following the effective date of the POTW permit.

Since the QIN does not have an approved pretreatment program, Special Condition C.2 of the permit reminds the City that it cannot authorize discharges which may violate the national specific prohibitions of the General Pretreatment Program, which are applicable to all industrial users introducing pollutants into a publicly owned treatment works (40 CFR 403.5(b)).

Consequently, Special Condition C.5 requires the Permittee to develop legal authority enforceable in Federal, State or local courts which authorizes or enables the POTW to apply and to enforce the requirement of sections 307 (b) and (c) and 402(b)(8) of the Clean Water Act, as described in 40 CFR 403.8(f)(1). The draft legal authority shall be submitted to EPA for review and comment, and then shall be adopted and enforced by the POTW.

#### **F. Standard Permit Provisions**

Sections III, IV and V of the draft permit contain standard regulatory language that must be included in all NPDES permits. The standard regulatory language covers requirements such as monitoring, recording, and reporting requirements, compliance responsibilities, and other general requirements.

### **VIII. Other Legal Requirements**

#### **A. Endangered Species Act**

The Endangered Species Act requires federal agencies to consult with National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species. A review of the threatened and endangered species located in the Quinault Indian Nation finds that there is NO EFFECT caused by the discharge from the Taholah Village Wastewater Treatment Plant (see Appendix E).

#### **B. Essential Fish Habitat**

Essential fish habitat (EFH) is the waters and substrate (sediments, etc.) necessary for fish to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999) requires the EPA to consult with NOAA Fisheries when a proposed discharge has the potential to adversely affect EFH (i.e., reduce quality and/or quantity of EFH). A review of the Essential Fish Habitat documents shows that there is no effect to essential fish habitat.

The EFH regulations define an adverse effect as any impact which reduces quality and/or quantity of EFH and may include direct (e.g. contamination or physical disruption), indirect (e.g. loss of prey, reduction in species' fecundity), site specific, or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

For the same reasons as listed for endangered species the EPA has determined that issuance of this permit would have no effect to EFH in the vicinity of the discharge. The EPA has provided NOAA Fisheries with copies of the draft permit and fact sheet during the public notice period. Any comments received from NOAA Fisheries regarding EFH will be considered prior to issuance of this permit.

#### **C. State Certification**

The state in which the discharge originates is typically responsible for issuing the certification pursuant to CWA Section 401(a)(1). In the case where the state has no authority to give 401 certification, such as for a discharge located within the boundaries of an Indian Reservation, EPA provides the certification. The point of discharge of the outfall is also located within boundaries of the Quinault Indian Reservation. Indian Tribes may issue 401

certification for discharges within their boundaries if the Tribe has been approved by the EPA pursuant to CWA Section 518(e) and 40 CFR Section 131.8 to administer a water quality standards program. The Quinault Indian Nation has not yet taken on § 401 certification; therefore, EPA is responsible for issuing 401 certification in this case. However, in the course of issuing this NPDES Permit, EPA has coordinated and consulted with the Quinault Indian Nation.

**D. Permit Expiration**

The permit will expire five years from the effective date.

**IX. References**

EPA. 1991. *Technical Support Document for Water Quality-based Toxics Control*. US Environmental Protection Agency, Office of Water, EPA/505/2-90-001.

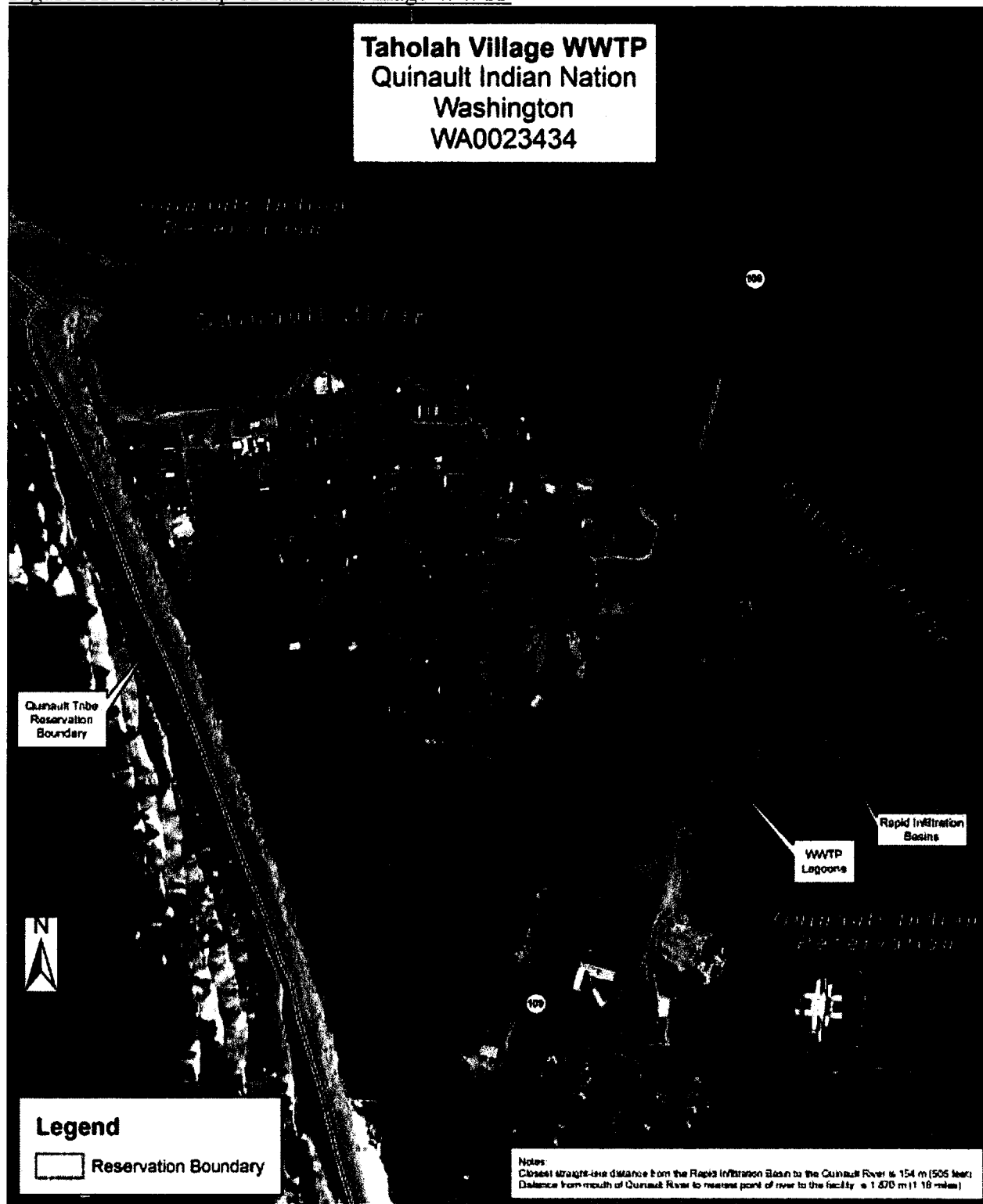
Water Pollution Control Federation. Subcommittee on Chlorination of Wastewater. *Chlorination of Wastewater*. Water Pollution Control Federation. Washington, D.C. 1976.

EPA. 2010. *NPDES Permit Writers' Manual*. Environmental Protection Agency, Office of Wastewater Management, EPA-833-K-10-001.

## Appendix A: Facility Information

<b>General Information</b>	
NPDES ID Number:	WA0023434
Physical Address:	Taholah Village Wastewater Treatment Plant 114 Quinault Street Taholah, Washington 98587
Mailing Address:	Taholah Village Wastewater Treatment Plant Quinault Indian Nation P.O. Box 189 Taholah, Washington 98587
Facility Background:	Wastewater Treatment Plant for Sanitary Wastes and process waste stream for a fish processing plant.
<b>Facility Information</b>	
Type of Facility:	Small tribally owned and operated wastewater treatment plant.
Treatment Train:	Four celled lagoon system; 4 aerators in the first lagoon, 2 aerators in the second lagoon, 2 aerators in the third lagoon, covered fourth lagoon, UV disinfection, dosing tank, discharge to 4-celled Rapid Infiltration Basins into groundwater.
Flow:	Designed flow rate: 0.2 mgd
Outfall Location:	47° 20' 34" N, 124° 17' 00" W.
<b>Receiving Water Information</b>	
Receiving Water:	Discharge into groundwater then into Quinault River due to hydrogeologic connection to the Quinault River.
Watershed as designated by Washington State Dept of Ecology:	Queets/Quinault Water Resources Inventory Area (WRIA) #21, segment: Quinault River and tributaries from mouth to the confluence with the North Fork Quinault River.
Beneficial Uses:	The following water quality use designations apply: Aquatic Life Uses: Core Summer Habitat; Recreational Uses: Extraordinary Primary Contact Water Supply Uses: Domestic Water; Industrial Water; Agricultural Water; Stock Water Misc. Uses: Wildlife Habitat; Commerce/Navigation; Boating; and Aesthetics.
Impairments	None. No applicable TMDL or WLA

Figure A1: Area Map of Taholah Village WWTP

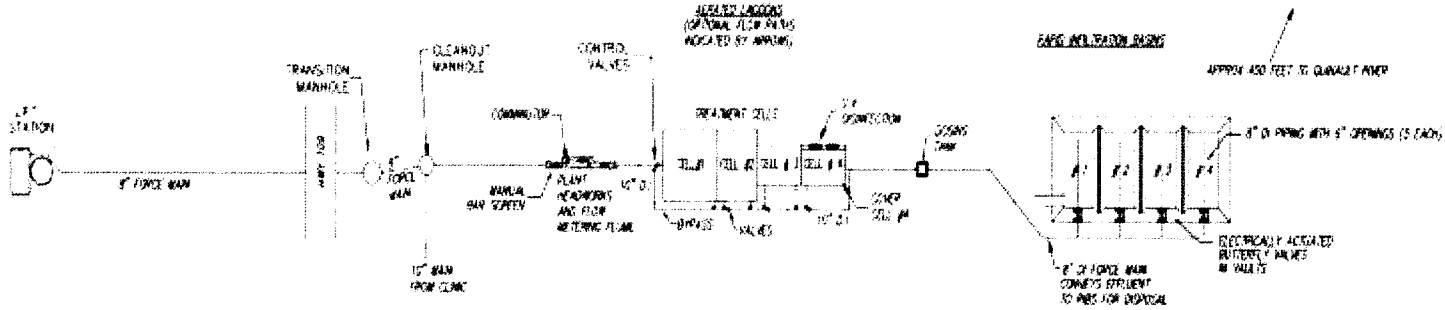


Note: Reservation boundary from US Census Bureau 2013, BOUNDARY AND ANNEXATION SURVEY (BAS) Quinault Reservation (49902033040)

**EPA**  
 US EPA Region 10  
 Map Created 12/24/2014

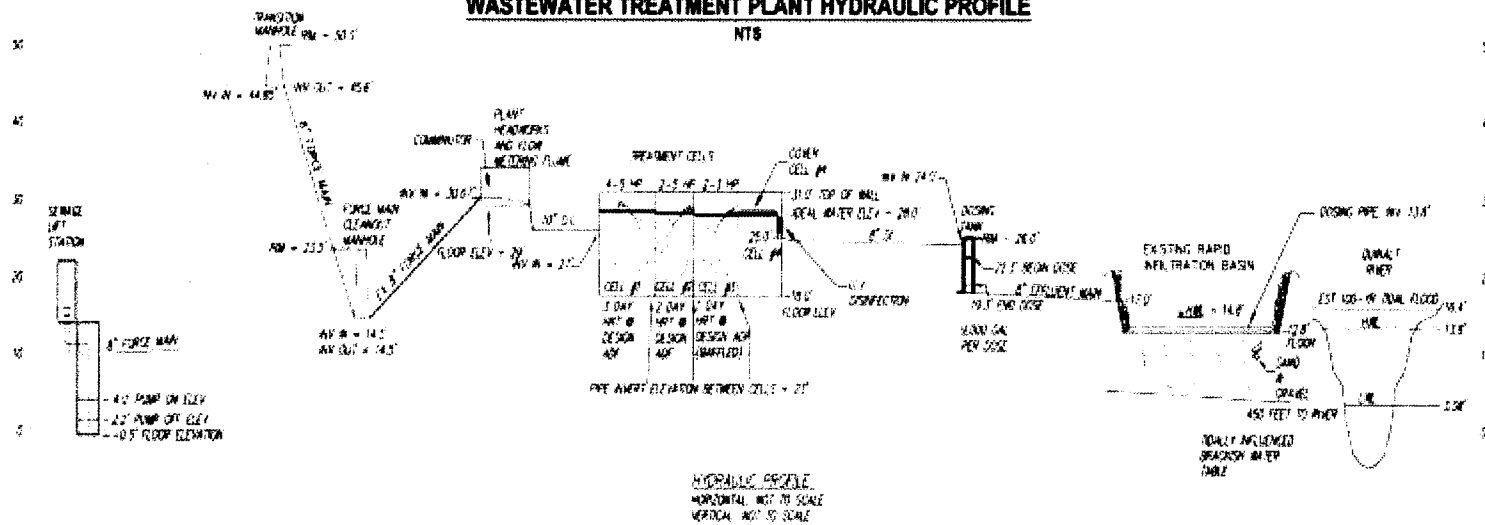
NPDES Permit #WA0023434  
Fact Sheet

Figure A-2: Schematic of Taholah Village WWTP



**WASTEWATER TREATMENT PLANT HYDRAULIC PROFILE**

NTS



**County Clerk**

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**From:** Anna Barbeau <annamaui2008@yahoo.com>  
**Sent:** Thursday, April 18, 2019 10:14 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Sensible use of reclaimed wastewater need be made mandatory. I am in support of the current County Council's attempts to not gut the Clean Water Act. Keeping our reefs & shoreline waters unpolluted need be a primary objective.

Sent from Yahoo Mail on Android

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**From:** michael dAddario <shivadario@yahoo.com>  
**Sent:** Friday, April 19, 2019 1:17 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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County Clerk

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**From:** Michael Gach <mrgach@att.net>  
**Sent:** Thursday, April 18, 2019 10:26 PM  
**To:** County Clerk  
**Subject:** Support the Clean Water Act

We are writing to urge you to support the clean Water Act.  
Please **protect our ocean and reefs from pollution.**

**We care** about protecting our ocean water quality, our reefs and saving the Clean Water Act. We swim in these ocean water daily and respectfully ask you to support the Clean Water Act.

With tremendous sincerity,

**Barbara & Michael Gach, Ph.D.**  
2198 Auina Pace, Kihei, HI 96753

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**From:** daniela minerbi <daniela.minerbi@gmail.com>  
**Sent:** Thursday, April 18, 2019 10:20 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

I respectfully ask the City Council to stop the attack on the Clean Water Act and protect our oceans from pollution. Clean water is a fundamental right for all human beings and it is a duty for elected politician to protect it,  
Thank you for your attention,  
Daniela MInerbi

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**From:** Jerry Riverstone <riverstonej@gmail.com>  
**Sent:** Thursday, April 18, 2019 11:40 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Maui County Council Members

I am writing to request that you move to resolve the County's legal case over the Lahaina injection wells without the case being held in the US Supreme Court. As a first step I hope you will vote to pass the resolution empowering the County Council to address this issue.

Instead as a County we should take responsibility for managing our waste using the most ecologically sound methods possible. Our reefs and beaches are irreplaceable and are worth spending the money to protect.

Sincerely,

Jerry Riverstone

Maui home owner

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**From:** Temple Weste <melepohaku@gmail.com>  
**Sent:** Friday, April 19, 2019 12:07 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Testimony submitted by Temple Weste:

The injection wells at the Lahaina Wastewater Reclamation Facility send millions of gallons of treated sewage per day into the ocean. This is harming our formerly pristine reefs at Kahekili Beach (aka Old Airport Beach). Instead of investing in fixing the problem and enabling water reuse to meet community water needs for agriculture and landscaping, the County has been spending millions of our taxpayer dollars to fight against any pollution controls on the Lahaina injection wells and has taken the case to the U.S. Supreme Court, asking for a ruling that would gut the Clean Water Act. When the new Council convenes this Tuesday, we call for them to chart a new direction for the County to now take a stand in protecting our fragile reefs and oceans and responding to the public cry for clean water, instead of advancing the interests of polluting industries. The first step involves passing a resolution that invokes the Council's authority to consider ways to resolve the legal fight and stop the attack on the Clean Water Act. An attack on the Clean Water Act is an attack on the health of our planet and ourselves. Also, it is obviously an attack on our tourist industry to allow the destruction of the attractions that bring folks to Maui.

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**From:** Pete Wilson <perhansahi@gmail.com>  
**Sent:** Thursday, April 18, 2019 10:16 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

There is clean water and there is unclean water. What do we want to put into the environment? Clean Water. This is a no brainer. Clean up your act. Pay more money and fix the mess.

Pete Wilson  
Pahoa, HI

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April 19, 2019

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2019 APR 22 AM 9: 05

RE: SUPPORTS RESOLUTION number: CC 19-178

OFFICE OF THE  
COUNTY CLERK

Dear Maui County Council Members

As chairman of the County of Hawaii Environmental Management Commission we are very concerned how the county disposes of its wastewater. For over 20 years wastewater was dumped into a sump  $\frac{3}{4}$  of a mile from the Honokohou Harbor. Many studies including one by the USGS (Hunt) demonstrated the wastewater constituents flowed in the subterranean estuary to the harbor. Thus, a hydrologic connection moves the nutrients from a point source into the waters of the United States.

We are extremely concerned that the major mining corporations are going to pull out all the stops to make sure the Ninth Circuit ruling in the Maui case is over tuned by the Supreme Court. With thousands of injection wells on this island discharging all matters of wastewater to the underground estuary, an adverse decision by the SCOTUS could place these discharges outside of the authorities of the Clean Water Act. By extension cesspits and septic systems in the coastal areas could become much harder to regulate.

The island state of Hawaii is hydrologically unique. In states like Kansas where soil profiles are hundreds of feet thick and functionally isolating the wastewater from the ground water, there is much less concern about an adverse ruling.

I believe we have a duty to care for the land and ocean for all the people of Hawaii and to act in the interest of future generations. From that ethic I most respectfully request Maui County withdraw as a defendant in the appeal pending before the SCOTUS.

Malama Pono,

R.H. Bennett Ph.D., Chairman  
County of Hawaii, Environmental Management Commission.

County Clerk

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**From:** Marge Bonar <margebonar@gmail.com>  
**Sent:** Friday, April 19, 2019 8:45 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Council Members,

Why is the county still fighting the closure of polluting injection wells ? Money & time spent on litigation would be better directed to eliminating the problem. Treat the water and make it available for non-potable uses.

Marge Bonar, Pukalani

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**County Clerk**

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**From:** Matti Christensen <mattichristensen@hotmail.com>  
**Sent:** Friday, April 19, 2019 5:38 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Dear Maui County Council Members,

Please stop the attack on the Clean Water Act and vote for Councilmember King's resolution without changes, amendments, or delay.

Mahalo for your consideration,

**Matti Christensen**

Registered Voter  
157 Lahai Lane  
Kahului, HI

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**County Clerk**

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**From:** Gerry Dameron <outlook\_FD6939393F5BB1FA@outlook.com>  
**Sent:** Friday, April 19, 2019 4:50 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Dear Council. PLEASE stop the long running insanity of pretending that we have not been contaminating our near shore oceans with partially treated sewage for the past many years. The EPA has tested our waters off of Lahaina and off of the cove in Kihei and have recorded fecal contamination at a hundred times over the legal limit for near shore ocean water quality. This must stop. This MUST change. Our county has been willfully and knowingly endangering our citizens and our visitors to toxic ocean waters for far too long. The money paid to Patrick Wong for years to avoid our kuliana to ensure clean near shore oceans was a crime and an embarrassment that will live on Alan Arakawa's record always. Now is the time to change it. Let's vote to fix the problem now. Our children deserve clean near shore oceans as well. Mahalo for being PONO and doing the right thing to FIX THIS long running health and environmental problem.

Gerry Dameron  
Pukalani / Wailea  
For Go Green Culture Foundation and as a private citizen as well  
[Gerry@GoGreenCulture.org](mailto:Gerry@GoGreenCulture.org)  
(808) 633 - 7722

Sent from Mail for Windows 10

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**From:** James thebesttreesurgeon <thebesttreesurgeon@gmail.com>  
**Sent:** Friday, April 19, 2019 6:44 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

To Whom it may concern,

Please stop injection well use to prevent further destruction of the Aina, and the people. Not only do harmful chemicals and nutrients make their way to the ocean, killing the corals and fish but the biological danger to ocean goes is increased. Divert all injection well water to cleaning facilities and if there is over flow on peak times pump up slope until it cannot reach the ocean. The smell there on the west side is not paradise but paradise lost- If you continue to disregard the clean water act you will be held accountable for the cleanup and restoration of what you have taken from us all. This will be the only way to help you see the right way to do things, if you have to pay to fix what you have done. You may have to already we just haven't decided to make you....yet. Money is far from the thing that is most important and the sooner you realize this the more happiness you will save. Burning cane used to be a good idea, so did radium paint on dials and watches, and oh what genius to bomb the islands too....WITH the radium still in the equipment . The 1950 is over so you should go back to work and spend our money on helping us or we will get someone who will. Thank you for your time.

Aloha

James F.

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**From:** Fahi Sajedi Foadi <fahidesign@yahoo.com>  
**Sent:** Friday, April 19, 2019 6:21 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please protect our reefs and ocean from **pollution**.

Sent from Fahi's iPhone

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OFFICE OF THE  
COUNTY CLERK

**From:** Stephen Holmes <councilmemberholmes@icloud.com>  
**Sent:** Friday, April 19, 2019 7:43 AM  
**To:** County Clerk  
**Cc:** Kelly King  
**Subject:** Resolution CC 19-178

2019 APR 22 AM 9:05

OFFICE OF THE  
COUNTY CLERK

Honorable Kelly King  
Chair, Maui County Council

RE: SUPPORTS RESO number: CC 19-178

Dear Councilmember King:

During my 12 years on the Honolulu City Council, we were involved in several Clean Water Act lawsuits. Mayor Fasi at the time used boogie man numbers based on daily fines under the Clean Water Act to get the public alarmed and to get us to support legal battles that we ended up losing. No massive fines were every levied, but a large federal consent decree with generous compliance deadlines was established which Honolulu is still working on to meet many years later. Neither EPA or the courts like to force taxpayers to pay out massive fines. They do want compliance, however, and they may also require some additional beneficial program be established.

Maui is getting dragged into a much bigger environmental fight that will largely benefit oil, coal, and fracking interests if it gets decided by a conservative Supreme Court. It is a fight that has horrible ramifications for water quality if it goes the wrong way. Maui is being used as a pawn in a much bigger legal fight.

The simple solution for compliance is to quit using injection wells that convey treated wastewater to the coast and causing pollution. All elected officials in Hawaii have a duty under the Public Trust Doctrine and the Precautionary Principle to protect our coastal waters. Water recycling ends dumping and creates a funding mechanism where is pays for itself. Honolulu didn't have a Reuse Division like Maui, so we entered into a public private partnership with Veolia to build the Honouliuli Water Recycling Facility, the largest in the State. The City Council mandated connections which created the market for sale of recycled water. The Honolulu Board of Water Supply administers the contract and handles billing. No taxpayers dollars were used as it was design, build, and operate. It is part of a comprehensive water resources planning process and will expand as Honolulu comes into compliance with treatment requirements at the nearby wastewater plant. It is cheaper to do water recycling than new source water development. For decades, Honolulu will meet it's water needs by displacing potable water for irrigation with recycled water. Recycled water has the added benefit of being drought proof.

I urge the Maui Council to end the lawsuit and come to a settlement than focuses on solving the problem. Protect our coastal ecosystem, protect public health, and provide for future water needs for the people of Maui. Don't be pawns in a chess match being played out by powerful special interests in the mainland.

Mahalo,

Steve Holmes  
Former Honolulu Councilmember  
75-5865 Walua Road E634  
Kailua-Kona, Hawaii 96740

**County Clerk**

---

**From:** Mark Hordyszynski <markhordyszynski@me.com>  
**Sent:** Friday, April 19, 2019 1:38 AM  
**To:** County Clerk  
**Subject:** Clean Water Act

Please stop the attack on the Clean Water Act and protect our ocean and reefs from pollution. Could you imagine if knowledge of the Lahaina Wastewater Reclamation Facility, which sends millions of gallons of treated sewage per day into the ocean and harms the formerly pristine reefs at Kahekili Beach (aka Old Airport Beach) reaches full volume and makes it to the ears of the tourism industry? It's not hard to do these days. Social media is a powerful tool and the Council's resistance to clean water, unpolluted oceans and healthy beaches needs to be exposed if they cannot do what is right for the people of Maui.

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**From:** Bianca Isaki <bianca@kahea.org>  
**Sent:** Friday, April 19, 2019 8:01 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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Aloha Council members,

Under past leadership, the County has been spending millions of our taxpayer dollars to fight against any pollution controls on the Lahaina injection wells. The County has taken the case to the U.S. Supreme Court, asking for a ruling that would gut the Clean Water Act, the bedrock legal protection of clean water for the entire nation. Instead of trying to dismantle the law, the county should be investing in fixing the problem and enabling water reuse to meet community water needs for agriculture and landscaping.

Please pass the resolution proposed that invokes the Council's authority to consider ways to resolve the legal fight and stop the attack on the Clean Water Act. This resolution will let the County chart a new direction that advances the public's interest in clean water, instead of advancing the interests of polluting industries.

--  
Bianca Isaki, Ph.D., Esq.  
808.927.5606

County Clerk

---

**From:** Jacqui <jjinparadise@gmail.com>  
**Sent:** Friday, April 19, 2019 8:45 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Instead of trying to dismantle the law, the county should be investing in fixing the problem and enabling water reuse to meet community water needs for agriculture and landscaping. Our reefs are dead, dying and brown as he one at airport beach park

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**From:** Linda Jenkins <LINDA\_M\_JENKINS@msn.com>  
**Sent:** Friday, April 19, 2019 8:36 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please reverse course and take action to support clean water. Let's not fight against a law that protects our reefs. We are fighting against ourselves.

Take action to protect our ocean. Our children and our children's children will be grateful for your actions. You have the power to take a stand.

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---

**From:** Hinano Kaleleiki <hekili201@gmail.com>  
**Sent:** Friday, April 19, 2019 4:38 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha to all my name is Hinano Kaleleiki my title is Konohiki appointed by lineal decend and unbroken geneoalgalical history. By proclamation and convenience from the sovereigns himself Kamehameha III. Its amazing how those that know the truth and history of these lands and urs people. We the Kanaka Maoli come from these lands known as Hawaii. We are not Hawaiian we did not assume a name of the place we live to identify as we are originally from. This is not true to whom you really are and from. Then to act as if your truly stem from this base culter and not ever recognize that the kanaka Marlo are the people of these lands we know as Hawaii we take nothing from the newly formed subculture to assimilate the host culture. Our people are uniqueness is one of a kind. Our language cannot be translated correctly by others for they have no understanding of our ways. With said the our people did not have a system as described today. In our cultural society everyone was equal from Moi to makaainana but the truth is that the moi alii nui, Konohiki and Kahuna which is not a priest as they describe this position but they are the best of whatever they do. The konohiki is balance today and tomorrow. The aliinui is the physical being of the spiritual realm our phone call to the gods the moi is the minister of justice he maintains the laws of the gods and enforces these rules and laws. But we are the servents of the servants. Without and the ones we serve are the needs of our people the makaainana. When one prospers and grows in abundance we all rise together. When one only rises then their stealing this is why we could feed hundreds of thousands of people. We did not assume or take advantage of our surroundings we mindfully of the lands and resource of our home. Never giving less then 110 percent of ourselves to our mother earth and honest and obedient to our makers. So let's first care for our water which sustains life weather it be fresh or Salt water be loyal to the land that feeds and provides all that we need and then some. Stop the stealing and perpetuating the crime. Commit to correcting the wrong and adhearing to the laws and rules of these lands. Return restore and replace and repair the damages. Ask permission from the titleholder and true owners of these lands. Make no more excuse for your greedy and arrogant ways. We are forgiving people. We are born free of all habits until they are taught. The greed of the konohiki in prepaturity for the future generations and for the hear and now we will never leave them in destitute. In the best interest of our people and community with dignity and respect. Mahalo do what's right not what's popular wrong is wrong even if everyone is doing it. Right may not be popular but it is correct. Aloha.

2019 APR 22 AM 9:05  
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COUNTY CLERK

**County Clerk**

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**From:** La'akea Kaufman <kea.kaufman@gmail.com>  
**Sent:** Friday, April 19, 2019 2:15 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

To whom it may concern,

I am writing to implore you to begin to pass more progressive, fair measures to protect our reefs, oceans and shorelines from water pollution. Our oceans are one of our most precious resources and are a treasure to be protected by all of us. The council should pass a resolution that invokes its authority to resolve water pollution issues at the local level with local input. Stop the attack on the clean water act, let's resolve this at the state and county levels and make better choices for the future of our land.

In solidarity,  
La'akea Kaufman

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**From:** Maury King <maury@mauryonmaui.com>  
**Sent:** Friday, April 19, 2019 7:27 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Isn't it time to just fix the problem with the injection wells and stop suing so we don't have to? If Maui County wins in the Supreme Court, it will adversely affect clean water everywhere. Is that what we really want to see happen?

This was never a good battle to choose. Let's find a better solution than fighting against protecting our reefs and just control the pollution.

Surely we have much better things to do with taxpayer money than this.

Pretty please. With sugar on top.

Maury King  
Wailuku, Maui

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**From:** James Marcus <788jma@gmail.com>  
**Sent:** Friday, April 19, 2019 8:59 AM  
**To:** County Clerk  
**Subject:** Stop Attack on Clean Water Act

Please be advised:  
Stop Lahaina Injection Well Ocean pollution.  
Stop any, and all, Pollutions to our Maui Environment.  
We must maintain, as best we can, a pollution-free Maui.  
Sincerely  
James Marcus, Haiku

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**From:** kristin markham <ks1markham@gmail.com>  
**Sent:** Friday, April 19, 2019 7:17 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Just stop it. Embrace clean water for the people and the living creatures of the ocean.

*From Kristin Markham*

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**From:** John Naylor <jdancer@kula.us>  
**Sent:** Friday, April 19, 2019 5:34 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Maui County Council Chair and members,

It is time to end injection wells in Maui County once and for all! It seems that the Mayor realizes that this is the will of the People and you who represent us.

Please No more kicking the can down the road. Do it!

Mahalo,

John Naylor Makawao

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**From:** shawn@shawnyoga.com  
**Sent:** Friday, April 19, 2019 9:31 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Lean up our water from sewage!

206 890-2704  
Shawn@ShawnYoga.com

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County Clerk

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**From:** steve sipman <ssipman@gmail.com>  
**Sent:** Friday, April 19, 2019 5:39 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please.

Mahalo,  
Steve Sipman  
3216 LUAHINE PL  
Ha'ikū, Maui, Hawai'i  
96708

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2019 APR 22 AM 9:05  
OFFICE OF THE  
COUNTY CLERK

**County Clerk**

---

**From:** Ruby Truly <rubytruly@gmail.com>  
**Sent:** Friday, April 19, 2019 8:28 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

**Stop the attack on the Clean Water Act and protect our ocean and reefs from pollution.** When I was growing up in the 50's, what is now Kahekili Beach Park (Old Airport Beach), was a special sweet and clean beach that my dad, Senator Toshio Ansai, and I used to go and pick opihi and swim.

Our ocean waters and reefs matter to those of us who have lived on Maui for generations. We have seen the change and the time has come for Maui to lead the way, and not serve the interests of the nation's worst polluters.

Sincerely,  
Linda Ansai  
Kihei, HI, 96753

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**County Clerk**

---

**From:** Barbara Barry <begoniabarry@gmail.com>  
**Sent:** Friday, April 19, 2019 9:57 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Chair and Council Members,

I am writing to ask you to stop the attack on the Clean Water Act and protect our oceans, reefs, marine life from dangerous toxins coming from the ejection wells.

Our host culture depends on sustenance from the oceans and the rest of us want to know that our oceans, reefs and ocean life is protected against human made pollution.

No one like swimming in brown water and the incidents of staff infections from swimming in our oceans is unacceptable. Please stop fighting this like the last Administration has, spending millions of dollars on legal fees and still having daily fines assessed against the County of Maui for non compliance.

Nuff Already.

Be Pono, do the right thing,

Mahalo,

Barbara Barry

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**County Clerk**

---

**From:** julie christine <juliechristine333@hotmail.com>  
**Sent:** Friday, April 19, 2019 10:56 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please support Clean Water Act. It's common sense that where there is clean water there is healthy life. Please. Our ocean waters and reefs matter to Maui, and Maui should be leading the way to stop pollution, not aid and abet the nation's worst polluters.

Thank you for using your common good sense as a humane being, your Aloha, and upholding your responsibility to protect the aina.

Respectfully,

Julie Christine, MOT  
HaleMakua rehab

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**County Clerk**

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**From:** kinee hanson <mauidogdaze@gmail.com>  
**Sent:** Friday, April 19, 2019 11:10 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please stop the attack on our Clean Water Act. Without healthy reefs and clean protected waters the state of Hawaii and her people and wildlife will have no future. My Ohana and I ask for your attention to this very important issue. Please vote to PROTECT and not to POLLUTE. Mahalo nui loa, Kinee Hanson Kihei, HI

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**County Clerk**

---

**From:** David Kingdon <dkingdon@yahoo.com>  
**Sent:** Friday, April 19, 2019 10:30 AM  
**To:** County Clerk  
**Subject:** Stop undermining the Clean Water Act

To the member of the Maui County Council and others whom it may concern:

I share the Sierra Club's position that Maui County should stop insisting on the continuation of the practice of injection wells. Instead, the County should continually be pursuing the most environmentally responsible practices possible.

It is a national embarrassment that Maui County, a place and municipality that should be on the forefront of environmental preservation and sustainable development, is instead making its mark by attempting to undermine the Clean Water Act.

Thank you for your consideration.

David Kingdon  
Wailuku, Hawaii

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**From:** haleakalaskies@hawaiiantel.net  
**Sent:** Friday, April 19, 2019 9:33 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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**To Maui County Council,**

**I am born and raised in Hawaii and have lived on Maui 25 years. The Council should stop the attack on the Clean Water Act and protect our ocean and reefs from pollution. Our ocean waters and reefs matter to Maui, we should be leading the way to stop pollution, not aid the nation's polluters. Injection wells are a bad idea. Please protect our oceans, drinking water, and beaches.**

**Sincerely,**

**Linda Lembeck**

**207 Kulamanu Cir., Kula, HI, 96790.**

**Ph. 808-385-0296**

**From:** Katherine <kjlilledahl@gmail.com>  
**Sent:** Friday, April 19, 2019 11:06 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

STOP PLEASE!  
concerned citizen,  
Katherine Lilledahl

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OFFICE OF THE  
COUNTY CLERK



**County Clerk**

---

**From:** sandra morey <sandi.morey@gmail.com>  
**Sent:** Friday, April 19, 2019 10:20 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Pollution control is most important. Our marine life as well as those visiting old Airport beach should not be endangered due to the lack of protections involved in dismantling the Clean Water Act.

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**County Clerk**

---

**From:** Dennis O'Shea <oshea606@gmail.com>  
**Sent:** Friday, April 19, 2019 9:56 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

It is time for Maui County to stop throwing away money on lawsuits and do the pono thing.

My family and I swim at Kahekili Beach Park and over the years I have seen fecal matter floating in the water and even semi-dissolved toilet paper.  
This is madness.

Even if the Council members don't personally swim there, tourists do, as well as residents. Your salaries and futures are linked to both.

Clean up your act and our water.

Mahalo,

Dennis O'Shea  
Lahaina

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COUNTY CLERK

**County Clerk**

---

**From:** Paul Solomon <psolomonlcsw@gmail.com>  
**Sent:** Friday, April 19, 2019 10:25 AM  
**To:** County Clerk; Kelly King; Keani N. Rawlins; Tasha A. Kama; Riki Hokama; Alice L. Lee; Mike J. Molina; Tamara A. Paltin; Shane M. Sinenci; Yukilei Sugimura  
**Subject:** Resolution "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND. ET AL. V. COUNTY OF MAUI. RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL,

Aloha Council Members,

Under past leadership, the County has been spending millions of our taxpayer dollars (which are needed for so many other things) to fight against any pollution controls on the Lahaina injection wells. The County has taken the case to the U.S. Supreme Court, asking for a ruling that would gut the Clean Water Act, the bedrock legal protection of clean water for the entire nation. Instead of using our tax dollars trying to dismantle the law, the county should be investing in fixing the problem and enabling water reuse to meet community water needs for agriculture and landscaping.

Therefore I ask that the council invokes its authority to consider ways to resolve the legal fight and stop the attack on the Clean Water Act.

Please pass the resolution introduced by Council member King "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND. ET AL. V. COUNTY OF MAUI. RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL,

Mahalo,

Paul Solomon, LCSW  
Haiku, HI  
808-633-3009

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**County Clerk**

---

**From:** Jeanie Stewart <jeanieonmaui@gmail.com>  
**Sent:** Friday, April 19, 2019 9:52 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do everything you can to protect the ocean water around the Lahaina wastewater treatment plant. It is vital to our economy and our spirits to take care of our environment. Please do the right thing.

Thank you,  
Jeanie Stewart  
181 Akai Street  
Kihei

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COUNTY CLERK

County Clerk

---

**From:** David Westerfield <dwest10909@gmail.com>  
**Sent:** Friday, April 19, 2019 10:04 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Don't waste time and money on fighting pollution controls. Stop polluting and protect the ocean.

David Westerfield

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**County Clerk**

---

**From:** Robert Wilcox <bertzz@me.com>  
**Sent:** Friday, April 19, 2019 10:27 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Dear Council,

This message is in regards to Kahekili Beach Park area. The degradation to reefs & water clarity offshore in recent years has been dramatic and disheartening. The continued use of my tax dollars to attack the clean water act and continue the sewage injections rather than fixing the problem angers me. Please reverse this disgusting trend & show respect for the Island of Maui!

Thank you for your time and consideration.

Robert Wilcox  
45 Pualu Loop  
Lahaina, HI 96761

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COUNTY CLERK

County Clerk

---

**From:** Petra Zoeller <zoeller.petra@gmail.com>  
**Sent:** Friday, April 19, 2019 10:32 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha,

please protect our waters and reefs from pollution! Please invest yourselves in fixingg the problem that the injection wells cause. Pass the resolution that invokes the Coucil's authority to consider ways to resolve the legal fight and stop the attack on the clean water act.

Mahalo!

--  
Petra Zoeller, M.A. dba Chetanaa Petra Zoeller  
Realtor (B), Broker in Charge  
UpCountry Realty  
[www.UpCountryMaui.com](http://www.UpCountryMaui.com)  
1 808 283 6919



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**County Clerk**

---

**From:** TylerRLewis <tylerrlewis@gmail.com>  
**Sent:** Friday, April 19, 2019 12:32 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please find it in your heart to do what is right for the public people & the environment instead of making more money happen for the selected few. The planet & our 7 generations of ancestors depend on us to make this world a better place. Please do what you can & what is right.

Mahalo nui loa,

Tyler

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**County Clerk**

---

**From:** Linda Lyerly <llyerly7@gmail.com>  
**Sent:** Friday, April 19, 2019 2:10 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

To whom it may concern:

I am writing to encourage Maui County Council to make right and therefore pass the water resolution before you this coming Tuesday. I am so ashamed That our County has taken such a devastating and wrong direction to, in any manner, weaken out Clean Water Act of 1972!! What is our State mandate After all?? That the life of the land be perpetuated in righteousness... THIS MEANS THE OCEAN TOO.

I swim at airport beach almost every day. The reef there is definitely impacted by the injection wells. We need to take serious the increasing population on the West side and be pono with the development so it doesn't come bite us Later.

Mahalo for your sincere consideration on this very important issue.

Linda Lyerly. Lahaina.  
llyerly7@gmail.com

Sent from my iPad

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**County Clerk**

---

**From:** Martha E. Martin <mauimarttha@gmail.com>  
**Sent:** Friday, April 19, 2019 2:10 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Dear County Council Members,

Please act to end the legal suit in the Supreme Court involving the injection wells at Lahaina Wastewater Reclamation Facility.

That lawsuit won't bring a solution that reclaims water for reuse and that also protects the environment. The funds spent on litigation will be wasted.

Please, instead of spending more taxpayer funds in legal battles, spend taxpayer funds to develop progress toward improving the environment and also reusing wastewater safely.

I've lived on Maui for over 50 years, and I hope Maui can conserve water and also conserve a healthy environment.

Mahalo,  
Martha E. Martin  
40 Kunihi Lane #226  
Kahului, HI 96732

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County Clerk

---

**From:** Gary <gary@ALOHAAKU.COM>  
**Sent:** Friday, April 19, 2019 11:37 AM  
**To:** County Clerk  
**Cc:** Gary  
**Subject:** Stop the attack on the Clean Water Act

Please..... Let's just fix the issues, stop funding the lawsuit, and work to protect the ocean!

Gary



Gary Passon  
gary@alohaaku.com

1390 S. Kihei Rd  
Kihei, Maui  
HI 96753  
808-874-0252

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**County Clerk**

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**From:** Team Aloha <teamaloha@icloud.com>  
**Sent:** Friday, April 19, 2019 2:08 PM  
**To:** County Clerk  
**Cc:** jason  
**Subject:** ATT: ALL County Council Members: Stop the attack on the Clean Water Act

Please let this save as public testimony re Tuesday 9 am matter regarding the Lahaina injection wells and the defense of a position that would do great damage if they should win!

TAKE THE AUTHORITY to change. invokes Council authority & consider ways to resolve the legal fight and stop the attack on the Clean Water Act.

Better should we stop this and find a way to resolve this matter AND put our local efforts on fixing the problem and becoming yet another advocate for a better tomorrow. Otherwise, Maui County could be known as the place where local indecision and defense of the environmentally un-defensible positions can then be part of major environmental abuse in other places in this country.

THAT is the greatest travesty.

And we locally should correct this issue and fix the problem NOW. Priority ONE.

Aloha,

Jason W Schwartz  
808-874-5900  
Kahului, HI

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**From:** Robert Schmidt <mybizmaui@gmail.com>  
**Sent:** Friday, April 19, 2019 12:23 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please change the age old ruling of the injection wells at the Lahaina Wastewater Reclamation Facility and safeguard our reefs and ocean life from treated sewage now entering the ocean at Kahekili Beach.

--  
Best regards, with gratitude;

Bob Schmidt

(808) 281-6487

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**County Clerk**

---

**From:** Rob Weltman <rweltman@twc.com>  
**Sent:** Friday, April 19, 2019 11:48 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Maui County Council Members,

Please withdraw Maui County from the case to allow releasing pollutants into the ground at the Lahaina injection wells. The polluted water flows into the ocean where it damages our sensitive reef system. Maui should be a supporter of the Clean Water Act, not out to weaken it. The Clean Water Act is what all Americans rely on for access to clean, safe water.

Aloha,  
Rob

188 Walua Place  
Kihei, HI

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**County Clerk**

---

**From:** Afton Toni Bennett <aftonb83@yahoo.com>  
**Sent:** Saturday, April 20, 2019 6:29 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please stop the pollution of our pristine waters and support clean water. After all, if this is about money, the tourism dollar is one of our greatest revenues!

Sincerely, Afton Bennett

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**County Clerk**

---

**From:** Teri Corpuz <tpcorpuz@yahoo.com>  
**Sent:** Saturday, April 20, 2019 9:30 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha,

It is time to right the wrong, time for us to be pono. We need to use our tax dollar wisely and do good for our environment. Instead of trying to dismantle the law, the county should be investing in fixing the problem and enabling water reuse to meet community water needs for agriculture and landscaping.

Please, chart a new direction that advances the public's interest in clean water, instead of advancing the interests of polluting industries.

I was raised in Pu'ukolii and have fond memories at the old airport beach. In fact it is still one of my favorite beaches today. We all have the kuleana to protect the reefs and our ocean waters. We who are fortunate to live in the middle of the Pacific ocean should be the role model of how we treat our land and ocean properly. We should lead the way. Please do what is pono!!!!

**Please stop the attack on the Clean Water Act and protect our ocean and reefs from pollution!**

Sincerely,

Teri Corpuz

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County Clerk

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**From:** S Gilgoff <stefinitelymaui@yahoo.com>  
**Sent:** Saturday, April 20, 2019 10:59 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please help protect our ocean ....


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County Clerk

---

**From:** Angelika Hofmann <feelgoodmaui@gmail.com>  
**Sent:** Saturday, April 20, 2019 11:53 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha, to whom it may concern,  
Please stop sending millions of gallons of treated sewage per day into the ocean and harming the formerly pristine reefs at Kahekili Beach (aka Old Airport Beach).

Aloha from Angie Hofmann 

P.O. Box 790728  
Paia, Hi, 96779

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**County Clerk**

---

**From:** Sulara James <sulara@mind.net>  
**Sent:** Saturday, April 20, 2019 2:01 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Thank you & Aloha, Sulara James

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**County Clerk**

---

**From:** Lucia Maya <luciakmaya@me.com>  
**Sent:** Saturday, April 20, 2019 1:35 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Aloha,  
Lucia Maya

808-866-8246  
[www.luminousadventures.com](http://www.luminousadventures.com)

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**County Clerk**

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**From:** MauiMercer <mauimercer@gmail.com>  
**Sent:** Saturday, April 20, 2019 1:29 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Maui County Council,

I believe it is of the utmost importance to take care of the ocean surrounding Maui. Keeping the ocean clean for the enjoyment and safety of all Maui's residents is our responsibility and you, as Council members are our leaders. Instead of fighting previous rulings against injection wells, please invest that money to create R-1 irrigation systems.

Mahalo,

Janet Mercer

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**County Clerk**

---

**From:** ajp@maui.net  
**Sent:** Saturday, April 20, 2019 8:44 AM  
**To:** County Clerk  
**Subject:** Kahekili Beach Park - Wastewater Injection Wells

Dear council members,

My name is James Padgett. I am writing with the hope that the new Maui County Council will decide to begin to figure out a way to clean up the waters around Kahekili Park in Kaanapali. My father was a spear fisherman and he used to take us kids diving all up and down the coast of West Maui. I remember how clean and alive the waters were back then. That was before all of the construction of the hotels and condominiums along the coast. I realize that as the population grew, so did the wastewater problem. Unfortunately, the infrastructure did not keep up with this growth and we now are left to deal with the mess. Please consider cleaning up the waters around Maui as a duty that needs to be dealt with now. We live in a special place and to let it continue to degrade does a disservice to the generations that will follow. The buck should stop now. Mahalo, James Padgett

James Padgett 189 Makaena Place Pukalani, HI 96768 email: ajp@maui.net Phone: (808) 268-1030

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**From:** Phyllis Robinson <pfierrob@aol.com>  
**Sent:** Friday, April 19, 2019 3:27 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

**Aloha Council,**

Please stop the attack on the Clean Water Act and protect our ocean and reefs from pollution. Our ocean waters and reefs matter to Maui, and we should be leading the way to stop pollution, not aid and abet the nation's worst polluters.

Mahalo for putting our environment first.

Phyllis Robinson

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**County Clerk**

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**From:** Fred Spanjaard <fred@globalmediaproductions.com>  
**Sent:** Saturday, April 20, 2019 1:31 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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**County Clerk**

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**From:** K Brown <kblimey@gmail.com>  
**Sent:** Saturday, April 20, 2019 4:07 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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**County Clerk**

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**From:** Co Pegg <copegg6@gmail.com>  
**Sent:** Saturday, April 20, 2019 5:43 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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**From:** Sheila McLaughlin <queen\_ulupalakua@hotmail.com>  
**Sent:** Saturday, April 20, 2019 4:59 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha,

I am trying to be hopeful that the new council will be progressive and stop the "business as usual" practices that have been harming the aina and our reefs for so many years. We are at critical stages so the "pono" decisions we make about our island are more important than we realize. County Council help us keep our ocean safe!

Mahalo!

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**County Clerk**

---

**From:** Bill Staley <ws9811@earthlink.net>  
**Sent:** Saturday, April 20, 2019 2:32 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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County Clerk

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**From:** Helena Weltman <hweltman@twc.com>  
**Sent:** Saturday, April 20, 2019 5:09 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Regards,  
Helena Weltman

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**County Clerk**

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**From:** Barry Winfield <bkwinfield@aol.com>  
**Sent:** Saturday, April 20, 2019 2:19 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

The pristine beaches of Kaanapali are an invaluable asset that attracts thousands of visitors and millions of dollars. Killing the coral and raising the bacterial count puts all that in jeopardy as well as being just the wrong way to go.

Thanks for your consideration.

Barry Winfield

Sent from my iPhone

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COUNTY CLERK

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**From:** yappygr1@aol.com  
**Sent:** Saturday, April 20, 2019 2:20 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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COUNTY CLERK

County Clerk

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**From:** Iolani Antonio <iantonio@hawaii.edu>  
**Sent:** Sunday, April 21, 2019 10:12 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha County Council,

Please mālama our ocean, reefs, and moku and stop the attack on the Clean Water Act.

Mahalo,

Iolani

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**County Clerk**

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**From:** Bill or Bobbie Best <bestb002@hawaii.rr.com>  
**Sent:** Sunday, April 21, 2019 12:03 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

It's more important now more than ever.

Mahalo for allowing our input.

Mr. and Mrs. Bill Best

280 Hauoli

Wailuku, HI 96793

808-242-9119

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County Clerk

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**From:** Maha Conyers <mahaconyers@gmail.com>  
**Sent:** Sunday, April 21, 2019 1:13 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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COUNTY CLERK

To whom it may concern,

I urge you to finally take decisive legal measures to ensure that our waters are clean for residents, visitors and sea creatures. I am appalled to hear that the County has used tax money to side with polluters and even fought against pollution control on the Lahaina injection wells! That is pretty outrageous!

Visiting friends of mine have been ill after swimming in polluted water on the West Side.  
( I think that lawmakers should be personally made liable and pay back for making wrong decisions when incurring high costs for the community through false policies. This is definitively not right. In a democracy certainly the well being of the people should have first place, not developers for rich people only, especially if they don't care about our natural Hawaiian resources. )

Thank you for turning away from the harmful practices of the past and ensuring our right to clean and unpolluted water.

May you lead in the right direction,  
Sincerely,

Maha Conyers, Rev., LMT

**County Clerk**

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**From:** Donna Gibson <dmg@telus.net>  
**Sent:** Sunday, April 21, 2019 10:43 AM  
**To:** County Clerk; EDB Committee  
**Cc:** Keani N. Rawlins; Kelly King; Riki Hokama; Tasha A. Kama; Alice L. Lee; Mike J. Molina; Tamara A. Paltin; Shane M. Sinenci; Yukilei Sugimura  
**Subject:** Maui County Budget Hearing April 24, 2019 - I support fair tax rates

Dear Committee Chair Keani N.W. Rawlins-Fernandez and Economic Development and Budget Committee Member

Re: Notice of Public Hearing April 24, 2019: Proposed Increase of Real Property Tax Rates

We are writing in favor of fair and reasonable property tax rates for the vacation rental industry. We own a small condo at Puamana in West Maui and use it both for personal use throughout the year and Short Term Rentals when we are not in Maui. Since taking possession of our unit in 2011, we have already experienced several significant property tax increases and have now been advised that a further substantial upward adjustment is being discussed by your members.

We understand that Short Term Rentals are currently taxed at \$9.28/\$1000, the third highest rate only exceeded by Hotel and Resort and Time Share rates. Increasing the Short Term Rental rate by such a large amount (to \$16.41/\$1000 - a far higher percentage increase (66%) than the other two categories) may put an unfair burden on the individual owners of these properties and their rental guests and may serve to harm the small businesses that depend on the vacation rental industry.

Maui has a growing vacation rental industry that relies on appropriate restrictions and standards and a fair existing permitting and taxing process. Short Term Rentals already comprise 25% of the approximately \$320 million of real property tax revenue compared to 11% for Time Share, and 7% for Hotel and Resort. The guests of Short Term Rentals contribute greatly to Maui's economy. **If one of the industry goals is to allow for varied accommodations and experiences for visitors and to enable small businesses to benefit from tourism, this massive increase in rates for Short Term Rentals will surely do the opposite.**

We are supportive of the Economic Development and Budget Committee's efforts to find a fair and equitable solution for taxing the vacation rental industry that limits any negative implications for the community. Right now Short Term Rentals bring in almost \$80 million in direct taxable revenue and has created thousands of jobs for Maui as well.

Thank you for reviewing this email and we hope that you will consider our concerns as you continue to draft this bill.

Peter and Donna Gibson

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**County Clerk**

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**From:** Matthew Gurewitsch <matthew@alohaheights.com>  
**Sent:** Sunday, April 21, 2019 11:28 AM  
**To:** County Clerk  
**Subject:** Testimony re: Resolution... Relating to the Clean Water Act

Aloha, Honored Members of the Council,

If I understand correctly, the Count of Maui has for years been paying fines to the tunes of millions of dollars annually for failure to comply with the Clean Water Act, discharging inadequately treated waste water into the ocean, poisoning our reefs, endangering our nearshore fauna, and jeopardizing tourism, upon which our economy depends. This is a shameful record. Taxpayer dollars should be earmarked for solutions, not penalties for dereliction of duty.

Kuleana. Pono. Malama aina. Aloha. Are these just buzzwords? No, they are not. Let's see the Council take them to heart for the health and welfare of our island home and the waters that surround us.

Mahalo for your attention.

*m.*

Matthew Gurewitsch  
3415 Kuaua Pl.  
Kihei (Maui) HI 96753

t/+1 (808) 874-8925  
fx/+1 (212) 656-1647

on the web: [beyondcriticism.com](http://beyondcriticism.com)  
on skype & twitter: mg1228

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COUNTY CLERK

**County Clerk**

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**From:** laurag <laurag@divefish.com>  
**Sent:** Saturday, April 20, 2019 7:32 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

We need to protect our clean water and ocean. Please do not vote to pollute by allowing the use of waste water injection wells. We all know that this kills our fragile reefs and also our endangered turtles and Monk Seals. Every time this is allowed we see the destruction and murky water that is the result. No More!! Mahalo for doing the right thing and being a hero for our people and the A'ina. Laura Gray R.N. P.S. Please share this with all relevant lawmakers. Mahalo.

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COUNTY CLERK

**County Clerk**

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**From:** Halley Prestage <halleyprestage@gmail.com>  
**Sent:** Sunday, April 21, 2019 12:48 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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COUNTY CLERK

To the Maui County Council:

I am astonished that a community who derives so much benefit from the ocean and it's proximity to the ocean, is fighting the Clean Water Act.

Historically, you have spent millions of taxpayer dollars to fight against pollution controls on the Lahaina injection wells. It seems very contradictory that you are banning sunscreens and plastic straws but are also fighting the Clean Water Act. I am sure that if this was largely publicized, people would be outraged.

I have snorkeled at Kahekili Beach Park only to have toilet paper catch on my arm. The reef is full of algae that is flourishing because of the injection wells.

Please stop the legal fight against the Clean Water Act by passing a resolution that invokes the Council's authority to consider other ways to resolve the situation.

Clean beaches and vibrant reefs are important to Maui and you should be her advocate.

Surely most of you have children, grandchildren, or other relatives. How can you conceive of any other plan that doing what you can do to protect Maui's reef and oceans? Why not spend some money on bringing in experts from other places where the wastewater issue is handled successfully and make the necessary changes rather than just trying to lower the bar by fighting the Clean Water Act.

Mahalo,

H. Prestage

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Halley Prestage | mobile: 808.757.8803 | e-mail: [halleyprestage@gmail.com](mailto:halleyprestage@gmail.com)

**County Clerk**

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**From:** aerie waters <aeriewaters@gmail.com>  
**Sent:** Sunday, April 21, 2019 9:07 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

The clean water act protects our water,with all its life affirming properties, for this and future generations....for your grandchildren!

Protect this act and the children to come.If money is your bottom line....without clean water, who will come here?  
Thank you for doing the conscienable thing by standing up for the clean water act.

Sincerely,  
Aerie Waters

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COUNTY CLERK

**County Clerk**

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**From:** keri zacher <zacherk@hotmail.com>  
**Sent:** Saturday, April 20, 2019 7:41 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

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County Clerk

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**From:** Anne Allison <onehiker4fun@mykolab.com>  
**Sent:** Sunday, April 21, 2019 9:18 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please figure out how to treat waste water correctly so Maui, its reefs and surrounding ocean stay clean and safe and support life. Hawaii already has a very high MERSA (flesh eating bacteria) incidence!!!! Our reefs are in trouble with all the pressures on them. when they go, so go the tourists. I love snorkeling and mostly stay on south side due to water treatment issues. Please do what is pono for the land, ocean, creatures and people!!!!

Anne Allison, Kihei, HI

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**From:** George Burnette <ggb7676@gmail.com>  
**Sent:** Sunday, April 21, 2019 9:12 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

2019 APR 22 AM 9:11

OFFICE OF THE  
COUNTY CLERK

To all Maui County Council members,

My name is George Burnette. I live full time in Wailuku and I'm testifying as an individual. I was one of the original volunteers for the ocean water quality monitoring program known as Hui O Ka Wai Ola, a program sponsored by the Maui Nui Marine Resource Council, the Nature Conservancy and the West Maui Ridge To Reef Initiative. I went on to become a paid employee of this program overseeing water quality monitoring on 12 of Maui's beaches.

I grew up in a smallish city, South Charleston, WV. South Charleston was once known as the chemical center of the world, There, and in surrounding cities, were located numerous chemical plants which produced products essential to the conduct of WW I and WW II. Many years ago, the waste of these chemical plants was dumped directly into a river which flowed through our city. This river, the Kanawha River, is quite a large river. This river was grossly polluted until something which became known as the Clean Water Act became law. I saw with my own eyes what can happen if common sense environmental laws are passed and followed. The Kanawha River is now far cleaner and is used for recreational purposes, something not thinkable years ago.

My understanding is that Maui County is party to a lawsuit now before the the U.S. Supreme Court. Our County has been spending taxpayer dollars to fight against any pollution controls on the Lahaina Wastewater Reclamation Facility's injection wells. If Maui County is successful in this lawsuit, the ramifications include potentially gutting the Clean Water Act.

I strongly oppose Maui County's current position of fighting to retain the right to pollute our near shore ocean and continuing to harm a precious coral reef. Instead, I support county investment targeted to help solve this problem, considering all the possibilities including water reuse for agriculture and landscaping needs.

It seems sadly ironic that Maui County, a place sought after for it's natural beauty, is party to a lawsuit which could result in the gutting of the Clean Water Act. I support the Clean Water Act, oppose the unlawful polluting of our near shore ocean and find wonder, beauty and great value in healthy coral reefs. It also seems ironic that this issue before us in Maui County could possibly directly affect the water quality of the river in West Virginia where I grew up.

I most strongly urge you to support the proposed resolution before you entitled "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND. ET AL. V. COUNTY OF MAUI. RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL". And in every way possible, I strongly urge you to search for ways to end the harmful effects of Maui's injection wells.

Humbly submitted,

George Burnette  
cell 513-205-5710

County Clerk

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**From:** Paul Carter <paul@tranceandhealing.com>  
**Sent:** Sunday, April 21, 2019 1:42 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha Kakou

I fish and paddle regularly in our waters on the south shores.

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Mahalo

Paul Carter  
230 W Waipio Rd  
Haiku

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COUNTY CLERK

County Clerk

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**From:** barbara george <barbarageorge40@yahoo.com>  
**Sent:** Sunday, April 21, 2019 11:10 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Mahalo!

Barbara George  
Waialua, HI

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COUNTY CLERK

County Clerk

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**From:** Mary Jo Masters <maryjo@bestmedia.com>  
**Sent:** Sunday, April 21, 2019 3:48 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Aloha,

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Mahalo,

Mary Jo Masters

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COUNTY CLERK

**County Clerk**

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**From:** Diane Shepherd <Diane.Shepherd@outlook.com>  
**Sent:** Sunday, April 21, 2019 9:29 PM  
**To:** County Clerk  
**Subject:** Injection wells

It is shameful that Maui County is trying to subvert the Clean Water Act and wasting taxpayer dollars in fines rather than fix the problem of partially treated wastewater discharging into the ocean. I have seen the wastewater bubbling out of the ocean floor at Kahekili and witnessed the decay of the reef. I personally know at least one person who has contracted MRSA from that site. It is just lucky that the County has not yet been sued for permitting such a health hazard. How many visitors would go elsewhere if they knew the danger?

I urge you to take the necessary steps to have Maui County establish tertiary treatment of wastewater before release into the ocean. Better yet, expand the reuse tertiary treated wastewater for irrigation.

Sincerely, Dr. Diane Shepherd

Sent from my iPad

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2019 APR 22 AM 9:11  
OFFICE OF THE  
COUNTY CLERK

**County Clerk**

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**From:** ediesmassage <ediesmassage@gmail.com>  
**Sent:** Sunday, April 21, 2019 2:36 PM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

To the County Council:

The Clean Water Act is essential to the health of our reefs. I've lived on Maui for 23 years and have witnessed the decline of our reefs on the West Side. We need to update our sewage processing plant on the West Side. It is inadequate for the dense population now.

We are watching to see how you handle this long-standing problem. Please support the resolution to protect our reefs.

Mahalo.

Edie Van Hoose

Sent from my iPhone

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COUNTY CLERK

**County Clerk**

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**From:** Ember <saraemberhawk@gmail.com>  
**Sent:** Monday, April 22, 2019 9:03 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Dear Esteemed Councilmembers,

I am writing to you today as a thirteen-year active resident and avid water woman with a deep and reverent relationship with our ocean. I wish to express my urgent and long-standing concern regarding the shameful use of injection wells pouring treated sewage directly into the ocean. I do not enter the water at Kehekili Beach due to the contamination there. Many times this lovely beach is inundated with the unbearable stench of sewage. Other Lahaina beaches and reefs are suffering damage from the sewage as well. I am dismayed by past actions of previous councils continuing to use injection wells but especially for spending our public funds to fight against and weaken the Clean Water Act.

I am calling on each of you to do the right thing: to stop the legislation immediately and turn our resources to be used for the good of all.

Mahalo,

Ember Behrendt  
Huelo  
808-344-5630

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**County Clerk**

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**From:** Chris egan <cseگان@earthlink.net>  
**Sent:** Sunday, April 21, 2019 10:34 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Sent from my iPhone

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2019 APR 22 AM 9:10  
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COUNTY CLERK

**County Clerk**

**From:** Peter Cannon <peter@hawaiianresources.net>  
**Sent:** Monday, April 22, 2019 7:08 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

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COUNTY CLERK

April 22, 2019

To: County Council Chair Kelly King and County Council of Maui members  
From: Peter W Cannon, Maalaea Wastewater Steering Committee Chair  
Regarding: Testimony to settle Lahaina Injection wells Case.

Dear Council,

I was born in Paia, Maui and raised in a home on the beach at Maalaea, Maui. I am a member and the Chair of the Steering Committee for the proposed Maalaea Regional Waste Water Treatment Plant. Throughout my seventy plus years of life I have observed the degradation of Maalaea Bay and its surrounding reefs and shoreline.

I have also observed the efforts of the prior Maui County Leadership to be on the wrong side of history by fighting against pollution controls over the Lahaina Injection wells systems through the Clean Water Act. Instead of fighting the Clean Water provisions all the way to the Supreme Court, Maui County should be investing in ways to clean up our coastal waters and utilizing the asset of reclaimed wastewater.

While I was growing up, Maalaea Bay was a pristine ecosystem with vibrant reefs, corals found nowhere else, a freshwater spring with a unique shrimp (now gone) where the harbor was built, and with abundant and clean fish, crustacean and other sea-life. Seashells were found everywhere. Today, with all of the Maalaea condominiums, the harbor and the Maalaea commercial triangle sending only primarily treated sewer effluent down 24 injection wells established throughout the harbor and village, only 8% of the original reef is alive, most fish and shrimp are gone, and we swim in filthy waters.

Many residents of Maalaea Village are concerned about the health and vitality of Maalaea Bay. We know that the pristine waters off of Maui are the main economic engine that brings visitors to our islands. Injection wells were established in the 1970's. This was once a cutting edge technology that was appropriate and acceptable when only two million visitors a year were visiting our islands. Today, with over ten million visitors a year coming to Hawaii, the injection wells are no longer appropriate. They are overloading the shoreline with unacceptable levels of damage from sewer effluent. Pumping effluent down into the water table is the same as pumping it to just off the beach.

Please make the right decision on Tuesday April 23, 2019. Please take the lead and pass a resolution that will allow Maui County to resolve and settle the issues in the current legal fight in a way that will protect our oceans and reefs from pollution. Please then use this power to come to terms and settle with the plaintiffs in this case in a way where we will all benefit from a cleaner environment. We should all be on the same side of History and have the same end goals.

Whatever happens at the Supreme Court over the Lahaina Injection wells is going to effect Maalaea Village. Please know that residents of Maalaea Village are being proactive over the expected outcomes from this case. We are trying very hard to establish a regional wastewater treatment plant for Maalaea Village that will take the place of all 24 injection wells and produce R-1 water for the agricultural lands surrounding the Village.

Please be our partners and help us in this effort.

With aloha,

Peter W Cannon



County Clerk

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**From:** Niu Lani olaf <cocolafo@gmail.com>  
**Sent:** Monday, April 22, 2019 8:47 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Sent from my iPhone

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COUNTY CLERK

**County Clerk**

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**From:** pittenger\_8@mac.com  
**Sent:** Monday, April 22, 2019 6:54 AM  
**To:** County Clerk  
**Subject:** Please resolve the lawsuit and stop the attack on the Clean Water Act

Dear Maui County Council,

I strongly support the resolution that would move the County of Maui towards settlement of the Hawai'i Wildlife Fund v. County of Maui lawsuit. That resolution gives us the opportunity to move our County toward resolution of the wastewater disposal problems, while preventing sever damage to the effectiveness of the Clean Water Act.

My background is in Geology and in environmental law. My bachelors degree is in geology and I have taught earth sciences and sustainability issues for many years. I also am an attorney, with a LLM (Master of Laws - above a JD) in environmental law. Let there be no doubt; this lawsuit is dangerous to any interests who seek to improve pollution of streams, lakes, rivers, and coastal waters.

Our current conditions result in a steady flow of pollution directly from our wastewater systems through permeable geological formations to our near-shore environment. This pollution in turn causes multiple threats to one of the most valuable resource we have - our coastal environment. We can move forward to resolve these problems, or move backward to fight a battle that will harm us as well as countless other waters of our nation.

The lawsuit the County is pursuing will give the Supreme Court an instrument that likely will be used to cut a gaping hole in the protections mandated by the CWA.

The Clean Water Act is a vitally important statute that arose when rivers literally caught on fire and many waters were so polluted that aquatic life as we know it was no longer found. Many were considered 'dead' due to extreme chemical and biological pollution, as well as structural degradation. But now these have been restored to much healthier waterways that support recreational activities. The CWA is a federal statute with state implementation that has provided a balance of guidance and pressure to clean up countless waterways throughout the nation.

The Clean Water Act has been so effective that it has been under attack since its inception by interests who want to pollute waterways with impunity. I do not want the County of Maui to play a large part in the dismantling of the CWA. Pursuit of this lawsuit is highly likely to do just that.

To move toward long-term resolution of our wastewater disposal problem, and to prevent immeasurable harm to the CWA, I strongly urge you to adopt the resolution and move immediately toward settlement of the lawsuit.

Let us lead the way toward better practices by using R1 wastewater for irrigation, not to pollute the ocean.

Mahalo for your attention,

Please feel free to contact me if you have further questions

Benjamin A. Pittenger, JD, LL.M.  
(808) 250-7922  
pittenger\_8@mac.com

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COUNTY CLERK

**County Clerk**

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**From:** Thomas Royer <tcroyer@gmail.com>  
**Sent:** Monday, April 22, 2019 6:59 AM  
**To:** County Clerk  
**Cc:** Lynn Britton; Lyndon Ibele; Tapani Vuori; Edwin Clarke; Pam Daoust; Peter Cannon  
**Subject:** Stop the attack on the Clean Water Act

Date: April 22, 2019

To: Maui County Council

From: Thomas C. Royer, 100 Hauoli Street, Apt. 412, Wailuku, HI 96793 Email: [tcroyer@gmail.com](mailto:tcroyer@gmail.com)

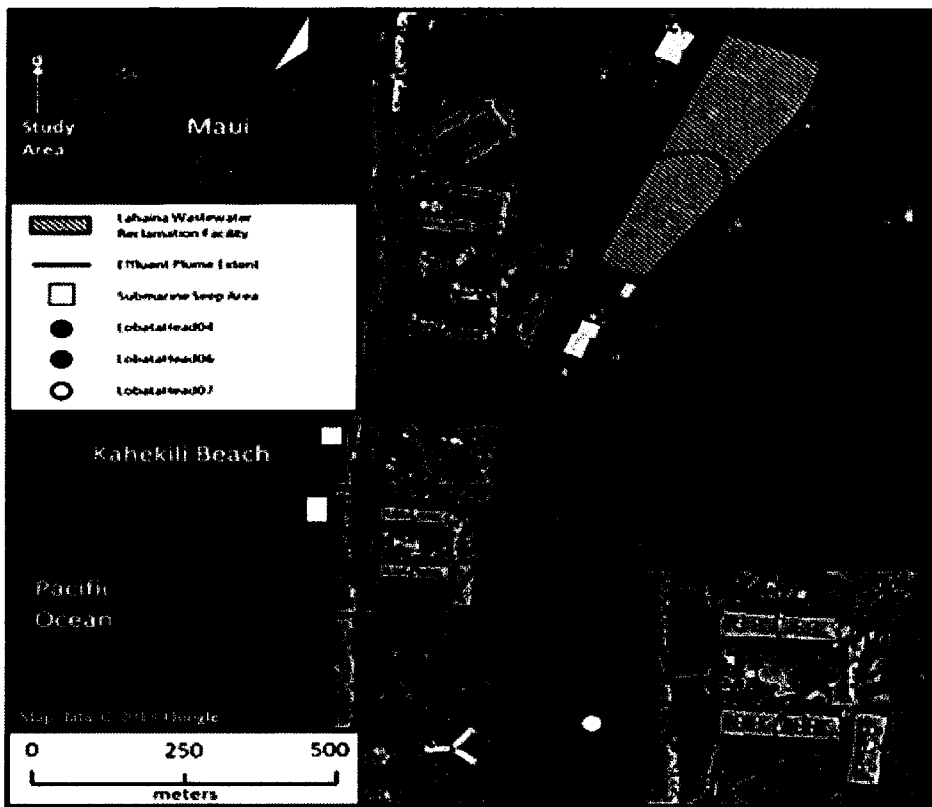
Re: Stop the attack on the Clean Water Act

I, Tom Royer, have been a resident of Maalaea for a decade. I serve on the steering committee of the proposed Ma'alaea Regional Waste Water Treatment Plant. I am an emeritus professor of oceanography at the University of Alaska Fairbanks and Old Dominion University in Virginia and have carried out marine studies of the North Pacific Ocean for nearly 50 years. I am very concerned about the status of Maui's marine environments and particularly Kahekili Beach Park(KBP). I first used KBP about 24 years ago when it was known as Old Airport Beach. It was one of my favorite Maui beaches. I have noted its demise over the years. Very recently I read a scientific paper published in **Nature** on April 3, 2019, which discusses nutrient loading at KBP from the Lahaina Wastewater Reclamation Facility (LWRF) since 1975. That paper contains a map (see below) showing the extent of the LWRP injection plume. The red dot shows the location of a long term sampling location where the nutrient levels are high and much of the coral is now dead due in part to excessive algal growth caused by high nutrient concentrations from the sewage effluent. Do the owners of the nearby hotels that were built after the closing of the old airport in 1980s have knowledge of the LWRF sewage effluent plume on their beaches?

Now is the time for Maui County to clean up its marine environment and bring back the ecosystem that originally attracted many visitors. It can begin by reusing the treated sewage effluent onshore followed by replanting native corals along our coasts to restore healthy ecosystems along our coasts. As an appropriate action, please use county funds to help restore our marine environments rather than attack the Clean Water Act in court.

Thank you for your attention. If you have any questions or desire a copy of the entire **Nature** paper referenced, please feel free to contact me.

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COUNTY CLERK



Reference

Murray, J, N.G. Prouty, S. Peek and A. Payton. 2019. Coral Skeleton  $\delta^{15}\text{N}$  as a tracer of historical nutrient loading to a coral reef in Maui, Hawaii. *Nature* (2019) 9:5579 | <https://doi.org/10.1038/s41598-019-42013-3>.

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Thomas C. Royer  
 100 Hauoli St., #412  
 Wailuku, HI 96793  
[tcroyer@gmail.com](mailto:tcroyer@gmail.com)  
 Cell (510) 318-2758

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Aloha mai e Kākou,

2019 APR 22 AM 9:17

Mahalo e 'oukou for properly representing the concerns of your voter base. Unfortunate for the billionaire corporations, the lack of clean water is far more detrimental for business, than to find another way to get water. They have no business at all, if they destroy the natural resources that people come here to enjoy.

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Whereas I understand that big corporate money is important to the politicians that it pays off, we are thankful that Maui County Council wants to act responsibly on behalf of the betterment of Maui's people, environment and most of all Maui's future.

Whereas I understand that I am not a professional who can freely spout scientific language that confuses people who are not scientists, I can confidently tell you that the continued damage to our reefs and the sea life contained within those reefs are essential to the life on land, including the life of corporate profiteering. Our ocean based businesses are going to collapse because of it. Think about the jobs, think about eating plastic poke (generally, you are eating radioactive, digested plastic poke now).

Whereas the continual damage to our reefs will kill all the life within the reef, which will create snowball effects on all life in this environment,

Let it hereby be known that by not adhering to the Clean Water Act, the Maui County Council, along with the entities against keeping our environment in thriving conditions, are acting in accordance with destruction of all life, their own descendants, and their corporate interest will flounder dramatically as a result.

Also let it hereby be known that at that point, damage done to our reef system and ecosystem altogether, will be irreversible, and

That no amount of corporate profit or personal bank accounts will be of any help toward the pending disaster that ignoring the Clean Water Act will create.

In final conclusion of testimony, let it hereby be known that any signature against the Clean Water Act openly agrees to being responsible for the decimation of life, profits and for acting out against the interests of their very own grandchildren.

Let those who choose to bring our ecosystem to a place of disaster, be held accountable and let the lives that die as a result of ignorance forgive them, for they will have to live with their decision for the rest of eternity, and answer for their choices when they die.

In the spirit of providing solutions to issues at hand, if more water is needed to accommodate billion dollar corporate industries, they are welcome to construct a desalination plant to assist in rising sea levels while getting all the water they need. With billions of dollars to play with, they can afford that. Upper echelon bank accounts should be taking more interest in protecting what makes their profits. Mahalo for recognizing where the voter base lies and for loving your grandchildren enough to want them to enjoy the same life you were given, as a result of how well your ancestors took care of the 'āina. Imagine if industrialization existed 200 years prior to when it did. We'd be dead as a human race by now.



## County Clerk

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**From:** Kahala Chrupalyk <jc76@hawaii.edu>  
**Sent:** Saturday, April 20, 2019 3:22 PM  
**To:** County Clerk  
**Subject:** Re: The Clean Water Act  
**Attachments:** Clean Water Act\_4\_20\_2019.docx

Aloha mai e Kākou,

Mahalo e ʻoukou for properly representing the concerns of your voter base. Unfortunate for the billionaire corporations, the lack of clean water is far more detrimental for business, than to find another way to get water. They have no business at all, if they destroy the natural resources that people come here to enjoy.

Whereas I understand that big corporate money is important to the politicians that it pays off, we are thankful that Maui County Council wants to act responsibly on behalf of the betterment of Maui's people, environment and most of all Maui's future.

Whereas I understand that I am not a professional who can freely spout scientific language that confuses people who are not scientists, I can confidently tell you that the continued damage to our reefs and the sea life contained within those reefs are essential to the life on land, including the life of corporate profiteering.

Whereas the continual damage to our reefs will kill all the life within the reef, which will create snowball effects on all life in this environment,

Let it hereby be known that by not adhering to the Clean Water Act, the Maui County Council, along with the entities against keeping our environment in thriving conditions, are acting in accordance with destruction of all life, their own descendants, and their corporate interest will flounder dramatically as a result.

Also let it hereby be known that at that point, damage done to our reef system and ecosystem altogether, will be irreversible, and

That no amount of corporate profit or personal bank accounts will be of any help toward the pending disaster that ignoring the Clean Water Act will create.

In final conclusion of testimony, let it hereby be known that any signature against the Clean Water Act openly agrees to being responsible for the decimation of life, profits and for acting out against the interests of their very own grandchildren.

Let those who choose to bring our ecosystem to a place of disaster, be held accountable and let their name go down in history as a disgrace to Maui, Hawai'i, and America (if you choose to represent unlawful political misrepresentation).

Let their names go down in such disgrace that their families change names to disassociate with such dishonor to humanity. Furthermore, let the lives that die as a result of ignorance forgive them, for those who decide will have to live with their decision for the rest of eternity, and answer for their choices when they die.

In the spirit of providing solutions to issues at hand, if more water is needed to accommodate billion dollar corporate industries, they are welcome to construct a desalinization plant to assist in rising sea levels while getting all the water they need. With billions of dollars to play with, they can afford that. Upper echelon bank accounts should be taking more interest in protecting what makes their profits.

--  
Aloha Kekahi i Kekahi,

Jen "Kahala" Azuma Chrupalyk

**County Clerk**

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**From:** Eileen Naaman <eonboard@aol.com>  
**Sent:** Monday, April 22, 2019 11:08 AM  
**To:** County Clerk  
**Subject:** Stop the attack on the Clean Water Act

Please do not weaken the Clean Water Act. Let us clean up our own act - use R1 wastewater for irrigation, not to pollute the ocean.

Mahalo

Eileen Naaman

Sent from my iPhone

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2019 APR 22 AM 11: 25

OFFICE OF THE  
COUNTY CLERK



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2019 APR 22 PM 1: 54

OFFICE OF THE  
COUNTY CLERK

April 22, 2019, Earth Day

In Support of Resolution No.19-178 "Requiring Settlement Offers in  
Hawaii Wildlife Fund, Et Al. V. County of Maui"  
April 23, 2019, 9:00am, Council Chamber

Aloha, Chair King, Vice Chair Rawlins-Fernandez & Members of the Maui County Council:

As the Hawaii Regional Manager of the Surfrider Foundation, I am writing in strong support of Resolution No. 19-178, which would require that "settlement offers in the case of Hawaii Wildlife Fund, Et Al. V. County of Maui, relating to the Clean Water Act, be transmitted to the Council for Approval or Disapproval." As a supporting party in this case, Surfrider is committed to clean water, and we have worked with Earth Justice and our partners for years to improve the quality of Maui's coastal waters by asking the Lahaina Wastewater Plant to stop injecting partially treated wastewater into its injection wells.

The motto of our coalition is "Don't Inject, Redirect." Scientists have shown that the injected wastewater has negative effects on the coral reef ecology at Kahekili Beach, and we believe the Wastewater Plant can redirect that water into other productive uses. We should be redirecting our reclaimed water into beneficial uses to meet arid West Maui's demand for fresh water for irrigation, not injecting it into wells that go straight out to the reef. This could be a valuable resource that would provide much needed water for golf courses, commercial landscaping, and agriculture. Thankfully, Maui County has an ordinance in place that says that if the county brings the water to a commercial customer, they have to use it.

Instead of working with our coalition to find solutions, the former Mayor chose to litigate, not mitigate. Maui County has already spent millions of dollars on mainland law firms to fight this case, and each appeal has cost the taxpayers more and more money. This case is hurting the local economy and damaging Maui County's image and reputation. Rather than promoting our county as a responsible steward of stunning natural treasures, we're being portrayed in national media as a polluter who doesn't care about our beautiful local reefs. This is embarrassing and could be avoided by redirecting the wastewater.

Now that this lawsuit is scheduled to go before the U. S. Supreme Court, Maui County's current stance is being supported by a rogue's gallery of corporate polluters like the American Petroleum Institute and the National Mining Association. They want to use this case to sabotage the Clean Water Act and justify environmental disasters like cyanide drainage from mines and leaking oil pipelines. We don't want to people to associate Maui County with these polluters; nor do we want to help their efforts to undermine the Clean Water Act on a national level.

For over a decade, the County's has fought to allow the Lahaina facility to keep polluting the Kahekili reef, and our coalition tried to work with the former Mayor to find practical alternatives. But now we have a new mayor and a new county council who can turn this around. Our county leadership can put an end this fight and start to build a solution instead. Mayor Victorino and the County Council have the opportunity to



do the responsible thing for Maui County and protect our reputation and our reefs at the same time. We should use our time, energy and taxpayer dollars to fix the problem, not fight the solution.

The Surfrider Foundation's Maui Chapter and four other chapters across the Islands support this Resolution because it empowers the Maui County Council to help find practical applications for the reclaimed water. This will not only save the County money, but it will also help restore Maui's reputation as a popular destination where people treasure our coastal waters and pristine environment.

If we start planning now, Maui County can build out a long-term solution for our water system that will give us something to be proud of, instead of embarrassing stories in the news around the country. But if the County continues to push this case all the way to the Supreme Court in Washington, D.C., we will damage our reputation as a place where people work together in the spirit of aloha to find practical, mutually beneficial solutions. This bill will get us moving in the right direction, and we appreciate the leadership of the Maui County Council in working to resolve this issue together.

Aloha,

Stuart Coleman

Stuart H. Coleman, Hawaii Manager

**County Clerk**

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**From:** Tapani Vuori <tvuori@mauiocenter.com>  
**Sent:** Monday, April 22, 2019 8:58 AM  
**To:** County Clerk  
**Subject:** SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND. ET AL. V. COUNTY OF MAUI.  
RELATING TO THE CLEAN WATER ACT

RECEIVED  
2019 APR 22 PM 1:53  
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COUNTY CLERK

To: County Council Chair Kelly King and County Council of Maui members  
From: Tapani Vuori, General Manager Maui Ocean Center, Board Member Ma'alaia Village Association (Member of wastewater steering committee), Ma'alaia Triangle Association, Maui Ocean Center Marine Institute  
Regarding: Testimony to settle Lahaina Injection wells Case.

Honorable Council Chair and Council,

I strongly support Maui County Council's ability to designate cases, as per ordinance 2786 (1999), codified at Section 3.16.020, Maui County Code, for settlement in the interest of public if so deemed by the Council. Maui County needs to have the ability, resources and tools to manage the Maui County responsibly, effectively, and inclusively for the benefit of public interest today and tomorrow.

We all see the negative impacts from our actions, or in-actions, in our near shore eco systems, which have been deteriorating with an alarming and accelerating pace. Global dynamics in terms of Climate Change will further exacerbate these impacts. Coral Reef eco system decimation and shoreline erosion are but just two concrete examples what is happening as a result. These have such a direct negative impact in so many ways to our communities that I am not sure we are prepared to deal with all the consequences.

This issue at hand is but a symptom of what is wrong in our approach to solving these fundamental issues. Perhaps we should start from the end goals and what is the legacy we really want to leave for our children, grand children, and so on. It is time for a new approach how we govern in the public interest; yes it has to start today but we need to have our eyes on tomorrow. I am not sure if we, as a community, have fully yet grasped all the negative outcomes and their impacts. We are running out of time for solutions; we all need to work together with single minded focus and harness our will and resources to solving these problems.

Take the lead and pass a resolution that will allow Maui County to resolve and settle the issues in the current legal fight in a way that will protect our oceans and reefs from pollution. Please then use this power to come to terms and settle with the plaintiffs in this case in a way where we will all benefit from a cleaner environment.

Thank you for your attention. If you have any questions please feel free to contact me anytime. Thank you.

Aloha,

Tapani Vuori | General Manager  
Maui Ocean Center, The Hawaiian Aquarium  
192 Ma`alaea Rd, Wailuku, HI 96793  
t 808.270.7097 | c. 808.561.2022

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**County Clerk**

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**From:** Gary Savage <kanalusavage@gmail.com>  
**Sent:** Monday, April 22, 2019 7:49 PM  
**To:** County Clerk  
**Subject:** I support the RESO

Aloha no, My name is Gary Savage

I remember the refs on the west side before all the changes.

I testified in the lawsuit against the County and I am very disappointed that we are not correctly committed to protecting our reefs and Ocean.

Build a new state of the art treatment plant. ASAP.

SPEND THE MONEY!

IT'S VERY IMPORTANT FOR US TO PROTECT OUR OCEAN AND REEFS

MAHALO FOR YOUR KOKUA

ALOHA NO BRADDA GARY.

P.S. I'M A WATERMAN AND HAVE BEEN DIVING THIS REEF SINCE 1970

WE NEED ACTION NOW!