

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

September 3, 2019

CONVENE: 9:03 a.m.

PRESENT: Councilmember Michael J. Molina, Chair (excused from 2:20 p.m. to 2:51 p.m.)
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair (arrived at 10:10 a.m.)
Councilmember Riki Hokama (arrived at 9:15 a.m./left at 12:47 p.m.)
Councilmember Tasha Kama (arrived at 9:08 a.m.)
Councilmember Kelly T. King
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura

STAFF: Shelly Espeleta, Legislative Analyst
John Rapacz, Legislative Attorney
Kasie Apo Takayama, Legislative Analyst
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci
Michelle Del Rosario, Executive Assistant to Councilmember King

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Mavis Oliveira-Medeiros, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Eric Nakagawa, Director, Department of Environmental Management
Edward S. Kushi, First Deputy, Department of the Corporation Counsel

OTHERS: Twelve (12) students from University of Economics, Hiroshima Japan
Stephanie Ohigashi
Twenty-six (26) students from Kula Waena O Lahaina
Kanoelani Steward

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Anahera Tevaga
Elijah Kanekoa
Brianna Kekona
Hana Losano
Ezra Smith
Kosianjra Kosi
Tyler Sado
Jordan Holokai-Jacinto
Cami Nakagawa
Rylee Kahookele
Kalena Carpenter
Hokuao Pellegrino
Brooke Holderbaum
Kayla Frias
Dave Taylor, CIP Coordinator
Robin Knox
State Representative Angus McKelvey
State Representative Tina Wildberger
Bridgett Mowaut
Liko Wallace
Mahina Poepoe
Carmen Hulu Lindsey, Maui OHA Trustee
Chris Fishkin, Host, Maui Real News
C. Rose Reilly
Caitlin Maratea
Kim Toomey
Rob Weltman, Chairperson, Sierra Club
Peter Davis
Spencer Headley
Jason Economou, Government Affairs Director, REALTORS®
Association of Maui
Stewart Coleman, Hawaii Manager, Surfrider Foundation Maui
Chapter
Hans Krock
James Kumagai
Katrina Frank
Paul Carter
Sean Lester
Lance Collins
Ananda Stone
George Burnette
Steve Allen
Steve Paselk
Mike Silva
Hannah Bernard, Director, Hawaii Wildlife Fund

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Sam Small
Clare Apana
Craig Lekven
George Chyz
Travis Liggett, President, Reef Power LLC
Lucienne de Naie, Board member, Sierra Club
Emily Hosseinian
Linda Lyerly
Daniel Grantham, Board member, Sierra Club
Juan Rivera, Civil Engineer, Wastewater Reclamation Division,
Department of Environmental Management, County of Maui
Liz Foote
Gerry Dameron, Executive Director, Go Green Cities Lucrative
Sustainability
Rita Massey
Deborah Aweau, Maintenance Coordinator, COM- WWRD
Autumn Ness
Peter deAquino
Miranda Camp
Shay Chan Hodges
Elisa Plauche
Paul McCurdy, Veterinarian, Maui Ocean Center; and Board member,
Sierra Club
Scott Rollins, Acting Wastewater Reclamation Division Chief,
Department of Environmental Management, County of Maui
Seraph D'Alerta
Darla White
Mark Deakos
Mahesh Cleveland, Attorney, Earthjustice
Satya (Christiane) Douglas
Kecia Joy
Rhiannon Chandler-Iao
Donna Brown
Stoph Kasak
Tessa Martinez-Melem
Isaac Moriwake, Managing Attorney, Earthjustice
Matt Lane
Terez Amato
Cassie Martin
John Ciesar
Albert Hahn
Kyle Ginoza
Keone Kneisler
Robyn Kinker
Joy Hosseinian

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Sne Patel
Dane Maxwell
Samantha Campbell
Kiara Santos
Bronson Lubresky
Nick Drance, The Maui Miracle
Cassandra Jones
John Gelert
Steven Dollar
Adam Smith
Gordon Firestein
Doris Lang
Michael Luque, Vice Chair, Surfrider Foundation Maui Chapter
Darla Palmer-Ellingson
Charlotte O'Brien, Executive Director, Food Security Hawaii
Stacy Otomo
Lori Tsuhako, Director of Housing and Human Concerns
Sierra Ondo
Campbell Farrell
Michael Wildberger
Amy Fonarow
Charles Rutkowski
Plus (88) other people

PRESS: *Akaku Maui Community Television, Inc.*
Melissa Tanji, The Maui News
Susan Halas, Maui Time
Axle Beers, Maui Time

GET-26 HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL 12-00198
SOM BMK, U.S. SUPREME COURT DOCKET 18-260 (CC 19-178)

CHAIR MOLINA: ... *(gavel)* ... The Governance, Ethics, and Transparency Committee meeting for Tuesday, September 3, 2019 will now come to order. Good morning, everyone. And good morning, Members. Let's start off first with our Member introductions. We'll start first with our Member from Hana. Good morning, Mr. Sinenci.

COUNCILMEMBER SINENCI: Aloha and good morning, Chair.

CHAIR MOLINA: Aloha, sir. And we have Council Chair.

COUNCILMEMBER KING: Aloha. Ohayo gozaimasu.

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CHAIR MOLINA: Ohayo gozaimasu to you too. Thank you, Madam Chair. And our Member from Wailuku.

COUNCILMEMBER LEE: Mr. Chair, if you are traveling to Thailand, Southeast Asia you would be in vogue if you said to everyone...well, the women say something and the men say something so I gave you the men's comment and so I would say sah wah dee khaa and then I'd bow to you.

CHAIR MOLINA: Okay, well I'll just do this back at you, sah wah dee khaa. Thank you, Member Lee. Excused we have our Vice-Chair Keani Rawlins-Fernandez as well as our Lanai Councilmember Riki Hokama. Let's go over to our West Maui representative. Good morning, Ms. Paltin.

COUNCILMEMBER PALTIN: Aloha kakahiaka, Chair.

CHAIR MOLINA: Aloha kakahiaka. And we have our Upcountry Councilmember, good morning.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

CHAIR MOLINA: Good morning. And also excused this morning is our Member from Kahului, Member Tasha Kama. We have from the Corporation Counsel's Office, we have Deputy Corporation Counsel, Mr. Ed Kushi, as well as Corporation Counsel, Ms. Richelle Thomson.

MS. THOMSON: Good morning.

CHAIR MOLINA: Good morning. And we have from the Department of Environmental Management, the Director. Good morning, sir.

MR. NAKAGAWA: Good morning.

CHAIR MOLINA: Good morning. And Committee Staff joining me, a very hardworking group of ladies. We have Ms. Shelly Espeleta, Pauline Martins, and Stacy Takayama Apo [sic]. Good morning, ladies. Well, folks, we have only one agenda item today but certainly a very big one. But before we get...delve into that, we have a lot of folks in the gallery this morning, impressive, certainly a very important issue which relates to the proposed settlement with the Hawaii Wildlife Fund versus County of Maui matter. I'd like to go over a few ground rules for public testimony today.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Yes, Ms. King?

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COUNCILMEMBER KING: May I just point out that we have some guests today here from Hiroshima and...

CHAIR MOLINA: The Chair is very aware of that. Thank you. I was just getting to that --

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: --Member King, if you'll allow me to. Okay. Folks, because we have a lot of people here today...this is a very highly charged and emotional issue, I would ask for all of your respect for our...whoever testifies today and their opinion. I need your help to maintain decorum so if you can help me do that, Chair would certainly appreciate that. Testimony will be limited to three minutes per individual. Testify your full name for the record and any organizations you represent, as well as if you are a lobbyist, you need to make the Committee aware of that. But before we proceed with testimony...by the way, we're going to get testimony as well possibly from Molokai, Lanai, and Hana. But we do have some very special guests in the audience, they've come over to us all the way from Hiroshima, Japan, from the University of Economics we have our students. We'd like to welcome you all. Good morning.

EVERYONE: . . . (*applauds*) . . .

CHAIR MOLINA: And Ms. Ohigashi from our sister city group has brought them over. And our young people from Japan certainly picked quite a day to come and observe our Council proceedings or Committee proceedings here today in Maui County. It's like this all the time. No, it's not like this. But thank you so much and we welcome you with a lot of aloha. Alright, Chair right now would like to recognize Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just was...wanted to also point out that we have Kula Waena O Lahaina in the audience and they...I just would request maybe if the students could go first, because the bus back to Lahaina and traffic and everything, if there's no objection, I would just humbly request if they could go first.

CHAIR MOLINA: Okay. Well, Member Paltin, the Chair has no objections. Members, any objections --

COUNCILMEMBERS: No objections.

CHAIR MOLINA: --to allowing the students to go first?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay, seeing none, and that's great, we have a wide array of people in the gallery from the very young to the very young at heart as well. So, thank you. Alright, let's call up our group from West Maui to testify. Please come up to the rostrum. And

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as our students are making their way to the podium, this particular item on our agenda has drawn some national attention as well, so whatever, you know, is being said and whatever decisions are made is certainly going to be very important for Maui County. And the Chair on behalf of my fellow colleagues appreciate all of your manao and input on this very important matter. So, yes, please come up and just introduce yourselves and if you have something you'd like to do prior to your testimony, Chair would like to welcome you.

COUNCILMEMBER KAMA: Chair?

COUNCILMEMBER SUGIMURA: Mr. Chair?

CHAIR MOLINA: Yes? Oh, Member Kama, yes?

COUNCILMEMBER KAMA: Good morning. I just wanted to say good morning to you.

CHAIR MOLINA: By the way thank you for attending the meeting this morning.

COUNCILMEMBER KAMA: Thank you.

CHAIR MOLINA: Okay. Thank you.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. STEWARD: . . . *(speaks in Hawaiian)* . . .

COUNCILMEMBER PALTIN: Sometimes it's nervous with this many people.

CHAIR MOLINA: I look forward to something very special this morning. This is great. Thank you.

MS. STEWARD: . . . *(speaks in Hawaiian)* . . . Aloha. Mahalo.

CHAIR MOLINA: Aloha.

MS. STEWARD: . . . *(speaks in Hawaiian)* . . . We're Ke Kula Kaiapuni O Lahaina and we just wanted to show our support for our aina, for this aina Haena Nui. They just learned this mele so mahalo for all of your patience. But in this mele it talks about Honokowai, it talks about Haena Nui, this place that we're all going to be talking and sharing about today. It gives light, it...how do you say, it really expresses the importance of how we need to value our resources not just for us today but for these kids, for our next generation coming up. And so, mahalo nui for having us and allowing us to go first.

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[Twenty-six (26) students from Kula Waena O Lahaina sing.]

CHAIR MOLINA: Maikai. Mahalo to Kula Waena O Lahaina. Would any one or two students would like to speak for the group or have something to say? I see you're from Lahaina Intermediate. That was a school I taught, Uncle taught many, many, many years ago. So, it's nice to see all of you coming from the west side. Any of the kids or couple of you would like to share your manao on this idea? And please just state your name for the record before you say something yeah.

MS. TEVAGA: Aloha. My name is Anahera Tevaga, I'm a resident in Lahaina. While our lahui is fighting for our Mauna Kea, how can we only focus on malama i ka mauna when we can't malama i ke kai? Our kai is what brought us here to Hawaii and I think that we need to protect our kai and not poison it. We need to take care of our resources so that our next generations will have it as well. And...yeah, that's it.

CHAIR MOLINA: Mahalo. Any clarification for testimony? Seeing none...Chairman King? Excuse me, young lady, we have the Council Chairman would like to ask you a question.

COUNCILMEMBER KING: Well, it's actually for the entire group because I just wanted to clarify the message. And I see a young lady in the back that has a sign, if you could your sign up, because I think that's the issue of the day is that your message there. So, I just wanted to clarify that we have an issue, a legal issue up before us, and so you're all here to ask the Council to settle the case and withdraw it from the Supreme Court, is that your message?

KULA WAENA O LAHAINA STUDENTS: Ae.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Okay, thank you. Anyone else would like to speak? Okay, we have a young gentleman. Please state your name. You can bring the microphone...or, Staff, could you assist the young man with bringing the microphone down? Thank you.

MR. KANEKOA: Pretty...this thing is big. Welina mai kakou.

UNIDENTIFIED SPEAKER: Aloha.

KULA WAENA O LAHAINA STUDENTS: Aloha.

MR. KANEKOA: . . . *(speaks in Hawaiian)* . . . Mahalo.

CHAIR MOLINA: Okay. Mahalo. Members, you need testimony clarified? Okay. Okay, next testifier please, and please state your name for the record.

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MS. KEKONA: Welina mai kakou.

UNIDENTIFIED SPEAKER: Aloha.

KULA WAENA O LAHAINA STUDENTS: Aloha.

MS. KEKONA: . . . *(speaks in Hawaiian)* . . . Mahalo.

CHAIR MOLINA: Mahalo. Members, any need for clarifying the testimony? Seeing none, thank you. And, folks, just if you could help me just tone down the applause just a little bit yeah. So, thank you, mahalo. Young lady, good morning. Please state your name for the record before you testify.

MS. LOSANO: Aloha. My name is Hana Losano and I am here to . . . *(speaks in Hawaiian)* . . . aloha aina, because it's a bad thing to pollute the ocean and it'll hurt the corals, and if there's no coral there's no fish. Mahalo.

CHAIR MOLINA: Mahalo. Members, any need to clarify testimony? Seeing none, thank you. And then our...any others that would like to testify before we close or we move on? No shame. Ho, you guys are doing so well. If I was your teacher I'd give you guys all A's today. Okay, good morning, young man. Please go ahead and state your name for the record and then...before you testify.

MR. SMITH: Aloha. My name is Ezra Smith. I'm here to--I don't know--testify that our ocean should be clean so that all living creatures in the ocean could stay alive like fish, 'cause if there's no fish then how are we supposed to eat it? Mahalo.

CHAIR MOLINA: Mahalo. Any others for testify?

MS. STEWARD: . . . *(speaks in Hawaiian)* . . . I definitely urge the Maui Council to withdraw their appeal to the Supreme Court. You know here we are today as the people of this community of Maui, and you guys keep sending it off away to the Continental US. It puts it in their hands, it makes them make a decision for us here, and they don't have no idea about the history of this place, they have no idea about the people of this place. They have probably never even been to this place. And so, the decision that they make over there is, it's going to greatly affect all of us, but all of that can change today and here. I definitely urge you guys to take into consideration all of these different solutions that I've been coming up. There's...we have a Water Commission meeting coming up next week about the waters from Honokowai, Honolua, and Honokohau, and to be able to utilize and it's being recommended that we decrease the amount of water that's being diverted from that area. And another option is to utilize this R-1 water. Instead of sending it straight to the ocean, you can continue to use it to landscape and for...to irrigate to different landscapes, to golf courses, to all the park areas within the Kaanapali area. And so, just really take into consideration all of the options before you guys just hand off our problem to somebody else. Here we are,

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everybody here, you see a whole wave of blue. We're here...just like how my haumana said, we're here to . . . *(speaks in Hawaiian)* . . . we're here to stand for our ocean. And so, I really urge you guys to just take things into our own hands besides giving it off to other people. And to really...even though it might be expensive, it might be hard to get all the infrastructure needed to fix the facility or whatever it needs to be done, think about, you know, think about...and from an educator perspective, you don't really see the fruits of your labor until way longer maybe. And so, when you think about investing...sorry, I see 30 seconds. When you think about investing into our aina like that, you're not just protecting everybody here and now, but you're protecting the water and this area for these kids right here. And so, I really hope you guys, you hear all of our voices today. . . . *(speaks in Hawaiian)* . . . Mahalo.

CHAIR MOLINA: Mahalo. And Chair appreciates your voices and thank you. Okay, I'm sorry, kumu, we have Chair King would like to ask you --

COUNCILMEMBER KING: I just --

CHAIR MOLINA: --to clarify your testimony.

COUNCILMEMBER KING: --wanted to, you know, I want to thank, first of all thank you for bringing the voice of our future. But I didn't catch your name so I just wanted...

MS. STEWARD: Oh sorry, my name is Kanoelani Steward.

COUNCILMEMBER KING: And you're the instructor for the...

MS. STEWARD: Yeah, I'm the...I'm their kumu.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Okay. Members, any other need to clarify Kumu Steward's testimony? Seeing none, Chair mahalos all of you for coming out and taking part in democracy so to speak, yeah, and appreciate your thoughts. And also mahalo for the olelo challenge like myself for translating as well, so much mahalo. Thank you very much.

MS. STEWARD: Mahalo.

CHAIR MOLINA: Mahalo. Thank you. Next to testify we have...on our one agenda item we have Dave Taylor to be followed by Robin Knox. Oh. You know what, sorry, Mr. Taylor, we have one more school group that I was just made aware of. Members, any objections to having the Kamehameha School students that are here to testify to have them go prior to taking testimony from others? Member Paltin?

COUNCILMEMBER PALTIN: No objections.

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CHAIR MOLINA: Any objections? Okay, so ordered. Okay, our students from Kamehameha School and their kumu, if you're available. Please come up to the podium. And while they're doing that Chair would like to recognize the presence of both Member Kama and Member Hokama to our proceedings this morning. Okay. Where is our Kamehameha School students? Please come up, no shame. And again, please state your full name for the record before you start your testimony.

MS. KOSI: Sorry. Aloha, my name is Kosianjra Kosi. Good morning --

CHAIR MOLINA: Good morning.

MS. KOSI: --Chair Molina and various Members of the Council. I'm a student from Kamehameha Schools and I'm standing behind this issue, because not only does it affect our future and our oceans, it possibly affects the future of those who come after us. The injection wells have been proven from many cases to negatively affect not only our oceans but our groundwater. I strongly support Maui County seeking to settle the Lahaina injection well case. One of the more...one of the most recognized instances of the negative impacts of the treated wastewater to our oceans is the Kahekili Reef. In an article titled US Supreme Court Agrees to Hear Hawaii Clean Water Act Case by Earthjustice it states that though treated, the sewage still contains a variety of containments including excess nutrients that have been linked to algae blooms and are shown to damage coral reefs. The treated wastewater has been flowing with groundwater via the injection wells owned by Lahaina Wastewater Reclamation Facility. This wastewater along with groundwater flows near the Lahaina...I'm sorry, near the Kahekili reefs, and the extra nutrients mentioned in the article includes nitrogen. Nitrogen causes algae blooms and that degrades our reef. Not only is it currently affecting the reefs, it is also...it also could affect the Hawksbill Sea Turtle since the Kahekili reefs is an important foraging spot. The County of Maui should resort to dispose of the treated wastewater that is not being sold to be used for other purposes such as golf courses, hotels, and et cetera. Some other ways to dispose of this treated wastewater in a resourceful way is to use it to restore dry outlands, save it to use for fires, and use it for agricultural needs. I propose that Maui County supports wastewater reclamation facilities financially and taking the extra step to making this treated water suitable to drink. Not only would this be a better way to save our oceans and more, but it would be a smart investment unlike some other funded projects that may have had to cost or will cost millions and had no other importance. Also, not only does this affect our oceans, our sea life, and our future on Maui, in the United States this impacts the same thing as us but in a much larger quantity. If the Clean Water Act is taken away, this gives wastewater treatment facilities, chemical plants, concentrated animal feeding or operations, mines, and oil and gas waste treatment facilities the free pass to contaminant the water with the pollution they produce as long as it does the same thing through the pipes in the ground and getting into our nation's oceans via groundwater. Thank you.

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CHAIR MOLINA: Mahalo for your testimony. Members, any need to clarify any testimony? Seeing none, okay, next to testify from Kamehameha Schools. Please state your name for the record prior to...and for all of our testifiers just a reminder, when you see the yellow light flashing that means you have 30 seconds to conclude your testimony, and once you see the red then it's time to end, yeah, but anyway, just a friendly reminder. Go ahead, young man.

MR. SADO: Aloha. My name is Tyler Sado. Good morning, Honorable Chair Molina and the Honorable Members of the Maui County Council. I am from Kamehameha Schools Maui and I'm a ninth grade student there and I am in strong support of GET-26. I support the County seeking to settle the Lahaina injection well case. The County of Maui should focus its efforts on ensuring no pollutants reach the ocean from our wastewater facilities. I strongly support GET-26 and Maui County's adoption of proposal number one, a resolution entitled Requiring Settlement Offers in Hawaii Wildlife Fund, Et Al. V. County of Maui into the Maui County Legislative Package. This resolution would provide the means for Maui County to settle the issue without the ruling of the Supreme Court. The involvement of the Supreme Court may provide clarification for the County concerning inclusions of the Clean Water Act; however, their ruling on the issues offers the potential for more than just clarification, it may cause more lawsuits, additional fines, and prolong the County finding a viable solution for Maui taxpayers and our unique environment. Maui County needs to put an end to this litigation. This issue has dragged on long enough and has used too much of our taxpayer money. Maui County needs to step up to the responsibility to be stewards of the aina and utilize alternate methods for the disposal of treated wastewater. I believe maintaining open communication with the community and key stakeholders, along with the willingness to compromise and work together is vital. Thank you for your consideration of this testimony in favor of GET-26. Mahalo.

CHAIR MOLINA: Mahalo for your testimony. Members, any need to clarify? Seeing none, thank you. Next to testify from Kamehameha Schools, please approach the podium. And again please state your name for the record.

MS. HOLOKAI-JACINTO: Aloha. My name is Jordan Holokai-Jacinto. Aloha, Chair Molina and Members of the Maui County Council. I am here to testify for the County continuing to the Supreme Court in order to get clarification about whether or not they should be put under the Clean Water Act. The Maui County I believe should not be falsely accused of being in violation of the Clean Water Act when it does or should not apply to the County at all. Instead, the organizations like Hawaii Wildlife Fund should not attempt to accuse the defendant, Maui County, of the current state of Kahekili Beach Park on Maui. I strongly oppose the false accusations to the Maui County made by said organizations. The Clean Water Act made in 1972 is meant to regulate the pollutants directly discharged into the waters of the United States of America, in other words, it should only affect closed-water systems that discharge their pollutants directly into the ocean. And since Maui County does not, they should, I believe, they should not be put under investigation for a supposed violation that did

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not happen. After conducting further research about the discharge entering the ocean at Kahekili Beach Park on Maui, it would be inaccurate to state that there was no discharge coming from the injection wells; however, there are many other sources that could and are most likely the cause of the recent damage done. To support my claim here is some reasoning as to why I am opposing the organizations like Hawaii Wildlife Fund, demand for the Maui County to withdraw their case from the Supreme Court. The County of Maui has been under the Safe Water Drinking Act since 1972 and has been abiding by all of the requirements. The Safe Water Drinking Act regulates impacts made to groundwater and aquifers, and one of the requirements the County must follow is that they must recycle polluted and/or sewage water to the highest possible quality water underneath drinking water. And once that is completed, they must reuse as much as possible before pumping it into the injection wells. Since the Maui County has been using the Lahaina injection well since 1972, along with many other companies whose pollutants also exit at Kahekili Beach Park, there's little reason to believe that the recycled water has any negative effect. And one main reason I believe this is because there's only been one known report of algal bloom or algae bloom which was in the 1990s and for those who are unaware, an algae bloom is a rapid increase of algae growth which usually results in the suffocation and death of the coral. So, if the water from the Lahaina injection wells was the cause, the decline in coral reef would be continuous. Russell Sparks conducted an observational experiment to see the difference in coral life in various locations on Maui, and it was found that over the span of a ten-year period, the coral life had not decreased, in fact it had varied amounts of growth within the surveyed years. I strongly believe that the final decision should not be made by an environmentalist or anybody involved with anything of the matter and instead should be made by someone who is unbiased and does not let their emotions forgo their decision. For those who are concerned, just please help decrease the amount of damages made directly from humans. Since we do live in Hawaii and it very much depends on tourism, there will obviously be a lot of impacts made from that. I also understand that people come here to visit our beautiful and luscious islands, but with all the construction going on, if this continues there will be nothing left for anybody to enjoy. So, for the sake of our earth, why don't you set aside technology for a while and focus on the dying earth that surrounds you. Thank you.

CHAIR MOLINA: Okay, thank you. Mahalo for your testimony. I'm sorry, young lady, we have a question from Councilmember Lee if you could come back?

COUNCILMEMBER LEE: I'm sorry, I didn't get your name.

MS. HOLOKAI-JACINTO: My name is Jordan Holokai-Jacinto.

COUNCILMEMBER LEE: Jordan, what did you say?

MS. HOLOKAI-JACINTO: Holokai-Jacinto.

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COUNCILMEMBER LEE: Okay. I thank you for the research that you've done and the courage that you've shown despite, you know, the comments from the audience. You know, stay strong with your position. Thank you.

COUNCILMEMBER KAMA: Chair?

CHAIR MOLINA: Okay, mahalo. Member Kama? Sorry, you're very popular, Jordan, this morning. Okay. Member Kama?

COUNCILMEMBER KAMA: Jordan, would you be able to make that testimony available to the Council?

MS. HOLOKAI-JACINTO: Of course.

COUNCILMEMBER KAMA: Thank you, Chair. Thank you, Jordan.

CHAIR MOLINA: Okay, thank you, Member Kama. Members, any other need to clarify Jordan's testimony? Seeing none, thank you for your testimony. And by the way, folks in the audience, again if you could kind of do your best to contain your emotions on whatever position any of our testifiers take, Chair would be really appreciative of that as well. Thank you. Okay, next to testify from Kamehameha Schools? Again, please state your name for the record.

MS. NAKAGAWA: Good morning, everyone. My name is Cami Nakagawa and I am a freshman at Kamehameha Schools Maui. So, I'm here to testify that I think the County should not settle the Lahaina injection wells case with the four environmental groups, because I think that the environmental groups shouldn't have sued the County in the first place, because the County has always been in compliance with the regulations set by the Department of Health. There was no reason to bring in the Clean Water Act into this, because the Clean Water Act is meant for the waters of the United States and surface waters of the United States. Surface water by definition is water that collects on the surface of the ground, and groundwater is by definition water held in the ground and the soil or in pores and crevices of the rock. Surface water does not, and I repeat, does not mean groundwater. According to EPA, the jurisdictional scope of the 1972 Clean Water Act is the navigable waters defined as the waters of the United States. This has been a debatable topic for a while in courts, but the groundwater does not mean waters of the US, because navigable by definition is, it is able to be sailed on by boats and ships, and I don't think that means that under...groundwater is being...able to be sailed on by boats and ships. So, if everything is connected and it pretty much is, because we were taught at school mauka to makai, that everything would eventually flow from the top of the ocean...from the top of the mountain to the ocean. So, after personal research, I do not deny that the discharge from the injection wells eventually travels from the original discharge points to the ocean, but I do not think that it's simply because of the wastewater traveling down that it is the sole cause of the pollution at Kahekili

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Beach. In all honesty, I don't think that it's the County fault because our reefs are dying, it is simply human impact that is causing such a strain on the environment. Overfishing, overpopulation, pollution, burning fossil fuels, deforestation, and much more, all of these caused problems that we all have to live with today and most likely for the rest of our futures like poor air quality, undrinkable water, and the extinction of multiple species. If the environmentalists are concerned with saving the environment then help cut back on the human impact. Anyway, the final ruling should be made by someone who is not an environmentalist, environmentalist groups or someone who's immediately in strong support of the environmentalists. It should be done by someone who can look past emotions and look at the facts while comparing them to what is right or wrong, someone who could look at all the true facts and withhold their opinions until seeing all the sides of the case. If the environmental groups think what...that what they're doing is right and that the injection wells are polluting the reefs then you should go to the Supreme Court, because they should have nothing to fear as the cold, hard facts will support their claim if what they say is right. It seems kind of shady to me that they would only want to have Hawaii follow this if they really wanted to save the environment. If the Supreme Court ruled in their favor because of the hard, cold facts then all cases such as this would result in better water and environments. Thank you.

CHAIR MOLINA: Okay. Mahalo for your testimony. Members, any need for clarification? Councilmember Sugimura? Sorry, young lady, if you could come back to the podium please. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Cami, for your testimony. Do you...could you provide that to us in writing also?

MS. NAKAGAWA: Yes.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Okay. Members, any other needs to clarify Cami's testimony? Councilmember Paltin?

MS. NAKAGAWA: Yes.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Cami, for coming today with your school and all the students for giving testimony. I just wonder, are you not an environmentalist?

MS. NAKAGAWA: Well, I believe that we should be protecting our environment, but I don't believe that we should look at other things that couldn't necessarily be directly impactful or if it just kind of doesn't make sense to look at it because it's not...it's been...they've been following their rules so I don't think that they would be a major cause of pollution so they shouldn't be like...sorry, can I rephrase that?

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COUNCILMEMBER PALTIN: Sure.

MS. NAKAGAWA: I think that if...I think that human impact in general is the cause of all our pollution. So, I think as an environmentalist I would be focusing on being able to possibly lessen that on areas that need more care.

COUNCILMEMBER PALTIN: And have you been to Kahekili before?

MS. NAKAGAWA: A couple of times but not really recently.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay, thank you, Member Paltin. Members, any other need for clarification? Seeing none, thank you very much, Cami, for your testimony. Okay. Next to testify from Kamehameha Schools, please approach the podium.

MS. KAHOOKELE: Aloha kakou. O Rylee kou inoa. I'm a Kamehameha School student, I am also a resident of East Maui. I specifically am going to testify for taking it to the court just because our here everybody has some sort of involvement in the matter no matter what. Somebody else who doesn't have anything to do with it might be able to see it from both sides; therefore, the court might actually be able to make a decision based on everybody's perspective.

UNIDENTIFIED SPEAKER (from the audience): . . . *(inaudible)* . . .

CHAIR MOLINA: Excuse me. Please keep your comments. Continue, young lady, with your testimony.

MS. KAHOOKELE: The Council has been going...the County has been going by the Safe Drinking Water Act which is completely different from the Safe Water Act or...

UNIDENTIFIED SPEAKER: Clean Water Act.

MS. KAHOOKELE: Clean Water Act. Thank you. But the act that we've been going by has been something that we've been using for...as long as I've been around at least so it's something that we're used to, something that we have been using and something that has been accurate since we started. Bringing the Clean Water Act into this has just confused everything. So, yeah, that's...I don't have my notes with me so that's all I'm going to say.

CHAIR MOLINA: It's okay. And the Chair appreciates your testimony. Could you state your name for the record again?

MS. KAHOOKELE: Rylee Kahookele.

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CHAIR MOLINA: Thank you, Ms. Kahookele. Members, any need to clarify testimony? Seeing none, thank you for your testimony. Anyone else from Kamehameha Schools? Please proceed to the lectern.

MS. CARPENTER: Aloha. My name is Kalena Carpenter and I have lived in Hawaii all my life. I have been to...well, I'd say that I've been to almost every beach. I love going to the beach, it's what I love to do on my weekends. And I look around in this room, I see a lot of people and I can tell that a majority of them also love the beach. They love the coral. I see some shirts with people that love turtles. And I see a lot of kanaka honestly. And if...well, I guess if they're kanaka then they honestly love Maui, Hawaii. Just everyone in general, I see students from Lahaina came all the way here to talk to the Chair about this issue that means obviously so much to them. Sorry. I don't know why I'm crying. It's just that...I'm so sorry. This issue means a lot as kanaka living in Hawaii and seeing the amount of supports that it gets, it just makes me happy I guess. So...okay. I'll try get it together, I'm sorry. So, growing up in Hawaii, going to the beaches, stepping on the coral and knowing that it's the kai that brought us all here, the voyages centuries ago that brought us here and knowing that the ocean is the reason why I call Hawaii my home. So, I guess that I'm very happy to be here today, and I really enjoy seeing all the support for the kai and everything. And thank you.

CHAIR MOLINA: Thank you very much, Rylee [sic]. Committee Members, questions for clarification? Rylee [sic]? Hang on, we have a question from Councilmember Lee. Councilmember Lee?

COUNCILMEMBER LEE: Good morning. Is it Brandy? What was your first name again?

MS. CARPENTER: Kalena.

COUNCILMEMBER LEE: Oh, Kalena, sorry. I just want to thank you for coming and I don't have any particular questions other than to ask you who is your teacher?

MS. CARPENTER: My teacher is Ms. Holderbaum, she's right over here.

COUNCILMEMBER LEE: I want to commend all of you and her for allowing each of you to express your point of view whether it's in support or not in support. It's very important to us as decision makers to hear all perspectives, and I'm really happy that your teacher is encouraging you to do that. Thank you.

CHAIR MOLINA: Okay, mahalo. Members, any need for clarification? Okay, mahalo for your testimony, young lady.

MS. CARPENTER: Thank you.

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CHAIR MOLINA: Thank you for showing up. It's not easy to testify. Okay. Our next testifier from Kamehameha Schools.

MR. PELLEGRINO: Aloha mai kakou. . . . *(speaks in Hawaiian)* . . . Hokuao Pellegrino. . . . *(speaks in Hawaiian)* . . . My name is Hokuao Pellegrino and I work for Kamehameha Schools, and I oversee sustainability and aina-based initiatives and programs for the entire Maui campus. And I wanted to just share a little bit briefly about the work that these haumana did that's part of Mrs. Holderbaum's class, high school class at Kamehameha Schools. And part of this academic exercise was really to share different perspectives. And so, I appreciate the audience, Chair, as well as the rest of the County Councilmembers for listening and hearing different perspectives. I think it was important for them to come and to see different angles as they begin to debate and, you know, have these type of exercises at, on campus. So, on behalf of myself and Kamehameha Schools, we just appreciate your time and willingness to listen. Mahalo.

CHAIR MOLINA: Okay. Thank you very much, Mr. Pellegrino. Members, any need for clarification? Seeing none, and thank you, Mr. Pellegrino. This has been a great civics and science lesson as well, and it's not only an exercise for you as...the children, it's also an exercise for us as adults. And Chair appreciates the majority of you have been doing your best to contain your feelings on this matter. So anyway, would your kumu like to testify as well? Please come up, ma'am, no shame. Again, please state your full name for the record.

MS. HOLDERBAUM: Aloha ____ Brooke Holderbaum. And I just really like getting students involved in our community. I'm very strongly in favor of our young people becoming aware and educated about issues that will affect us and them and anyone really who lives here in Hawaii. And I think Kalena said it best, you know, if we live here, we live near kai and this is not an easy decision so when we placed it in front of the students a lot of them did kind of have a hard time wrestling with the ideas. Not only are they really big and they've never heard of things like the Supreme Court and laws and everything like that before, but they also had to figure out how does that align with their identity. And so, there is no easy decision. One of the students said ho, that's so hard, you know, it's such a hard decision and it's such a hard choice, why do you do this to us? And so, you know, and really it's a great opportunity for them to figure out not only where they stand--'cause I don't think that this is a necessarily black-and-white issue in a lot of ways, there's a lot of gray area--and just where they are and why and to be able to stand true in that within themselves as kanaka, as Hawaiians, and as people of this land. So, mahalo for allowing the students, all of them to testify and in whatever place that they stand. And all of them are testifying in love of their aina. Yeah.

CHAIR MOLINA: Okay, mahalo, Brooke. Members, any need to clarify the testimony?

COUNCILMEMBER KING: Chair, I think we had one more student who didn't...

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CHAIR MOLINA: Oh, we do have one more student? Yeah, please come up. Especially you're wearing UH.

MS. FRIAS: Aloha. My name is Kayla Frias. And I came here today, I was kind of nervous to talk and I didn't really want to, but now seeing that all my friends have talked, it kind of made me get more confident to speak up. So, like my friend Kalena said, we, all of us here are born and raised here, and we're living by our oceans and we're surrounded by coral reefs, our fish. And the real decision is if we want our next generations to see the reefs and see our oceans like how we see it now or even better to...or even better than how it is right now. And I want this haze to settle in a way that everybody can get what they want. And I want us for the next generations and for my kids and their kids to get to the see the ocean and get to see the coral reefs as healthy as they possibly can be. Thank you.

CHAIR MOLINA: Mahalo for your testimony. Any need for clarification? Seeing none, mahalo for your testimony. Aloha, Kamehameha Schools, we certainly appreciate your manao with us today. And yes, it's not an easy decision and but that's what government and leadership is about. And I hope to see some of you in these seats someday as our future leaders. Aloha. Thank you. Oh, we do have one more testifier?

COUNCILMEMBER KAMA: Yeah, one more.

UNIDENTIFIED SPEAKER: No.

CHAIR MOLINA: No? That's it? Okay, your choose [sic], you can go back to school. I know you much rather be in school than be here right? Okay, no. Anything else? Seeing none, okay. Okay, thank you. Before I continue with testimony, I've just been reminded due to our Fire Code rules, I'd like to ask any of you please not to as much as possible block the aisles and doorways, they should remain clear for fire safety purposes, okay? Alright, continuing with testimony. And I'd like to...the two testifiers I called up previously. First we have Mr. Dave Taylor, to be followed by Robin Knox. And thank you very much for your patience.

MR. TAYLOR: Good morning, Chair and Members. My name is Dave Taylor. First, it's a lot of pressure to go after those kids, because they were so eloquent, courageous, and intelligent that I think one thing we can feel is the world is in good hands if they are our future leaders. But my name's Dave...well, that counted as my time. Anyway, my name's Dave Taylor. I'm the Capital Improvement Program Coordinator here at the County. I'm a licensed civil engineer in Hawaii. I've been involved in Clean Water Act, Safe Drinking Water Act issues including NPDES and UIC for more than 25 years. As most of you know, I was formerly Water Director and Wastewater Chief. My testimony is intended to inform you about non-injection well issues...non-wastewater issues that may impact the County if we settle. At its core, this case is simply about which

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regulatory process is required for what types of projects. That's what the Supreme Court is going to decide. And there's enormous consequences to that decision. For my entire career, water that was discharged into the ground was regulated under the Safe Drinking Water Act. And water discharged into waters of the United States, streams, oceans, lakes, wetlands, et cetera, was regulated under NPDES and the Clean Water Act. If this case...if we withdraw, the Ninth Circuit ruling stands and there are two litmus tests that the court made. Any water that's fairly traceable and more than de minimis that ends up in the ocean, even if it was injected in groundwater comes under the Clean Water Act. That is a huge change from what our practice in civil engineering has been for our entire careers. The EPA has recently informed us that even...this is their exact words, even commonplace and ubiquitous activities such as releases from homeowner's backyard septic systems may need NPDES permits, and that people who don't comply could be in violation of Federal law. Translation, in Maui County these criteria are likely to be true for a wide variety of things, coastal and streamside facilities including drainage systems, cesspools, septic tanks, and even irrigation systems. We will need...so if we settle, we're basically going to need to ask Department of Health about every project, every CIP project, do we need NPDES permit or not? If the answer is yes, we may not be able to do those projects. Currently funded projects you may not even think of like the vehicle wash rack that you funded in this year's budget may need an NPDES permit and may not be able to happen. Private projects like the affordable housing project you're hearing tomorrow may be cancelled because it needs an NPDES. The Department of Health has no processes in place to deal with NPDES permits for any of these things. We could find ourselves in sort of this regulatory purgatory where nobody knows what to do. Settling the case does give us certainty, not settling will leave uncertainty in all of these other aspects. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Taylor. Members, any need for clarification? Member Lee?

COUNCILMEMBER LEE: Mr. Taylor, can you explain again the impacts on CIP projects as a result of let's say the County having to...or you having to apply for NPDES permits?

MR. TAYLOR: So, first, it wouldn't necessarily be apply, first, it would be we have to find out if we need them. So, let's just take for example Hookipa Beach Park bathroom. Everyone's been there, there's a bathroom, there's a septic system, it's right next to the beach. We would need to write to DOH and say look, that water is right next to the ocean, do we need an NPDES permit, yes or no? If the answer is yes, we had no CIP project planned for that. We may need to build a sewage treatment plant there, build a pipeline all the way to Mama's Fish House to pump the sewage there, close the bathrooms.

UNIDENTIFIED SPEAKER (from the audience): . . . *(inaudible)* . . .

MR. TAYLOR: You could go to a wide variety --

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CHAIR MOLINA: . . . *(gavel)* . . .

MR. TAYLOR: --of projects...I was at Kepaniwai Park yesterday where the bathroom and septic system is also right near the stream. Again, that would...we would have to ask DOH do we need an NPDES permit, what are the parameters? And then initiate a CIP project to look at engineering alternatives, et cetera, et cetera. So, there could be this enormous range of projects that are going to have to be evaluated, we're going to have to have discussion with DOH, where exactly is the line in the sand where we need an NPDES or not, and then how do we manage that. It's just I don't know what's going to happen but there will be uncertainty that every one of these projects is going to have to be evaluated for that.

COUNCILMEMBER LEE: So, are you saying that DOH doesn't even have a process?

MR. TAYLOR: So, I talked to the Director of the Department of Health last week on a conference call, Chair was part of the conference call, from the staff. And I peppered him with, you know, a lot of questions. What if, what if, what if? What if we write to you asking this and what if that? And I don't want to put words in his mouth but the basic response is that they do not currently have any methodology to apply NPDES permitting to groundwater infiltration projects such as individual septic tanks and drainage systems. So, they would have to develop that. If we settled and this becomes the law of the land, they would have to figure all that out.

COUNCILMEMBER LEE: How many cesspools are we talking about and septic systems may be affected?

MR. TAYLOR: I mean there are thousands in Maui County.

COUNCILMEMBER LEE: Alright, thank you.

CHAIR MOLINA: Members, any other need for clarification? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Mr. Taylor, for testifying. So, you worked with this for 25 years, your experience base is 25 years?

MR. TAYLOR: I think 27 years but yes.

COUNCILMEMBER SUGIMURA: And I guess for the years that you were with Wastewater then you had the UIC permit, is that correct?

MR. TAYLOR: That's correct.

COUNCILMEMBER SUGIMURA: Within those 25 years, so what is the difference between NPDES with EPA versus the UIC permits?

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MR. TAYLOR: So, the real experts to that question are Department of Health, right, the Clean Water Branch head and the Safe Drinking Water Branch head. But from a practical standpoint, the UIC, underground injection control permit which occurs under the Safe Drinking Water Act, has been historically used when water dumps into the ground. The NPDES permit under the Clean Water Act is used when you are putting water directly into a receiving body, rivers, streams, lakes, oceans, and wetlands. Basically from a practical standpoint, if you can see the water going into the river, stream, lake, or ocean and watch it dissipate and track how it gets there and how it dissipates, that's NPDES. And if you're putting the water into the ground where you don't know exactly what happens to it, that's UIC. You are...the water is regulated in UIC at its point of discharge to the ground, you're not measuring things in the ocean because you have no way to know what you're dumping into the ground, exactly what you find in the ocean and making one-to-one correspondence. So, that's why the permitting is different.

COUNCILMEMBER SUGIMURA: If I could, Chair? So, based upon your first...what you explained to Ms. Lee, the projects, will we have liability, the County have any liability through this process, the NPDES process or permitting any of our CIP projects?

MR. TAYLOR: I mean you're asking a legal question which I'm not, you know, I think that's best for Corp. Counsel. But from a licensed civil engineer standpoint, we are required to do the best...to follow laws, rules, and regulations. Now that we know about this, part of initial project development, again, whether it's a single-family home and we were going to put in a septic tank or a school and we were going to put in a drainage system under their driveway or, you know, some sort of a County facility with a septic tank, any of those, we're going to need to ask Department of Health what permits do we need here, what's the procedure? And that's one of the first things we would do as civil engineers. And we have to ask that and we have to follow that. So, the liability is if we don't ask and if we don't follow their direction.

COUNCILMEMBER SUGIMURA: So, you're saying it could affect our affordable housing and all the focus has been that we need to build more houses is greater than --

MR. TAYLOR: So...

COUNCILMEMBER SUGIMURA: --just the CIP projects?

MR. TAYLOR: The purpose of my testimony was really just to inform you of what may happen and maybe what you should look into. You have a project on your docket tomorrow, Makila Farms affordable housing project. I've seen the blueprints for that, every one of those has an individual wastewater system with a leach field, and there are a bunch of infiltration basins at the bottom of that project. And all of that probably meets the criteria of fairly traceable to the ocean. So, if somebody is...if we settle and this is the law, the civil engineer for that project is going to have to ask the

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Department of Health, do I need an NPDES permit for the leach fields, do I need an NPDES permit for the drainage infiltrations basins? Maybe DOH says yes, maybe they say no, I don't know. But DOH doesn't seem to have a procedure in place of how they're going to split hairs on that. And it's this uncertainty that I'm here testifying about. I don't know how long it's going to take DOH to resolve this uncertainty. These are really good questions to ask them, satisfy yourselves that you have a clear understanding what is the uncertainty, are you comfortable with it, are you not, and I would just recommend that you have that discussion before you make a decision about whether or not you think settlement is a good idea or not.

COUNCILMEMBER SUGIMURA: Thank you. Thank you...

CHAIR MOLINA: Okay, thank you, Member Sugimura. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Dave, appreciate your presence. I just wanted to clarify your maybe this will happen thing about the project, the Makila project because I did meet with those folks. They're assuring me it is completely contained, they're not going to be traceable to the ocean in any way. So, I want to...I think before you say these may be traceable to the ocean, you should really talk them, because you're maybe sabotaging their project with that statement. And then the other thing is doesn't the EPA already regulate cesspools at this point?

MR. TAYLOR: The State Department of Health has an existing permitting process for cesspools and septic tanks.

COUNCILMEMBER KING: Right. So, they, you know, they sent us a letter yesterday that says in part, it's signed by Bruce Anderson, it says we do not believe this additional permitting, referring to NPDES, requirement is necessary or appropriate for septic tanks or cesspools. So, do you think that there's a way that the UIC can be strengthened, the permit that we have right now to address the groundwater contamination?

MR. TAYLOR: Absolutely.

COUNCILMEMBER KING: Okay.

MR. TAYLOR: In fact, I read that letter and I think that is what Dr. Anderson is saying, and in our conference call with him last week that is what he was saying is that the existing underground injection control program under the Safe Drinking Water Act can be used to regulate containments that eventually go to the ocean.

COUNCILMEMBER KING: Okay. So, if we do that, we can pull this off the...we can settle this and pull this off the Supreme Court docket hopefully.

MR. TAYLOR: You know that's your, obviously your decision.

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COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Hang on, folks. Hang on.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Let Mr. Taylor answer. Sorry, Mr. Taylor, I couldn't hear you with the applause going on. What was your response to Chairman King?

MR. TAYLOR: My response is that's obviously the Council's decision, but if these two litmus tests stay in the Ninth District, Department of Health isn't allowed to just ignore the law. So, if the law says, and we got a letter last week from EPA that I quoted, if the EPA is saying that their interpretation of Federal law is that a septic tank does require an NPDES permit, Department of Health isn't allowed to do their own thing. So...

COUNCILMEMBER KING: Right. But the EPA hasn't said that. I mean we have some, you know, amicus briefs that have been filed on the side of the Hawaii Wildlife Fund by former EPA administrators from Bush, Clinton, Obama administrations. You're quoting the Trump EPA right now, so that's one of my concerns is that the EPA is not necessarily the EPA that we've known all these years. And so, you know, appointments change the tenor of the message. Thank you.

CHAIR MOLINA: Thank you, Chair King. Any other need for clarification from Mr. Taylor? Seeing none, thank you very much for your testimony --

MR. TAYLOR: Thank you.

CHAIR MOLINA: --Mr. Taylor. Next to testify on GET item 26, we have Robin Knox, and to follow Ms. Knox, we have State Representative Angus McKelvey who did sign up to testify later. I would like to ask for the Member's consideration of having Mr. McKelvey, 'cause he's on a strict time schedule, if you'll allow permitting Mr. McKelvey to testify after Ms. Knox. Any objections to that?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay. Good morning, Ms. Knox.

MS. KNOX: Good morning. Thank you for allowing us one more time to talk to you about this really important decision. I am an environmental professional and for those students, I don't know if they're still here from Kamehameha Schools, that's different than an environmentalist. An environmentalist professional is trained. Dave Taylor is also an environmental professional but he and I have different specialties. His is wastewater treatment and the construction, operation, and maintenance, and mine is pollution control and understanding how much pollution we can discharge and still

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keep the water quality in the receiving water good enough to support beneficial uses like fisheries and growing coral. I think there's a lot of confusion about the Clean Water Act. I only have a few moments to talk so I encourage all the Councilmembers to please ask me any questions that you have lingering about the Clean Water Act. The Clean Water Act does not regulate water, although the name may lead you to believe otherwise. The Clean Water Act regulates pollution. The name of the permit is national pollutant discharge elimination system, not water discharge elimination system. In my experience in 30 years of working in permitting in the Clean Water Act working for agencies all over the country, I've had clients in 20 different states, the interpretation has always been that the Clean Water Act always gave the authority for the state departments and EPA to regulate cesspools and septic tanks. That is a large problem from a management standpoint to regulate a large number of small discharges, and there are many more larger pollution problems like the injection wells to take their attention. So, this is not going to give any new authority to them. And I think DOH has been pretty clear and the agency that I used to work for when I was a young permit writer, I'm like we got to regulate this septic, and they're like we could but why would we when we've got bigger fish to fry. So, I think that's a lot of smoke and mirrors. Some people are also trying to say that the nitrogen doesn't harm the reef or that it's coming from other sources. There is clear evidence in peer-reviewed scientific papers that the County's wastewater is showing up in coral that's impacted by bio-eroders and in turtle tumors, and it is the nitrogen from the treatment plant that's causing this harm. However, harm does not need to be shown to be regulated under an NPDES permit, only three things: a point source which the wells are, a discharge of pollutants, and that it gets to a water of the US. The County has never denied any one of those three points, and the clear language of the Clean Water Act says an NPDES permit is required. The Mayor had an article saying oh, Kahekili is recovering, the biology is getting better, and certainly we should all celebrate that. But biology is just one indicator and that was achieved by banning fishing. By saying you cannot take any herbivorous fishes, and that's not how it's supposed to work. The Clean Water Act is supposed to protect the water quality so that we can have that fishery. We're not supposed to eliminate the fishery to mitigate pollution that we're supposed to clean up.

CHAIR MOLINA: Okay, Ms. Knox. Okay, thank you, Ms. Knox.

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: Okay, folks. Alright, settle down. ... *(gavel)* ... Okay, Members, any questions, any need to clarify Ms. Knox's testimony? Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for being here, Robin. Is, in your opinion, I mean I've got...I'm not sure who this is from but pictures of the Kahekili Reef decline. And we've got people who are saying that the reef is...I mean the Mayor put in his statement that the water there is actually being healthier, getting healthier since 2009. So, do you have like personal experience of being in that water?

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MS. KNOX: I do, and I've seen...

COUNCILMEMBER KING: You've seen the reef?

MS. KNOX: Even before the dye studies were done, I've seen colored water, bubbles, warm water to the touch, other things. I've tested the bacteria everywhere, I know that it's worse in the injection well zones. So, yes, I do have personal experience. And there have been improvements, that's true, but it's because of the magic of when you start looking at pollution, it magically starts reducing itself. When you start counting it and quantifying it as we have been with these studies, it starts getting reduced. The Clean Water Act, the NPDES permit is a guide to how to do that. It brings in the real experts at EPA and DOH and even private consultants to figure out how much pollution the water can take without causing damage. Our population is growing, what are you going to do...this is what I want the Council to think about, what are you going to do if Maui County wins this at the Supreme Court? Does that mean we're going to keep polluting at the same amount? Are we going to increase? 'Cause the current permit would let us do three times more nitrogen discharge than what we're currently doing. Are we going to, you know, if we decide we need to reduce, how much do we need to reduce and what kind of treatment level do we need? The NPDES program guides us in answering all of those questions. There are very well established procedures. And it also offers liability protection to the County. Everyone's talking about liability on these projects, well yeah, any county government should be asking, for every project is an NPDES required, that's always been the case. But you also are not allowed to cause or contribute to violations of State water quality standards. So, there's a lot of liability exposure of not having NPDES permits. And the permits have what's known as permit as a shield which protects the County from certain liabilities. The County decided injection wells were okay and it turns out that that's wrong. So, the County may have liabilities for the damages that are happening. I don't know, you'll have to ask your attorneys, but that's a possibility. But I do know that the --

CHAIR MOLINA: Okay, Ms. Knox...

MS. KNOX: --NPDES permit...

CHAIR MOLINA: Sorry, I think you've answered Chair King.

MS. KNOX: Okay.

CHAIR MOLINA: Chair King, you have another question for Ms. Knox?

COUNCILMEMBER KING: Yeah, I just have one more question.

CHAIR MOLINA: Okay.

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COUNCILMEMBER KING: So, I mean, and I think we're...we've been moving in the right direction as far as our Department of Environmental Management probably because of the water testing that we've been doing. So, you know, I don't want to discount the fact that there is some improvement. And so, basically I've heard from the heads of our DEM Department, Department of Environment Management that they are, you know, they are very concerned about the injection wells and moving away from utilizing those as a first defense. So, in your opinion, I mean the injection wells, are they okay to keep those as like a backup for storm runoff? I mean that's what I've heard is that we need the injection wells in the case of, you know, the next 10 or 20 or 50-year storm where we have all this extra water and it has to go somewhere.

MS. KNOX: An injection well is only a hole in the ground, it matters what you put in it, the quality of what you put in it and that includes salinity. So, too much is a problem. Having the well, I agree, we probably need the wells. If not the well then we would need a way to discharge directly to surface water or we would need enough containment to hold all the water when it's raining. Even if we went to 100 percent reuse, when it rains, we get infiltration into our system, the volumes go up, and it's got to go somewhere, we don't want raw sewage backing up in people's homes. So, I would agree that we need the wells, but I would strongly say we need more treatment, we need to get...reduce the amount of both nitrogen and freshwater and other...you know the Lahaina effluent is even toxic, it's been tested one time and it was toxic. So, we need to reduce. But the well itself isn't evil.

COUNCILMEMBER KING: Okay, just wanted to make that distinction. Thank you for that.

CHAIR MOLINA: Thank you very much, Chair King. Members, any other need to clarify Ms. Knox's testimony? Councilmember Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Ms. Knox, for being here.

MS. KNOX: Thanks.

COUNCILMEMBER SINENCI: You mentioned that fishing was stopped at Kahekili Beach?

MS. KNOX: Yeah, you cannot...the ban, it's prohibited to catch certain herbivores and the idea was that this is an emergency Band-Aid to try to save that reef. They got the fishing regulations banned and so because people aren't catching the herbivores, the herbivores eat the algae so they've been able to do some mitigation of the high nutrient levels. But like said, that's not how it's supposed to work. We're not supposed to give up fisheries to mitigate pollution, we're supposed to mitigate pollution to protect fisheries.

COUNCILMEMBER SINENCI: And who issued that ban? Who issued that ban?

MS. KNOX: DLNR --

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COUNCILMEMBER SINENCI: DLNR.

MS. KNOX: --Division of Aquatic Resources.

COUNCILMEMBER SINENCI: And this was how long ago?

MS. KNOX: I think it was around 2010, yeah.

COUNCILMEMBER SINENCI: Okay, thank you.

CHAIR MOLINA: Okay, thank you --

COUNCILMEMBER SINENCI: Thank you, Chair.

CHAIR MOLINA: --Mr. Sinenci. Members, any other need to clarify Ms. Knox's testimony? If not, thank you very much, Ms. Knox, for sharing.

MS. KNOX: Thank you.

CHAIR MOLINA: Thank you.

AUDIENCE: . . . *(applause)* . . .

CHAIR MOLINA: Okay, folks. I tell you, everybody's going to have sore hands at the end of the day yeah. I appreciate your doing your best to hold off your emotions but it's certainly a highly charged one. Alright, continuing with testimony, we have our State Representative Angus McKelvey, and the Chair has been made aware that we also have another State Representative in the audience. If there are no objections, I'd like to allow State Representative Wildberger to go after Mr. McKelvey. Any objections?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay, thank you. And Chair would also like to recognize another elected official in the house, Committee Vice-Chair Rawlins-Fernandez. Thank you for being here.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha, Chair.

CHAIR MOLINA: Good morning, Mr. Representative.

MR. McKELVEY: Aloha, everybody. Thank you so much. First of all, Chair and Committee Members, thank you for even having this hearing. I mean that's a huge step forward that this is on the agenda and this issue is being discussed. And it was alluded to earlier, thank you for your renewed commitment in aggressive funding of wastewater

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solutions for Maui County so we can move past injection wells as a primary disposer and relegate it to emergency stormwater use only, hopefully. The previous speaker pretty much said everything that I felt all along, in fact I'd like to adopt her words as if they were my own as we say at the State Legislature. Everything she said is on point. I'm a simple guy. Okay. I'm not a scientist, I'm just a representative who happens to be born and raised in West Maui so I've been trying to dig into this issue and, you know, I went to the EPA website itself and I looked at the website and I said okay, you know, our cesspools and septic systems 'cause this is the drumbeat that I keep hearing, individual homeowners with these systems are going to face this cost, potentially costly NPDES permits if this were to go to the Supreme Court and be overturned. And it says right here that basically individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge, which I believe cesspools do not, do not need an NPDES permit. Right there, black and white on the URL, not me, this is the EPA. I asked the Department of Health because the letter came to the Council, you know, about the fact will they require an NPDES permit, you are the entity under the 1974 agreement that would basically carry out such a program. Would you require this of all individuals? And the Director and the branch chiefs at the time said probably not for the resource issues that were brought up, the practicality issues, and that they would probably look to what they call a general permit instead which would be more ministerial in nature. And again, it all boils down to fairly traceable and foresee-ability insofar as if an NPDES permit is required. Now, I can't speak to municipal CIP projects because that's not my kuleana. I would think that there are numerous permits that would be needed in any CIP project, and this will be one of many that would work its way through the system. And so, with that and the renewed commitment of the County to address the issues in Kahekili, what are we left with at this 11th hour? And what are we left with is that this issue is spinning out of control to have national implications. This issue will not just affect us here in Maui Nui, this issue will...sorry about the beep, you know us State guys we like to ramble on. It will affect everybody from tin mines in New Mexico, coal ash deposits in West Virginia, large-scale agricultural runoff in Minnesota. All of these places, the community's right to know what is being discharged into their surface waters, navigable waters, and yes, I believe Kahekili is navigable, I've surfed and paddled around it on a canoe several times. But the fact of the matter is this will have implications across the board. The Trump Administration is left one victory in their aggressive agenda, 'cause all others have been thwarted and that is this. If the Trump Administration has told its base over and over again, you make me President, I will put people on the Supreme Court to overturn these unjust laws. He has those two people, it is not a fair and neutral bench. It is not a fair and neutral body. And what...if this decision is overturned at the Supreme Court, I guarantee you there'll be tweets a plenty from the Trump Administration, from the President himself thanking Maui County for their visionary leadership in making America great again.

CHAIR MOLINA: Okay. Thank you, Mr. Representative. Thank you for your comments.

AUDIENCE: ... *(applause)* ...

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CHAIR MOLINA: Okay, folks. . . . *(gavel)* . . . Okay. Mr. McKelvey, your testimony time has ended.

MR. McKELVEY: I'll just finish with this.

CHAIR MOLINA: I'm going to have to open up the floor for questions from the --

MR. McKELVEY: Oh yeah, sorry.

CHAIR MOLINA: --Members.

MR. McKELVEY: I'll just leave it at that.

CHAIR MOLINA: Members, any need for clarification from Representative McKelvey's testimony? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Representative McKelvey. Mahalo for your testimony. You said you grew up in the area by Kahekili Reef and you personally witnessed the change of the environment of Kahekili Reef from before to now the degradation.

MR. McKELVEY: Uh-huh, totally fair, I grew up in Napili so just up the road but I would surf and dive all up and down the coast, and back in the day, back in the day, that area where rainbows and osterizers is, was a pristine area. The shelf reef had plenty of green lettuce and emu, people would go and gather all the time, and then changes started happening. The red algae started showing up, it started taking over. I had a lot of fun dragging tons of it on my surfboard leash out of the water every time a swell would come. I didn't know at the time but those little vents pumping out the warm water were injection well feed-off. Because at the time it was like oh look, warm water vents, you can get under the cold water and warm up a little bit. But the...boy, I regret that. But I can tell you that yeah, it is anecdotal data but is shared by many. My friend Mark Vieth at the *Lahaina News*, I got involved in political activism partly because of this reason. Because our community...Randy Draper, I'll...a laundry list of names of kupuna to community members who are very upset about this. They could see the changes happening and they wanted the County to adopt an aggressive, 100 percent reuse for the facility where the water would be piped to golf courses and landscaping and potential roadside irrigation. It's not all suitable for all types of agriculture like vegetables, but that was the dream and the vision. That's what I fought for wastewater funds for the idea that this would be one of the things that the County would eventually address. And so, again thank you for doing it now. Wish we could have done it sooner. But again, you know, I mean I saw it myself, my friends and neighbors saw it, and I said you know what, I'm going to run for office to give voice to this and many of the other issues that the west side community faces every day in struggling to maintain what little is left of old Maui, of old Lahaina that is

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changing. It saddens me we're going to send money to attorneys on the mainland to buy what, buy a house up on Cut Mountain that they're cutting away? I mean that's who's going to benefit from it. Lawyers in the Supreme Court are going to decide this. The divide and disenfranchisement of government between its people will be only deepened if that is the case. Let's settle it in our own backyard. Let's withdraw the petition...

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: Okay. Well, thank you.

MR. McKELVEY: That's all I'm saying.

CHAIR MOLINA: Member Rawlins-Fernandez, do you have another need to clarify Representative McKelvey's testimony?

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah, just one last question. So, you're saying that as the representative of the area that's directly impacted, a lot of residents have come to you with their concerns about this?

MR. McKELVEY: Numerous and many over the years. And it's important that I let the Council know I speak only as the representative of the 10th District, because I ran on this stuff, I got elected, and the other thing as an individual. As an individual who grows up...grew up there, who lives there, who goes down to Breakwall, who basically gets stuck in Foodland buying \$9 loafs of bread with everybody else. That's why I'm here. But I do not speak for the House of Representatives, I do not speak for the Legislature, I speak only in that capacity and that's very important that you know that. And whatever decision you guys make, I respect it. It kind of sucks to be you right now 'cause you're going to be in the middle of back and forth and battles and scientists and everything else. But I know that you are at least hearing the public, you're hearing the facts, and I hope the decision you make will be to...if nothing else just withdraw the petition from the Supreme Court, take it out of their hands, take it out of Trump's hands. Put it in...

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: Okay, thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Representative McKelvey. Mahalo, Chair.

CHAIR MOLINA: Okay, folks. ... *(gavel)* ... Hang on. We may have more questions from the Members for you, Mr. Representative. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Representative. So, I thought you said something about earlier recognition of this problem, I mean over

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the years, and there was a...and I saw a letter from you talking about monies that were brought into the County with the help of Senator Inouye.

MR. McKELVEY: We've gone after monies starting with the ARRA monies back in the day and continually through the Wastewater Revolving Fund to the counties, all of them including Maui County. At the time that I lobbied and bothered Bob Nakasone about it was to address the Lahaina injection well system. Why? Because I was getting beat up by people who were running for office and the fact that, you know what, what is the State doing to help the County address the situation if it's such an important issue? It's a continual commitment, one I will make to you personally right now to go back next session and continue to fight for the wastewater. That's why I'm heartened by the decisions this Council has made on the budgetary level as well as the policy decisions to aggressively move in this direction. I'm not here to go back and review the actions of past councils, administrations. As the OHA case clearly points out, that was a previous body. But I've tried in my personal capacity to make that the focal point of funds dragged down. And I will continue to do that. And it heartens me that the County of Maui is stepping up to the plate in so many areas now to be a partner with the State of Hawaii. And so, that's why I feel we can settle this in here, that's why I feel we don't need to play with fire at the national level. And that's what worries me the most, you know, our actions at the Supreme Court won't just affect us, they'll affect communities all over the United States. And you know what, let's give it a chance to do this here. I think the Council--and thank you again, Members--has been moving to that direction. And I stand here in my capacity as a Representative to support you and work with you on getting those funds, and with the rest of the Maui delegation. One thing I think the whole delegation agrees on, you know, if I may speak for them is that we are committed to getting the resources to Maui County so you can do the job you need to do on all sorts of problems, so.

COUNCILMEMBER KING: Thank you. Thank you.

CHAIR MOLINA: Thank you, Chair King. Okay, Members, any other need to clarify? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Angus, for being here. You've done a lot of research and have looked into this and it sounds like for many, many years, so thank you. The problem that we have today is the disparity between the Ninth Circuit Court of Appeals' decision versus the law, and the reason for the Supreme Court is to get clarity in the law. Do you have a comment about that?

MR. McKELVEY: Yeah, actually the law of the land right now it's the Ninth Circuit decision.

COUNCILMEMBER SUGIMURA: So...

MR. McKELVEY: Pending an overturn by the Supreme Court, it is the law of the land.

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COUNCILMEMBER SUGIMURA: Right.

MR. McKELVEY: And so, the reconciliation between circuits and division within circuits is the reason why the Supreme Court --

COUNCILMEMBER SUGIMURA: Right.

MR. McKELVEY: --would like to look at this. But is that Maui County's interest? Is that our compelling interest is to decide a discrepancy between the Fifth Circuit internally and the Fifth and the Ninth? No. I think our interests here are to, in my mind to address the wastewater situations both globally in Maui County as well as the Lahaina injection well plan. Whether or not the court wants to reconcile differences, that's the Supreme Court's kuleana. Taking this to the Supreme Court, to help the Supreme Court it's kind of a disconnection for me. So yeah, I don't kind of see why that would be a compelling reason for the County to take this all the way, that the court needs to find reconciliation at that level. And they can choose from many other cases to do so if they so choose. It's, again, I am very disappointed the deck is kind of stacked insofar as that goes but that's my observation personally. But thank you so much and it's good to see you again by the way.

COUNCILMEMBER SUGIMURA: Yeah, good to see you. And I think you've explained why it's important to get this clarified --

MR. McKELVEY: No, what I've --

COUNCILMEMBER SUGIMURA: --between the Fourth and Ninth Circuit Court --

MR. McKELVEY: --explained...what I've...no, I did not.

COUNCILMEMBER SUGIMURA: --decisions.

MR. McKELVEY: No. No, I did not.

CHAIR MOLINA: Okay, alright, folks. Okay, thank you. Member Sugimura, you have any other questions for Mr. McKelvey?

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Okay. Any other need to clarify the Representative's testimony? Councilmember Hokama?

COUNCILMEMBER HOKAMA: Just a quick question, Mr. McKelvey, and appreciate your thoughts this morning. So, like us we've been following this years, you followed it, I've been following it. Why hasn't the State Legislature directed the Department of Health to come up with something definite and black and white so that the counties have

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better guidance and we would know yes, don't apply for it 'cause it doesn't qualify or please apply 'cause you need...it's a requirement. Why wouldn't you help us with the Health Department's administration to get this clarified clearer within your purview?

MR. McKELVEY: Well, I agree with you and that's why I actually wrote a letter to the Department of Health to address the issue under their UIC permit. Because the standards are also reflective a the previous testifier said within the State admin rules. To me, it's like yeah, let's test at the well level, let's use the UIC permit which I believe is under review right now by the Department of Health. Call it a complaint, yeah, it's a complaint to the Department of Health. We have standards that are reflective of these standards in the Clean Water Act, in the State admin rules already, why don't you apply them to the UIC Permit. And so, you know, probably should have done it sooner, you're correct, Chair, but, you know, we're all human, we all make mistakes. But you know what, I sent that letter because I'm not going to aggressively let go of the fact that if you...the influxion of nitrogen into the near shore waters as shown by the 2011 and 2017 tests, that is why these standards should be addressed or to the Lahaina injection wells. And as to the herbivore group, you know, I just want to put a shout-out to my former colleague, God rest her soul, Representative Mele Carroll who is the one who actually spearheaded this thing. And we had numerous talks in her office afterhours. And the injection wells and the Lahaina situation kept coming up as a compelling reason why we had to tell the fishermen you cannot take these stocks. We need them desperately to be a frontline defense for what is happening in this area. Back when I was an aide in the State Senate eons ago for Tony Chang, we had algae blooms galore over the west side, back in the '90s. And we funded cleanups and all sorts of things. When Maui Land and Pine went offline, the algae exasperation started to drop in that area, but yet it still continued in the area down there. And I don't see too many cesspools down in that area. There are golf courses, they're a contributor yes, but clearly when you look at the nitrogen load, you cannot deny given the traceability test in my mind, simple guy...

CHAIR MOLINA: Mr. Representative, I think you've answered Councilmember Hokama's question.

MR. McKELVEY: Okay, and I'm rambling on. I'm a State guy, remember.

CHAIR MOLINA: Politicians love to talk.

MR. McKELVEY: You know we do, don't we?

CHAIR MOLINA: Okay. Mr. Hokama, you have another question for Mr. McKelvey?

COUNCILMEMBER HOKAMA: No, I appreciate his response and I look forward to his successful efforts to get the Health Department moving forward 'cause we need to have them make a decision, Representative.

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MR. McKELVEY: Yeah, they do, exactly.

COUNCILMEMBER HOKAMA: You know because this County has constantly requested guidance and we are still waiting for that guidance. Thank you, Chairman.

MR. McKELVEY: I agree with you --

CHAIR MOLINA: Thank you, Mr. Hokama.

MR. McKELVEY: --wholeheartedly.

CHAIR MOLINA: Committee Members, any other need for clarification? Member Sinenci?

COUNCILMEMBER SINENCI: Yes, thank you, Chair. Just for clarification. Thank you, Representative McKelvey, for being here. So, clarification, you don't see us taking this to the Supreme Court?

MR. McKELVEY: I hope not.

COUNCILMEMBER SINENCI: Okay.

MR. McKELVEY: Withdrawing the petition to the Supreme Court in and of itself would be...that's what I'm here for, withdraw the petition to the Supreme Court.

COUNCILMEMBER SINENCI: Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci.

MR. McKELVEY: Thanks, guys.

CHAIR MOLINA: Okay, seeing no other need to clarify Representative McKelvey's testimony, we'll continue with our next testifier. And by the way before...as Representative Wildberger proceeds to the podium, just as a point of information for you, we've had 84 people sign up. So, we're on actually, we had 33 students, 3 students earlier, and we're on like number 5 or 6 from that 84 so just to give you an idea of where we're at. So, if you're like number 70, there might...you might want to consider coming back at a later point, because we are going to break around 12:00-ish and then we have another committee meeting at 1:30. So, just to give those of you in the gallery, if you have...you're one of the later sign-ups, you may want to make some adjustments to your schedule and likely come back today, this afternoon to give testimony. So, that is the Chair's thoughts as we proceed --

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: --this morning. Good morning, Representative Wildberger.

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MS. WILDBERGER: Good morning, Chair Molina. Thank you for having me today. I want to say my mahalos to you specifically for having this meeting and inviting the public to comment. And thank you to the Committee Members as well. I'm Tina Wildberger, I'm State House Representative for District 11, South Maui. And I'm here today because my district elected me to protect our natural resources, clean air, clean water, and healthy reefs. And we are having challenges with our healthy reefs. We know we have problems in Lahaina, that's what we've been talking about all day. We have the same challenges by the Kahului Wastewater Treatment Plant and the Kihei Wastewater Treatment Plant. I remember when I moved to Hawaii in the '90s, I used to be able to pick limu and other beautiful ʻōgo on Cove Park beach and those plants are no longer available. So, as a fellow elected official, I know how hard it is to be in your seats. I know how you take heat for positions that are unpopular. I'm here to offer you support to drop this suit, to drop this challenge to the Supreme Court so that Maui County and the State of Hawaii will not forever be stained in reputation in concluding with the Trump Administration in dismantlement of our environmental protections in the Clean Water Act. I would like...I will remind the Council, I remember at the Maui County Democratic Convention, I presented a resolution on this subject. Council Chair King was there. Councilwoman Yuki Lei Sugimura was there. Councilwoman Tasha Kama was there. And that resolution passed unanimously, so those three Councilmembers did vote for this resolution to drop the lawsuit at the Democratic State Convention. This Council has been doing amazing work. This Council funded millions in infrastructure investment. That's where we need to keep going, okay. We had previous Councils that was uninterested in doing something other than injecting wastewater into our reefs, and now we're making an investment in infrastructure. So, let's continue on that line. Let's continue to make the appropriate environmental investments in our communities. We're currently in this situation because previous development did not happen with infrastructure-first policies. We need to move forward in that direction and I feel like this a game changer. Who wants to be on the wrong side of history? I don't think any of you do so please join me in supporting dropping this lawsuit to the Supreme Court. I'll end there.

CHAIR MOLINA: Thank you, Representative.

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: ... *(gavel)* ... Okay, folks. Okay, Members, do you have any need to clarify Representative Wildberger's testimony? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Representative Wildberger.

MS. WILDBERGER: Good morning.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony this morning.

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MS. WILDBERGER: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Quick question, same question I asked Representative McKelvey. Have you heard from your constituents in District 11 and what were their thoughts on this case?

MS. WILDBERGER: District 11 wants clean water and healthy reefs. District 11 wants distribution of R-1 water to agriculture, to golf courses. Imagine had we spent the millions of dollars that it's costing us to defend this lawsuit on wastewater infrastructure, we would be way ahead of where we are now. But we can't go back in time and we need to clean up all three of these. This isn't just about Lahaina. Lahaina is just the example. Kahului is a hot mess. Kihei is right behind it. We want swimmable, swimmable waters. Our environment is our economy. We don't have healthy reefs, there are no fish on those reefs, guess what, people going go Caribbean, they're going go Mexico. We're...let's preserve our economy and keep our reefs healthy and our water clean and our wastewater out of our ocean.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Representative Wildberger, for your testimony. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Members, any other need to clarify Representatives Wildberger's testimony? Seeing none, thank you very much --

MS. WILDBERGER: Mahalo, thank you.

CHAIR MOLINA: --Representative, for taking the time to be here. Appreciate it. Okay, Members, Chair is aware of the time. I think it's time for us to maybe head out to one of our sister offices out there for testimony. It's been reported that Molokai we have three testifiers. So, what the Chair's intent is to do is to take the testimony from our Molokai citizens, and then we'll take our break and continue with testimony here in the Chambers. So, let's go out to Molokai and Ms. Lindo. We have our testifiers ready to go? Please proceed.

MS. LINDO: Aloha, Chair. This is Zhan at the Molokai District Office and our first testifier is Bridgett Mowat.

MS. MOWAT: Hello?

CHAIR MOLINA: Hello.

MS. MOWAT: Good morning. My name is Bridget Mowat and I reside on Molokai. Although I don't live in Lahaina I am compelled to speak out as the ocean, reefs, and ocean life affects my livelihood for subsistence living, cultural practices, and healthy ocean activities for myself, my children, and the community. Protection of ocean life and reef

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is very important for us. We already know how injection wells work and how it affects our reefs and marine life. At this day and age, we should be very open to protecting our food resource but not only for food but also in keeping the ocean healthy so it'll maintain its natural systems, organisms, and ability to thrive. Injection wells, cruise ships, poor storage, sewage systems, and illegal or accidental dumping of raw sewage into the ocean has proven to cause negative impacts on our ocean life. Our oceans are being depleted due to neglect and disregard for the natural sensitive system. We're using our ocean as a toilet. I ask the County to withdraw its appeal and work with the State and community stakeholders to modernize the treatment facility and invest in water reuse solutions. We are educated now and we're aware of the impacts. With climate change upon us we need to be protecting our resources mauka to makai. Please help to uphold the Clean Water Act and protect Maui's reef which not only provide many economic benefits but hold cultural and environmental significance for all of Hawaii. I ask you to support the settlement of the Lahaina injection well case and withdrawal of the appeal. Thank you very much.

CHAIR MOLINA: Alright, mahalo, Ms. Mowat. Members, any need to clarify Ms. Mowat's testimony on Molokai? Seeing none, thank you. Ms. Lindo, please continue with your next testifier on Molokai.

MS. LINDO: Yes, thank you, Chair. Our next testifier is Liko Wallace.

MS. WALLACE: Aloha, Chair Molina and --

CHAIR MOLINA: Aloha.

MS. WALLACE: --Councilmembers. My name is Liko Wallace and I'm from the island of Molokai. I would like to first thank Chair Molina for scheduling this very important meeting today. I'm testifying this morning in support of settling this case today. Please don't let it go to the Supreme Court. I would also like to thank Member Kama for your correspondence with the Department of Health. Yes, it would have been a lot better to have had someone come from the Department of Health in person, but with the answers that you did get in the correspondence that you got, it clarifies the fact that they will not enforce against us homeowners with cesspool or septic systems. With that fear addressed, I don't see any reason we shouldn't settle this and continue to invest in fixing the problem. The Council has done an incredible job at investing into solutions, particularly in expanding and improving County wastewater systems. Please don't allow poor decisions by previous Councils tie your hands in unnecessarily moving forward with this lawsuit, especially after having the courage to fix the problem. As a Maui County taxpayer I would be happy to see my money go to fixing this problem rather than going to litigation. And I know that this may have been just a temporary solution so if we invest in something that would be better for our environment, I would say go for it. The water may be cleaned to R-1 standards but the freshwater itself can kill coral. Injecting 3.5 million gallons more than the amount that naturally would have entered the ocean, water can do damage. And as the past

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testifier stated the nitrogen cause the algae blooms which smothers and kills the reefs. I come from a family of fishermen, we live off the sea. Subsistence is important to Hawaiian families. Continue to kill coral means marine won't gather there. Without marine life there is no food for Native Hawaiians in the area to gather subsistence. So, hearing that the answer to the problem was to stop the fishermen from catching herbivores is a silly solution. So, we look forward to this settlement today, Lord...Chair Molina and we look forward to calling you our hero in making this stand. Thank you so much.

CHAIR MOLINA: Mahalo, Ms. Wallace. You put some plenty pressure. Committee Members, any questions for Ms. Wallace on Molokai? Seeing none, mahalo for your testimony, Ms. Wallace. Ms. Lindo, please introduce our next testifier on Molokai.

MS. LINDO: Thank you, Chair. Our next testifier is Mahina Poepoe.

MS. POEPOE: Hi, this is Mahina Poepoe testifying to urge you to settle and drop the lawsuit. Do not let this go to the Supreme Court. I find this issue at best to be puzzling and hypocritical. It's embarrassing, it's terrifying. We were supposed to be leaders in stewardship, not in destruction. Every single one of you and us eats from the reefs. The health of tourism, economy, culture, recreation, subsistence, social and environmental health all depend on our reefs. Around the world reefs are taking gas from all angles, acidity, temperatures, pollutants, populations like never before. So, if we can at least relieve this source of contribution, we give our reefs that much more of a fighting chance. The fact is that wastewater discharge does enter the ocean and the fact is that remove or reduce the source of discharge decreases the amount of pollution entering the ocean. Wastewater, the way it is on all of our islands cannot continue as business as usual. State law requires I believe cesspools to phase out by 2050. The County needs to implement this law on its residents, and I don't know how you expect to do that and have people comply when the County itself is not setting a good example. We can do better and you should want to do better. One of Maui County's greatest assets is its natural beauty. From the upland forests to the coral reefs, the islands of Maui County are a portrait of a rare and amazing natural world. Protection including ecological systems is of vital importance. Wastewater seepage combined with other non-point and point-source pollution has the potential to destroy the region's nearshore water quality. The reef decline on Maui is among the fastest in the world with the two stressors that can be immediately addressed are overfishing and deteriorating water quality. Those words are not mine, they're verbatim taken, almost verbatim taken out of the Countywide and Maui Island Plans. The sentiment in these plans to protect and preserve our environment and specifically reef and marine resources is not only apparent, it's undeniable. There are at least 30 or more policies, objectives, goals, actions that can be directly related to the discussion today and used as reasoning to settle the case. I can read a couple of them that are very, very clear. Two point two point three, action one, transition from the use of wastewater injection wells to appropriate environmentally sound methods of wastewater disposal and promote the beneficial reuse of wastewater effluent. I don't

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know how much more clear this could be. Avoid development actions that impair Maui's reef system and remove identified stressors. Injection wells are an identified stressor. I...

UNIDENTIFIED SPEAKER: Three minutes.

CHAIR MOLINA: Ms. Poepoe...

MS. POEPOE: I encourage you to look at your County plans and --

CHAIR MOLINA: Please conclude.

MS. POEPOE: --I believe it's your duty to uphold these plans. I just don't want you to let this County be the potential cause of a nationwide disaster and, you know, be the clever a-hole that undermines and decimates water protection for an entire country. I think that this...

CHAIR MOLINA: Okay, Ms. Poepoe, sorry, I have to stop your testimony, Ms. Poepoe. Members, any questions for Ms. Poepoe on Molokai? Okay, seeing none, mahalo for your testimony, Ms. Poepoe. Ms. Lindo, do we have any other testifiers on Molokai?

MS. LINDO: No, sir, we do not have any more testifiers on Molokai at this time.

CHAIR MOLINA: Okay, mahalo. Members, the Chair is aware of the time, it's about 10:45. Let's take a morning break. And just for your information as I mentioned earlier, we have 84 sign-ups so we got quite a ways to go. When we come back from our recess we do have representative...Ms. Hulu Lindsey, we'll begin with her and go from there. So, Members, meeting in recess till 11:00 a.m. . . . *(gavel)* . . .

RECESS: 10:45 p.m.

RECONVENE: 11:05 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . Okay, the Governance, Ethics, and Transparency Committee meeting for Tuesday, September 3rd is now called back to order. We're in the process of public testimony, and as this Chair had stated prior to the break, we have OHA Trustee Hulu Lindsey would like to testify, and following Ms. Lindsey will be Mr. Chris Fishkin. Good morning.

MS. LINDSEY: Good morning and aloha, Chair Molina and Members of our County Council. Mahalo for the opportunity to testify on this measure this morning. My name is Carmen Hulu Lindsey and I am a Trustee with the Office of Hawaiian Affairs, representing the island of Maui. The Office of Hawaiian Affairs submitted a very in-depth and detailed testimony to the County Council which I have no time to share with you this morning. But I'm here to express my personal feelings and I speak in

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support of resolution GET-26 and encourage Maui County to abandon its efforts in pursuing its appeal in Hawaii Wildlife Fund versus County of Maui which will overturn crucial protections found in the Clean Water Act. The injection of nearly 20 million of gallons of reclaimed water a day into the ground at the Lahaina Wastewater Reclamation Facility has a detrimental effect on Kahekili Beach and the adjoining ocean environment. Hawaiian kiai who seek fish, dive, and be in the ocean describe the heartbreaking tales of degradation to the coral reefs and its surrounding ecosystems. The County should abandon using injection wells to dispose of recycled water. Instead, the County should focus on a delivery system for reused water generated by the Lahaina Wastewater Reclamation Facility for irrigation purposes. There are dangerous implications of a legal appeal to the US Supreme Court. Large corporations will be able to take away communities' rights to know what are in their streams, lakes, and oceans. As elected officials of an island where wai has had a storied history, it is our kuleana to actively protect our water sources for our future generations. . . . *(speaks in Hawaiian)* . . . Mahalo.

CHAIR MOLINA: Okay, thank you, Member Lindsey.

AUDIENCE: . . . *(applause)* . . .

CHAIR MOLINA: . . . *(gavel)* . . . Folks, again, please if you could restrain yourself a little bit with the applause. I appreciate the emotion but trying to maintain decorum here. Committee Members, any questions for our OHA Trustee, Ms. Lindsey?

COUNCILMEMBER KAMA: Chair?

CHAIR MOLINA: Okay. Councilmember Kama, followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER KAMA: Thank you, Chair. Thank you for being here this morning, Trustee Lindsey. So, you know, in your testimony you mentioned that you would like to see a reuse of that water through a delivery system. Could you expound on that please?

MS. LINDSEY: Although I am not a researcher, common sense tells me reuse can go to the golf courses around the area basically for landscaping. There's lots of condominiums there where we can...where they have beautiful landscaping so I would say we need to reuse it in that manner.

COUNCILMEMBER KAMA: So, to reuse it means...how do we get the water from where it is now from the injection wells to where we'd like to put it? How do you suggest we do that?

MS. LINDSEY: I'm sorry but I'm not qualified to answer your question.

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COUNCILMEMBER KAMA: Okay.

MS. LINDSEY: I'd like to say though that the Office of Hawaiian Affairs has very talented staff that has done in-depth research on this issue, and our offices are open to all of you Councilmembers that would like to ask our office for any kind of help in the research that you're doing for that purpose.

COUNCILMEMBER KAMA: I would like that. Thank you. Could you forward that information to our Staff here?

MS. LINDSEY: I certainly will, Councilwoman.

COUNCILMEMBER KAMA: Thank you. Also...Chair, if I may?

CHAIR MOLINA: Proceed.

COUNCILMEMBER KAMA: So, does the Office of Hawaiian Affairs think about what that cost might be for us to redistribute this water to reuse it?

MS. LINDSEY: No, it's not our kuleana to do that, it is a County problem, but we stand strong behind the purpose and we would be happy to help you with that as well.

COUNCILMEMBER KAMA: Thank you very much, Chair. Thank you, Ms. Lindsey.

CHAIR MOLINA: Thank you, Member Kama. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Trustee Lindsey.

MS. LINDSEY: Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for being here today to testify and for offering yourself and your office as a resource or OHA as a resource for our Councilmembers in figuring out a more aloha aina way forward. I, my question is as an elected official have you heard from your constituents about this, particularly lawaia, those who subsist in the area?

MS. LINDSEY: Absolutely. I have, I've heard from so many of them and that is the reason I'm here this morning because I've heard from so many people actually begging that we go the route of this to pull back from the Supreme Court. They think that it's very, very dangerous. So, I exhort you to vote for our communities.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo nui, Trustee. Mahalo, Chair.

CHAIR MOLINA: Okay, mahalo, Committee Vice-Chair Rawlins-Fernandez. Council Chair King?

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COUNCILMEMBER KING: . . . *(inaudible)* . . .

CHAIR MOLINA: She answered your question? Okay, alright. Any other need to clarify Trustee Lindsey's testimony? Seeing none, mahalo for taking the time to share your manao.

MS. LINDSEY: Thank you for having me.

CHAIR MOLINA: Aloha. Next to testify on GET item 26 we have Chris Fishkin, to be followed by C. Rose Reilly.

MR. FISHKIN: Aloha, Councilmembers. Aloha, Chair. My name is Christopher Fishkin, I'm the host of Maui Real News on *Akaku*. Dave Taylor just argued for better clean water practices for capital improvement projects on Maui, so, thank you, Dave. Councilmembers, it is up to you to settle this case. The Mayor proposes a settlement in a public interest case of which no one knows the terms because they can only be revealed in executive session. It affects the public and while there is this hearing there can be no public discourse on those terms as they're not in the communicated resolution. Is that government transparency, Chair? No wonder Earthjustice doesn't trust the Mayor, and why residents find it difficult to trust the government. Let's not fool ourselves, the Department of Corporation Counsel, not the Mayor, is in charge of this case and these proceedings. This Corporation Counsel has tried to insert language in the prior injection well settlement resolution which has no precedent, violates the Hawaii rules of professional conduct about attorney-client relationship, in which language sought to deceptively wrest control from both the Mayor and the Council in these settlement proceedings. This Corp. Counsel has lied to this body, a proven fact during Ms. Lutey's confirmation hearings about environmental law in a case involving an unfilled SMA permit by a developer. The attorneys of these Corp. Counsel drafted deceptive language to amend Title 18, the subdivision ordinance to enrich commercial developers and private interests at the expense of County taxpayers which the Council is now trying to repeal. They have been just caught making false representations about judicial records. This Council with the exception of four of its Members appear to be under the control of Corp. Counsel Moana Lutey and her deputies. Understand that Corp. Counsel has no real interest in settling this case unless it's a clear win for them. Ms. Lutey is a litigator who in her own words during confirmation said that she does not like to settle cases. She will drag the entire County down to her level in an attempt to win regardless of the cost to the County. Without the terms being public the Mayor's real intentions are highly questionable. Ms. Lutey and her previous Department Director Wong have proven through numerous cases that they refuse to settle only to lose their settle later at a far greater cost to the County. In a recent case before Judge Cahill, Kaanapali Ocean Villas, Judge Cahill said Corp. Counsel abused its taxation power to create a weapon. The Corp. Counsel has been using this case now as a weapon against the Clean Water Act and for others' interests. In the tax case they may have severely damaged the

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County's bonding credit rating of this County. Now, Corp. Counsel is about to damage Maui County's standing in the world and turn Maui which should be viewed as the vanguard of protecting the Clean Water Act into a pariah on the world stage. You appreciate tourism, Mr. Molina, as an economic engine for the County of Maui, well, watch the news coverage unfold after Donald Trump uses Maui County to advance his agenda to gut the Clean Water Act. You know the Hawaii Supreme Court has an amazing record of protecting the environment and environmental law. That protection is written into the State Constitution itself. Mayor Victorino as evidenced by the scientific community is simply wrong in the facts, and this Mayor has a track record of not keeping his word. So, is this Council going to create a legacy for Maui which ruins our standing in the world based upon this Mayor's lack of leadership or is this Council going to take the reins, be the responsible branch of government during this critical time and protect the aina, Maui County's reputation, and its standing in the world? It's up...

CHAIR MOLINA: Okay, Mr. Fishkin...

MR. FISHKIN: I have one last sentence, sir.

CHAIR MOLINA: Okay, go ahead.

MR. FISHKIN: It's up to you, Councilmembers, to protect this County from Corp. Counsel, from outside influences, and even possibly from this Mayor. Thank you for your time. Aloha.

CHAIR MOLINA: Thank you, Mr. Fishkin.

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: ... *(gavel)* ... Okay, folks, settle down. Okay, Committee Members, questions for the testifier? Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Fishkin, mahalo for your testimony. So, I just wanted to clarify, the document that you're referencing is the correspondence that the Council received on August 27, 2019, which came from the Mayor urging the Council to go into executive session to review the revised settlement to be presented. And what you're saying is that you're discouraging the Council from going into executive session?

MR. FISHKIN: Yes, I think this settlement should be...it is in the public interest, it's a public interest case and it should be discussed in the public forum and the terms should be made available to the public. How does the Sunshine Law allow us to have a public discourse on terms that the public doesn't even know what they are or how they exist? Yes, I definitely agree with that. Thank you.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. And the document that you're referencing is the August 27th...

MR. FISHKIN: Correct, the August 27th communication from Mayor Victorino.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony.

MR. FISHKIN: Aloha. Thank you. Mahalo.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay, thank you. Members, any other need to clarify Mr. Fishkin's testimony? Seeing none, mahalo for your testimony, Mr. Fishkin.

MR. FISHKIN: Thank you, Chair.

CHAIR MOLINA: Next to testify on GET item 26 we have C. Rose Reilly, followed by Caitlin Maratea. C. Rose Reilly? Okay.

MS. REILLY: Aloha. My name is Cecilia Rose Reilly. . . . (*chants in Hawaiian*) . . . That basically says that the waters of the ocean and the rivers sustain life. Those waters run through my blood to the ocean. We are all part of one cycle, we are water. I am from Irish descent, 500 years longer than Hawaii in the illegal occupations that are ruining this planet. I come from Texas before living on Kauai. I was born in Ohio. In Ohio where I was born, they polluted the river so badly that it caught fire. Where I'm from in Texas, the water is green, filled with black tar balls and there are stinging gnats everywhere. The ocean is furious and polluted to disgusting quality. When I, you know, lived on Kauai for ten years about, I was able to see pristine water, experience it, know it clearly and thoroughly throughout my being what it looks like and how it should be with rivers running mauka to makai all over that island. So, what we're looking at here, ten years I've been crying to this County about cleaning up the injection wells specifically, that I can see the pollution happening. And but I've learned throughout those ten years going to so many water meetings now is that the poorest soil of Hawaii actually allows the river water to create the groundwater. It allows the river water to permeate down all of the injection wells through this porous material into the ocean when it comes down close to the beach and through these sandy soils. So, that basically when I was at the water meeting last week for the State, they were talking about West Maui water coming from the streams. Like I don't remember them talking about it coming from any groundwater. So, that water has come from streams to a manmade plant that is being put into a manmade facility that happens to be underground for ease of, you know, not paying to fix things properly. So, basically the injection wells are a bad plan. There are other plans. Earthships have a specific wastewater treatment ability that is zero leach. It's 100 percent reclamation. So, we have the ability, we have the technology, all of the different things, and it is the law in Hawaii to protect the water. I have that written down, it's

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the Hawaii State Section 7 on obligation to protect, control, and regulate Hawaii's resources for the benefit of its people which means for all its people, the ones that are coming and future generations as well.

CHAIR MOLINA: Ms. Reilly, thank you very much for your testimony. I'm sorry I have to stop you there.

AUDIENCE: . . . *(applause)* . . .

CHAIR MOLINA: Okay, folks. . . . *(gavel)* . . . Come on, folks, we got to settle down please. Members, any questions for the testifier?

VICE-CHAIR RAWLINS-FERNANDEZ: Quick one, Chair.

CHAIR MOLINA: Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo for your testimony, Ms. Reilly. Real quickly, the oli that you did, was that from Paniolo Prince and His Queen Maile?

MS. REILLY: It was.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

MS. REILLY: Mahalo.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Alright, thank you very much. Members, any other need to clarify Ms. Reilly's testimony? Seeing none, thank you very much for your testimony.

MS. REILLY: Thank you.

CHAIR MOLINA: Okay, next to testify we have Caitlin Maratea, followed by Kim Toomey.

MS. MARATEA: Hello. Good morning. My name is Caitlin Maratea. I'm here as a concerned resident in favor of settling the Lahaina injection well case. Thank you, Council, for hearing my testimony. Maui has been a beacon in enacting progressive environmental policy. Refusing to settle this case goes against a lot of things that you, the well-informed Members of this government body stand for. Why did Maui County pass legislation to remove plastic bags, polystyrene, oxybenzone sunscreen only to fight upgrading the waste treatment system that causes direct and measurable damage to the nearshore waters? Yes, it's expensive to upgrade infrastructure. Perhaps the \$4.3 million that Maui County has already spent fighting this case could have been better used to upgrade the Lahaina facility. That's more than the \$2.5 million that the plaintiffs are asking be used toward diverting and reusing wastewater. This issue

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could have been solved already actually. I could talk to you about numbers and dollars generated annually by Hawaii's coral reefs, but hopefully you already know their value. Instead, I would like to share my personal experience with this specific area. I am a dive instructor and spend almost every day at Kahekili Beach Park teaching my divers about reef conservation. I talk about this very case almost every day and since 2012 when I learned of the injection wells and the research behind them. I have informed hundreds of visitors and local residents about what the seeps along the coastline are doing to Kaanapali's reefs and sea life. I have watched the rapid decline of the reef with my own eyes. What you have in front of you are photos taken by me, dating back to 2013 with updates as recent as last month, showing what is happening, the damage that is happening along Kaanapali shores. These specific locations are right in front of the Westin Kaanapali Ocean Resort Villas. Not only are these locations frequented by hundreds of swimmers daily, they are almost adjacent to where the seeps deliver treated wastewater into the ocean. If this isn't jarring enough evidence to give you pause then I don't know what is. Thank you to the Councilmembers that have already voted in favor of this, of withdrawing this case from the Supreme Court. Others on this Council I have watched in the past vote in favor of measures protecting Maui's environment. Please do the right thing. Don't make Maui County the landmark case that allowed the Trump Administration to gut the Clean Water Act. By settling this case we can solve issues not only here at home but send a clear message to the nation that Maui County will not become the darling of the corporate industrial machine that spearheaded the deregulation of environmental protection in this country. Thank you.

CHAIR MOLINA: Okay, thank you very much, Caitlin.

AUDIENCE: . . . (*applause*) . . .

CHAIR MOLINA: . . . (*gavel*) . . . Folks. Okay, any need to clarify --

COUNCILMEMBER KING: I have a question.

CHAIR MOLINA: --Caitlin's testimony? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here. So, this is the, your testimony, and can you tell us what we're looking at in this? You know because a lot of people would look at this and not understand what's going on here. So, what is the actual...can you just describe the physical decline of the reef?

MS. MARATEA: Absolutely. So, the first two photos at the top are near and dear to my heart. The photos on top are taken some of them back in 2013, some of them in 2015, 2016 when the coral was much healthier. It's pretty apparent. This rather large lobe coral on the top-left picture has completely died. It is toppled over, there's no fish populating it anymore. That is what I used to use as a marker to know where I was in the dive site and it's just kind of gone. You can see it in the picture beneath.

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COUNCILMEMBER KING: Uh-huh.

MS. MARATEA: I mean this is...these are...these locations are exactly in the same place, maybe with different perspective, but I mean it's undeniable the amount of damage that's being caused to this particular reef.

COUNCILMEMBER KING: Okay. So, what we're looking at on the top is the picture before and then underneath --

MS. MARATEA: Exactly.

COUNCILMEMBER KING: --what's happened in that same location?

MS. MARATEA: Yes.

COUNCILMEMBER KING: Do you...so do you still dive in that area?

MS. MARATEA: I do every day almost.

COUNCILMEMBER KING: Even though the coral's not in very good shape?

MS. MARATEA: Yeah, unfortunately, and I actually brief my divers ahead of time to kind of make them aware of like hey, it used to look a lot better than it does now, but we're working hard here to keep it beautiful and to still appreciate the living museum that we get to go see every day.

COUNCILMEMBER KING: Okay, thank you.

CHAIR MOLINA: Thank you, Chair King. Members, any other need to clarify Ms. Maratea's testimony? Seeing none, thank you very much for your testimony.

MS. MARATEA: Thank you.

CHAIR MOLINA: Aloha. Next to testify we have Kim Toomey, followed by Rob Weltman. And, folks, Chair apologizes for being so ornery on the clapping part, I know it's exciting but for those of you doing your best to restrain yourself, the Chair appreciates it. So, anyway, certainly a very hot-button topic to say the least. Ms. Toomey?

MS. TOOMEY: Aloha. Thank you for listening to us today. I believe the best way to judge your government is how their actions, policies, and laws reflect common sense or how they are thwarted by special interests and political ambition. I believe discharging millions of gallons of slightly treated sewage into a healthy reef along the crown jewel of your tourist area does not make common sense. I believe when the forces aligning with your case are oil and gas and mining interests that common sense tells you

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you're on the wrong side. They can only have one interest in this case and that is to create a loophole that will make it expedient and cheaper to pollute. I believe common sense tells you, you have a kuleana to the people, the land, the reefs, the ocean of this island. I believe if we don't deal with remediation now that our children or our grandchildren will have to, because reef degradation will continue and be more severe and more pervasive. I believe common sense also tells you it will be more expensive to deal with it in another generation. I believe common sense tells you, you should have an understanding of the cost of remediation. I believe there was a question about that earlier. There have been three separate studies for and by the County dealing with the specifics of those costs by district. I believe that this island has tackled difficult projects before. Road to Hana, the bridges, tunnels, we can do difficult, challenging things, expensive things when we put our mind to it. Don't let anyone tell you that we can't. I believe that people of this island want this settled for many reasons. You are our elected officials, our elected leaders. I ask you to do just that, lead the way forward. I believe it's common sense when there's a settlement agreement before you that should be palatable that you take it. That's all I have to say today. Thank you.

CHAIR MOLINA: Okay, thank you, Ms. Toomey. Okay, Committee Members, any questions for our testifier this morning? Oh, I'm sorry, Ms. Toomey, if you could return.

MS. TOOMEY: Yes.

CHAIR MOLINA: Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo for your testimony this morning. I was wondering if you...since you have the documents in front of you if you would mind just reading the titles of the three studies that you have that discuss the costs for expanding and improving our wastewater system?

MS. TOOMEY: Yeah, so I just have two of them in front of me at the moment, but one is titled West Maui Recycled Water Verification Study. The second one is Central Maui Recycled Water Verification Study.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for that.

CHAIR MOLINA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

MS. TOOMEY: Any other questions?

CHAIR MOLINA: Thank you very much. Members, any other need to clarify Ms. Toomey's testimony? Councilmember Sugimura?

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COUNCILMEMBER SUGIMURA: Thank you for testifying. So, did you say the County of Maui produced those studies? And...

MS. TOOMEY: Yes, for and by the County.

COUNCILMEMBER SUGIMURA: Can you give me the years please and the Department I guess is Environmental Management?

MS. TOOMEY: Okay.

COUNCILMEMBER SUGIMURA: Is it...

MS. TOOMEY: January 2012, prepared by the Department of Environmental Management, Wastewater Reclamation Division. December 2010, by County of Maui County Council, prepared...well for them, prepared by Department of Environmental Management, Wastewater Reclamation Division and Department of Water Supply Division.

COUNCILMEMBER SUGIMURA: So, the first one for 2012 is the West Maui Recycled...

MS. TOOMEY: The first one, yes.

COUNCILMEMBER SUGIMURA: What was it, West Maui Recycled...

MS. TOOMEY: Department of Environmental Management Wastewater Reclamation Division.

COUNCILMEMBER SUGIMURA: No, I...yeah, the study was called West Maui Recycled...

MS. TOOMEY: I'm sorry, West Maui Recycled Water --

COUNCILMEMBER SUGIMURA: Water, okay.

MS. TOOMEY: --Verification Study.

COUNCILMEMBER SUGIMURA: Verification. Thank you.

CHAIR MOLINA: Okay, thank you very much --

MS. TOOMEY: Any other questions?

CHAIR MOLINA: --Member Sugimura. Any other need to clarify Ms. Toomey's testimony? Seeing none, thank you very much for your testimony. Next to testify on GET item 26 we have Rod Weltman, followed by Peter Davis.

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MR. WELTMAN: Chair Molina and Members of the GET Committee, aloha kakahiaka. Aloha mai kakou . . . *(speaks in Hawaiian)* . . . Clean Water Act. My name is Rod Weltman of Sierra Club and I live in Kihei. I was asked at the GET meeting on May 20th if it was true that the EPA had issued a new statement on the Clean Water Act requirement to obtain a permit if releasing pollutants that reach the ocean. I answered yes but the real question is why the Trump EPA is taking such a different position from that of the Obama EPA. On February 3, 2017, the Trump Administration issued an executive order directing all agencies to repeal at least two existing regulations for each new regulation. On August 9th this year, the EPA reported success. They undertook 26 deregulatory actions and only 4 new regulatory actions in Fiscal 2017 and Fiscal 2018. On August 29th this year, *The New York Times* reported on 84 environmental rules being rolled back by Trump. This is good news, right? Less regulation, less hassle. Well, I believe it depends on if you are a fossil fuel company or other major polluting industry or if you are a human being or other living thing that breathes in air and drinks water. Twenty-three rollbacks to allow more air pollution and emissions., ten to allow more endangered species to be killed, seven to allow more water pollution, and on and on. These are all things that will save dirty corporations money but will cost us living beings our health and shorten our life expectancies. Trump is unraveling 30 years of environmental protection. Great news for some polluters but how would they go about giving all polluters the right to poison all of our public waters? Democrats control the House of Representatives and they will not allow Trump to rewrite the Clean Water Act. Well, the County of Maui gave Trump a solution. Reinterpret the Clean Water Act so it no longer applies if pollutants are dumped near public waters rather than directly in them. Problem solved. This is a radical deregulation and it is no surprise that it is strongly supported by the most...the worst polluters and the most far-right organizations in the country. As you all know, the Obama Justice Department and EPA supported the Hawaii Wildlife Fund in their case asking Maui County to stop polluting the ocean without a permit. Hawaii Wildlife Fund is also supported by EPA officials of the Clinton, Bush, and Obama administrations. They've been asking Maui County to follow the law of the land as established in 47 years of the Clean Water Act. This is not an expansion of the Clean Water Act they're asking for, it is a defense against deregulating it. The Trump Administration is not our friend. Let's put our energy and our money into protecting and improving our ocean waters, not into helping Trump and his polluter friends make things even worse for the wai and the kai that we all depend on.

CHAIR MOLINA: Okay, alright, thank you, Mr. Weltman. Mr. Weltman, also, could I get your testimony in writing? I'd like to find out more about what the Trump Administration has, had done with our environmental legislation nationally. Appreciate that. Committee Members, any need to clarify Mr. Weltman's testimony? Chair King?

COUNCILMEMBER KING: Thank you. Thank you, Chair, 'cause I was going to ask for a copy of that testimony as well. But do you...what was...what were those numbers again, the rollback versus...I know you said they created four new regulations and there were, they rolled back...

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MR. WELTMAN: So, the...very early in the Trump Administration, one of his goals, one of his promises to his donors, his supporters was to roll back environmental protections. And so, he said that his new rule was that for every new regulation, you have to rollback four existing ones. And they've not only done that, they've exceeded their charter, because they deregulated 26 things and only implemented 4 new ones in 2 years.

COUNCILMEMBER KING: What were the implementation, the new ones that they've implemented?

MR. WELTMAN: I don't have that in front of me right now. And then so that was that. And then the other thing that just this week there was an article in *The New York Times* going over all the ones that have been implemented and that in the process of deregulation, that are in the process of being implemented.

COUNCILMEMBER KING: Okay. Yeah, if we can get that . . . (inaudible) . . . --

MR. WELTMAN: Yes.

COUNCILMEMBER KING: --that would be great. Thank you.

CHAIR MOLINA: Okay, thank you, Chair. Members, any other need to clarify Mr. Weltman's testimony? Seeing none, thank you, Mr. Weltman. I appreciate you doing the olelo as well. A lot better than I could. Okay, next to testify on item 26 we have Peter Davis, followed by Spencer Headley.

MR. DAVIS: Good morning, Chair and Council. My name is Peter Davis. I live in Kihei and I'm testifying today as an individual. I'm an attorney. I'm admitted to practice before the US Supreme Court. You are here today to decide whether to leave the Ninth Circuit's interpretation of the Clean Water Act in place as the law that governs the State of Hawaii. This Ninth Circuit opinion rewrote the Clean Water Act, it didn't just expand it or interpret it, it rewrote it and it made it substantially more dangerous for all of Maui's cesspool owners. First, it allows finding of violations in cases of remote discharges, and second, it lowered the standard of proof. The new test is merely that a discharge is fairly traceable to the point of introduction. That's a much easier burden of proof to me. Keep in mind that lawsuits to enforce the Clean Water Act are civil and not criminal. That means that there's no requirement of proof beyond a reasonable doubt. The preponderance test applies in these lawsuits. That means that all you have to show to win is that it's 51 percent more likely that something is true than not. How does this impact our cesspool owners of which there are over 12,000? I know the Sierra Club and others have promised publically not to go after cesspool owners. The Department of Health has indicated they're not going to go after cesspool owners. Those promises mean absolutely nothing. First, there's the latest development. The Federal EPA in a memo sent just last Wednesday indicated that their understanding is

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that the current Ninth Circuit ruling if the stays the law for Hawaii, may now require the EPA to start enforcing against cesspool owners. That's as of last week. That's very big news and a very big change in position. On top of that possibility and here's the big one for me, there is the constant reality that any private person can file a lawsuit to enforce the Clean Water Act. You can't stop that from happening. It could be a kook, a well-intentioned person, but you can't stop private lawsuits. Now, here is for me the nightmare situation the cesspool owners are looking at. A clever attorney files a class action lawsuit against a group of property owners with cesspools. That attorney chooses well, targeting a specific area where cesspools are clustered together and bring before the court a group of property owners who in combination with one another can't even try to say they're not polluting the aquifer, because it's clear that as a group they are polluting the aquifer. Targets like Rice Camp subdivision come to mind, maybe Makawao Ranch Acres. People down in Hana, anywhere there's a cluster, you sue them as a group, bring them before the court. With the tracing requirements satisfied, the court could find these owners are jointly in violation and require permits from all of them. If the court orders you to get a permit and you can't get it, your property has just been effectively condemned. Think about it, aside from any EPA enforcement, one individual acting alone could cause havoc on an entire community of homeowners with cesspools. You can't let that happen. That's why I urge you let the Supreme Court take this case and modify the ruling if not overturn it. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Davis. Committee Members, need to clarify Mr. Davis' testimony? Member Lee?

COUNCILMEMBER LEE: Thank you, Mr. Chair. Mr. Davis, I just wanted to confirm what you said about the EPA has stated that they will not enforce any kind of fines or anything against people with cesspools. But they are illegal, is that what you said?

MR. DAVIS: No, that's what I...my comment was that as of Wednesday of last week, the EPA sent an e-mail to Richelle Thomson, indicating that it's their understanding if this law stays in place, the Supreme Court doesn't make any changes to it, that the Ninth Circuit's ruling may require them to come after people with cesspools.

COUNCILMEMBER LEE: Oh, may require.

MR. DAVIS: May.

COUNCILMEMBER LEE: But then the other hand, private citizens can sue one another over this issue?

MR. DAVIS: I could sue you tomorrow if you have a cesspool.

COUNCILMEMBER LEE: Yeah, thank God I don't.

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CHAIR MOLINA: Thank you, Member Lee. Members, any need to clarify...Vice-Chair Rawlins-Fernandez, followed by Councilmember Sugimura.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Davis. Mahalo for your testimony. So, in order for you to sue Member Lee, as you said earlier in your testimony, you would have to prove that her cesspool is fairly traceable to a navigable water?

MR. DAVIS: If I sued her individually and not as a group, I would have to prove that her cesspool was fairly traceable. You can tell me what --

VICE-CHAIR RAWLINS-FERNANDEZ: Right.

MR. DAVIS: --you think fairly traceable means because I don't think the court was clear about that. A pretty easy burden.

VICE-CHAIR RAWLINS-FERNANDEZ: And so, how would you get onto Member Lee's property to put in a tracer dye to prove that her cesspool is the cesspool that is going into navigable water?

MR. DAVIS: I would seek a court order authorizing me to go on to her property.

VICE-CHAIR RAWLINS-FERNANDEZ: I think you would need more proof then to allow an individual to have a court order to go onto someone's private property.

MR. DAVIS: We can disagree about that.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

UNIDENTIFIED SPEAKER (from the audience): Sure do.

VICE-CHAIR RAWLINS-FERNANDEZ: We do.

CHAIR MOLINA: Alright, folks, settle down.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

CHAIR MOLINA: Member Rawlins-Fernandez, another question?

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah. So, the Department of Health already strictly regulates cesspools. Is that correct?

MR. DAVIS: It's within their jurisdiction, yes.

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VICE-CHAIR RAWLINS-FERNANDEZ: Right. Okay. And then the EPA has delegated that authority to our State Department of Health?

MR. DAVIS: I'm not sure that's still the case. Certainly they have delegated in the past, this new memo indicates to me that they may feel they have to independently get active in going after people with cesspools.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Well, I don't know...I didn't interpret it that way, especially with the "may," and not the "shall," and it wouldn't be a requirement. It's just total fear mongering. So, I appreciate your testimony and we can disagree. And mahalo for allowing me to ask questions, Chair.

CHAIR MOLINA: Thank you, Vice-Chair Rawlins-Fernandez. Any other need for clarification? Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you for being here. So, just wondering on septic's then, is Department of Health now permitting septic tanks?

MR. DAVIS: I believe that, yeah, I think...if your question is can you still put in a septic tank pursuant to the Department of Health? I believe that is the case, yes. In fact, if you're in a remote area that doesn't have sewer, the only way you can build a new residential structure is to go with a septic, 'cause they won't allow...at least on Maui cesspools are not allowed anymore.

COUNCILMEMBER SUGIMURA: And it's being regulated under what permit?

MR. DAVIS: Huh?

COUNCILMEMBER SUGIMURA: Do you know what permit they would...we would be required to get?

MR. DAVIS: I do not, no.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: Yeah, Member Sugimura, we can ask the Department of Health representative when we do come to that point with regards to your question. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Davis. You're testifying on your own behalf or do you represent the County?

MR. DAVIS: No, I'm representing myself as an individual.

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COUNCILMEMBER KING: And your...okay. And your area expertise is...you have an environmental area of expertise?

MR. DAVIS: I don't claim environmental expertise.

COUNCILMEMBER KING: Okay.

MR. DAVIS: I...

COUNCILMEMBER KING: Okay. Just the information you're presenting sounds like your...you had some background in this. But do you know about the administrative rules for underground injection control?

MR. DAVIS: No.

COUNCILMEMBER KING: Okay. So, you're not aware that Section 11-23-02 which is the scope specifically excludes...it says it covers any injection well as hereby defined in this chapter. Excluded from this chapter are individual wastewater systems serving...

CHAIR MOLINA: Chair King, please ask your question.

COUNCILMEMBER KING: Well, I'm asking him if he's aware of this because he's making statements about cesspools, and this administrative rule specifically excludes family residential households which generate a volume of domestic sewage less than 1,000 gallons per day. So, are you aware of that, the administrative rules in the State?

MR. DAVIS: I'm not specifically aware of those rules, but they make no difference because an individual can sue another individual anytime. Private enforcement under the Clean Water Act is permitted which means any individual can step forward, as did the plaintiffs in this case and start initiating an action against an accused violator.

COUNCILMEMBER KING: But isn't it true that any individual can also step into the water and sue the County for anything? I mean you said it yourself, there can be kooky lawsuits. So, individual lawsuits can happen for all sorts of reasons, and we can't stop the lawsuit from actually being filed, correct?

MR. DAVIS: You cannot stop someone from going to the courthouse and filing an action.

COUNCILMEMBER KING: Okay. So, actions can happen on either side. I just wanted to know if you were aware of this administrative rule from the State of Hawaii. Thank you, Chair.

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CHAIR MOLINA: Okay, thank you, Chair King. Members, any other need to clarify Mr. Davis' testimony? Mr. Davis, just for the record since it was asked of your background, are you...what is your profession? I'm just curious.

MR. DAVIS: I describe myself...well, I'm an attorney.

CHAIR MOLINA: Okay. Alright, thank you. Okay, just thought I'd ask, folks. Okay, thank you very much for your testimony, Mr. Davis. Okay, next to testify we have Spencer Headley, followed by Jason Economou.

MR. HEADLEY: Good morning, Council. Thank you very much for having this meeting here today. We appreciate our opportunity to have our voices heard. My name is Spencer Headley, I work at the Department of Health. I'm speaking today--a little bit shorter--speaking today as a private citizen, as a concerned citizen of Maui. In this late hour of litigation after dragging on for years as you know to settle the lawsuit before it reaches the Supreme Court. I'm really wishing I had the permit number available based on previous testimony. I don't; however, I would like to thank Representative McKelvey for accurately portraying the Department of Health's official position as this would relate to underground injection wells versus septic tanks moving forward if this lawsuit is settled. If there's one thing I can offer again as a private citizen that might shed some light on why that would be, with soil, with the bio-zone being able to degrade excess nutrients as well as pathogens in the water, you need a minimum of two years of transport time within the soil before reaching receiving waterways in order to prevent contamination. However, I believe the studies that were mentioned earlier has proven that the tracer has reached the ocean after ten months from being injected into the Lahaina Reclamation Facility. So, it really comes down to impact, and cesspools is a completely separate issue than that. Again, it is covered under a completely different set of regulations, and that will not change based on the settlement of this lawsuit. Again, and I apologize I'm speaking as a private citizen. So, but here we are in 2019, arguing whether we should continue to pump 3 to 5 million gallons of treated wastewater which has excess nutrients into the ocean. I understand how difficult of a position that puts you in settling, the prospect of settling the lawsuit. It would irresponsible for me just to equate lawsuit settlement with the solution as that would put all the burden in your hands. But I think we as a community are here to express our willingness to work with you and to share some of that burden, put some of that burden back onto us, hold us accountable. Councilmember Kama, I apologize for not having a clear response as to why you haven't received guidance more clearly in the past, but we could talk about the past all day long about things that went wrong or not. So, anyway, moving forward, turning the page let's figure out a solution. Let's figure out a better way to handle this wastewater. There's a whole host of alternative solutions available. There's funding. Senate Resolution 92 which is concerned about cesspools as well as other things...I'm going to stop talking. But anyway --

CHAIR MOLINA: Okay.

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MR. HEADLEY: --that's...

CHAIR MOLINA: Mr. Headley, sorry, I'm just going to stop you.

MR. HEADLEY: Yeah.

CHAIR MOLINA: And thank you for being here. And I think you may be asked a couple of questions by the Members. I'll start off first. Can you just clarify your...now you're here as an individual.

MR. HEADLEY: Yes.

CHAIR MOLINA: Your position in the Department of Health?

MR. HEADLEY: I'm an epidemiologist so it's basically a disease investigator. So, we...yeah, investigate diseases.

CHAIR MOLINA: Okay, appreciate your perspective.

MR. HEADLEY: Yeah.

CHAIR MOLINA: Members, questions for Mr. Headley? Member Lee?

COUNCILMEMBER LEE: Mr. Headley, do you think that the NPDES program is the right program to manage discharges to groundwater?

MR. HEADLEY: Define groundwater. Like from which source? 'Cause that's...you're dealing with different things.

COUNCILMEMBER LEE: Oh, I thought you were familiar with this.

MR. HEADLEY: So...

COUNCILMEMBER LEE: I mean it's either the ocean or groundwater.

MR. HEADLEY: I apologize, I was thinking more the source. I think that's the issue is whether this is a point-source pollution into a navigable waterway. I think that's sort of the crux of the legal semantics that's going on. And the EPA for the past 35 years has consistently ruled that the hydrologic connection exists, that a point source can be defined a point source via groundwater. So, via using groundwater as a transport, that would still count as a direct hydrological connection. It is noteworthy to point out that after 35 years of espousing this position, the current EPA has changed course in the past six months. So, anybody is up here stating that this is a, you know, the hydrologic connection is against the EPA standard, that's absolutely correct; however,

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it's also very important to note that it's only been correct for the past five months officially and doesn't espouse the historical perspective. And our knowledge on this issue is constantly evolving, we're becoming more aware of how the hydrologic connection affects our receiving waterways and our navigable waterways which is that word everyone keeps talking about in regards to this case. We're becoming more aware. My master's thesis topic was on how soil conditions will be compromised on climate change and our abilities to effectively treat wastewater. And it's going to become harder.

COUNCILMEMBER LEE: You answered my first question.

MR. HEADLEY: Sorry.

CHAIR MOLINA: Okay.

COUNCILMEMBER LEE: Yeah.

CHAIR MOLINA: Member Lee?

COUNCILMEMBER LEE: You know it seems to me that you have limited knowledge of this area 'cause, you know --

AUDIENCE: . . . *(laughter)* . . .

CHAIR MOLINA: . . . *(gavel)* . . .

COUNCILMEMBER LEE: --I'm talking the Clean Water Act, you know, if you're trying to combine that which is the ocean with the Safe, you know, the Safe Water Drinking Act and with groundwater. I mean, you know, like where are you on this? You want to combine everything? Which permit should we be getting?

MR. HEADLEY: An NPDES permit for underground injection controls and general permitting which already exists which you already need for septic tanks.

COUNCILMEMBER LEE: But it appears that it's not clear. It's not clear, that's why we're in court in the first place.

MR. HEADLEY: So, I think part of, again, the murky waters is because there's been attempts to make water murky around this issue. And this is I believe sort of part it. So, to back up, on the first page of the Clean Water Act--it's about 380 pages long--the first primary objective is to prevent pollution to protect the public's health as well as the environment, and they use groundwater two times in the preamble of the Clean Water Act.

COUNCILMEMBER LEE: Excuse me, one more.

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MR. HEADLEY: Yeah.

CHAIR MOLINA: Proceed, Member Lee.

COUNCILMEMBER LEE: Okay, that's really not where I was planning to go. I was trying to get clarification --

MR. HEADLEY: Okay.

COUNCILMEMBER LEE: --on --

MR. HEADLEY: I apologize.

COUNCILMEMBER LEE: --you know, our clarification that we need is which permit do we, you know, obtain, how do we obtain it, and how do we get, you know, some kind of assurance that this is the final and definitive requirement of the State and the Federal government?

MR. HEADLEY: You're asking me that question? By just as a way to say how I see this is or what would change based on the settlement of this lawsuit? If you're basing it on here and now, I believe Representative McKelvey had a great point that since the lawsuit has been decided on in the Ninth Circuit that it would require again underground injection control wells to obtain an NPDES permit, because there is a direct hydrological connection observed with the ocean via the groundwater to the injection well. And it has been made clear, apparently there's a statement by the EPA last week, but sorry, it has been made clear that moving forward the existing regulation that already surrounds cesspools and septic tanks isn't going to change.

COUNCILMEMBER LEE: Why can't we get a permit?

MR. HEADLEY: Pardon me?

COUNCILMEMBER LEE: Why can't we get a permit from DOH?

MR. HEADLEY: I will have to talk to somebody above me on that.

COUNCILMEMBER LEE: Okay, thank you.

MR. HEADLEY: But I'd love to get back to you on that.

CHAIR MOLINA: Okay, thank you. Yeah, Members, you have questions about the DOH's position, I would prefer you ask that of the head person in charge, I believe that would be Dr. Anderson who we hope to have at our proceedings at some point. Not likely today but, you know, based on the amount of testimony we have, I think deliberation

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on this issue will have to take place on another day and the vote. So, and thank you very much, Mr. Headley. If there's no other need for clarification...Chair King?

COUNCILMEMBER KING: Thank you. Thanks for being here, Mr. Headley. I think you've really actually clarified one of the issues with the EPA for a lot of us and how the position has changed which we kind of saw coming like a train wreck after the last election. But the...so the...I just wanted to clarify what you just said which is the point source, the issue at hand is the point source via groundwater as it relates to the injection wells. And so, we...isn't it true that we actually have clarification now with the Ninth District Court and that what the County is trying to do with this lawsuit is get that overturned. Is that the issue?

MR. HEADLEY: That's correct. Yeah, that's the appeal.

COUNCILMEMBER KING: Okay. So, there's clarification right now on what is required. In your opinion is there...would there be a way to strengthen the UIC permit that we currently have to include the protections of the NPDES without actually get an NPDES?

MR. HEADLEY: That's a great question. I will have to research that. I actually don't know the answer of that.

COUNCILMEMBER KING: Okay.

MR. HEADLEY: Yeah.

COUNCILMEMBER KING: Okay.

MR. HEADLEY: But that is something that I think is a great question and I think the position I'm taking is that we're willing to do anything we possibly can as a community to reach out and move forward on this. I mean we can, like I said, debate all day long on what should have been done five years, and I believe that the Department of Health has a role in that as well that there hasn't been good clarification. But again, thank you for having this discussion here today, 'cause I think...I mean I would just like to say personally like now is the time to turn the page collectively and figure this out cooperatively here and that would be included in that conversation, the question as to whether or not we can strengthen the underground injection controls in addition with other solutions to greatly limit the discharge, the effluent nutrient load. Yeah.

COUNCILMEMBER KING: Okay. Thank you.

MR. HEADLEY: Yeah.

CHAIR MOLINA: Okay, thank you very much. Okay, seeing no other need to clarify, Member Rawlins-Fernandez, Chair needs to call a recess to address an important procedural

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matter, and now once we come back we'll...I'll recognize you for your line of questioning for Mr. Headley. And, Mr. Headley, if you can be patient with me. Recess subject to the call of the Chair. . . . *(gavel)* . . .

RECESS: 11:57 p.m.

RECONVENE: 12:03 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . Tuesday, September 3, 2019 is now come back to order. It's three minutes after the hour of noon. We'll continue with the line of questioning for our testifier Mr. Headley from Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Headley, mahalo for your testimony. I think, I'm not sure if Chair King asked my question so I was going to try to rephrase it in another way. So, my understanding is the NPDES permit has been granted to facilities like the Lahaina Wastewater Facility, Reclamation Facility. And so, it's not something that's unprecedented or impractical. And it's already been...NPDES permits have already been granted in that way for decades. Is that your understanding?

MR. HEADLEY: That is my understanding; however, I must admit that I need to review that particular idea more clearly, because I just can't give you a firm yes, but that's my understanding, yes.

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

MR. HEADLEY: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay, Members, any other need to clarify Mr. Headley's testimony? Seeing none, thank you very much, Mr. Headley. Okay, and we have one more testifier that the Chair had stated publicly to hear from, and after that the Chair will make an important announcement on behalf of Member Sinenci as well. Jason Economou? Please approach the lectern. He'll be also testifying on GET item 26.

MR. ECONOMOU: Good morning. Thank you, Chair Molina. Thank you, Councilmembers. I hope you all are doing well. My name is Jason Economou, I am speaking on behalf of the REALTORS® Association of Maui. We're more than 1,700 members. In the interest of the environment and in the interest of Hawaii's sovereignty over its groundwater, the Council should allow this case to be heard by the Supreme Court of the United States. The question being considered by the court deals directly with Hawaii's authority over its drinking water. The specific issue that the court will address is whether the Clean Water Act requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a non-point source such

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as groundwater. This is a question of permitting authority. Yes, the environment is implicated but this ultimately has to do with Hawaii's sovereignty over its own groundwater. Representative McKelvey was here, he is a very quotable person. He had some great lines, got a lot of applause. One of them was we should settle this in our own backyard and we play with fire when we play at the national level. Where was he when this lawsuit was filed? This went through the Federal District Court. It went to the Federal Ninth Circuit Court of Appeals. The Federal Ninth Circuit Court of Appeals' decision gutted the Safe Drinking Water Act. That's Federal law. Let me explain, so the Safe Drinking Water Act has what it calls state primacy, and under the Safe Drinking Water Act there are two versions, there's the Federal version and there's a State version. Under the Federal version and the State water...State version, it says the state governments have primary enforcement authority over their drinking water. Under the Clean Water Act, the Federal government has primary enforcement authority. So, under the Safe Drinking Water Act, if Surfrider, Hawaii Wildlife Fund, all of those folks didn't bring this lawsuit, under the Safe Drinking Water Act, we could have put all of our effort into lobbying the State government and saying hey, State government, you get to set more stringent regulations than the Federal government does when it comes to the Safe Drinking Water Act. Set higher regulations, the water is getting into the ocean, we need to stop polluting. I agree with you, I want to stop polluting. But guess what, now we can't go to the State and say all that, because we said that the Federal government under the Clean Water Act gets to regulate our groundwater, gets to regulate our children's drinking water. Now, here's another interesting thing, a fellow who is with Sierra Club he said that 84 environmental rules were rolled back. Where were all those Supreme Court cases? Wait, the Federal government doesn't need Maui County and the Supreme Court to roll back the Clean Water Act. They don't need a Supreme Court case to roll back the Clean Water Act or any other Federal regulation. Right now, through the actions of Hawaii Wildlife Fund and through the Ninth Circuit decision, the Federal government has the power over Maui's drinking water.

CHAIR MOLINA: Okay, Mr. Economou, sorry, I have to stop your testimony there. Committee Members, questions for Mr. Economou as it relates to his testimony? Okay. We'll go with Member Lee, followed by Member Sugimura.

COUNCILMEMBER LEE: Not so much a clarification but so you are talking about impacts and because you are also an expert in housing, what do you think the, if any impacts will be on housing?

MR. ECONOMOU: It's going to be huge. So, when it comes to housing, I mean I know one fellow over there scoffed at the sound of an attorney testifying. Well, I got bad news, I'm an attorney. So, I'm an attorney in South Carolina, I'm an attorney in Hawaii, and I'm an attorney at the Federal level too. I'm licensed to practice law for the Federal Bar. What I can tell you about that and as Government Affairs Director for the REALTORS® Association of Maui is that uncertainty, especially legal uncertainty is very unappealing for anybody that wants to build anything. Because here's the thing,

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even though we can all say with confidence even though we might not have passed the bar, that nobody is going to enforce this and that the law won't affect people, do you know how much it is to defend a lawsuit? Even a lawsuit you win? It's expensive, especially in Federal courts. Not every attorney can practice in Federal court. So, let's say that Mr. Davis who testified was right. Some person goes to...well, let's make this easy. Some person goes to Lahaina and they choose all the properties that are located over the Lahaina Aquifer. Now, the thing is we know already that there's a hydrological connection there. So, now I don't even need to get a permit or a court order to get on to your property. Just through modeling I can look at your septic system or cesspool both of which will be implicated here, I can say well, you're right over this aquifer zone, you need an NPDES permit. You didn't get a Federal permit did you? Even if you win, make it to Federal court, you win the first time around, that's months, months, and thousands and thousands of dollars in legal fees. This is expensive. And it's not just big businesses, I'm sure some of you are homeowners. If you're not, you have landlords who are homeowners. This will affect them. Some of you have parents who own property, this will affect them. If you're waiting for a new project to get built, if I were talking to a developer, I would tell them not to develop anything until this --

CHAIR MOLINA: Mr. Economou, I --

MR. ECONOMOU: --permit is settled.

CHAIR MOLINA: --think you've answered Member Lee's question. Member Lee, do you have another question?

COUNCILMEMBER LEE: No, thanks. No.

CHAIR MOLINA: Okay, thank you. Member Sugimura?

COUNCILMEMBER SUGIMURA: So, thank you for being here. I'm glad to hear this 'cause you're saying this is a permitting problem.

MR. ECONOMOU: Yes.

COUNCILMEMBER SUGIMURA: And the permitting is right now with the Nine Circuit Court decision, we are required, the County is required to get an NPDES permit for the injection wells?

MR. ECONOMOU: Not just the County. So, here's...let me repeat the issue before the court, whether the Clean Water Act requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a non-point source such as groundwater. If we withdraw the appeal now, the state of the law will stay. Yes, a Clean Water Act permit is required when pollutants originate from a point source but are conveyed to navigable waters by a non-point source such as groundwater. So,

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that's the County but it's really everybody that ever discharges anything that might be considered a pollutant, which by the way for the Clean Water Act like chlorine is a pollutant. So, our treated water, our drinking water might require a permit if it's being discharged into the groundwater, so your hose when you're using your garden.

AUDIENCE: . . . *(inaudible)* . . .

MR. ECONOMOU: Listen...

CHAIR MOLINA: Folks. . . . *(gavel)* . . . All right.

MR. ECONOMOU: You can say it's ridiculous....

CHAIR MOLINA: Okay, that's enough. Meeting in recess. . . . *(gavel)* . . .

RECESS: 12:12 p.m.

RECONVENE: 12:13 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . GET Meeting for September 3, 2019 is now back in session.
Okay, Mr. Economou, have you completed your thoughts or response to --

MR. ECONOMOU: No.

CHAIR MOLINA: --Member Sugimura?

MR. ECONOMOU: Because here's the thing --

CHAIR MOLINA: Okay, please direct your answer.

MR. ECONOMOU: --even if there's not a legal case, now I have to go to my realtors and I have to say there is a lot of uncertainty here. So, when you're selling a house, you might need to disclose that this house needs an NPDES permit, you might not, I don't know, it's unclear. I would caution them to do that. If every sale of property is now coupled with this statement, this disclosure, that is going to have a chilling effect on the housing market. The implications are much --

CHAIR MOLINA: Alright, thank you.

MR. ECONOMOU: --broader.

CHAIR MOLINA: Miss, Member Sugimura, you have another question?

COUNCILMEMBER SUGIMURA: Yeah. I really appreciate him...

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CHAIR MOLINA: Okay, ask your question please.

COUNCILMEMBER SUGIMURA: So, delaying the housing market is what you're saying because of the NPDES permit, unless if we get this clarified at the Supreme Court?

MR. ECONOMOU: I mean it's not just the housing market, uncertainty is really difficult for all markets. But I can't stress enough, this case isn't as simple as pollution bad, County bad, County Council good. It's not simply an environmental issue. This is a permitting issue and it's a complex permitting issue. It takes years to understand these things. I understand that everybody who's here and who's testifying and who's holding up red signs and hissing at me, they want what's best for the island. I want the water that's going on to our golf courses to be the best water that it can be but we've withdrawn that power. So, now the water that's being used for the water reuse program, it's the same water that, you know, is killing our reefs, but now we're going to spray it on golf courses next to the ocean instead of putting it in injection wells. And under the Safe Drinking Water Act, the states had primacy, the State could have protected itself if Trump and the EPA rolled back those regulations.

CHAIR MOLINA: Okay, Mr. Economou, I think you've answered Member Sugimura's questions. Anything else? If not, Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. You know when you mention chlorine discharge and stuff, have you ever tried to call the State DOH or the EPA to report a seaside pool discharging into the ocean?

MR. ECONOMOU: No, I haven't made that phone call, what's it like?

COUNCILMEMBER PALTIN: They don't do anything. So, and then, you know, disclosure and uncertainty, we have about eight or nine condo complexes in Kahana that are very uncertain about their future, they're about to fall into the ocean. And I have friends that sold their condos, you know, so I mean it still goes on and on. But my main question is you listed the ramifications of uncertainty, but we're not sure which way the Supreme Court is going to decide, that's why it's going to go them, and if the County loses, do you know all the ramifications in that case?

MR. ECONOMOU: Well, if the County loses then they'll be upholding the Ninth Circuit's decision so that would be somewhat ideal for a lot of the folks here. I mean their idea is that they want the Ninth Circuit's decision to stand. Now, the best-case scenario which would be a happy medium for both of you is that the County loses and also they clarify what the Ninth Circuit said. So, we can talk about Trump's Supreme Court, there are two judges that Trump appointed, but fine. His EPA, he appointed all of them, but let's forget Trump's EPA. When it comes to the Supreme Court, clarifying the law is really what's important here. That'll provide some level of certainty...some level, even a modicum more than exists right now with there being a division amongst the Federal courts. And I mean it's a difficult situation. We're already seeing lawsuits

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popping up in different Federal district courts against housing projects that have like 20 residents based on the Ninth Circuit's ruling, so the clarity.

COUNCILMEMBER PALTIN: And so, if these housing subdivisions are currently having negative effects on the environment, you want it to remain like that, is that what you're saying?

UNIDENTIFIED SPEAKER (from the audience): Yeah right.

MR. ECONOMOU: No, I mean --

CHAIR MOLINA: . . . *(gavel)* . . . Settle down.

MR. ECONOMOU: --I believe that when the State has authority over our groundwater, it's easier for us at a County level to influence the actions of the State. So, if it's a matter of State permitting in order to put discharges into the groundwater, I believe that the people of Hawaii and the representatives from Hawaii have more concern and more understanding for what Hawaii needs than somebody at the EPA under the Clean Water Act. So, I want Hawaii to do a better job with its pollution. I want Hawaii --

UNIDENTIFIED SPEAKER (from the audience): . . . *(inaudible)* . . .

MR. ECONOMOU: --to be better, and I want Hawaii in charge of its own children's drinking water.

CHAIR MOLINA: . . . *(gavel)* . . . Sir...excuse me, Mr. Economou. Sir, if that outburst --

COUNCILMEMBER PALTIN: I think that...

CHAIR MOLINA: --continues I'm going to have to ask you to leave which I don't want to so please help me out okay. Mr. Economou, sorry, continue briefly with your response.

COUNCILMEMBER PALTIN: I think I agree with him and the EPA officials as well as the US Supreme Court that Hawaii officials should decide and not the US Supreme Court.

MR. ECONOMOU: But the thing is, it's already been decided by the Federal court. So, the only chance for Hawaii officials to decide is if this goes to the Supreme Court and the Supreme Court say hey, guys, you're off base, the primary permitting authority for drinking water, for groundwater should be the Safe Drinking Water Act. That's the way that it's been interpreted for many, many years before now. So, if you want Hawaii to decide, your only chance is for this to go the Supreme Court and for them to say the Safe Drinking Water Act applies. But...

CHAIR MOLINA: Okay, thank you. Thank you, Mr. Economou. I think you've answered that question sufficiently. Chair King?

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COUNCILMEMBER KING: Thank you, Chair. So, I just wanted to follow up on some of your clarification about that if we go to the Supreme Court on this and we win, that eliminates the groundwater as a conveyance from point source to navigable waters.

MR. ECONOMOU: Under the Clean Water Act?

COUNCILMEMBER KING: Right. So, that...

MR. ECONOMOU: I mean it depends on your...

COUNCILMEMBER KING: That's what the County is appealing, I mean these are your words I just wrote down. So, if we win, we don't have to care about the groundwater as being a conveyance to navigable waters?

MR. ECONOMOU: Not quite. So, here's the thing --

COUNCILMEMBER KING: In your opinion. What?

MR. ECONOMOU: --there's more than one regulation when it comes to groundwater. Right now, we have primacy under the Safe Drinking Water Act. Yes, as far as the conveyance goes, if we withdraw or are you saying if we win the appeal then...

COUNCILMEMBER KING: Right, we're appealing because the Federal courts told us that the groundwater is a conveyance from a point source to a navigable water.

MR. ECONOMOU: Yes.

COUNCILMEMBER KING: And the County Administration wants to say no, that's...we're going to appeal that, we don't want that to be so.

MR. ECONOMOU: Not quite. So --

COUNCILMEMBER KING: How do you see it?

MR. ECONOMOU: --here's the specific...the specific language deals specifically with the Clean Water Act and Clean Water Act permitting authority. So, it's not necessarily the County is saying that if a pollutant is being conveyed to the ocean then no permit should be required. The question that the County is asking or what the County is saying is that the County or forgive me, the State should have primary permitting authority over the groundwater. That's the way that it's been under the Clean Water Act. That's the way that it was intended, the states have primary permitting authority.

COUNCILMEMBER KING: Okay. Then...okay.

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MR. ECONOMOU: We can increase regulation easier at a State level than the Federal level.

CHAIR MOLINA: Okay, Mr. Economou, thank you.

COUNCILMEMBER KING: So, yeah, we disagree on that.

CHAIR MOLINA: Chair, please continue.

COUNCILMEMBER KING: My other point, my other question to you is are you aware of how many years the plaintiffs tried to negotiate with the County Council and the County Administration so that they didn't have to come to this point of bringing this lawsuit? Were you around back then or were you aware? I mean, no, it's a valid question because they spent years trying to negotiate to keep this out of court and there was a settlement that was reached at one point --

CHAIR MOLINA: Okay, Chair, I think your question has been asked.

COUNCILMEMBER KING: --that was withdrawn. So...

CHAIR MOLINA: Okay, even though Mr. Economou didn't mention it in his testimony, I'll permit it. Just answer it yes or no if you were, you know, at the time...

MR. ECONOMOU: Yes, I'm aware.

COUNCILMEMBER KING: Okay, so you're aware --

CHAIR MOLINA: Okay, thank you.

COUNCILMEMBER KING: --of all those years of the attempted to settle it?

MR. ECONOMOU: Yes, I am aware.

COUNCILMEMBER KING: Okay.

MR. ECONOMOU: And I know that in 2015 there was a settlement agreement that everybody agreed to that said that we can appeal to the Supreme Court.

COUNCILMEMBER KING: It was supposed to be settled at that point and then the County decided no, they're going to appeal.

MR. ECONOMOU: But the terms of the settle agreement...

CHAIR MOLINA: Okay, I'm going to put a stop to this.

COUNCILMEMBER KING: We can ask for clarification.

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CHAIR MOLINA: We'll do this in our deliberations. Members, any other need for clarification of Mr. Economou? I'm not going to allow us to turn this into a Committee meeting here at this point, this is the testimonial phase. Okay, if there are no other questions, Mr. Economou, thank you, Mr. Economou --

MR. ECONOMOU: Thank you very much.

CHAIR MOLINA: --for providing us your extensive testimony on this. Sorry, folks, the Chair's a little testy right now. We're getting close to lunch and when you're hungry you're not yourself as the old saying goes in that commercial. And thank you, folks, for doing your best to restrain yourselves. I know it's a very...Brother Junya, mahalo, and also everyone else. Got to do this with aloha. Alright, folks, we have an announcement. We do have another Committee meeting that's scheduled for 1:30 under the leadership of Member Sinenci. I'm going to open up the floor to Mr. Sinenci for an announcement. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Yes, the EACP Committee recognizes the importance of this matter and the importance of the Councilmembers hearing the different issues, particularly from our communities that have taken the time out to come and testify. So, just to let you know that we've cancelled our 1:30 meeting, and it was establishing an agency to address climate change, sustainability, and resiliency, EACP-26. However, we are taking up the issue on September 17th, so we wanted to thank Joshua Stanbro and those who sent in testimony for this afternoon's meeting. But we apologize, we wanted to continue this discussion. Mahalo.

CHAIR MOLINA: Well, thank you for the announcement, Mr. Sinenci, stunning announcement to say the least. So, as I...from your comments, so no EACP meeting at 1:30.

COUNCILMEMBER SINENCI: Correct.

CHAIR MOLINA: You'll reschedule that item at a later point as you mentioned. So, Members, just for your information, we did have 85 now sign-ups, we are on, we just completed number 12. So, yeah, I know you can read me right. It is nearing 12:30. Members, the Chair will then since the EACP meeting has been cancelled, Chair would like to take a recess to get yourselves reenergized. Folks, two o'clock? Is that a, is that agreeable to all? Okay, the GET meeting for Tuesday, September 3, 2019 is now in recess till 2:00 p.m.

MR. COLEMAN (from the audience): Chair?

CHAIR MOLINA: And when we continue testimony--hang on--we have...

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MR. COLEMAN (from the audience): With all due respect, I flew over from Oahu specifically to give testimony and I have to go back. Is there any way to just grant a few more minutes --

CHAIR MOLINA: Okay.

MR. COLEMAN (from the audience): --for people who have been waiting here since 8:30?

CHAIR MOLINA: That's...choice of the body.

UNIDENTIFIED SPEAKER: Chair?

CHAIR MOLINA: Members...

VICE-CHAIR RAWLINS-FERNANDEZ: No objections.

COUNCILMEMBER KING: No objections.

CHAIR MOLINA: Okay. Sir, please come up to the lectern and --

COUNCILMEMBER KAMA: Chair?

CHAIR MOLINA: --state your name for the record.

COUNCILMEMBER KAMA: Question. So, does that mean that all the other people who flew in from Oahu can testify too?

CHAIR MOLINA: Well, that is a good point --

VICE-CHAIR RAWLINS-FERNANDEZ: No objection.

CHAIR MOLINA: --Member Kama.

COUNCILMEMBER KAMA: Thank you.

CHAIR MOLINA: Okay, Members, you're willing to sit through...

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

CHAIR MOLINA: I believe we had a Mr. Kumagai who wanted to testify prior to his flight. Alright. And Mister...

UNIDENTIFIED SPEAKER: Dr. Krock.

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CHAIR MOLINA: So, we have three that would like to testify then. Alright, Members, it is your choice, your recess. So, that'll be impacted but so be it, we will accommodate...if that is the...if the body so orders it. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. And then what is the Chair's intent on how long we will go today?

CHAIR MOLINA: We will complete testimony. If it takes us till midnight tonight, we will go as long as we have quorum.

VICE-CHAIR RAWLINS-FERNANDEZ: No objection.

CHAIR MOLINA: Okay. Well, Chair is ready for the long haul. Okay, sir, please state your name for the record.

MR. COLEMAN: Aloha, Chair Molina and Councilmembers. Mahalo for extending this time, I really do appreciate it. I flew over specifically for this hearing. My name is Stewart Coleman, I'm an author and I'm the Hawaii Manager for the Surfrider Foundation and we represent thousands of ocean recreation users across Maui, across the State, and across the country. And we have divers, surfers, bodysurfers who are very concerned about the pollution that's coming out at Kahekili and the, you know, what we have to I think face here is that the damage environmentally has been proven. We've had study after study so, you know, there's, there are a lot of complexities in this case, but I think we have to eliminate the one...things that are fairly straightforward. We have that documented, you saw it with your own eyes in the photographs. What we have here now is an issue of can Hawaii, can Maui deal with these issues and take care of them ourselves before kind of kicking the can down the road to the Supreme Court. It seems like, you know, there's some of the lawyers that have testified, that fear mongering, if we don't do this, everything's going to go to hell, everything's going to be...we know that's not true, because we work with aloha and we know that things will continue. The Ninth Circuit did not disrupt the law, it upheld the law, the existing law. I'm also on the Cesspool Conversion Working Group for the State, and I know that they will not be going after individual homeowners. That's a fact, that's from DOH, they've said this and yet you continue to hear fear mongering to cloud the issues. From the very beginning, working on this issue for ten years, all we wanted was a win-win situation. We did not even want to sue, and every time we won at every level, we tried to settle and we were just saying let's just take this, we're not seeking penalties, we want to use any money for the solution. And we kept on getting shut down, even when we were winning. So, you can imagine it was very frustrating but we always wanted that win-win. What we're facing right now is a lose-lose, because if Maui goes to the Supreme Court, basically we're saying we can't resolve our own issues and we're going to punt it to honestly one of the most dangerous administrations we've had in a while. And so, this is a dangerous precedent, it's a dangerous precedent for the rest of the country. So, the world is watching. We have people from all over the country watching this and it depends on what we decide.

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Even if you win at the Supreme Court, it will be a loss because it will undermine the Clean Water Act. And so, that's very important to remember that you're not just looking out for the people of Maui, you're looking out for the people of the country. This has been the rule of the land and one of the most important environmental acts of the last 50 years, and this could seriously undermine and gut it. So, I ask you to look into your hearts, listen to your constituents, and please do the right thing. The world is watching. Mahalo.

CHAIR MOLINA: Alright, thank you, Mr. Coleman.

MR. COLEMAN: Thank you.

CHAIR MOLINA: Okay, any need to clarify Mr. Coleman's testimony? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Quick question to follow up on Chair King's question to the previous testifier. Aloha, Mr. Coleman, mahalo for flying over from Oahu to testify. So, you're part of the petitioner's group --

MR. COLEMAN: Yes, ma'am.

VICE-CHAIR RAWLINS-FERNANDEZ: --with the Surfrider Foundation. And you stated that you were reluctant to sue, it wasn't something that you wanted to do. How long did you try working with the County and the State to improve the law to better protect our environment before you finally resulted to a lawsuit?

MR. COLEMAN: So, there was at least two years where we had don't inject, redirect. That was our campaign. And we worked...we tried to work with it and we really tried not to do anything to antagonize the people at the County level. And that's why you haven't...the public hasn't heard a lot about this issue, because we were confident that we would find a resolution and we didn't want to attack the County, we didn't want to attack the Mayor, we didn't want to attack anybody because we thought they would do the right thing. And so, now at this late stage after two legal losses, we are just kind of like we're coming into the fight kind of late because we thought they would do the right thing. So, it was years, and at every step of the way...it was even put on hold so we could work out a solution and we came up with all kinds of solutions. And they were saying oh they were too expensive, but again as has been pointed out, it would have definitely been less than the 4 million that we've spent on legal fees. So, we've always been let's mitigate, not litigate.

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

MR. COLEMAN: Mahalo.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

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CHAIR MOLINA: Okay, thank you, Vice-Chair Rawlins-Fernandez. Chair King?

COUNCILMEMBER KING: Thank you, Chair. And just to follow up on that, was there a point where you thought you had a settlement with the County --

MR. COLEMAN: Yes.

COUNCILMEMBER KING: --in 2014-2015?

MR. COLEMAN: Yeah.

COUNCILMEMBER KING: So, and then what happened with that?

MR. COLEMAN: And so, you know, we...everybody's going forward in good faith and, you know, again we're not asking for damages or penalties. I think we were saying the lowest possible thing that you have to offer. And it was just like let's work on this. And we really thought that this was going to be resolved. That's the thing, that this has gone on for nine years is just incredible because we thought it would be resolved after the first defeat, after the second one, and all along the way and even before we filed lawsuit. So, you know, it's something that we've always wanted to settle, and I can...we have even assured which is kind of unprecedented and the lawyers can tell you more about this, that we weren't going to sue. We made a, you know, like a note that we weren't going to sue the County or do anything further, really putting ourselves out there vulnerable, making ourselves vulnerable to show that our intentions were to work with the County Council, to work with the department of the environment and the wastewater facilities and the whole...at every level.

COUNCILMEMBER KING: So, what happened to that settlement that you thought you had?

MR. COLEMAN: It was rejected and, you know, there have been some very last-minute settlement offers that were offered literally at the midnight hour, and even those we tried to take in good faith but they weren't really offered in good faith it seemed. And so, we have considered every one. I can't tell you how many e-mails and phone calls we've had about this saying oh yes, we can find a solution, let's do this. I mean I am not kidding you, it's hundreds and hundreds of e-mails and phone calls just to try to find a solution.

COUNCILMEMBER KING: Thank you.

MR. COLEMAN: Mahalo.

CHAIR MOLINA: Okay, thank you, Chair King. Okay, seeing no other requests for clarification...oh, we have Member Lee.

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COUNCILMEMBER LEE: Quick question. Thank you, Mr. Chair. Did your group ever agree with the County to take this matter to the Supreme Court?

MR. COLEMAN: No. We...

COUNCILMEMBER LEE: Never did?

MR. COLEMAN: Yeah, we thought, you know, in previous years the EPA, the Supreme Court...

COUNCILMEMBER LEE: Okay, thank you. Thank you.

MR. COLEMAN: Thank you.

CHAIR MOLINA: Okay. Any other need for clarification? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you for your hard work.

MR. COLEMAN: Mahalo.

COUNCILMEMBER SUGIMURA: So, did the Surfrider organization work with EPA to strengthen the UIC permit requirements? Did you ever have communication with the EPA?

MR. COLEMAN: I didn't directly. I'm not sure if my, our legal associate at Surfrider did, but yeah, I'm not sure about that.

COUNCILMEMBER SUGIMURA: And you're familiar with the NPDES requirements --

MR. COLEMAN: Yeah.

COUNCILMEMBER SUGIMURA: --and that the County has not or we have not been able to get NPDES permit from the State?

MR. COLEMAN: Right, and I think that's what we've always been working for, just to get that NPDES permit because it just sets guidelines. As was said earlier in the testimony by Robin Knox, it just provides helpful guidelines about how best to deal with it, and then it gives safeguards to protect the State, the County as well.

COUNCILMEMBER SUGIMURA: So, Ninth Circuit decision still remains. Thank you.

CHAIR MOLINA: Okay, thank you, Member Sugimura. Okay, seeing no other requests for clarification, thank you very much --

MR. COLEMAN: Mahalo.

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CHAIR MOLINA: --Mr. Coleman. And --

MR. COLEMAN: Thank you.

CHAIR MOLINA: --safe travels back to Oahu. Okay, the other two individuals that have signed up for testimony and who do have trips to make. I'd like to call Mr. James Kumagai, followed by Mr. Hans Krock.

MR. KROCK: The other way around.

CHAIR MOLINA: Oh okay. I have Mr. Kumagai listed first but, Mr. Kumagai, is that okay for Mr. Krock to go before you? Okay. Proceed, Mr. Krock.

MR. KROCK: Hi, my name is Hans Krock. I testified before at a previous session and I wanted to add to that testimony and because there are some clarifications that are needed from a scientific point of view and that are relevant here. The discharge of wastewater, treated wastewater or otherwise into the ground has certain changes in that water as it goes to the ocean. And that's not being taken into account in this particular discussion. Because here it says if there was a direct pipeline to the ocean, they say now we're being polluted by wastewater directly in the ocean, but there's significant changes in the injected water. And the principal one that I want to bring out here besides it traveling through a fair distance of essentially a sand filter or ground filter, and that is the removal of the second important nutrient and that is phosphorous. Phosphorous does not travel through the ground, and it gets coated onto the particles and does not travel. So, that the water coming out in the ocean may contain nitrogen but it doesn't contain phosphorous. And in order to grow anything you have to have both nitrogen and phosphorous plus other micro-nutrients and whatnot. So, the water coming out does not cause blooms. And the existence of that argument is the same as for instance the entire Kona coast. There's no surface runoff in Kona and so all the water which contains nitrogen and phosphorous from the ground activity comes out and has nitrogen in it but no phosphorous. There have been no blooms at all along the Kona coast. It's phosphorous limiting. It's phosphorous limiting and you can add all the nitrogen you want, it's not going to cause a bloom. So, the problem at the...the argument that this is causing damage to the coral is just simply not true. And I included in the testimony you people have that a complete study of the fact that nitrogen does not damage coral.

CHAIR MOLINA: Okay, alright, thank you, Mr. Krock. Members, questions? We have Member Lee and followed by Chair King, clarification of --

COUNCILMEMBER LEE: Clarification.

CHAIR MOLINA: --Mr. Krock's testimony.

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COUNCILMEMBER LEE: So, you're saying that whatever is in our injection wells when they are discharged into the ocean, that those liquids and materials disperse in the ocean as opposed to being in a pipe that goes directly to a reef?

MR. KROCK: Yeah, I'm saying that the phosphorous gets removed by its passage through the ground.

COUNCILMEMBER LEE: Okay. And then the other thing is an alternative would be ocean, direct ocean outfall?

MR. KROCK: Yes.

COUNCILMEMBER LEE: Okay. Is there evidence that shows...now that goes in a pipe right?

MR. KROCK: Yeah, every other outfall in the State of Hawaii is a direct pipeline.

COUNCILMEMBER LEE: And has anybody...

MR. KROCK: So, you have an advantage here.

COUNCILMEMBER LEE: Okay. So, is there...has there been any studies on the effects of direct ocean outfall?

MR. KROCK: Yes, and that's what's included in the...

COUNCILMEMBER LEE: I meant in a sentence or something.

MR. KROCK: Yeah.

COUNCILMEMBER LEE: Not the whole study but can you just --

MR. KROCK: Yeah.

COUNCILMEMBER LEE: --kind of summarize what...

MR. KROCK: And there it's a direct discharge and this particular study was for Hawaii Kai but I'm familiar with Sand Island, Honouliuli, the outfalls on Maui, incidentally I've studied them all.

COUNCILMEMBER LEE: So, are you saying their effects are all different, the impacts are all different?

MR. KROCK: No, none of them have effects if they're in the open sea. You have a detrimental effect in Kaneohe Bay, in various groundwater inclusions. There you have blooms. And a study Jimmy Kumagai and I and others made studies and did a big

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change in the water quality standards for Hawaii in general. And the first thing we did was remove all the wastewater from Kaneohe Bay, from any embayment because that's where you have the blooms. If you have an open coastal area, you don't have the blooms. The dangers and the damage that we get in these open coastal areas is from surface runoff from pineapple fields, from other agriculture where they put nutrients on the surface, it runs off with the sediment, and that damages the coral.

COUNCILMEMBER LEE: Okay, thank you.

CHAIR MOLINA: Alright, thank you, Member Lee. Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, I'm sorry, what was your last name?

MR. KROCK: Krock.

COUNCILMEMBER KING: Krock.

MR. KROCK: K-R-O-C-K.

COUNCILMEMBER KING: Okay. And you're an engineer, a professor, or...

MR. KROCK: I'm an engineer, I'm a professor, Emeritus --

COUNCILMEMBER KING: Okay.

MR. KROCK: --Professor at UH.

COUNCILMEMBER KING: Okay. So, you were hired by the County of Maui?

MR. KROCK: No.

COUNCILMEMBER KING: Oh, okay, so you're over here just...what's your interest in coming to Maui? I'm just trying to...

MR. KROCK: Yeah, well, I'm interested because I wrote the water quality standards for the State.

COUNCILMEMBER KING: Okay.

MR. KROCK: I've been studying water quality, I'm an environmentalist, and...

COUNCILMEMBER KING: Okay, were you involved in the studies in Lahaina at Kahekili?

MR. KROCK: No.

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COUNCILMEMBER KING: No? Okay. So, you haven't seen...have you seen the results?
Because I've sat in --

MR. KROCK: Yes.

COUNCILMEMBER KING: --data studies --

MR. KROCK: I've seen those results.

COUNCILMEMBER KING: --and I have seen phosphorous reported. So, I'm just curious as
to why --

MR. KROCK: Yes.

COUNCILMEMBER KING: --we're saying there's no phosphorous in the water. I've seen it
reported in the data.

MR. KROCK: I'm not saying that there's no phosphorous in the water. I'm saying there's no
phosphorous in the wastewater coming through the ground.

COUNCILMEMBER KING: Okay. So, but...and you said there's no algae blooms?

MR. KROCK: There were algae blooms when there was runoff from pineapple and whatnot.

COUNCILMEMBER KING: Okay, so you're saying there's no algae blooms now?

MR. KROCK: No, no.

COUNCILMEMBER KING: Okay. In the recent years?

MR. KROCK: No. And there's been a study by a colleague of mine at the University of
Hawaii, Steve...is he here?

CHAIR MOLINA: Okay, Mr. Krock...

MR. KROCK: Yeah. And that's...

CHAIR MOLINA: Chair King, continue if you have another question.

COUNCILMEMBER KING: That was my question.

MR. KROCK: That's...

CHAIR MOLINA: Okay, I think you've answered her question sufficiently, Mr. Krock. Thank
you.

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MR. KROCK: That's been made for...

CHAIR MOLINA: Members, any other need to clarify Mr. Krock's testimony? Seeing none, okay, thank you very much --

MR. KROCK: Thank you.

CHAIR MOLINA: --Mr. Krock. And our final testifier before we break for recess, we have Mr. James Kumagai.

MR. KUMAGAI: Thank you, Mr. Chairman, Members of the Council. I'm James Kumagai. I'm here as one of the co-authors by, including Professor Krock who just testified and also Victor Moreland, Dr. Victor Moreland. And we presented testimony in the last hearing and this is the follow-up. I'd like to go over and I've submitted testimony I think in length in trying to go over the historical aspect. Basically, the whole thing and most of us involved started the water quality program for Oahu in 1969, and that I think started off the movement getting into the '92 amendments to the Clean Water Act. Now, the Clean Water Act itself is a codification of public policy, experience, a lot of experience around the country, a lot of results from the research and development institutions such as Cal Berkeley, Stanford, Caltech in the West Coast anyway. And what is included in there are situations, principles, and ideas of what works and what does not work in the environmental management field. And that's the critical part that I want to bring out. From experience, the science, and the language of the law as to what is it that is intended, what would work, and what doesn't. So, let me come out with that for Hawaii, especially in Honolulu from 1969, from the introduction of the Water Pollution Control Act amendment in '72. I was involved in '69, with the study that was with...for Oahu and right after that to Kauai in particular. Now, since the initiation or the passage of the act, Hawaii was already moving into its own program under Kenneth Brown. I think I have included his paper in there, and what happened was that there was a problem, the disagreement between the State and Feds, and we worked to amend basically the Federal statute which was passed. But the major point I'd like to bring out is the main focus for the implementation of the Water Pollution Control Act of '72 was Section 208, an area-wide waste treatment management, basically looking at it holistically, the whole environment and the people involved with it as a whole. And that's what I have, yes.

CHAIR MOLINA: Okay, thank you very much, Mr. Kumagai. We have a question for you from Member Lee.

COUNCILMEMBER LEE: Mr. Kumagai, could you continue explaining about Section 208?

MR. KUMAGAI: Okay. Section 208 I have included the speech of the regional administrator at that time Paul DeFalco into, as an attachment to the testimony. And I felt it is important because the regional administrator of the EPA at that time purposely came

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through to talk to the elected officials, explaining what Section 208 was all about. And you can read through that and then see in his words, and he has a lot of references to I guess the bureaucratic language and the language of the law and so on. But what was felt, I felt very important in the whole thing was he said the Section 208 plan is not a plan for DOH, it's...the main point is to make it part of everybody's plan. The environment is everybody's business, it's not only for the Health Department or anybody's, it's everybody. So, along with that, I had a, you know, basically a paper by Doug Costle, administrator of EPA for public participation, public outreach, and so on, bringing everybody together to work on it. So, basically the whole movement was not only looking at the big picture technically but institutionally. Now, I made mention also to the experience that started out in '62, in '61, in that area, '62, William _____, California...

CHAIR MOLINA: Okay, Mr. Kumagai, Member Lee has notified me that you've answered her question.

MR. KUMAGAI: Oh, I'm sorry. Okay.

CHAIR MOLINA: No problem. I know you have a wealth of information to share.

MR. KUMAGAI: Okay.

CHAIR MOLINA: And other need for clarification, Members, from Mr. Kumagai? If not, thank...mahalo for your testimony, Mr. Kumagai.

MR. KUMAGAI: Okay, thank you.

CHAIR MOLINA: Alright, Members, we've reached the bewitching hour if you'd like to call it that. I know you're quite winded and hungry so at this point the Chair will call for a recess. Before we do that, at last count we still have another 70 roughly testifiers, sign-ups anyway. We will come back at 2:15 and if they're still here in the gallery, Katrina Frank, followed by Paul Carter. So, meeting will be in recess till 2:15. ... *(gavel)* ...

RECESS: 12:47 p.m.

RECONVENE: 2:20 p.m.

VICE-CHAIR RAWLINS-FERNANDEZ: ... *(gavel)* ... Will the Governance, Ethics, and Transparency Committee please return to order. It is 2:19 on September 3rd. I am Keani Rawlins-Fernandez, Vice-Chair of this Committee and will be filling in for Chair Molina while he takes care of some important matters. He'll back probably in about, at about 2:30. So, we'll pick up where we left off with public testimony, Katrina Frank, followed by Paul Carter.

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MS. FRANK: Aloha and good afternoon.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha.

MS. FRANK: My name is Katrina Frank. I'm not here today to talk you about science or about law. I'll leave that up to the experts. I'm here today to speak for the water. Collectively we have stopped listening to its rhythms and its wisdoms. We've lost sight of what is important, the long vision of our people and our planet. We've forgotten our place in the natural order of things. We have interfered with the cycles of nature injecting wastewater into our aquifers. This has deleterious effects on our land, our sea, our watersheds, and all those who dwell within. For all water flows to the sea, even groundwater eventually. And it is in these times that those who hear the call to speak for the water must rise up and do so. And that is my kuleana, that is my responsibility to speak for the water. And if the tears flow which they so often do, those are simply water too. Water is life, we are all intrinsically interconnected. We are woven together by the waters within all of us. As within, so without, as above, so below. The original stewards of this land recognized this. The Hawaiian creation chant speaks to this interconnectivity, to the ahupuaa. That what happens in the mountain trickles down to the sea, that the guardian plants protect one another, land and sea, mauka to makai, all connected by the watersheds. Malama ulu, it is our responsibility to care take these ecosystems, these aquifers, supporting their health and continued functioning. It is our kuleana to preserve clean water. You must feel that deep within your being because I know that I do. And what we do to our planet we do to ourselves. We are being called to wake up and take a stand for what is right, for what is pono. You know we sit here discussing the future of clean water for our islands, our country, and our world. The fact that we've even arrived here to discuss this future kind of boggles my mind, that we have to have these conversations. It deeply saddens me to the core of my being, to the waters within, and the waters within ripple out. Just as your decisions here today have consequences that ripple forth into our world. By choosing this path of elected office, you've chosen to shoulder a grand responsibility, one that I do not envy, and I thank you for carrying that truly. Now, how do you move forward with that responsibility? You are here to represent my voice and I say settle, withdraw this appeal. The potential implications of your decisions here today are staggering. Do what is right. You know in your naau what is right. It is your kuleana and your responsibility, now is the time that your ability to respond affects the future of clean water. We must be forward thinking to choose planet over product...profits. Please settle this case. Ua mau ke ea o ka aina I ka pono, the Hawaiian State motto, the life of the land is perpetuated in righteousness. Please, now is the time to do what's right. Mahalo.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Frank. Members, do you have any clarifying questions for our testifier? Seeing none, mahalo for your testimony. Next is Paul Carter, followed by Sae Patel.

MR. CARTER: Aloha kakou. My name is --

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VICE-CHAIR RAWLINS-FERNANDEZ: Aloha.

MR. CARTER: --Paul Carter, resident of Haiku, Maui since 30-some years. I'm here on behalf of myself and my family, my daughter, my daughters who were born here, raised here. I don't think I want to add any arguments, it seems like we've had enough arguments. Everyone, yeah, kind of like, what is that, Godzilla versus King Kong. I would like to talk more about what we have, share and the same, whatever side you decide to be on or I think everyone here is in agreement that we don't want to pollute our waters. You know we don't want to have unhealthy children, that everyone here wants to have oceans where their children can swim happily and healthfully, where our food and our fish can grow happily, healthfully. So, that to me is what we should focus on, number one. Everything else is after that, yeah? Whether you think it's this way or that way, whether the real estate is going to happen this way or that way, whether the government thinks this or that, everything else comes after that. So, to me the decision is...it's better to make it simple, it's not so complex, yeah. Trying to figure out what the EPA is saying or not saying, that's complex, everyone has their own opinion. But what our responsibility is here, that's not so complex. You know just remember what's the priority, you know, what's really important to all of us, you know, not just to me, not just to you, not just to this group, not just to that group, what's really important to all of us. So, you've got to answer that of course. You know in my opinion the number one thing is the aina which means the people and the land and the ocean, the food, yeah, aina. The food that we all...sustains everybody here, that's number one. So, you have a motion before you, you know, to decide whether to withdraw this court case, this appeal or not, yeah. And your only question should be, the choice I make, yeah, if I decide...if I vote to withdraw this, will that help support what's really important, number one thing, the health of the land, yeah, the health of our food, the health of our oceans. Will that help that? If I vote to continue it, will that help that, yeah? Will that actually help protect and the safety of the health of our children, of our aina? That to me I think you can make it simple like that. And all these lawyers and all these talk and all these different opinions, okay, that's interesting, and maybe questions that need to be answered but not number one. Number one is our health, this land, and the sea, and if withdrawing this motion is going to support that or not. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Carter. Members, do you have any clarifying questions for our testifier? Seeing none, mahalo for your testimony. Okay. Next is Sae Patel, and then Sean Lester.

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Okay. Ms. Patel isn't here, so Sean Lester, followed by Lance Collins.

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MR. LESTER: Aloha kakou. Nice to see all your smiling faces today, sitting in this Chamber with all the florescent light all day, I kind of feel for you. Basically, what I'm seeing here is from one side is what Mr. Carter talked about, it's the naau, speaking from a place that's deeper where we're called to a higher understanding of what we can work with. The fear and loathing in Las Vegas or I guess in Maui doesn't really work. You have attorneys that twist everything in the wind. I'm trained in a scientific paradigm, I'm a nuclear engineer, I've been at this for a long period of time, and I understand how to pierce to the clarity or obfuscate, to make hyperbole. And I heard a lot of hyperbole based on the scientific paradigm. Bottom line is we've got certain things we work with, logic, truth, ethics, virtue. What is it we're really working with here, what are our basic aspects as human beings? I'm not here just speaking for myself but I have my daughter standing here as well. We have to understand every person here in 30 years in all probability is not going to be here. This decision you're making is going to be one of the things that you will remember with your last breath what you're doing right now. Not the money you make, the position, the power, this will echo throughout a 250-year experiment in the United States, it will echo through all of the fierce determination it took to build what we see here, the blood and the bones of the extraordinary people of Maui. The Hawaiians, the Filipinos, every single...Japanese, Chinese, everyone that's here, it's been...it's building up to this point. So, as Dr. Carter talked about, I think it comes...I can sit here and I'm going to go through a few things here, but the bottom line is that's what it really comes down to. What will your last breath speak to you with what you're going to be stating today? I'd like to talk to what Dr. Krock said 'cause I'm going to use his own...I'll just give you a prime example of the way scientists can throw out things or obfuscate things. He was talking about the fact that phosphorous had to be with you or in an area with nitrogen in order to have a bloom. And by the fact that in injection wells by the time it gets out to the ocean he's stating that the phosphorous is gone. Ipso facto, he also spoke about the fact that is a massive amount of phosphorous that's already been...come in through other fields and other things, and what does it do? It actually coats out the area. So, if there's a coating of phosphorous and you know if you add nitrogen, there's going to be a problem, why would you not absolutely stop those injection wells to put the second part of what will allow the bloom to be there? It's only one example. So, I understand, you know, you have Carmen Lindsey, her talk was extraordinary too. You have a lot of people that are stepping forward in the State to help you. Utilize their processes 'cause up till now it's been like this. When you see that shift in awareness, you know that that's where the awareness is to go as you learn in martial arts or anything else that you work with. Thank you very much. I definitely am asking you to drop the lawsuit, allow this to move. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Lester. We have a question from Chair King, Members. Okay, Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for being here --

MR. LESTER: Sure.

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COUNCILMEMBER KING: --Mr. Lester. So, can you explain to us the... 'cause I didn't quite get the science behind the phosphorous. I understand, you know, my first... what I first heard Dr. Krock say is that there's no phosphorous in the water, and then when I questioned, he said no, there's phosphorous from something else. So, I think what you're saying is that by adding the nitrogen there's a reaction of the two? Can you explain that?

MR. LESTER: By the doctor's, his own words himself, he's stating that you have to have nitrogen and phosphorous together for there to be a bloom. His statement, I'm only going by what he's stating, states that by the time that the effluent gets to the reef that it's only nitrogen from that source, so we don't have to worry about. But at the same time, he was stating that phosphorous has already come from other sources to the reef. So, you're not concerned to get these two together in the same place? I would be. I think there's a... this is where you have a different corollary and you go deep into your scientific paradigm to really take a look at other potential possibilities. One of the challenges about being... of being an expert is you get lost in your own differentials. You can't see things from a different... from a broader perspective. But you... these... there are very skillful people that are willing to work with you here, and the question is do... can you step up to the plate and actually make a difference this time around and I really believe you can. These are smart people here in this room. Okay, thank you very much for your time. Appreciate it.

COUNCILMEMBER KING: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair King. Members... seeing no other questions, mahalo for your testimony. Okay. Okay, next is Lance Collins, followed by Ananda Stone.

MR. COLLINS: Aloha and good afternoon --

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha.

MR. COLLINS: --Councilmembers. My name is Lance Collins and I am here testifying on my own behalf today. I do and I have represented the West Maui Preservation Association, Kamalu O Kahalawai, Na Papai Wawae Ulaula, and the Pukoa o Kama Alliance. And what I'm going to testify about today does involve things that I've come to know from representing those groups. The first is, is that I represented both Pukoa o Kama Alliance and the West Maui Preservation Association more than ten years ago when we were required to ask the Director of the Department of Health to intervene on this exact matter both in Lahaina and Kihei. And the Department of Health, the Director said that she wasn't going to entertain it, or at the time, yeah, she wasn't going to entertain it, and whatever should be entertained would be sent to the Safe Drinking Water Branch, and they've done nothing. They've decided to do nothing about it. So, it wasn't like the West Maui Preservation Association and the other

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groups decided not to work within the framework that was available. Both, for Kihei and Lahaina these groups went to the Department of Health through the Safe Drinking Water Act and it went nowhere. So, there were efforts before this lawsuit for the underground injection well permits, nothing happened with that. The next thing is the NPDES general permits. Some of the people who have testified here make it seem like if cesspools were even to ever be regulated as an NPDES activity, that they would be required to do the same thing that the County injecting 5 million gallons a day into the ground would have to do and that's just not true. The Safe Drinking Water Act through the administrative rules has a whole series of general permits for all sorts of activities: storm waters associated with industrial activities, storm waters associated with construction activities, once-through cooling water that's less than a million gallons per day, discharges of hydrating water, construction activity, dewatering. There are these general permits that do implicate the Clean Water Act, but they're covered by one general permit, you don't have to have an individual permit. All of these actions are treated under that one permit. It's not strange, it's not unusual, but the folks that have been saying that every single cesspool is going to have to have this multimillion dollar consultancy, it's just not true. That is just not true. The fishponds are done through a programmatic EA, it's the same way. You do it once and it covers a group of actions, so that's not true. I'm going to run out of time here. I represent Kamalu O Kahalawai and WMPA with respect to the issue of water diversions in West Maui, and CWRM has clearly stated that the only solution to the conflicts with water in West Maui is to use the recycled water as part of an overall solution to restoring the instream flow standards for Honokowai, Honokohau, and Honolua Streams. So, I ask you folks to settle this case and continue making progress towards reusing all of this water for the needs of the Kaanapali District and possibly of the Lahaina District. Mahalo.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Collins. We have questions for you from Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Mr. Collins, for being here. What do you think about neighbors suing other people for their cesspools as one testifier had mentioned?

MR. COLLINS: Well, you know, I, people sue each other all the time, you can't stop that. I, you know, I do know that if the Department of Health ends up creating a general permit scheme for cesspools--which by the way by State law will have to be phased out--but for cesspools and septic tanks if somebody is going through that then they're sheltered because then they're following through the regulatory regime. So, you know, it...people sue frivolous lawsuits all the time. People could possibly do that. But just as it's very expensive to defend a lawsuit, it's also very expensive to prosecute a lawsuit. And so, you know, if a neighbor is suing another neighbor over this issue, it's probably because they're both really rich and have nothing better to do with their lives.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Sinenci. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Mr. Collins. So, I just wondered if you could give us your opinion since you're an attorney as well, we had an attorney for RAM, the REALTORS® Association of Maui speak to us earlier and seemed to think that every household on the island would be in danger of having to have a permit if this doesn't go to the Supreme Court. So, isn't...aren't the households regulated under the Hawaii administrative rules for UIC?

MR. COLLINS: Household, so yeah...

COUNCILMEMBER KING: Or exempted I should say.

MR. COLLINS: Well, yeah, so under the Safe Drinking Water Act presently, they are exempted from that, and in fact the State can also do that under the Clean Water Act, or they can...I mean I'm telling you that the worse-case scenario with how DOH decides to address this issue, the worse-case scenario is that they will in their administrative rules adopt a general permit like all of the other 12 things, I listed some of them just now, and treat it that way. Because, you know, the Department of Health doesn't have the staffing to treat every individual septic tank and cesspool the same as a water treatment facility that's injecting 5 million gallons of water a day. So, if they don't in their administrative rules exempt these, the individual residences, and these small uses. In the same way, I mean a million gallons per day of once-through cooling water is a lot of water so the Department of Health is already treating much larger things than individual residential uses through these general permits. And so, a general...what a general permit, so maybe I didn't be clear, a general permit is basically they issue this permit, it lasts for five or seven years, and if your activity comes within the activity described in this general permit, that's your permit. So, there isn't a separate application process, there isn't...you don't have to hire consultants or experts to do any kind of studies, you just fall under that general permit. The same way they do the fishponds.

COUNCILMEMBER KING: Okay.

MR. COLLINS: One fishpond...yeah, yeah.

COUNCILMEMBER KING: That makes a lot of sense.

MR. COLLINS: Sorry.

COUNCILMEMBER KING: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair King. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Nice seeing you here.

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MR. COLLINS: Likewise.

COUNCILMEMBER SUGIMURA: So, the member said you represented...there were three member...three groups?

MR. COLLINS: There's four.

COUNCILMEMBER SUGIMURA: Four groups?

MR. COLLINS: Four groups, WMPA, the West Maui Preservation Association, I represented them in their administrative agency action with the Director of the Department of Health for having to do with the injection wells harming the oceans. And then that was mostly dismissed and what remained was sent to the Safe Drinking Water Branch. And then Pukoa o Kama Alliance and that's Kula Kai, a Kihei group, South Maui group, and I represented them in an administrative agency with the Director of the Department of Health, related to the injection wells at the Kihei facility. Same, exact same thing that happened to the West Maui injection wells happened there, Department of Health. And then also Kamalu O Kahalawai and that's with the Commission on Water Resource Management and their water wasting complaint against Maui Land and Pine and Kaanapali Land. And then also Na Papai Wawae Ulaula which is a shoreline access group in West Maui.

COUNCILMEMBER SUGIMURA: So, I'm just wondering for any of 'em, did you have any permitting requirements?

MR. COLLINS: Did they have any permitting requirements? Well...

COUNCILMEMBER SUGIMURA: Did you get for them or whatever you were representing for them?

MR. COLLINS: Sure. So, for WMPA and for Pukoa they were trying to get the Department of Health to regulate the harmful nutrients in the injection well. So, it was through a special administrative process, but both of them, I think politely I could say it ended inconclusively.

COUNCILMEMBER SUGIMURA: So, you didn't have to get any permits?

MR. COLLINS: In...well, they aren't polluting anything, they're trying to stop pollution so they wouldn't need a permit from the director of the department.

COUNCILMEMBER SUGIMURA: Oh, I'm sorry. You were representing the side that they were going against trying to get us. So did...was your action, did it get any permits for whoever you were going after then? I guess you were going after the County?

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MR. COLLINS: Well, it wasn't...they weren't going after the County, what they were trying to do was to try to limit and minimize the pollution, and that ended up being the avenue that Judge August asked the Pukoa o Kama Alliance to do before that lawsuit could proceed. And so, because Pukoa o Kama did that, then the West Maui Preservation Association decided instead of suing because the people they were dealing with at the County weren't listening, why don't we try this administrative procedure which seems to be less adversarial. But of course the County opposed it and the director decided to do nothing, so.

COUNCILMEMBER SUGIMURA: So, this is all before the current lawsuits that were going on then?

MR. COLLINS: Those proceeded, yeah, this...the administrative agency proceedings occurred after several years of trying to work directly with individuals in Wastewater and Water Supply, and then when that basically went nowhere, then we have this. And WMPA is now part of this lawsuit that's before the Supreme Court.

COUNCILMEMBER SUGIMURA: So, are you representing these, any of these four currently or are you pau already?

MR. COLLINS: I represent the West Maui Preservation Association and Kamalu O Kahalawai in their water wasting complaint with CWRM. And I think that the last case that Na Papai had that's in litigation has ended, but I do represent them in other cases. And Pukoa just settled a couple months ago back in May with the County. I think the final document just got stamped by the judge about a month ago or so. So, they don't currently have any litigation going on at the moment. And I know that Pukoa is very, very thankful to the Council for increasing the funding for the reuse in Kihei.

COUNCILMEMBER SUGIMURA: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Sugimura. Member Paltin?

COUNCILMEMBER PALTIN: Oh, I just wanted to make disclosure that I used to be with the WMPA.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I don't think that has any conflict, so.

COUNCILMEMBER PALTIN: Okay. I haven't been with them since I took the office.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Member Paltin, for that disclosure. Okay, I have two questions. So, first I didn't quite hear the ending part of your testimony when you said that CWRM talked about the water reuse and it helping with the instream flow standards. Would you mind repeating that part please?

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MR. COLLINS: Oh sure. So, I'm sure everybody's aware that the Commission on Water Resource Management, CWRM, has been designating the instream flow standards for all of the West Maui watersheds, and they basically have gotten through everything in the Lahaina District and now what they have left are the three in the Kaanapali District which is the Honokowai Watershed, the Honolua Stream which actually is not a perennial stream, and the Honokowai Watershed [sic]. So, those three streams they have, the staff has proposed instream flow standards for them, and I think what they're trying to look at is how to accommodate all of the needs of water in that district. And the solution that they are proposing in general terms requires or would need the County to upgrade its facilities. And I mean it also requires the buy-in of the large landowners as well, 'cause if they don't do that then it doesn't matter how upgraded your system is, there's nowhere to put the water.

COUNCILMEMBER PALTIN: Chair?

MR. COLLINS: So...yeah.

COUNCILMEMBER PALTIN: Sorry. The last stream was the Honokohau Stream.

MR. COLLINS: Honokohau. Sorry, did I say...

COUNCILMEMBER PALTIN: You said Honokowai twice.

MR. COLLINS: Oh sorry, sorry. Yeah, Honokowai. Sorry, sorry, I'm a little bit nervous.

COUNCILMEMBER PALTIN: Just for the record.

MR. COLLINS: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

MR. COLLINS: Honokowai...Honokohau, sorry. Yeah. So, yeah, that's their proposal and it's not that...they can't mandate it and so they've been working with all of the parties. So, they've been working with the folks that I represent, they've been working with the large landowners, they've been in conversations with the Department of Water Supply and Wastewater management. Because there is a need for the R-1 type water, it's just that the distribution of it isn't there yet and it's going to need the County and the large landowners to work together to make that happen.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Mahalo for that clarification. And my last question is we're talking about the injection well or the facility injecting 3 to 5 million gallons per day into the groundwater. How does that compare to a household-size cesspool or septic tank? If you know.

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MR. COLLINS: Well, it doesn't. Because I think one thing is that the waters in the cesspool and the...or definitely a septic tank but even the cesspool aren't getting injected deep into the ground. You know the cesspool of course as you know, the water leaches out over a particular...I always say the grass is always greener over the cesspool right? So, true, and that's how it is. But the injectate is...there's absolutely no comparison. That...the area in front of the Lahaina injection wells, Haena Nui was such a significant fishery that it was actually awarded to somebody during the Mahele. It's called out in the Mahele, Haena Nui, the fishery itself. That's how significant that fishery was. And now people can't catch uhu and other herbivores, because it's such a crazy thing down there now, but that's where it is. And so, that's why I guess if I can just say I really want to mahalo Nick Lum for the words that the kids sang this morning, because when they talk about Haena Nui, he's, you know, he says that one day it will be a reef that have flocks of birds basically hovering above it, so hopefully one day.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Collins. Okay, seeing no other questions, mahalo nui for your testimony today.

MR. COLLINS: Aloha. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Our Chair is, has returned so I'll call a quick recess at the call of the Chair. It's 2:49 on September 3rd. We are now in recess. . . . (gavel) . . .

RECESS: 2:49 p.m.

RECONVENE: 2:51 p.m.

CHAIR MOLINA: . . . (gavel) . . . The GET meeting for Tuesday, September 3, 2019 has now come back to order. The Chair would like to first thank my ably, wonderful Vice-Chair, Ms. Keani Rawlins-Fernandez for facilitating the start of this meeting today.

VICE-CHAIR RAWLINS-FERNANDEZ: Nou ka hauoli.

CHAIR MOLINA: Oh, mahalo. And, you know, Chair had a minor emergency up in my residence up in Makawao. So, during the lunch break, I had to do the roundtrip and with traffic being what it is, I finally just got back. So, thank you, Ms. Rawlins-Fernandez, for running the meeting. So, we last...we just had Mr. Collins complete his testimony so we are now on the next testifier or two testifiers, Ananda Stone, to be followed by George Burnette. And again, Ms. Stone approaches the podium, Chair would like to thank all of you again, friendly reminders about clapping and all that, if you could kind of keep it, you know, to a minimum. And certainly appreciate your exuberance and enthusiasm on this as well. So, and I thank you all for being here because this is what civic engagement is all about, democracy and

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sharing your manao and your thoughts on this matter. Okay. Good afternoon, Ms. Stone.

MS. STONE: Aloha kakou. My name is Ananda Stone. I'm representing myself and my position is to drop the lawsuit and so many reasons why. I'm actually very sad that I'm even having to stand here today, because I was a part of the original DIRE Coalition and trying to get the County at that time to make a new solution to redirect our wastewater. And I thought that this would all be over by now. One of the things along the way, it's been a long ten-year history, but along the way in 2014 and 2016, I'm not sure if all of you are aware but there was a floating workshop that was conducted on one of our catamarans here where we, the conservation organizations took out the decision makers to actually talk about the problem of the injection wells and then take them to Kahekili, the area where it was actually happening. And it was so wonderful to see like everybody coming together and learning. And they were very positive and very supportive. And they were actually able to go over to the area where you could see it kind percolating up. It was on the news. Even the area, you could see a picture of it. I took out...at the time it was a County Councilmember who is now our Mayor and he struggled to snorkel. And the reason I bring that up is because I wondered how I could get you to all understand the importance of our reefs and our ocean and our nearshore waters if you don't spend any time there, if you're not connected to that area. And so, I have a feeling that some of you may be or understand it through hearing people talk but don't really have that same connection to yourself. So, I thought well, how could I get you onboard and the only way I could do it is, you know, we're always most interested in things that are in our backyard and if it's in your backyard then you're concerned about. So, I thought well, what if it was a little blow-up swimming pool that was in your backyard and that's where you were going to put your kids and your grandkids and you knew that it had polluted, this type of polluted water. Would you want to do that? And would you...or would you want to fix that? And so, I just please ask you to do the right thing and be on the right side of taking care of our nearshore waters. Thank you.

CHAIR MOLINA: Thank you very much, Ms. Stone. Committee Members, any need to clarify testimony of Ms. Stone? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Stone.

MS. STONE: Hi.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony.

MS. STONE: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: I didn't hear correctly, did you say that you took out the current Mayor when he was a Councilmember to Kahekili Reef?

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MS. STONE: Correct. And I didn't say, I was a photographer on the event so it wasn't me that took them out, but I...he was having trouble with his mask and snorkeling and was sort of behind the crowd so I kind of hung out with him and took him out, and we had a really good time together. And he was really thankful and invited me to lunch. But I don't know, you know, it just made me feel like maybe that's an issue for making decisions for something you don't really understand how much people enjoy it, you know, how important it is. For me, I'm an under...I was an underwater videographer for over 20 years, and I'm still a dive master so I love the coral, I love the fish, anything in the ocean I just think is a magic place. So, to see anything bad happening to it human caused by us really hurts me and I feel like they don't have a voice. So, you know, environmentalists like me have to come up and talk for them.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. I agree that pictures sometimes cannot do justice to actually seeing destruction as we recently experienced with the Fairway lots. I recently went there and saw the destruction there and it's, pictures don't do it justice. So, mahalo --

MS. STONE: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: --Ms. Stone. Mahalo, Chair.

CHAIR MOLINA: Mahalo, Ms. Rawlins-Fernandez. Chair King?

COUNCILMEMBER KING: Thank you, Chair. I just wanted to clarify your position because you were talking about going out with the now Mayor who is wanting to take this to the Supreme Court. But are you advocating for that or are you advocating for settling?

MS. STONE: I'm advocating to drop the lawsuit.

COUNCILMEMBER KING: Okay.

MS. STONE: Or is that how it should be stated?

COUNCILMEMBER KING: Yeah, I was just wondering because you were talking about taking people out and that they understand but where you have a Mayor who doesn't want to settle it and wants to continue on to the Supreme Court.

MS. STONE: Yes, and I disagree with that.

COUNCILMEMBER KING: Okay.

MS. STONE: With the Mayor.

COUNCILMEMBER KING: Okay.

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MS. STONE: Yeah. And that's why I feel like he may want to do that because he's not connected to the ocean is basically what I'm saying.

COUNCILMEMBER KING: Okay. Are you the one that invited the Councilmembers to come out on...

MS. STONE: I wasn't the one that invited them.

COUNCILMEMBER KING: Oh, somebody...

MS. STONE: Yeah.

COUNCILMEMBER KING: Somebody did and...

MS. STONE: But there's several people in this group --

COUNCILMEMBER KING: Okay.

MS. STONE: --that are going to be speaking that were.

COUNCILMEMBER KING: Oh, okay. I was just --

MS. STONE: Yeah.

COUNCILMEMBER KING: --curious, I mean I've had the --

MS. STONE: Yeah.

COUNCILMEMBER KING: --same experience in South Maui, so.

MS. STONE: And I'm sure they would invite all of you as well if people were interested in kind of seeing and getting a firsthand perspective.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Mahalo, Ms. Stone. Any other need to clarify Ms. Stone's testimony? Seeing none, thank you for sharing and letting us know that there is an invitation out there for us if we ever want to go diving.

MS. STONE: I'll make it happen.

CHAIR MOLINA: Alright, thank you. Next to testify on GET item 26 we have George Burnette, followed by Steve Allen.

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MR. BURNETTE: Good afternoon, Chair. I'm George Burnette. I'm here speaking as an individual. I'm speaking pretty humbly after listening to all this testimony from the school, the kids from the school, the...our elected representatives, all the experts. I'm just a concerned citizen, so I hope my testimony has some meaning. I'm in favor of GET-26, I think we should drop the Supreme Court case. And also thank you, this morning was definitely a potentially explosive time here in the Council Chamber but you did a great job, thank you. I'm going to try to go quickly, I hope to hit all my points, a lot of them talked about already. The issue about the cesspools and septic system owners, well, there's been a lot of testimony about that. Just my understanding was one of the Members here got a letter from DOH saying that they're not going to do that so I know there's a lot of other issues concerning that. But I did bring one thing so, Chair Molina, if I decided as a citizen to sue you for your cesspool, I was interested on how I might do that. And I did find out I can buy the dye and not, it's not too expensive, I can buy the dye. But one thing I found out that I think might be interesting, this is something I found called Groundwater 101. And it says groundwater usually moves inches per day. In sandy soils however groundwater moves a bit more quickly, between one to five feet per day. Even at this rate, groundwater and substances dissolved in it might take five years to travel about one mile. So, my point is whether or not people can sue or would sue, I just think it's so implausible that this talking about suing somebody for cesspools, because even if you put the dye in, it's going to take years for it to show up on the ocean and exactly when is it going to show up and then how many people would you have to have and where exactly on the shore would that...or under the water that'd be coming out? It's just so implausible. I haven't heard anybody talk about this and maybe it's not even true, but I've heard I believe on the Council floor and/or either on *Akaku* concern about being subject to fines from the EPA either now or in the future. And...wow.

CHAIR MOLINA: Thank you, Mr. Burnette.

VICE-CHAIR RAWLINS-FERNANDEZ: Thirty more seconds.

MR. BURNETTE: I do have some documents that said the County did reach a settlement with the EPA in 2011, basically kicking and screaming concerning killing UV and there was no fines involved. So, I think the EPA does work without fines. I have some information, the County states that the plans are to expand the Clean Water Act. I have documents here.

CHAIR MOLINA: Alright, you can go ahead and conclude your...

MR. BURNETTE: Am I done?

CHAIR MOLINA: Yeah.

MR. BURNETTE: Sorry.

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CHAIR MOLINA: Okay.

MR. BURNETTE: I have documents here, amicus briefs, the first time I ever read that, and one of them is from former Chairman of the EPA and it basically refutes that claim. It basically says the discharge into groundwater is covered by NPDES and I have the documents right here on that.

CHAIR MOLINA: Alright, thank you very much, Mr. Burnette, for your testimony. Committee Members, any need to clarify Mr. Burnette's testimony? If not, thank you very much...

MR. BURNETTE: Can I say one more thing?

CHAIR MOLINA: Go ahead. Briefly.

MR. BURNETTE: This is personal to me because not only because I'm a citizen here, I grew up in West Virginia. West Virginia decades ago was very polluted by the coal mining companies and chemical companies, and as a result of things like the Clean Water Act, it's a very different place now and I'd like it to stay that way. Thank you.

CHAIR MOLINA: Well, thank you for that bit of information. Thank you. Okay, next to testify we have Steven Allen, followed by Gordon Firestein.

MR. ALLEN: My name is Steve Allen, I'm a licensed plumber and a licensed plumbing contractor in the State of Hawaii. I've got 37 years of experience in doing all of it, and I'm here just to spread a little bit of my knowledge to the Council to maybe assist you. I'm not going to say yes or no to supreme courts or any of that nature. What I'm going to point out though is that I don't think the County can pointed at as the big bad wolf. You have sewer pipes in every building from South Maui to Kapalua, Upcountry, Paia, Haiku, Central Maui with holes in them leaking raw, untreated sewage in the ground. You want to talk chemistry, you want to talk nitrogen. You go all the speaking you want, but the fact remains sewage treatment is treated sewage, untreated is not. Until you have a handle on untreated sewage and the broken, unkept sewer systems, it's never going to go away. We're either category one, two, three, and four, and five on the wastewater treatment. There is no category for untreated sewage. The only reason we have realigning of pipes from the municipal sections is financial. Infiltration is when waste goes out...exfiltration is when it comes out and infiltration when it comes in. They do infiltration lining to save costs for sewage pumping and treatment. And the EPA doesn't exist in Hawaii for those that don't know, they subcontract to the Health Department. That's a very slow process. Seven years ago, we had a building in Wailuku, total collapse of the sewer system, leaking into the groundwater. It took us seven months working with the EPA to get the Health Department to get involved. So, if you want results, possibly you guys ought to look within because that's a slow process. As far as once again with the Supreme Court, you know, you guys have to be educated to the point to make your decision what you think's best for yourself. But

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the biggest concern I have is that this unknown, this unspoken. I've spoken to newspaper reporters, I've been in contact with them, nobody wants to look at this other side. We are daily as a company dealing with rehabilitation of sewer systems. I can tell you that I've been at a building at Charlie Young's Beach, completely rotted out sewer lines and there's people surfing in front of it. I can tell you that at 730 Front Street we replaced a sewer line eight years ago, there's no bottom in that sewer line, right across the street at the Breakwall. That's right in front of the Breakwall, cousins, nephews, family members surfing. Right behind us at one of the restaurants, no bottom to the pipes, untreated sewage. So, we can point all the fingers we want, but you have to pay attention to the infrastructure. And as far as cesspools leaking into the ground, well sure, it's great if they're sandy but I've seen it where there's no bottoms and it goes right into a pit. Yeah.

CHAIR MOLINA: You can go ahead and finish your, that last thought, Mr. Allen. Go ahead.

MR. ALLEN: Well, I mean not every cesspool is the same and not in every the same locations. You know you have lava tubes, some people are lucky and they never have to pump their cesspools in their whole lives because they're on a lava tube and other people aren't in that situation. Clay, soil, sand, different situations. This whole cesspool thing, they stopped making corks for wine a long time ago because they figured out how to make screw-tops. They stopped making cesspools a long time ago because they figured out how to make septic systems.

CHAIR MOLINA: Okay, thank you, Mr. Allen. I think you've certainly explained it well. Just before I turn it over to the Members if they have any questions for you, have you, you know, this has been a longstanding issue, have you previously mentioned your concerns to prior Councils and the Department?

MR. ALLEN: Negative.

CHAIR MOLINA: So, this is your first time?

MR. ALLEN: Just in private conversation but never in a forum.

CHAIR MOLINA: Appreciate your perspective. Members, questions for clarification for Mr. Allen? Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I just wanted clarification on the pipes that you said that were corroded or were, didn't have bottoms or linings or where raw sewage is going. Is that...are those County --

MR. ALLEN: Let's say a 40...

VICE-CHAIR RAWLINS-FERNANDEZ: --pipelines?

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MR. ALLEN: Excuse me?

VICE-CHAIR RAWLINS-FERNANDEZ: Are those County pipelines?

MR. ALLEN: No, on the private side --

VICE-CHAIR RAWLINS-FERNANDEZ: Private.

MR. ALLEN: --is where...just a monstrous problem exists, but there's no jurisdiction there. And yet if you're on the beach with a condominium and you have 120 units in it, none of that water can get treated if it doesn't get to the septic...to the treatment plant. And if 20-30 percent of it is leaching into the ground, what good is type three water if it's 100 yards, 50 yards from the ocean leaching into the water? I mean I've physically seen it, I know it exists, and we're working on them all the time.

VICE-CHAIR RAWLINS-FERNANDEZ: Private, so condos have pipes where raw sewage is going into the ocean?

MR. ALLEN: Absolutely. They're bottomless...take a building built in 1975 and it's cast iron pipe, the bottom is worn out. The only time they ever get fixed is when they don't work, in other words they back up and they cause a stoppage. But if they're accepting the flow, nobody knows any different. Or if they know any different, they don't want to spend the money to fix it until they're in the situation that they're forced to.

VICE-CHAIR RAWLINS-FERNANDEZ: Got it. Mahalo, Mr. Allen. Mahalo for your testimony. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Members, any other need to clarify Mr. Allen's statements? If not, thank you very much for your perspective, Mr. Allen. Next to testify we have Gordon Firestein, to be followed by Doris Lang. Gordon Firestein? Firestein? Okay, seeing none, we'll move on. Doris Lang? No? She's left? Okay, moving on, Michael Luque from the Surfrider Foundation. Michael Luque, you're in the audience? Okay, moving on, Steve Paselk? Steve Paselk? Okay. Mr. Paselk will be followed by Mike Silva.

MR. PASELK: Aloha, Council. My name is Steve Paselk and I am testifying today on behalf of nature. For over 40 years, Maui County has injected millions of gallons of sewage water daily into our near-ocean injection wells, raising ocean nutrient pollution levels up to 100 times above State recommended levels and severely stressing the ocean environment. Until now government leaders have been successful in ignoring and denying this environmental degradation. The County's lawsuit appeals are continuing the denials and delaying needed solutions. What we have been doing constitutes crimes against nature and it must stop now. It is time to stop stalling and come together as a community with courage and vision to find the solutions we need. I propose a citizen task force to research tertiary treatment system upgrade options and

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costs for Lahaina, Kihei, and Kahului wastewater systems, to truly create safe and valuable agricultural water. Tertiary treatment is the final cleaning or polishing process that improves wastewater quality before reuse. Imagine using this recycled water in combination with carbon offset grants to plant regional carbon sequestering forests with hiking trails one to two miles above Lahaina, Kihei, and somewhere in the Kahului treatment area. These forests would benefit the climate, aquifers, help cool temperatures, and provide recreation. These forests would provide an immediate beneficial use for this recycled water and combined with nearby agricultural use would allow a more concentrated and less costly recycled water distribution system. Agricultural uses of the water in the area could also free up other water for human use. Please let's come together as a community to bring about long overdue solutions. Thank you.

CHAIR MOLINA: Thank you, Ms. Paselk. Members, any need to clarify Mr. Paselk's testimony? If not, thank you very much for your manao. Okay. Let's see who our next testifier is. Mike Silva, and he will be followed by...Committee Secretary, could I have the rest of the stacks? Oh, okay. Hannah Bernard. Okay. Following Mr. Silva will be Hannah Bernard. Aloha.

MR. SILVA: Good afternoon, Chair Molina and the Committee Members. My name is Mike Silva, I live in Kula, work in Wailuku. I'm not here as an individual, I'm representing the Hawaii Society of Professional Engineers. We had submitted written testimony last week. It was an attachment. So, it didn't look like it went through so we submitted it again, a text only yesterday via e-mail so I apologize for any duplication or confusion. But we are opposed to settling the court case. We're not here to argue about the current operations in Lahaina, we are concerned with the Clean Water Act being used to regulate the injection wells. The fact that I'm aware of is that the Clean Water Act is not currently being used in Hawaii to regulate the injection wells. If the previous rulings are overturned, it's not gutting the Clean Water Act, it's going to be status quo, injection wells will be regulated with the Safe Drinking Water Act. But if it's not overturned, it would expand the Clean Water Act in our view. So, we wanted to provide a few implications that we think could happen if it's not overturned. One is we don't have a solution yet for any kind of replacement of injection wells so that's a big unknown. There was talk about 100 percent reuse which is a great goal, I'm not too sure how feasible that would be though. We talked about injection wells possibly being used as a backup if it's raining and that reuse water was supposed to be used for irrigation. Two more items we had is we're saying liability, but Dave Taylor mentioned it's probably best to, weighed by an attorney so I think as engineers we should present potential violations to you guys or to the, for consideration. And mentioned before, Kahului Treatment Plant, Kihei Treatment Plant, Launiupoko Beach Park, Kepaniwai, so a lot of County facilities that could be affected. And the last one is for the residents. So, we talked about, you know, people have talked about before individual wastewater systems possibly being traced to the ocean. I think that's definitely a realistic assessment. So, actually I just had one more item was to, you know, think about actually which groups could have financial gain if the court case

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was settled. And actually engineers, we would be the ones that would have a lot of assessing and permit applications and designing of systems. And we're here in front of you providing reasons on why you should think about not settling. So, thank you for your consideration.

CHAIR MOLINA: Okay, thank you, Mr. Silva. Committee Members, questions for Mr. Silva to clarify his testimony? Seeing none, thank you very much, Mr. Silva. Okay. Next to testify we have Hannah Bernard who will be followed by Sam Small.

MS. BERNARD: Aloha kakou. Chair Molina, Vice-Chair Rawlins-Fernandez, and Councilmembers, Committee Members, thank you so much for your patience. And particularly you, Chair Molina, your grace under our excitement today has been laudable. Very much appreciate you being here again today. And especially those of you who voted previously in the GET meeting to withdraw this lawsuit from the Supreme Court's jurisdiction, I hope that the time intervening has only strengthened your resolve. For those of you who are still waiting to decide, I just hope to leave with you that few more choice points to take and just go with you to support the why to take this to the Supreme Court, why would you do this. And do I need to back up and say my name? Or I'm good right, who I am?

CHAIR MOLINA: Sure.

MS. BERNARD: Okay.

CHAIR MOLINA: Well, you can do it at the end of your testimony.

MS. BERNARD: I'll do it later. Okay, so the why. So, first of all, we've heard time and again about the health of this reef, Haena Nui, the appropriate name. Kahekili Beach Park area, and I so appreciate Lance Collins and the kids for educating us on the name of this fishery and this reef, because we didn't know that 12 years ago when we started our community organizing and negotiations with the County. And for me it's been 12 years and for the DIRE Coalition and that's on Maui. Maybe not all the folks from all of our partner groups who joined us further down the line, but it's been a long time. And we've heard even from the beginning that it might not be our effluent that's killing the corals, and I can't believe we're still hearing that today, that it might not be our injection wells that's killing the corals and the corals might not be in trouble anyway. But dozens of scientists proved that it was from different agencies including the USGS, UH, UCSD, Department of Health, EPA, and consultants. In fact, they showed the area is more than 125 football fields in size that's impacted. The wastewater effluent is killing the corals because it's warmer, more acidic, and lower in oxygen. And as we've heard time and again, it contains a witch's brew of nutrients including nitrogen and yes, phosphorous. And I'm sure that some of my colleagues will speak to that misinformation you were given earlier. The injectate does contain phosphorus. It contains flame-retardant, not to mention pesticides, chemicals that are not normal to a coral reef system as you probably know, but yet we're still having

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to defend this. These studies, most of them have been published in peer-reviewed journals, the latest in the prestigious journal *Nature*. So, this place now is a case study for the collapse of a coral reef ecosystem. Our reef is now being referred to as a way to look at what will happen to reefs that have pollutants that are increasing the rate of ocean acidification beyond what we find in nature. So, the science is clear and I understand that there might be other opinions and they may not be from scientists who've published like Steve Dollar, a discredited scientist who Mayor Victorino has referred to. And I'm --

CHAIR MOLINA: Thank you.

MS. BERNARD: --think I'm summarized with that.

CHAIR MOLINA: Okay, thank you much, Ms. Bernard, for your testimony. Committee Members, any need to clarify Ms. Bernard's testimony? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here. Can you...you were going to tell us about your organization and your back...is your background in science?

MS. BERNARD: Yes, I'm a marine biologist and I've been working in the field for 37 years, here in Hawaii for 28, and we are lead plaintiffs in this case, co-plaintiffs together with Sierra Club, Surfrider, and West Maui Preservation Association. So, I've spent a lot of time in that reef that's the subject of this issue as well as many of Maui.

COUNCILMEMBER KING: Okay. And can you tell us if the data that's been, being presented from, I mean I think West Maui and South Maui shows, I thought I remembered it showing an increase of phosphorous because of those actually areas --

MS. BERNARD: It does.

COUNCILMEMBER KING: --and the injection wells.

MS. BERNARD: It does. And the thing that's so...it's so crazy to me is that we're still talking about this with uncertainty, that even our own youth are questioning whether it's real that this is the injection wells that are causing the deterioration of the reef. Here's pictures from two weeks ago from one of our volunteers. These are the seeps, this is the dead coral all around them, and it's really tragic. For those of us who've witnessed the death of these areas, the dead zones which I'm sure my colleagues will also talk about in a little bit, we have to stop this, and we've been talking about it for 12 years. It's time to really take action. And I really appreciate all the efforts that you folks have done to try and move us forward. But going to the Supreme Court will set us back and possibly even take away all motivation to continue doing the good work that we're doing.

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COUNCILMEMBER KING: Okay, thank you.

CHAIR MOLINA: Okay, thank you, Chair King. Members, any other need to clarify Ms. Bernard's statements? Seeing none, thank you, Hannah. Next to testify we have Sam Small, to be followed by Clare Apana.

MR. SMALL: Hey. Thank you. As always it's an honor to participate in the democratic process. As I frequently do, my comments are a lot about process as it relates to this hearing. For many years, this Council has understandably welcomed opportunities to make the tasks at hand less overwhelming. The problem is that overtime this Council has given away its authority and has allowed Corporation Counsel to essentially take over Maui County. Corp. Counsel functions as an independent branch of government with no oversight and no accountability, and that's just wrong. Today's public hearing notice references our County Charter Section 3.16.20. Let me quote, the Council shall determine and specify from time to time, by resolution, claims for which all written offers of settlement are to be transmitted to the Council. So, unless this body goes out of its way to specifically request and name actions proactively, you never get notified of settlement offers. Corporation Counsel withheld Surfrider's previous offers to settle for years. Like Angus McKelvey noted this morning, this is something kind of new here. This is one of the few times I've ever been aware of the Council specifying that it wants its authority back. Congratulations for doing so. Our Charter may need to be revised. Corporation Counsel Director Moana Lutey didn't want this Council to have authority over the injection well case. She originally proposed language to give Corporation Counsel final say, absolutely attempting to usurp authority of both the Mayor and this Council. And in her confirmation hearing, she lied about it. She said that the language was common. That language is not common. It was extraordinary and she lied about it. Who are Corp. Counsel's clients anyway? At Ms. Lutey's swearing in, Mayor Victorino said Corp. Counsel doesn't work for him, Corp. Counsel doesn't work for this Council, they work for the people. That is absolute bullshit. If I am their boss...

CHAIR MOLINA: Mr. Small, if you could hold off on the language. And again, if I could steer you back to the injection well issue.

MR. SMALL: I am aware...I will --

CHAIR MOLINA: Go ahead, Sam, yeah.

MR. SMALL: --continue to circle right back. Believe me it all dovetails. There are other instances, the 2015 Upcountry water bill you've been lied to about that. Corporation Counsel is systematically misleading this Council. The, Mayor Victorino's settlement agreement just offered last week does not need to go to executive session. There are no financial claims so the intimidation that Corp. Counsel usually uses against you Councilmembers of being held personally responsible for costs incurred in a settlement just doesn't apply.

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CHAIR MOLINA: Sam, sorry, I have to stop your testimony.

MR. SMALL: Yeah.

CHAIR MOLINA: Thank you. Committee Members, need for clarification of Mr. Small's testimony? Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for being here, Mr. Small. What...so you said that the...I mean I do understand the Mayor is supposed to be bringing a new settlement. Have you seen that?

MR. SMALL: No, nobody has.

COUNCILMEMBER KING: Oh okay, but you said that there were no financial implications. I mean I don't think any of us have seen it, so, you know.

MR. SMALL: The claims made by the organization, the environmental organizations say that they're willing to forgo any financial penalties so therefore there is no financial risk involved.

COUNCILMEMBER KING: Okay, I was just wondering...

MR. SMALL: And you can't be held responsible.

COUNCILMEMBER KING: Okay. I just wondered if you had seen it because I'm as baffled as you as...

MR. SMALL: No, it's a total mystery.

COUNCILMEMBER KING: Thank you.

MR. SMALL: And it's not right.

CHAIR MOLINA: Okay, thank you, Chair King. Any other need for clarification of Mr. Small's testimony? Seeing none, thank you very much, Mr. Small --

MR. SMALL: Thank you.

CHAIR MOLINA: --for your testimony. Next to testify...

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: ... *(gavel)* ... Come on, guys. Clare Apana to be followed by Charlotte O'Brien.

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MS. APANA: Good afternoon, Councilmembers. Good afternoon, Chair. Thank you so much for bringing this forward, such an important issue for our community. Thank you. Well today, I thank you for your patience and what I have to bring is a story from someone who just died last, this last Saturday and I thought I should bring it forward for him. He was a Papa Kilo Hoku and Papa Kilo O Ke Kai. And I remember in 2010, he came over to help with some of the different beaches to show the connection of mauka to makai and he heard about this case and he said I have to talk to Hannah Bernard. And so, we had to stop everything we did, we were doing so he could find Hannah Bernard and talk to her. And he had to tell her that there were solutions, there were solutions that he knew about, about how kanaka used the water, how the water was used many times before it got to the ocean. And by then at the last loko ia was the last place where it was cleaned before going into the ocean. And I was kind of mad at him because we were off schedule, but he thought it was so important that he had to tell her. And that was like nine years ago and we thought it was all settled when the County said they were going to fix the problem. But maybe you don't know why it's so important, and this is what I have learned walking with some of these people, with walking with Michael. When the maiopilo blooms, you know, he took me aside, there were all these DLNR people and he said they don't know why it's so important. Those roots go down, they go down like 40 feet, they got to find the water in the lava tubes. And then when they bloom, they set off a biochemical signal, a trigger goes down through the water to the ocean to the limu. Then the limu sets off another trigger, tells the fish time, come lay your eggs. And so, these important cycles I'm sure were not depending upon getting R-1 treated water into them. We have never...from what I have seen, I haven't seen a study that looks at these kind of cycles. We always talk about mauka to makai, mauka to the makai, ahupuaa, how important, how smart the kanakas were, but we have never studied this to see exactly what were they talking about. And even the bloom of the, of wiliwili tree, when the flowers bloom they go into the underground system, end up at the ocean, and trigger another reaction there. So...

CHAIR MOLINA: Ms. Apana, thank you. Sorry, I have to...

MS. APANA: Thank you very much. I'm good. Thank you.

CHAIR MOLINA: Well, thank you.

MS. APANA: Thank you.

CHAIR MOLINA: Committee Members, any need to clarify Ms. Apana's testimony? Okay, none? Okay, thank you so much, Clare. Appreciate your manao.

VICE-CHAIR RAWLINS-FERNANDEZ: One quick question, Chair.

CHAIR MOLINA: Oh, I'm sorry. Committee Vice-Chair Rawlins-Fernandez?

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Apana, mahalo for your testimony. So, do you know, I know you said this wasn't studied but is the information that you're sharing with us recorded in any written document, or was this passed on orally the way that our culture passes ike?

MS. APANA: I've been trying to get some of these projects to actually take the testimony of these important people, like usually laau lapaau people who knew the plants and then go to the ocean. And I've not been successful yet. I think somebody more like Hannah Bernard might be able to definitely tell you. I haven't seen it in connection with the injection wells. So, I believe it must exist somewhere because they've been studying loko ia very intensely in the past years, and all of that water that's flowing into the loko ia is done mostly by spring water comes down and that's coming underground. So, I believe that it's there and I'm sorry I haven't seen it in relationship to this particular project.

VICE-CHAIR RAWLINS-FERNANDEZ: So, then in your testimony would you say that by blocking these interconnected signals as you described from the different plants and flora, fauna, that it's also another way of stopping Native Hawaiian gathering and practices?

MS. APANA: Okay. Yes, I believe...I should have made that more clear that there are cultural practices, there are traditional practices. There's traditional knowledge here that is science that needs to be considered in looking at a system such as this. We're looking at the pollutants coming down to the ocean with the algae bloom, certainly. What happens to all the other systems that are relying upon having a certain level of clean water to be flowing in? And yes, I believe that all the fishermen, all the people who gather limu, all the people who rely upon these medicines, various medicines, including medicines at the ocean, medicines that are coming through the land that is fed by the water, they are very potentially impacted by what happens to how clean this water is. And I think there is a solution and I hope that our County will get to it. I hope that you will vote to rescind or to finish this lawsuit and get to the work of finding the solutions because they're out there. And for my friend Michael who thought it was so important that he had to say it, I hope that you will listen to people who actually have the traditional knowledge of these kind of areas, of lava tubes, of the way the springs run into the ocean, of the way that the water affects all life. Thank you very much.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo to you and mahalo to Michael for sharing with us the impact of native wisdom and practices, Ms. Apana. Mahalo, Chair.

CHAIR MOLINA: Mahalo, Member Rawlins-Fernandez. Seeing no other need to clarify Ms. Apana's testimony, thank you so much, Clare. Next to testify we have Charlotte O'Brien, followed by Darla Palmer-Ellingson. Calling Charlotte O'Brien. Seeing none, okay, we shall move on. Darla Palmer-Ellingson? Okay, not here. Moving on...by the

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way, Members, we have 92 individuals signed up, we are on number 36. Craig Lekven? I hope I pronounced that right. Craig Lekven? Okay, Craig is here. And he'll be followed by George Chyz. And testifiers, please notify the Chair if I've, you know, mispronounced your name. So, appreciate that.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair? Real quick.

CHAIR MOLINA: Yes, Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: I notice some people had walked in and I was just wondering if those that you're calling, if you're putting the, their forms on the side to call them again later?

CHAIR MOLINA: Yeah. Well, we'll keep it open until we officially close testimony so if somebody walks in at a later point and testimony is still open, Chair is open to that. I believe that is I think maybe...I'm not sure if it would be...if we were shut to that off that's a potential Sunshine Law violation but I'll give everybody their opportunity. 'Cause I understand that people have to leave and if testimony is still open, that is the Chair's recommendation. However, if the body, the majority of the body objects to that, please make it known to the Chair.

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay, there are no objections. We will proceed in that fashion.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Thank you for that question. Good afternoon, sir.

MR. LEKVEN: Good afternoon. My name is Craig Lekven. I'm an environmental engineer in Wailuku. For the past 11 years, I've assisted the County of Maui with its wastewater issues through my employment of Brown and Caldwell, an environmental engineering firm. In my role as project manager, I've led the County's efforts to evaluate options to eliminate injection well use at four of the County's wastewater treatment plants. This work has included investigation of land treatment, satellite treatment plants, and other options including direct potable reuse. I've also served as an expert witness in support of the County of Maui for this case. Today, I'm here as a private citizen and ratepayer to urge continued support for the appeal before the Supreme Court. The court rulings eliminate the clear, bright line that has existed between two regulatory programs, the Clean Water Act and the Safe Drinking Water Act. In doing so, the rulings actually complicate the County's efforts to eliminate injection well use at the treatment plants. In my professional opinion, transition to land treatment systems represents the most practical and economical means to eliminate injection well use without constructing ocean outfalls. Transition to land treatment offers a way to significantly reduce the County's environmental impact compared to the injection

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wells. As an example, our estimates show that implementing land treatment in Lahaina can reduce the mass of nutrients entering the groundwater by greater than 90 percent; however, land treatment systems include a percolation component and therefore pollutants would eventually enter the ocean near the shoreline albeit at a significantly smaller amount than the current system. The Department of Health has stated that if the ruling is upheld, the NPDES permit will require treated effluent to meet ocean water quality standards at the point of discharge to the injection wells. In our analysis of the feasibility of implementing direct potable reuse at the Lahaina Treatment Plant, we have determined that there is no treatment technology available that can achieve these requirements. Effluent can be purified at great expense so that it is safe to introduce back into the drinking water system, but it would not be clean enough to be put into the ocean under the current rules. This logic would likely be applied to land treatment systems as well. My Big Island client has been threatened with just such a lawsuit over a proposed land treatment system in Kona, based on the rulings of this case. The County of Maui needs regulatory clarity before it invests some 150 to \$200 million to transition to land treatment and significantly reduce the environment impacts of our community. Settling this case will not resolve the legal challenges, because the underlying technical and regulatory issues will remain unresolved. Deep-ocean outfalls may end up being a more practical and feasible solution to eliminate injection wells if the Appellate Court ruling remains, because outfalls may carry less regulatory uncertainty. No matter how it rules, the Supreme Court decision will provide us with the regulatory clarity that is needed to successfully transition away from injection wells, be it to land treatment or ocean outfalls. I urge your Council to continue to support the appeal.

CHAIR MOLINA: Thank you, Mr. Lekven. Councilmember Sugimura, followed by Councilmember Lee.

COUNCILMEMBER SUGIMURA: Yeah, thank you very much. Very interesting. So, when you talk about outfalls, right, which is an option or you're saying land treatment or ocean, so the outfall would be that, is that correct?

MR. LEKVEN: The, yeah, the outfall would be similar to what's being done on the other islands, for instance, Sand Island Treatment Plant on Oahu running a pipe out to the ocean past the reef, past out into water called Class A waters where there's an allowance for dilution credits in the water quality standards.

COUNCILMEMBER SUGIMURA: So, could you, since you worked on it, do you have an estimate how much that would cost us if we had to create this new outfall system to replace the injection wells?

MR. LEKVEN: We have just started evaluation of the outfall options, we have not developed costs for that.

COUNCILMEMBER SUGIMURA: Do you have an estimate?

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MR. LEKVEN: We...it's probably somewhere on the order of...well, this is a guess, I don't even want to be quoted on it until we've done the work.

COUNCILMEMBER SUGIMURA: Okay.

MR. LEKVEN: We have evaluated the land treatment options extensively at all four treatment plants. In sum, the total bill to the County would be somewhere on the order of 150 to \$200 million to take care of all four. So, all three on Maui Island and Kaunakakai Treatment Plant as well.

COUNCILMEMBER SUGIMURA: For all four it would be --

MR. LEKVEN: For all four.

COUNCILMEMBER SUGIMURA: --150 to 200 million.

MR. LEKVEN: Yeah.

COUNCILMEMBER SUGIMURA: And --

MR. LEKVEN: Roughly 50 million --

COUNCILMEMBER SUGIMURA: --what is...

MR. LEKVEN: --per treatment plant.

COUNCILMEMBER SUGIMURA: What is land treatment? This is the first time I've heard land treatment. I've heard injection wells and the, you know, the outfall which I'm thinking is...but what is the land treatment?

MR. LEKVEN: Land treatment is actually very old technology that's kind of dropped out of favor. It involves...actually reuse, reuse is a form of land treatment. It's taking the water, applying it to land. There are different forms of land treatment, reuse is one form of land treatment. There's others that are kind of the cousins of land treatment that would allow application of effluent to the land during periods of wet weather, that type of arrangement.

COUNCILMEMBER SUGIMURA: Okay. So, it would be 150 to 200 million to take care of the four doing that kind of method.

MR. LEKVEN: Yeah.

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COUNCILMEMBER SUGIMURA: And I think I read the Scott Rollins who is the current Wastewater Division Chief had an item in *The Maui News*, and he said it would be per outfall it would be 100, I think he said 125 or so to 200 million.

MR. LEKVEN: Yeah, we have to do the work. We're currently working on that project about taking a look at all of the options and comparing them. So, the ocean outfall option has not been evaluated by us to date.

COUNCILMEMBER SUGIMURA: Okay. Thank you very much.

CHAIR MOLINA: Okay, thank you, Member Sugimura. Member Lee?

COUNCILMEMBER LEE: You mentioned that the ocean outfall option has not been evaluated by your group yet, but I'm, not that I'm in favor of it but I'm curious why the other counties have opted for that method and Maui County opted for the use of injection wells. Do you know why?

MR. LEKVEN: No, I wasn't here. I was a schoolboy on the mainland at the time.

COUNCILMEMBER LEE: Okay.

MR. LEKVEN: So, decisions were made back in the '70s. I've heard stories that there was resistance to implementing outfalls at that time. So, but I don't know.

COUNCILMEMBER LEE: Okay. And then did you submit your testimony to the Council?

MR. LEKVEN: Yes.

COUNCILMEMBER LEE: You did?

MR. LEKVEN: I e-mailed a letter to all of you last Friday.

COUNCILMEMBER LEE: Thank you.

CHAIR MOLINA: Okay, thank you, Member Lee. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. Could you help to explain what is an ocean outfall?

MR. LEKVEN: An ocean outfall is a pipe that leads out beyond the shoreline out, it's usually a good mile or two out into the ocean, and the treated effluent is discharged into the ocean where it's diluted, and it's a common practice in, for dealing with wastewater effluent.

COUNCILMEMBER KAMA: So, it's treated or not treated?

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MR. LEKVEN: It is treated, yes.

COUNCILMEMBER KAMA: To, do you know what standard it would be treated?

MR. LEKVEN: That's determined by the NPDES permit required for discharge directly to surface waters.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Member Kama. Any need for further clarification? Mr. Sinenci, followed by Chair King.

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Mr. Lekven, for being here. So, just for clarification, you said that there's no technology for reuse?

MR. LEKVEN: No, there's...we looked at direct potable reuse which is treating the water to such a high degree that it could be recycled in the drinking water system. It's a very extreme measure. Okay, in doing that, we looked at the, basically the state of the art of treatment technologies, 'cause obviously if you're going to have people drinking the stuff, it's got to be treated to an extremely high degree. And we compared, our engineers compared the...prepared models of the treatment that would obtained using the highest level of treatment available and compared it to the ocean water quality standards that Hawaii has established and it was off by a factor of at least ten, not even close. So, the nuance of all this is that if we're given permit requirements that can't be reached with any technology, well, the lawsuits continue.

COUNCILMEMBER SINENCI: Thank you. Follow up, Chair. So, the Mayor has been quoted that he's moving towards 100 percent reuse with, instead of the injection wells. And so, he's putting some monies to direct some of this effluent up above Lahaina into a big reservoir. Would that...what are your thoughts on...

MR. LEKVEN: That is part of our land treatment system. What he's talking about is land treatment. Taking the effluent and applying it to the land where the nutrients can be taken up by plants as fertilizer. The soil provides treatment benefits, including removal of various constituents of concerns like endocrine disruption compounds, and other types of compounds that you hear about.

COUNCILMEMBER SINENCI: And so, you, do you feel that we still need clarification from the Supreme Court if the County is, the Administration is moving towards 100 percent reuse?

MR. LEKVEN: Yes. Because there...the way I read, the Appellate Court ruling is an improvement over the District Court ruling in that the Appellate Court added two little caveats at the end of their ruling that said discharges have to be more than de

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minimis to the groundwater, and the effluent has to be reasonably traceable to the surface water. So, land treatment including reuse has a percolation component in that if you irrigate with water, you have to irrigate to leach salts and below the root zone of the plants. And that water...and when it rains here in the wintertime, there's overwatering by mother nature. So, pollutants from the treatment plants and when the water is used for reuse or in a land treatment system will find its way to groundwater eventually. And the way I read the ruling and I'm not an attorney but I have to deal with this stuff, the way I read the Appellate Court ruling is that would be a violation of the Clean Water Act and an NPDES permit would be required.

COUNCILMEMBER SINENCI: Would those waters be also traceable?

MR. LEKVEN: Yes, I believe so. It could be. Yeah.

COUNCILMEMBER SINENCI: Thank you.

CHAIR MOLINA: Okay, thank you very much, Mr. Sinenci. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Lekven. So, are...you're an engineer?

MR. LEKVEN: Yes.

COUNCILMEMBER KING: Okay, I'm not...I mean I wonder if you ever saw the report done by Steve Parabolicoli who used to be the wastewater treatment facility management up there? There's a four-stage proposal of action to --

MR. LEKVEN: I have not seen...

COUNCILMEMBER KING: --start bypassing.

MR. LEKVEN: I have not seen Mister...

COUNCILMEMBER KING: Because the number one was biological nutrient removal which...

MR. LEKVEN: Which you have now.

COUNCILMEMBER KING: Well, we had a consultant that was hired at the behest of the Council last year and so we're still waiting for those results. I've been told by the previous head of the Department of Environmental Management that the goal was to bypass the injection wells and to go into reuse. So, his comment to me was we don't need the biological nutrient removal, but I mean that's a technology that would help in this case. Do you not agree?

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MR. LEKVEN: You currently have biological nutrient removal at all three Maui wastewater treatments.

COUNCILMEMBER KING: Okay, well, they don't seem to know that because we had to put it in as a proviso a couple of years ago. But my point is that the four-step proposal that Mr. Parabicoli came up with was less than \$2 million total to get that wastewater treatment facility off of the dependence on injection wells. So, I just wondered if you...

MR. LEKVEN: I have not seen it.

COUNCILMEMBER KING: Okay.

MR. LEKVEN: I'd have to look at it and consider it.

COUNCILMEMBER KING: 'Cause that might be something that you're talking about doesn't exist, it is different technologies included in that report. I'm just hoping that maybe if you're spending time, you know, just researching and investigating that maybe you could hook up with Mr. Parabicoli who's...

MR. LEKVEN: I would like to see that report.

COUNCILMEMBER KING: Okay. That would be great. Thank you.

MR. LEKVEN: Yeah.

CHAIR MOLINA: Okay, thank you very much, Chair. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you for having so much knowledge and background on this. I'm just curious about the outfall versus the injection well and treatment, and particularly about the outfall. So, you said that the outfall waste I guess would be treated somewhat. Would it be cleaner--if, I don't know if that's the correct word, but--than the current injection well or would it be similar?

MR. LEKVEN: That, typically there's negotiations that go on between the agency and the regulatory authority on the, in this case, it would be through DOH who would issue the NPDES permit. The plants already have biological nutrient removal so the performance of the Lahaina Treatment Plant in particular since that's the subject of this case is excellent. Actually I was surprised when I reviewed the data and saw that the total nitrogen level in the effluent was about six milligrams per liter which is excellent for a plant with biological nutrient removal but no advanced nutrient removal. Phosphorous was down I believe around one milligram per liter, again excellent performance. I would think...and you already have biological nutrient removal and filtration and a high level of disinfection to create R-1 water so I would think that, if I had to guess, I would think that that would probably be sufficient although you never know when you talk to regulators about these things. Now, I

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would say that the cost associated with it is the cost to construct a pipe out, you know, it could be miles offshore, and to avoid disturbing the reef, typically what's done is something called directional drilling which is very expensive. So, I don't...again we have to...we're just starting the effort to evaluate that in relation to the other options that we've looked at.

COUNCILMEMBER SUGIMURA: So, there's more work to be done and just the numbers are staggering, because if I look at how much we spent this year for our Fiscal Year 2020 for CIP, we spent 152 million and you're saying this would cost more than that.

MR. LEKVEN: Yes.

COUNCILMEMBER SUGIMURA: So, there'll be a lot of sacrifices I think we would have to make in order to accommodate this.

MR. LEKVEN: It will clearly have to be phased in over time.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Okay, thank you, Member Sugimura. Member Paltin?

COUNCILMEMBER PALTIN: Oh, thank you, Chair. I just was wondering, you know, like how the previous testifiers were saying like I mean it's kind of an issue right now about restoring stream flow versus using that water for ag or more development. And I was wondering too if, you know, we've always had like a rainy season and a dry season, but things are kind of getting more blurred, and it kind of seems like the prevailing world view is water is a precious resource. So, I mean even if we can work towards full reuse like you were saying, we're not sure that the rainy season is going to come or what the instream flow standards are for Honokohau, Honolua, Honokohua, Honokowai, and from what I've seen when the water is put back, the fisheries gets more healthier because of the muliwai, and so I don't understand the resistance to full reuse. I mean even if you never get it, it's out...the community is saying cooperation so as long as we're still going in that direction who's going to be upset?

MR. LEKVEN: Reuse is great. I'm, fully support reuse.

COUNCILMEMBER PALTIN: Oh okay. Thanks.

MR. LEKVEN: I'm not opposed to reuse. If you can reuse 100 percent, that's fantastic. As a practical matter...

CHAIR MOLINA: Sir, thank you. Your response was sufficient. Members, any need to clarify the testifier's comments? Member Rawlins-Fernandez?

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VICE-CHAIR RAWLINS-FERNANDEZ: Quickly. Mahalo, Chair. Like Member Paltin and like your firm, I don't support outfall. I don't think that's the direction we should be going. So, my question is if you or your firm have explored biological wastewater treatment systems like that built by Organica which is going to be built in the Waikapu Country Town, and if...I mean I would think that would be something great for our County to start investing in systems like that. Do you think that's something that would be a good thing for the County?

MR. LEKVEN: We'd have to look at the technology and whether...and the reliability of it. That particular system was developed in Hungary and there's no systems installed yet in the United States so I've heard from Mr. Parabicoli and the Mana Water about the benefits of it, but we would need to look closer at that.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh, I didn't realize Waikapu was going to have the first system like that.

MR. LEKVEN: That's my understanding.

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

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Member Sugimura?

COUNCILMEMBER SUGIMURA: You know we heard that the Maalaea condos, right, so did you do work with them also because...

MR. LEKVEN: Yes, that was my project.

COUNCILMEMBER SUGIMURA: Can you enlighten us on that and how it reflects what we're discussing today?

MR. LEKVEN: Actually what we've looked...what we've proposed for County of Maui is very similar to what we proposed for Maalaea condos which would be taking the treated wastewater that's been treated with biological nutrient removal to remove nutrients and then creating groves of Native Hawaiian trees and watering the trees with the effluent. And that would be a land, considered a land application system, land treatment system. And I...we are, we proposed two such systems on the Big Island and they are in design right now. The challenge with Maui is that our treatment plants are a lot bigger than the small towns that we're doing on the Big Island.

COUNCILMEMBER SUGIMURA: So, the challenge as you see it with the current question of today, settle or Supreme Court, go to Supreme Court, how do the Maalaea condos line up? Because that's a real life, real-live situation happening...

CHAIR MOLINA: Member Sugimura, if you could hold up. I'm not sure if that was mentioned in the gentleman's testimony. So, I'd not like to venture out into that area

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where we're discussing Maalaea. I think first and foremost, we need to focus our attention on the Lahaina injection wells. I understand you're trying to get a nexus or a point to tie it in, but again I'd like to you to hold off from mentioning other sites just in case we don't get into violation with the Sunshine Law police.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: And I'll give you an opportunity to restate your question in another way without mentioning another entity or a project.

COUNCILMEMBER SUGIMURA: Well, I already said the entity but I would love to hear how, you know, it, a real-life situation actually would get impacted by today's decision so that's where I was trying to get to, Chair. I mean he has so much information.

CHAIR MOLINA: And I'm sure he'll be available during our break to discuss further. Speaking of which, Members, the Chair is aware of the time. If there is no other need for the gentleman here, I'll excuse him. Thank you. And I'm sorry, the testimony form was taken away from me so I forgot your name.

MR. LEKVEN: Lekven, yeah.

CHAIR MOLINA: Mr. Lekven, thank you so much.

MR. LEKVEN: Thank you.

CHAIR MOLINA: Okay. And we do have Mr. Chyz waiting, and thank you so much for your patience. Members, after the conclusion of Mr. Chyz's testimony, we will take a break. Okay.

MR. CHYZ: Hello. Thank you for being here to listen to all the people that voted you into office. This Council is a breath of fresh air that brings the people and all life in Maui County hope for a brighter future. I and many others voted you into office to turn around the tragedy that greed has brought to this paradise. It's up to you to follow through and do everything you can to turn around the momentum of greed that has plagued the entire world. There's change happening in politics where working-class people are stepping into office. This can change the, really change the world, because although, you know, they talk about a government of the people, it's always been a government of the aristocrats. So, this is really exciting. We're here today to let you know that we support you in doing what is right. We are entering into a new era in which working-class people are stepping into office. The idea of a government of the people, by the people has been a theory but you are making it a reality. This issue of protecting the environment is a key issue that will demonstrate who you support, the people who work and live here or the aristocrats that are driven by greed. Maui is one of, if not the most beautiful island in the world. Just 40 years ago Maui reefs were exquisitely beautiful living treasures. The coastal waters were crystal clear and

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delightful to swim in. The pollution that has devastated much of our coastlines could have been completely avoided by outlawing coastal development. The buildup in Lahaina is a tragedy that was perpetrated by short-sighted greed. It is time to change the course of this tragedy. There are still some beautiful living reefs on some of the undeveloped coastal regions. These prove that we all need...what that we all need to do to protect the coast is to back up and let it live. Every coast in the entire world that has ever been developed is dead. That's what, all it is. You develop the coastline and it, and the reef dies. You don't develop the coastline and it lives. We just got to back up a mile and slowly extract everything back and then you're going to have healthy, healthy coastline on the entire island.

CHAIR MOLINA: Mr. Chyz, thank you.

MR. CHYZ: That's the ultimate solution and I...just one final thing is that I am, would like you to not go to the Supreme Court.

CHAIR MOLINA: Okay, thank you, Mr. Chyz. Members, any need to clarify Mr. Chyz's testimony? Seeing none, and thank you for your patience, Mr. Chyz. Did I pronounce your last name correctly, sir?

MR. CHYZ: No, I don't think anyone knows how to pronounce that name.

CHAIR MOLINA: Okay, fine. I'll ask you during the break. Alright, thank you very much. When we come back from our break, well, we are at testifiers number 39 and 40, Travis Liggett, to be followed by Linda Lyerly. So, Members, it's just about four o'clock. Let's return to the Chambers at 4:15. Meeting in recess. ... *(gavel)* ...

RECESS: 4:00 p.m.

RECONVENE: 4:22 p.m.

CHAIR MOLINA: ... *(gavel)* ... The Governance, Ethics, and Transparency Committee meeting for Tuesday, September 3, 2019 is now back to order. It is 21 minutes after the hour of 4:00 p.m. Continuing with public testimony on GET item 26, we have Travis Liggett to be followed now by Ms. Lucienne de Naie. The previous name that I announced, Ms. Linda Lyerly had requested to switch positions with Ms. de Naie. So, Ms. Lyerly, you'll be our 43rd testifier just for your information. Good afternoon, Mr. Liggett.

MR. LIGGETT: Aloha.

CHAIR MOLINA: Aloha.

MR. LIGGETT: Aloha, Councilmembers.

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COUNCILMEMBERS: Aloha.

MR. LIGGETT: My name is Travis Liggett and I am appearing before you again today as both a concerned resident and also representing my small business Reef Power LLC, a Maui company dedicated to reef health. Please accept the injection well settlement, because I have developed a three-part plan to eliminate municipal injection in Maui. Step one, install upgrades such as enhanced nutrient removal, not biological removal as you mentioned, to the existing wastewater facilities to achieve the best conventional treatment available by building on the facilities we already have. Step two, polish that wastewater to very low nutrient levels using native freshwater stream limu in an Algal Turf Scrubber which is a natural regenerative system that can grow native algae by the acre in a kind of artificial stream bed. Three, for disposal, we can irrigate a 100-acre forest that is planted with Native Hawaiian trees such as ohia and sandalwood, right there next to the wastewater facility, with retention berms downhill like soil aquifer treatment basins to contain any runoff for responsible groundwater recharge. I have submitted a draft proposal to implement these solutions Countywide to eliminate municipal injection well discharge using a \$2 flush fee per visitor. Flush fees have been used in the Chesapeake Bay area and have paid for hundreds of million dollars of improvements. Also, since the last hearing on this matter in May, I've had a couple of interesting developments. I had a meeting with many mayors of the Mayor's...members of the Mayor's staff when I was advised by them to go and do my project as a private R-1 customer and zero out the injection wells if that is my goal, but that the Administration was not interested in collaboration with me at this time. No one from the Mayor's Office has returned any of my e-mails since then. Another development is that a representative of a private foundation saw my testimony last time, and after some correspondence, they have made a pledge of funding to support a pilot program. So, thank you for the opportunity to testify. Finally, I want to say both sides are right when they say the other is trying to gut or expand the Clean Water Act. This is a clearly defined fork in the road. You can either expand the Clean Water Act with a vote to settle today or risk gutting it at the Supreme Court. We can either go forward or backward with water quality. Please choose healthy waters. And I have a long story that has led me to this place including becoming very sick with wastewater in the stream I lived on when I was little. I came here in 1984 and saw the reefs and they were just so beautiful it gave me hope. I decided to devote my life to wastewater treatment upgrades. When I came in '99, they were decimated so I decided to go back to grad school, I worked at NASA for ten years in life science engineering and here I am now.

CHAIR MOLINA: Okay, thank you very much for your testimony, Mr. Liggett. Mr. Liggett, before I turn matters over to the Members who may want clarification on your testimony, you mentioned that you had contacted the Administration. I guess it was some time during May of this year and...

MR. LIGGETT: Yeah, I had a meeting with about six members of the staff and some of them were enthusiastic about my ideas, but the impression I got was that they were not

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allowed or permitted or given permission to open to collaboration. Maybe they just weren't interested in my ideas, but the only follow-up information was requested by the lawyers, so.

CHAIR MOLINA: Okay, thank you for that clarification. Members, any need for clarification? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Travis. And I appreciate, I remember when you came before and you were working on it, and so it sounds like you've gotten some level of funding. Are you working with anyone else or is it just yourself?

MR. LIGGETT: I'm leading the project, I'm collaborating with some researchers, in particular one from the Smithsonian who is working in a, at a university in Germany right now and they're doing experiments on recirculating Algal Turf Scrubber systems that bring the nutrients very low. So, I'm collaborating, and a couple other experts in the field.

COUNCILMEMBER KING: Okay. And yeah, I was just looking...I see on your proposal it's a 30-year proposal and it looks like somewhere around 5 million...

MR. LIGGETT: That's the amortization of the cost, the work would be done in the next few years.

COUNCILMEMBER KING: Okay. So, tell me what a flush fee is.

MR. LIGGETT: Well, a flush fee in the Chesapeake Bay region is a fee that was originally \$30 per year, they increased it to \$60 per year that went into wastewater improvements for the Chesapeake Bay, because it was very compromised and degraded. So, using those fees in the region, they were able to do hundreds of millions of dollars of upgrades. Now, I've estimated for the three technologies that I'm estimating, that would be a \$2 flush fee for 30 years per visitor. Say we make it \$12 per visitor then we could have \$500 million over 30 years to upgrade all of the cesspools.

COUNCILMEMBER KING: Is that a per day?

MR. LIGGETT: Per visitor.

COUNCILMEMBER KING: Per visitor, whether you stay a week or two weeks?

MR. LIGGETT: Right. So, a family of four would have four times that for their stay.

COUNCILMEMBER KING: Oh, okay.

MR. LIGGETT: But if there are 3 million visitors per year, say it's a 20 flush fee, that's 60 million per year that we have to work with. And I think it would be an experience

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for them where they actually get to contribute, feel good about it, it's like an experience for them.

COUNCILMEMBER KING: Okay. I never heard of that before. I did hear about the pollution in the Chesapeake Bay, I didn't know that they --

MR. LIGGETT: That's how they managed it.

COUNCILMEMBER KING: --enacted that, that's how they paid for it. Okay.

MR. LIGGETT: But we wouldn't do it on residents, we would do it on visitors because they don't have that pool of resources to draw upon.

COUNCILMEMBER KING: Okay, thank you.

CHAIR MOLINA: Okay, thank you, Chair King. Seeing no other request for clarification, thank you, Mr. Liggett, for your testimony.

MR. LIGGETT: Thanks.

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: Oh I'm sorry. Mr. Sinenci, you had...I'm sorry, go ahead.

COUNCILMEMBER SINENCI: I just wanted to ask Mr. Liggett about his...

CHAIR MOLINA: Proceed.

MR. LIGGETT: Yeah.

COUNCILMEMBER SINENCI: Yeah.

MR. LIGGETT: I had a tour given to me by a DLNR person, Skippy Hau who took me to a stream in East Maui where there's a lot of limu. It was really hard to get to, almost couldn't make it on this particular stretch of stream. But he allowed me to take a small sample. I've just been growing it in a Mason jar, it just proliferates in the water. But you can remove about a gram per meter squared of nutrients per day with this technology which is the ancient technology of the limu. And you could scale that to receive or pull out all the nutrients in say Kihei's wastewater for seven to ten acres of basically artificial stream bed. And that size is equivalent to an 18-foot-wide stream running down from the highway in Keokea to Kihei. So, it's just like putting it through a really long stream basically. The limu naturally cleans streams.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

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CHAIR MOLINA: Okay, thank you, Member Sinenci. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Liggett, mahalo for your testimony. We did receive your written testimony with more details of the plan, mahalo for the follow-up. I was just curious, the limu that you're holding there, do you know the name, the Hawaiian name?

MR. LIGGETT: There are probably five different species of limu in this. They live kind of like a reef themselves, and there are also insects and bacteria and diatoms so I don't know the names, I haven't analyzed them. There's a really cool field guide by Alison Sherwood, from UH Manoa, published in 2002, and if you go on my social media reefpowermaui.com, you can see microscopic pictures of the native stream algae and they're beautiful, they're like jewels, so have a look.

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

CHAIR MOLINA: Okay. Mahalo, Member Rawlins-Fernandez. And you know with that question, Member Rawlins-Fernandez, as a person who certainly appreciates limu for its wonderful taste, now you've stimulated my appetite thinking about it, so thank you. Thank you, Mr. Liggett.

MR. LIGGETT: Thank you.

CHAIR MOLINA: Next to testify we have Ms. Lucienne de Naie, followed by Emily Hosseinian.

MS. de NAIE: Aloha, Chair Molina. Thank you so much for all of you being here and thank you, Chair, for hosting this meeting on this important topic. As we see 16,663 people are watching, if not more. Those are just the folks who have been signing the petitions at Sierra Club, Surfrider, and others have been distributing. Those little dots of pictures are our reefs. There's 15,000 little individual pictures of our reefs there. Our reefs are precious and they need solutions. We who have been at this a long time, I'm one of the ones who've been at it since 1999, Hannah Bernard and I have been trying to figure out some way that we can work with our community to find a solution for Lahaina side. Hannah lived there, I didn't, I just surfed there and it was breaking my heart to see what was happening on those reefs. Will the County move forward...say it's after November, say it's...say it's next January and the Supreme Court has ruled and say they said yeah, you know, County of Maui, you don't have to do anything more, you're doing a good job, but nothing new to regulate, just go and do what you're doing. Will we see anything change? I have to say from my experience I doubt it very much. In spite of the fact that this Council has put money in the budget, you know, when you do your research they've put money in the budget before, but it doesn't always like get into the follow-through. Why? Because these are like big system changes and we need the big system-like shift. And I was so gratified to go to the Water Commission the other day and see the vision for these iconic streams in West Maui. The streams we love, the Honokowai Stream, Honokohau Stream, Honolua

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Stream, to see that they would be seen as streams that would have restored flows, mauka-makai, and that this R-1 water was like the key to kind of making that happen. Because right now it's the wasted resource, it's the something that could do something else that is being sent into the ocean. And I did earlier distribute, you might have these three sheets. I don't know if all of you read blueprint plans, but in a nutshell what is going on here is there's the Lahaina Treatment Plant, there's a pipe that exists from the treatment plant to two reservoirs. This pipe used to be used to irrigate the sugar cane fields. When Pioneer Mill shut down in '99, all that water had no agricultural use anymore and so full time all the water went into the injection wells. The injection wells existed but they didn't have to process very much water, because it was really needed by agriculture. It is needed by agriculture now if we want to try to restore, especially Honokowai Stream and we need to look...is that my time over? Wow, that was quick.

CHAIR MOLINA: You can conclude your thoughts.

MS. de NAIE: Okay. Anyway, we really need the vision to put the money towards restoring these reservoirs so that we can have an operating system that can use water in perpetuity and use it on land and free up the water that's being taken from our streams and let it be in the streams and in its place use this water that we consider waste. Thank you.

CHAIR MOLINA: Alright, thank you, Lucienne. Committee Members, questions? Or clarification I should say. Member Paltin, followed by Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Oh, just clarifying, that's the Wahikuli Reservoir, you said...

MS. de NAIE: Actually, these reservoirs it's the Honokowai and the Lower Field 14 Reservoir. The Wahikuli Reservoirs right now are kind of in a suspended state, they're decommissioned. But there is a larger plan, and I might say Hawaiian Home Lands is really hoping they could work with the County and do this, because they need 2 million gallons of water a day and they're surrounding the treatment plant. If they're going to have ag lots for their beneficiaries. And they don't want to take the stream water, they don't want to be part of the problem, they want to be part of the solution. So, Wahikuli is a separate reservoir, they're a little bit further more towards Lahaina side. And those eventually could be incorporated into the system if the County wanted to do what Oahu is doing. Oahu is recommissioning reservoirs and using them to store reclaimed water and stormwater to hedge against climate change, weather pattern changes.

COUNCILMEMBER PALTIN: And do you know the capacity of the Lower Field 14 Reservoir?

MS. de NAIE: It says right here...it doesn't say what it is. I would guess it's a few million gallons a day. It says the Honokowai is 4 million. The Field 140 right below is a

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large-capacity reservoir, it's right below the Honolua Ditch. I've seen that reservoir, I've hiked up there.

COUNCILMEMBER PALTIN: And that one is currently being used?

MS. de NAIE: That one is being used and for...but that one has, you know, the intake there is all bust up so they have to fix that intake. Maui Land and Pine would need to do that. But supposedly they're willing to do that, because they're being sued for wasting water, all the water is kind of like wasting.

COUNCILMEMBER PALTIN: And then so like the Wahikuli Reservoir and the Crater Reservoir, that's --

MS. de NAIE: Those are the decommissioned ones.

COUNCILMEMBER PALTIN: --under the State's jurisdiction to recommission it?

MS. de NAIE: I guess it could be. The CWRM didn't talk about that during their presentation so I'm not sure how far in the future that would be in their plans. But these are on public lands so they're kind of the low-hanging fruit. One's on Hawaiian Home Lands and one's on State land.

COUNCILMEMBER PALTIN: Okay, thank you.

MS. de NAIE: Thank you. And thank you guys for your consideration of doing something besides just letting us talk about this for another ten years.

CHAIR MOLINA: Okay. Lucienne, we have Member Rawlins-Fernandez would like to clarify your testimony.

MS. de NAIE: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. de Naie, mahalo for your testimony. I want to quickly dovetail off of what Member Paltin was talking about. So, the Honokowai Reservoir, the capacity is 4 million gallons?

MS. de NAIE: Uh-huh.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. de NAIE: And my guess is the Lower Field 14 is at least 2 million gallons. It could be more. I've seen it and I don't remember it that well, but, you know, if for instance all of that land was irrigated with these two reservoirs and the ditch system basically. That was the supply for this area.

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VICE-CHAIR RAWLINS-FERNANDEZ: So, the...

MS. de NAIE: There's thousands of acres.

VICE-CHAIR RAWLINS-FERNANDEZ: The pipeline or the arrow that shows from Lahaina Wastewater Treatment Facility to the Honokowai Reservoir, that's a pipeline that already exists?

MS. de NAIE: It already exists and was used up to the 1990s. Now, according to the evaluation that the Water Commission, CWRM we call 'em did, that line might need to be upgraded. So, sections may be, you know, needing to be replaced and some of the pumps, you know, 'cause the water needs to be pumped up there. Some of the pumps would need to be replaced. But there's a list on the third page, I think a little bit more specific. Pipeline, pumps, you know, upgrade intake, transfer it from Maui Land and Pine to Maui County, so these are the kind of the steps on Page 3 that would need to be taken. But, you know, it's time for us to start thinking bigger in terms of what we can do with our water resources and manage them more in a holistic way.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, mahalo. And so, the Mahinahina Reservoir, that's 20 million gallons...

MS. de NAIE: Yeah, that is. That's for the water treatment plant I believe. Yeah. That's, you know, that's our freshwater supply. So, we use water from the Honolua...Honokohau Ditch for a portion of our drinking supply in West Maui, and it goes to that reservoir and that treatment plant and then it's stored in the reservoir, and then it's delivered to the system. But about half of Lahaina is on a private system and doesn't use that source, doesn't use the County system. That's the County drinking water plant. So, different plant, they're near each other but different plants.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, I...yeah, the Honokowai Reservoir and the Lower Field 14 Reservoir are both for ag?

MS. de NAIE: They are, they're for non-potable water. So, this is a non-potable water system.

VICE-CHAIR RAWLINS-FERNANDEZ: Historically used for...okay.

MS. de NAIE: Yeah, exactly.

VICE-CHAIR RAWLINS-FERNANDEZ: Got it. Okay, that's great information. Mahalo for providing that.

MS. de NAIE: Thank you. Thank you all.

VICE-CHAIR RAWLINS-FERNANDEZ: And then so my last question.

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MS. de NAIE: Sorry.

VICE-CHAIR RAWLINS-FERNANDEZ: Sorry. Was just to clarify what you mentioned earlier in your testimony which was that the wastewater facility with the injection well, the injection well was designed to dispose of the excess that wasn't used by Pioneer Mill. Is that...

MS. de NAIE: That is my understanding that, you know, when the plant first went in, Pioneer Mill was always desperate for water. I interviewed, when I did a water research report in 2002, I interviewed some, you know, executives from Pioneer Mill, and they were telling me oh man, we used every scrap of water, we used...reused the mill water, anything we could get because we were always short of water in the dry season. And this water was a godsend, because even though it wasn't, you know, as much development in the '80s as it is now, there was still water every single day that they could use. So, yes, it was used for that.

VICE-CHAIR RAWLINS-FERNANDEZ: So, while Pioneer Mill was in operations then the amount that was being injected into the groundwater...

MS. de NAIE: Probably very minimal. So, when it was a rainy period, yeah, they were injecting, because the fields didn't need water when it was raining. But, you know, it rains in Lahaina, what, 14 days a year or 18 days a year or something, so there are most days the water was being put to good use in those fields. Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you. And then the last...sorry, this is my last question for now. You said the DHHL lots nearby would need about 200 million gallons...

MS. de NAIE: No, 2 million.

VICE-CHAIR RAWLINS-FERNANDEZ: Two million, sorry.

MS. de NAIE: Yeah, 2-0 million.

VICE-CHAIR RAWLINS-FERNANDEZ: I added two extra zeroes.

MS. de NAIE: Yeah, they have a water plan, they actually have a development plan and a water plan, the Hawaiian Home Lands, and I happened to go their presentation a couple years ago and get all the materials. And I went oh man, I'm going to check this out and there it is. They have their Honokowai...Kaanapali lands which surround the water treatment plant. You can see those are all DHHL lands. They wanted to start doing development there both commercial and then house lots by about 2021, according to their plan and they would need 2 million gallons a day of non-potable

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water for landscaping, for fire suppression. I mean imagine if those reservoirs were filled all the time, it would be great for firefighters. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Excellent point. Mahalo, Ms. de Naie, for your testimony. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Seeing no other request for testimony...

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: ... *(gavel)* ... Okay, folks. Okay, thank you, Lucienne. Next to testify we have Emily Hosseinian, followed by Stacy Otomo.

MS. HOSSEINIAN: Hello. Oh, hello. Hi. My name's Emily Hosseinian. I'm 21-years-old and I'm here on behalf of all of my friends, my peers, young people my age just representing what I've heard from everyone that I've talked to and what they want. Everyone on this island is affected by the health of our reefs. We want the decisions that are made about Maui to happen here on Maui, by the people of Maui in order to ensure these decisions are in best the interest of our residents. That is why we urge you to settle the Lahaina injection wells case here. We want to see our County make a shift towards sustainability anyway so this is a golden opportunity for that. The group of you all here have that opportunity to make that decision. And how many people get to say that in their careers that they made such a big impact on the world? We can't get back all of the money we've already spent dragging this case out since I was like 11, but we can stop wasting money to send this to the Supreme Court and use that money towards making changes that are for a better and brighter future. We understand that change is hard, it's expensive, and it's inconvenient, but it's going to be on the backs of young people anyway so why don't we build what they actually want to see happen? And we're willing to put in the work. Overall, this an opportunity for the County to reflect on their responsibility to the community that they govern. It's a step towards accountability and making things right. We should be coming together and finding solutions to protect a brighter future, not be fear mongering and putting a price on the health of this planet and our communities. And that's all, thank you.

CHAIR MOLINA: Okay, thank you very much for your testimony, Ms. Hosseinian. And always nice to see someone from your generation up here giving your thoughts, after all it's your generation that will be carrying the torch of leadership in this community someday. Members, any need for clarification? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here and for representing your generation. I just have one question for you, do you vote?

MS. HOSSEINIAN: I do vote. Well, I voted the one time I could vote.

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COUNCILMEMBER KING: Thank you. Keep doing it.

MS. HOSSEINIAN: Yeah, thank you.

CHAIR MOLINA: Okay, thank you. Members, any other need for clarification? Seeing none, thank you very --

VICE-CHAIR RAWLINS-FERNANDEZ: Chair?

CHAIR MOLINA: --much for...oh, did I hear a voice? I'm sorry, yes, Member Rawlins-Fernandez? Sorry.

VICE-CHAIR RAWLINS-FERNANDEZ: Quick question. Mahalo, Chair. Aloha, Ms. Hosseinian.

MS. HOSSEINIAN: Perfect.

VICE-CHAIR RAWLINS-FERNANDEZ: Did I say that correctly? Sorry, I tried. Mahalo nui for coming to testify and for bringing the voice of, you know, the younger generations. I just wanted to clarify, in your testimony you said that you would speak to your peers about the importance of this issue and the feedback you got from them. Would you share with us some of the feedback that you got from your peers?

MS. HOSSEINIAN: Yeah. A lot of people on different ends of the spectrum, some people are in favor of using this to support permaculture and growing more food on the island and using all that nutrient-rich water for agriculture. Some people just don't want to be seeing it going into the ocean. I work in tourism on a snorkel boat. My livelihood depends on the health of our reefs, everyone on this island does, even our Councilmembers. So, I know all my coworkers and everyone I work with is wanting to see anything that even has a chance of polluting the ocean to be changed.

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

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez.

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: Okay, folks, alright. Please...I certainly do appreciate Ms. Hosseinian's testimony so great to see that. You know as one of nine seniors on this Council...I'll speak for myself. Sorry, Member Rawlins-Fernandez, I know you and a couple others are, you know, are younger than me but I won't get into age. But it's always nice to see who's going to be carrying the torch someday, and after all, we need to instill in our young people, government participation which is something that's near and dear to my heart. Okay, let's now go for Ms. Linda Lysterly who earlier gave up her position.

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So, you're now up. And Ms. Lyerly will be followed by Lori Tsuhako to testifying on GET-26.

MS. LYERLY: Aloha, Council and Chair. Thank you very much for having us. This is my first time speaking before Maui Council. I used to be involved on the Big Island in the '80s and '90s. But wow, it's very confusing huh? I can see how people could be, you know, persuaded to go to the Supreme Court with all this pilikia talk about it. But really what the Ninth Court and the Appellate Court has done is just strengthened the Clean Water Act which is good for us. I mean yeah, we have to get into compliance. But that's like the 21st Century, hello, we need to do this. If we go to the Supreme Court, oh my God, we're airing our dirty laundry to the world. We're going to be looked at like the polluters of, you know, the...Maui. It's horrible. It'll be a really bad PR for tourism and it won't serve. I'm telling you it's going to come back on us. It'll be very bad to do, because if we try to hurt the cornerstone of environmentalism from 1972, it's not right. We can go forward with the Clean Water Act and we are supposed to be...what is the State motto? Perpetuating the land through righteousness, pono actions. You don't work for the Mayor, you work for the people. And bless his heart but he is being really misguided here, and I think his actions could be considered selfish and reckless. And anyway, there could be a class...we might even consider a class action suit against him if this goes to the Supreme Court for breach of public trust, breach of fiduciary responsibility, and on and on. We could figure out more. But I'm willing to organize Lahaina and have lots of help with the rest of the island. So, I hope that doesn't happen please. Please, please. I mean it's the shibai thinking that we have to go the Supreme Court for anything. Really, it's not right. Anyway, I guess I have a few more...aloha to all. That's all I really care about is aloha, aloha aina, and thank you for having me. Thank you.

CHAIR MOLINA: Thank you for your testimony, Ms. Lyerly. Committee Members, any need to clarify Ms. Lyerly's testimony? Seeing none, thank you very much for your thoughts.

MS. LYERLY: Thank you.

CHAIR MOLINA: Next to testify on GET item 26 we have Lori Tsuhako, the Director of Housing and Human Services to be followed by Sierra Ondo. Ms. Tsuhako? Okay, seeing Ms. Tsuhako not here, moving on to Sierra Ondo. Sierra? Not here as well. Okay, moving on. We have Campbell Farrell. Campbell Farrell? Not here? Okay. Next, Daniel Grantham. I know he's here. There he is. Daniel Grantham to be followed by Isaac Moriwake.

MR. GRANTHAM: Boy, I've sure learned a lot today. Good afternoon, Councilmembers and Chair. I know you guys are all plenty tired. I do have one suggestion here that if you're going to consider the cost of doing, what did he call that, land treatment, don't fall for the 150 million, get the plumber back, ask him how much it costs to fix the pipes. You know there's a Honolua Ditch that carries, what, I think 20 million gallons

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a day right now. If we put 5 million gallons of that back in the streams and put the treated water in there, hey, what's...it kind of balances out, right? At least it does in my head. Jeez, I had a lot of things that I was going to talk about. You know I studied this, it's really complex, because there's these acronyms and technical terms and NPDES and CWA and UICs and, you know, essentially what I think it breaks down to is if you pump your waste or put your waste in a hole in the ground, it doesn't...it's harder to prove that you're polluting. So, the conditions are much easier. If you...and any way it gets into waters, and by waters that means streams, rivers, tributaries, anything that gets to the ocean, anything that gets to interstate stuff, anything that gets to where we're growing food for raising...fishing, for interstate commerce, anything like that, then you get what's called the National Pollution, what, Discharge Elimination System which is much stricter because it's so much easier to tell what's going on. And it's so much easier to find out how to...how you can fix it. Now, when you do what they call the UIC, the underground injection thing, I mean it's worked out really well for the frackers hasn't it? I mean you can light your kitchen sink outlet on fire but hey, you know, they're not polluting. You know I mean and this thing with the Supreme Court, you know, they have...they're kind of getting notorious since Trump's been appointing people down there. I did have a little list of supporting pipelines, coal burning, drilling in the arctic wildlife refuge, attacking clean power, fighting a court-ordered ban of a neuro-toxic pesticide--and ain't that great for kids?--approving methane releases, and pushing logging in Alaska's Tongass National Forest, and never, never ever mention the climate. It's crooked.

CHAIR MOLINA: Thank you for your testimony. Time's up. Members, any need for clarification of Mr. Grantham's testimony? Seeing none, thank you very much for your testimony.

MR. GRANTHAM: Thanks.

CHAIR MOLINA: Next to testify we have Isaac Moriwake, followed by Matt Lane.

MR. MORIWAKE: Aloha, Chair Molina, Members of the Committee. I want thank you, especially Chair Molina for taking the time to schedule this hearing and hear this important issue, and taking it to extra innings and just reflecting how critical this is for really not only County of Maui but for the entire nation. I'm here to answer on behalf of Earthjustice any questions or respond to statements regarding Earthjustice and its legal action. But first, I just wanted to share some brief background since some folks may not know me or where I'm coming from. I really feel a special connection to Maui and I've been privileged to work on the Na Wai Eha case for 15 years and practically lived here for long stretches in that case. When we started that case, we were told it couldn't be done, that's not the way things work here in this island, and now as folks know, all four streams are flowing mauka to makai. And we are allied with the County in the Na Wai Eha case. We support the treatment plant, and they support increasing flows to Wailuku River. So, I wouldn't be here if I thought the County was getting a raw deal or if individual homeowners on Maui were going to

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be hurt or harmed. Our clients are Maui citizens. And for the same reason I've just been dismayed at the County's attack against the Clean Water Act not just here at home in Maui and in Hawaii but really for the entire nation. And there's no way you can sugarcoat this, this is not clarifying the law, this is upending decades of consistent law interpretation. And you don't have to believe me, read the County's own briefs. If you stick your pipe into the ground, you're free from regulation. This is the County talking with the Trump EPA, and they say they're in substantial agreement with the Trump Administration. If you saw off your pipe ten feet from the water's edge, you're free from regulation. I mean you can't draw clearer pictures than this. You don't have to get into the terminology. These are the extreme positions that the County is taking before the Supreme Court in your name. Now, instead of owning up to the reality here of what the County is arguing, they're diverting attention to these scare tactics and so I want to just, you know, turn your attention to our testimony and those are two main scare tactics, right, the cesspools issue and then this impossibility of getting an NPDES permit for injection well. Both are totally false and I explained those in my testimony. Again, I am open to answering any questions. But the bottom line with cesspools is one, it's the existing law, you're not supposed to be polluting the ocean anymore. So, if it's directly going in, stop it. And there's actually a general permit that can be issued to cover everybody so they don't have to go through that rigmarole and there will be that protection. Okay. With the NPDES permitting I have examples of permits already issued to wastewater treatment plants that inject wastewater into the ground and then goes into waterways. So, there's example of this. Totally wrong for the County to say this is unprecedented. It's been done and there's example. Anyway, I'm open to questions if any folks are interested. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Moriwake.

AUDIENCE: ... *(applause)* ...

CHAIR MOLINA: Hold on, folks. Okay. Before I turn Mr. Moriwake over to...I know some of the Members want to question you or just have information. Again, if you have questions, please keep it confined to his testimony today only. But I would like to invite Mr. Moriwake when we do get into the deliberative phase of this matter, as a resource like we did at the last meeting so you can ask more questions once we come up with a date for the deliberative process. So, again, so just with regards to his testimony here, Members, any need for clarification? Chair King?

COUNCILMEMBER KING: Thank you, Chair. And thank you for letting us know you're going to ask Mr. Moriwake to be a resource so I'll try to keep it narrow, my questions narrow. The first, my first question is because you talked about NPDES permits for injection wells and other cases, can you just give us a couple of other examples where those permit, that permit actually exists for a similar case?

MR. MORIWAKE: Yes. And we cite those examples in...

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COUNCILMEMBER KING: And use that permit, a general permit.

MR. MORIWAKE: No, because these are major pollution operations, they need to get an individual permit.

COUNCILMEMBER KING: Okay.

MR. MORIWAKE: And just like the Lahaina plant needs to get an individual permit. Small operations like cesspools and what have you, they can be covered by a blanket general permit. But we cite these examples in our written testimony. There's the Tahola Wastewater Treatment Plant in Washington State. There's the Neopit Wastewater Treatment Plant in Wisconsin. I brought a copy of the Neopit Wastewater Treatment Plant permit. It's mostly 23 pages, not including the general standard conditions. And so, the Council Committee might be interested in taking a look at this. But it covers seepage cells in which the pollutants are discharged, and then from those seepage cells it travels to the ground into a nearby creek. How is this any different from the Lahaina injection plant? It's exactly the same basically. And so, this has been done before with regards to wastewater treatment plants. And it has also been done with regards to other polluting operations. So, what they call CAFOs which are these industrial animal feeding operations that have these huge, you know, sewage pits that leach into the ground and to waters. They're covered by such permits. Oil and gas, wastewater treatment facilities are covered by such permits, mines. And so, these already exist and some of them have existed for decades. What the County is doing is wiping this all off the table, essentially deregulating these operations. That's the craziness of what's going on here.

COUNCILMEMBER KING: Okay. Can you share those, that, if you --

MR. MORIWAKE: Absolutely.

COUNCILMEMBER KING: --have those samples of permits for the Council, that would be great. And then my other question is have you seen any alternate proposals at this point? I mean I know we're all hearing that there's going to be one presented but have you been presented with it? Any alternate --

MR. MORIWAKE: Alternate...oh I'm sorry.

COUNCILMEMBER KING: --settlement proposal?

MR. MORIWAKE: If you're referring to this resolution from the Mayor saying that he has another settlement offer, no we haven't seen anything. *Maui News* reported this, still same situation, we haven't seen anything, we haven't...sorry, we haven't even been contacted --

COUNCILMEMBER KING: Okay.

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MR. MORIWAKE: --by the Mayor's Office. And we also sent a two-page letter to the Council just alerting the Council to our objections to that kind of last-minute game play.

COUNCILMEMBER KING: Okay, thank you.

CHAIR MOLINA: Thank you, Chair King. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Moriwake, mahalo for your testimony today. So, you're an attorney --

MR. MORIWAKE: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --and what do you specialize in or what field?

MR. MORIWAKE: Environmental law.

VICE-CHAIR RAWLINS-FERNANDEZ: Environmental law, that's great.

MR. MORIWAKE: And Native Hawaiian law. I mean and especially in Hawaii.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. 'Cause we had a lot of attorneys that came and were not specialized in environmental law and tried to advise us on the law that you specialize in. So, mahalo for being here.

MR. MORIWAKE: Yeah, and can I just point out really quick that when I was in law school and I'm not going to say how long ago that was okay, but we were learning about this established law about how if pollution goes to the ground and into a protected waterway, that's covered by the Clean Water Act. There were court cases on this that we studied. And so, to say that this is some kind of new phenomenon or expansion or shift, it's just totally wrong. I'm sorry, I just have to keep on repeating that because it's true.

VICE-CHAIR RAWLINS-FERNANDEZ: So, it's basic knowledge that even law students would know?

MR. MORIWAKE: Yeah, you study this in law school. Mahesh our new association attorney he's also going to testify but he did his environmental court, the moot court competition on this issue.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. So, you said that places like Neopit have a NPDES permit, what you responded to Chair King's question about. And that our Department of Health could use that as a guide in creating our NPDES application so that the Lahaina Wastewater Facility could become compliant --

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MR. MORIWAKE: Exactly.

VICE-CHAIR RAWLINS-FERNANDEZ: --as far as the NPDES?

MR. MORIWAKE: Exactly. And Councilmembers may be aware that under the Obama Administration, the EPA offered to help Hawaii, so not only the County but also the Department of Health to basically write the permit and figure it out. The only thing that has changed here is the Trump Administration. That's what this entire appeal is riding on.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. And so, for the...there's, like you said there's been a lot of scare tactics, specifically for the cesspools and septic tanks. You know as Councilmembers we're concerned about our residents, we don't want homeowners to be caught up in lawsuits or fined from the Department of Health. And so, in the Ninth Circuit's decision it talks about that it...the water cannot be de minimis and that it has to have the functional equivalent of a direct discharge in order for it to violate the Clean Water Act.

MR. MORIWAKE: Correct.

VICE-CHAIR RAWLINS-FERNANDEZ: Is that a correct understanding?

MR. MORIWAKE: Right. And, you know, supporters of the County taking this to the Supreme Court have said the Ninth Circuit rule is so problematic it opens the floodgates. It actually is more of a protection or a limitation. I mean again these standards, functional equivalent of a direct discharge, more than de minimis. De minimis is basically manini, right, small potatoes. And so, how does this...any of this apply to an individual, private cesspool or septic tank? The bottom line is that those, these rules have existed for decades as I mentioned. If you're polluting the ocean from a point source which can be anything, right, somebody using pesticides or whatever, somebody like with the Lahaina Treatment Plant discharging into the ocean. It's regulated, you're not supposed to do that. And so, this is under both State law and Federal law. So, with regards to cesspools, this law has already existed, where has this been Armageddon of lawsuits with homeowners or neighbors suing each other? This has been the law and will continue to be the law by the way under State law even if the County prevails in its Supreme Court appeal. So, I'm just saying this is the status quo in terms of we're supposed to be protecting our oceans and not discharging pollution into it and yet there hasn't been this doomsday of so-called lawsuits or, you know, just kind of liability. The solution as Lance Collins pointed out, the worst-case scenario he called but I just said a very practical solution is for DOH, first of all it make clear that it's not going to require permits, has no intention. But if it wanted to, again, issue a general permit, and that's something that covers a host of activities of these small individual type of actions that neither DOH or EPA want to bother issuing millions and millions and millions of individual permits for these small type of activities. By the way, I'm sorry I'm going on but this is really important. There's

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already an existing general permit for recycled water use. And I thank actually Chair Molina and the Committee for, in holding these extensive discussions because all this comes to light and we dig further into it and there's no hiding at this point. And we found that general permit already exists covering recycled water use. So, Mr. Lekven, I talked to him outside, I said you know what, you have this...I agree 100 percent with you about 100 percent reuse, and his concern was well, if we go that route, land treatment, somehow is going to run afoul of the Clean Water Act. Already covered by DOH, and that's the kind of proactive solution oriented steps that DOH, the County, all of us together in Hawaii should be taking to move ahead for the solutions, you know, not to fight before the Supreme Court.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez.

AUDIENCE: . . . *(applause)* . . .

CHAIR MOLINA: Okay, folks.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Thank you. Members, any other need for clarification of Mr. Moriwake's testimony? Member Lee?

COUNCILMEMBER LEE: Okay, I have just one or two questions. Did you say that you were opposed to the County withdrawing its appeal to the Supreme Court and you never agreed to it in the first place as a representative of Earthjustice?

MR. MORIWAKE: Right. No, I believe, I remember, Councilmember, Lee you asked that question of maybe one of the community group plaintiffs. And the question is did we agree that the County would take this all the way to the Supreme Court? We agreed the County had the right to take it all the way to Supreme Court, we did not think that was a good idea. But...

COUNCILMEMBER LEE: But you agreed to it in the 2015 settlement...not settlement, but agreement?

MR. MORIWAKE: The existing 2015 agreement recognizes the County's right to take this over the cliff it wants to, if it wants to. And in fact, we don't need an agreement for that. We can't stop any party if it wants to go to that extreme from exercising that right. So, that's what...that's the sole thing that the agreement recognizes. But we are urging you absolutely that that is not the right way to go and now, you know, we're joined by many people of Maui saying the same thing.

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COUNCILMEMBER LEE: So, I understand that but I just wanted to make clear, you know, because of previous testimony that this was included in the 2015 agreement that you recognize that the County may take it to the Court of Appeals for the Ninth Circuit and the Supreme Court, right? It's in that agreement, 2015.

MR. MORIWAKE: That's what I said, yes.

COUNCILMEMBER LEE: Okay, thank you.

MR. MORIWAKE: The County has that right, we're saying the County should exercise their right to drop the appeal.

COUNCILMEMBER KING: Chair, can I --

CHAIR MOLINA: Okay, thank you, Member Lee.

COUNCILMEMBER KING: --have one follow up?

CHAIR MOLINA: Chair King?

COUNCILMEMBER KING: Thank you. So, Mr. Moriwake, you know, I looked at that 2015 agreement and it did recognize the County's right, but in 2015 the Supreme Court was a little different than it is today, correct?

MR. MORIWAKE: Yes.

COUNCILMEMBER KING: So, in 2015 you possibly thought take it to the Supreme Court, we're going to win because I've looked at your case and it's a very strong case. I don't know that this particular Supreme Court that's trying to derail Roe versus Wade and trying to do away with our affordable health care is the same Supreme Court and would necessarily care about all the facts. But I mean that was my feeling back in those days and I wasn't on the Council, that it was a different Supreme Court and we might have had a chance of having the correct decision made. My biggest issue and I believe it's a lot of your supporters is what the Supreme Court looks like today.

MR. MORIWAKE: So, everyone with their own eyes can see what's going on in Washington D.C., with the Trump Administration, can see what our Supreme Court looks like, and can make their own independent judgment whether it's a good idea to go to the Supreme Court and what kind of ruling we can expect. We believe, I'm talking about Earthjustice now, that we have a strong case, and I invite all the Councilmembers to, if you haven't read the briefs, at least the main briefs, please, I'm happy to share the briefs from the County community groups, I mean and the Maui community groups with you. It is a strong case not only based on the moral strength of protecting the waters, aloha aina, and the purpose of the Clean Water Act, but fundamentally based on the plain language of the Clean Water Act. You folks are sort

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of aware of how the legal arguments are lined up, it's the Maui community groups that are trying to enforce the Clean Water Act as written, and Maui County and the Trump Administration saying no, you need to add one more word in the Clean Water Act to say only discharges directly into waters. Add the word directly, are covered by the Clean Water Act. So, we think we have a very strong case and if it goes all the way we're hopeful that the court will uphold, you know, its legal principles and uphold the Clean Water Act. But even so that we think we're going to win, we think it's better for us to work it out at home and not display this whole controversy, Maui in front of the whole world, Maui's pollution problems, Maui's alliance with the Trump Administration. Wouldn't it better just to resolve this? And that's my sort of mystery, why, how has it gotten this far? But we have a chance to make it right, right now.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Thank you, Chair King. Member Lee?

COUNCILMEMBER LEE: Yes, I just wanted to ask you, you realize that our treatment plant treats the water to the tertiary level in Lahaina?

MR. MORIWAKE: Yes. Well, near tertiary, I'm not sure, there's a little bit of an argument whether it's truly tertiary or not, but as many people have recognized across the spectrum that the Lahaina plant does a lot of treatment to this wastewater.

COUNCILMEMBER LEE: Well, not just...it's at the highest level as far as we're concerned. The other thing is we've invested millions of dollars to continue to find, you know, resolutions to the problems that we've had in West Maui and South Maui. So, you know, I think people need to give the Council credit for having the foresight to assist the Administration in solving some of these major problems.

MR. MORIWAKE: Absolutely. And if it's not clear that we're giving you credit for taking a proactive stance particularly in this latest budget, let me make that clear right now. You know we appreciate that foresight and that vision. It has to follow through as Ms. de Naie pointed out. And all the more so, if we're moving ahead, if we're turning a page, why do we need to blow things up at the Supreme Court?

CHAIR MOLINA: Thank you, Member Lee. Members, any other need for clarification? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you for being here.

MR. MORIWAKE: Thank you.

COUNCILMEMBER SUGIMURA: So, I was just wondering, so if we decide to settle today, what is the impact to us and the residents of Maui County?

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MR. MORIWAKE: Status quo as it's been for decades which is that any pollution going into the water should be regulated. So, if we're talking about the Lahaina Treatment Plant, we turn to getting that permit that has been delayed for so many years. And we have pledged to work with the County on that. The pending settlement agreement says so long as we're moving forward in good faith, we're not going to hassle the County with more lawsuits, more threats of penalties, or anything like that. In fact, if you look at the whole history of this, we didn't seek any penalties, even when this was hot and heavy in litigation, what did it amount to, \$2.5 million total directed to the solution. So, that's the same spirit that we could continue with the Lahaina plant if the appeal was dropped tomorrow. And then, you know, you can talk about all the other sort of background noise about cesspools and things like that, but as I already mentioned there's ways to address that that don't involve intimidating, you know, the good Maui citizens that are just trying to follow the law anyway.

COUNCILMEMBER SUGIMURA: There are 70 million gallons of waste that goes, that are created by the cesspools, and I'm particularly concerned about cesspools and septic just as my friend from Hana must be because our communities have, that's the way that, you know, we take care of our waste. But what would happen to that as an issue, the 700 [sic] million gallons of waste that's created by the cesspools? Especially, well, I should say especially those closer to the ocean, the shores?

MR. MORIWAKE: Again...

COUNCILMEMBER SUGIMURA: Based upon your position.

MR. MORIWAKE: Yes, thank you. Again status quo which is that they're banned by 2050, that there're increasingly strict controls on these types of systems, and if properly installed, these systems are not supposed to pollute the environment, right? So, I would venture that, you know, if they're following, if everyone is following the rules, there's no pollution of the environment through these systems, and they're being phased out. But if there's any...sorry.

COUNCILMEMBER SUGIMURA: If I could?

MR. MORIWAKE: Yes.

COUNCILMEMBER SUGIMURA: Because Upcountry we've been designated the top priority for the whole State so there's concerns about the cesspool/septic conversion. I want to just make that statement.

MR. MORIWAKE: Okay.

COUNCILMEMBER SUGIMURA: The other thing is that how are we to comply with the law and get the NPDES permit when right now we've been trying to as a County and haven't been able to secure it? So, that is the problem that we're having with the State

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of Hawaii Department of Health, the EPA, right, and administering this so that we can get the proper permit --

MR. MORIWAKE: I appreciate...

COUNCILMEMBER SUGIMURA: --and the proper guidelines. And the jurisdictions that you mentioned earlier that were able to get the...was it three that got the...

MR. MORIWAKE: Two specific examples cited in our testimony.

COUNCILMEMBER SUGIMURA: What states are they please?

MR. MORIWAKE: Wisconsin and Washington but these were actually issued by EPA.

COUNCILMEMBER SUGIMURA: Right. So, EPA would take over that and not Department of Health?

MR. MORIWAKE: No, in Hawaii as you know the authority to administer the Clean Water Act has been delegated to the Department of Health of the State.

COUNCILMEMBER SUGIMURA: So, because of this disparity in the law which is my concern and for the, my residents still is that I think that there is the EPA who would have the kuleana so to speak of being able to regulate this. And that...what did the Ninth Circuit Court decision do?

MR. MORIWAKE: I'm sorry, I need to clarify that. In Hawaii it would be the Department of Health that would be in charge of administering any kind of permitting.

COUNCILMEMBER SUGIMURA: And the Department of Health hasn't been able to do it, that's the problem, right, so that's why we're in this situation. They have not issued us the NPDES permit if they were allowed to do by it EPA. So, that's the problem right?

MR. MORIWAKE: I understand that's a problem, things are in limbo right now, but that's why I'm saying if we just stop this lose-lose situation at the Supreme Court and focus on the win-win of getting that permit and working together at home then, you know, we can get the Department of Health's attention and get this done. Now, specifically on that permit with regards to the Lahaina Treatment Plant, the way it stands right now and in our previous testimony to this previous Committee meeting, sorry the previous Committee meeting on May 20th, we attached all the correspondence. The way it stands right now is that Department of Health is waiting on the County to give it further information so it can continue processing the permit. And the County has now asked for three or four or five extensions at this point year after year. So, the ball's actually in the County's court on the permitting with DOH. And I'm not making this up, it's all in the correspondence if you want to just check.

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COUNCILMEMBER SUGIMURA: So, thank you. I'll double check with the Department.

MR. MORIWAKE: Thank you.

CHAIR MOLINA: Okay, thank you, Member Sugimura. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Mr. Moriwake. You mentioned there was an already existing permit for like an overlay, can you explain that again?

MR. MORIWAKE: Right. So, I think you're referring to the general permit with regards to recycled water use. So, the Department of Health has already issued a permit that covers on a blanket basis any use of recycled water in the State. And all you need to do is make sure you follow the rules in the permit, follow the conditions, and you're essentially covered. And there's all kinds of general permits, there's one for pesticide uses. So, here's another example, it's a point source, you have the Roundup tank and if you're shooting it into the water or a stream or ocean, you're violating the Clean Water Act technically. But there is a general permit that DOH has issued that covers it so long as you follow the conditions. And by the way, that general permit you don't even have to tell DOH anything, you don't even have to issue any kind of notice or anything like that. But these are the type of proactive solutions for these type of individualized type of applications and individualized pollution sources that the Clean Water Act already allows and contemplates and it's already established.

COUNCILMEMBER SINENCI: Who is the applicant of those general permits?

MR. MORIWAKE: So, every individual user, every individual polluter. But the issuer of course of the general permit is Department of Health right?

COUNCILMEMBER SINENCI: Okay.

MR. MORIWAKE: Yeah.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay, thank you very much, Mr. Sinenci. Seeing no other need for clarification on your testimony, I want to thank you, Mr. Moriwake, for going through this interrogation session at this point. And I'm sure there'll be more questions for you once we get into the deliberative phase of this. So, thank you for making some clarifications.

MR. MORIWAKE: Thank you so much.

CHAIR MOLINA: Okay.

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AUDIENCE: . . . (*applause*) . . .

CHAIR MOLINA: Okay, folks. . . . (*gavel*) . . . I'll tell you what, folks, I'd be a millionaire if I got a nickel for every time I've had to ask you to refrain from your applause but thanks for trying anyway, appreciate that. It's been a long day, trying to shed some light on things. Okay, next to testify on GET item number 26, our 49th testifier today, Matt Lane to be followed by Juan Rivera. Matt Lane? Okay, seeing none, okay. Mr. Rivera, Juan Rivera on GET-26 to be followed by Liz Foote.

MR. RIVERA: Good afternoon.

CHAIR MOLINA: Aloha.

MR. RIVERA: My name is Juan Rivera. I am the Design and Construction Supervisor for the Wastewater Reclamation Division. Basically I manage the Capital Improvement Program for Wastewater. I submitted written testimony but this is kind of a synopsis, the two-minute version of it. Getting rid of the injection wells is a really bad idea. Injection wells we've been using since the 1970s, they are the preferred way to get rid of the treated effluent of our plants. They're really cost effective and relatively easy to maintain because they work by gravity. They used to treat less effluent back in the '70s. They treat...they handle more now because of the growth in the area. But in the years since they were built, the treatment processes have improved substantially, technology to improve the wastewater quality has improved significantly, specifically at the Lahaina plant. But right now, we just commissioned earlier this year a new step-feed aeration basin which is automatic controls measuring dissolved oxygen and ammonia, to fine tune and optimize the process. We're also just commissioned last month a new clarifier to remove solids from the water. And we have four now as opposed to the three we used to have for the last 20 years. And we've been proactive researching injection well technology. My colleague Craig Lekven was here earlier, he kind of talked a little bit about it. These are all the reports he's wrote for us, and I think I shared one of them with Member Sugimura. Sugimura, thank you, sorry. And I want to talk a little bit about the infrastructure and also environmental cost of implementing these solutions. And I did a little exercise, you know, I'm an engineer, I can calculate things, I pull out my old physics books. In the, take for example the case of the Lahaina, everybody keeps talking about use the water, use the water. Well, you have to pump the water. That's an inevitable part. You have to pump the water up the mountain. So, what's the cost of pumping the water? Well, you need two 125-horsepower pumps running continuously. Now, if you do the equivalency between horsepower, kilowatt hour, and the cost of kilowatt hour, and the amount of CO2 required, that's produced by one kilowatt hour, well, basically it translates into a cost of \$571,000 a year just to pump the water and also produces 800 tons of CO2. It's almost one pound per kilowatt hour of CO2. So, what are you trading? What are you trading? That's what I want to raise the alarm here to this Council. Please look at everything, look at all the facts, because you may be shooting yourself in the foot by, you know, removing a little bit of nitrogen from the reef, but you're putting 100 tons of

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CO2 in the atmosphere exacerbating climate change. And that's only one plant, we have four plants. So, I want everybody to take this into consideration when making this decision. Thank you.

CHAIR MOLINA: Thank you, Mr. Rivera. Members, needs for clarification? Member Lee?

COUNCILMEMBER LEE: Hello, Mr. Rivera. You're the first person who has come up to the microphone in favor of injection wells. Anyway, in the Lahaina plant in your testimony, your written testimony you talk about no existing regulatory framework.

MR. RIVERA: Well, that's for...

COUNCILMEMBER LEE: Can you explain what you mean?

MR. RIVERA: Yeah. Well, that's for the study we did for Lahaina direct potable reuse, and one of the concerns about treating the water to the level that can be used for drinking and mix it with the water at the Mahinahina plant is that right now there's no regulatory framework in the State of Hawaii to what the quality of the water should be. So, there's no law that says this is how you do it or how it should be done, how it should be regulated. So, that's one of the big concerns.

COUNCILMEMBER LEE: Mr. Rivera?

MR. RIVERA: Yes?

COUNCILMEMBER LEE: Okay. So, are you in your capacity a person who would be applying for a permit?

MR. RIVERA: No. That would be up to the Department.

COUNCILMEMBER LEE: Oh, okay. Alright, thank you.

CHAIR MOLINA: Okay, thank you, Member Lee. Any other need for clarification of Mr. Rivera's testimony? Member Rawlins-Fernandez?

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

MR. RIVERA: Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony.

MR. RIVERA: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: So, in your testimony you said that injecting the water into the groundwater, the treated effluent into the groundwater is the preferred way to

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dispose of the treated effluent. But isn't it true that it wasn't initially designed to be the preferred and primary way to disposing of the treated effluent?

MR. RIVERA: The Lahaina plant was actually designed to have ten injection wells originally, only four were built as in the plans. And when I say the preferred method of effluent disposal is because it is the most cost effective at least here in Hawaii. I agree with my colleague, colleague Craig about the outfalls, I'm also in favor of the outfall, because I think if you treat the water to a high quality and extend the outfall sufficiently enough into the ocean, you can take care of the problem of the reef and you also take care of all the operational and maintenance that a water that...that a system that pumps water uphill come with. Because again, every time you have to work against gravity, every time you have to work against friction, you're incurring an environmental cost. And that's something that seems to be forgotten in this big discussion, so.

VICE-CHAIR RAWLINS-FERNANDEZ: You're supportive of constructing an outfall as a better method of disposing of the treated effluent kind of tells me that as a wastewater technician/engineer, your testimony leans more toward that perspective alone. So, when you spoke to us about 135-horsepower pumps and all the CO2 and the cost for electricity, the assumption that you're making is that the County would then purchase diesel or fossil fuels to run these pumps and not use PVs?

MR. RIVERA: Well, the MECO...

VICE-CHAIR RAWLINS-FERNANDEZ: It's the assumption that you're making.

MR. RIVERA: The calculation I did, and again looking at the EPA websites or sources for the average production...the average CO2 generation for kilowatt hour, it's 1.6 pounds per kilowatt hour. However, MECO produces about 60 percent...sorry, 40 percent is renewable, so what I did in my calculations, I multiplied that 1.6 by .6, that's where I came up with the number 1 pound of CO2 per kilowatt hour. That takes into account the renewable portion.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, the assumption that you're making is that we would purchase it from MECO and not generate our own. Mahalo.

MR. RIVERA: Well, generating in our own, solar panels are great, but honestly running this big pumps and running the centrifuges and the aeration system of the plant --

VICE-CHAIR RAWLINS-FERNANDEZ: Right.

MR. RIVERA: --you cannot do it with solar, you just can't.

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

MR. RIVERA: You just...

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Seeing no other need for clarification of Mr. Rivera's testimony...Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Nice to see you. So, I wondered then in the question for today, settle or go to Supreme Court, do you have an opinion about that? I think you...

MR. RIVERA: We should go to the Supreme Court. Yes, ma'am.

COUNCILMEMBER SUGIMURA: Okay, thank you.

MR. RIVERA: Yes.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Okay, thank you, Member Sugimura. Thank you very much, Mr. Rivera.

MR. RIVERA: Thank you very much.

CHAIR MOLINA: Thank you. Continuing with testimony, we have Liz Foote, to be followed by Terez Amato. And before Ms. Foote gives her testimony, Chair was kind of just getting a pulse feel for your availability later tonight. Something to think about, we have roughly 45 more sign-ups. Assuming all 45 are here, an average of 3 minutes, the Chair's simple mathematical calculation is 135 minutes, looking at 2 hours and 15 minutes after a 1-hour dinner break say at 6 o'clock. So, Members, are we okay to at least proceed to at least at a minimum till 9:00 p.m. tonight with quorum? Okay, I see tentative nods. We'll discuss that at a later point but just something for you to think about as we progress through the evening. Okay, Ms. Foote --

MS. FOOTE: Thank you.

CHAIR MOLINA: --thank you for your testimony.

MS. FOOTE: Thank you, everyone. I'm Liz, I'm an individual testifying. Okay, imagine your team is playing in the Super Bowl, it's the first quarter, you're behind five touchdowns, it's 35 to 0, it's not looking good. And then with a minute left in the quarter your team scores a field goal. You're now on the board and the momentum has shifted. You're still down but you know if you keep playing like that, you can win, you just have a long way to go. So, this obviously isn't about football, it's a story of the past ten years of the Kahekili Herbivore Fisheries Management Area. We just scored those first three points. Reef recovery take a long time. And yes, there have been some encouraging signs of success in the KHFMA but consider where we started. So, I'd like to use my

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time today to address two specific misperceptions about the story of the Kahekili Reef, Haena Nui. Okay, I'm not going to get into the Clean Water Act, the legal implications 'cause that's not my expertise. I'm trained as a scientist and as an educator. Part of my job is focused on outreach about the KHFMA and I feel like I've failed. So, this is much, this is just as much of an apology as it is testimony. So, with this lawsuit I'm seeing a lot of messaging suggesting that the reef is essentially fine, it's recovered. Those environmental groups are using old photos to make their case, so this is why I feel like I've failed. You know there's a lot of scientific nuance that needs to be understood. So, if I can convey just these two things today, I'll feel like I'll have failed a little less. Okay one, we're in the first quarter here, when you see those latest statistics that show parrot fish biomass has increased by 331 percent, insurgent fish by a mass by 71 percent. Yes, that's great, it's an encouraging sign, early sign of recovery, but again consider where we started from a very degraded baseline over ten years ago when we were still down by 35, but we're still down. Recent research has shown that it would take 30 years for the fish that we have there now to graze down all the algae. So, this is why we need to continue protecting the herbivores in the area and continue to take action on land to reduce sediment and nutrient pollution. Okay two, my next point has to do with the algae affecting the reef. Yes, photos from the early 2000s have been used in association with the lawsuit. Those photos of a species of green seaweed called Cladophora that was blooming at the time, it's very noticeable and was an early sign that something was wrong; however, that's not the only type of algae that responds to nutrients and harms the reefs. There's a very less showy form of algae out there called turf algae. It's brownish-greenish and it looks like a carpet on the reef. It has the same impact as the Cladophora, it can outcompete and kill coral. This is the type of algae you'll see if you visit the reef today. There's a still a lot of it and the fishes and urchins aren't eating enough of it. So, that's the scientific nuance we've apparently failed to convey. The reef is doing better but it's not doing well. So, the overall message I'd like to leave you with today is that resource management actions do seem to be working, protecting herbivores, increasing reuse and UV. The reef is showing...last sentence, the reef is showing promising signs of resilience and recovery, but it's still degraded and still struggling. We need to acknowledge this, continue to support management initiatives, and recognize the fact that we still have a long way to go. So, please settle.

CHAIR MOLINA: Okay, thank you very much, Ms. Foote. And I appreciate the football analogy as well. Committee Members, questions or clarifications? Ms. Paltin, followed by Chair King.

COUNCILMEMBER PALTIN: Hi, thanks for being here today. I feel like this is like, you know, who knew where we were going to be ten years ago, but I think, you know, ten years ago, we were on the opposite side. I didn't want to ban herbivore fishing. And I guess I was wondering if you remembered why?

MS. FOOTE: Why you didn't want to ban it? No, tell me.

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COUNCILMEMBER PALTIN: Because we needed to go to the source of the problem.

MS. FOOTE: Yes, absolutely. You're right, and what Robin Knox said earlier this morning really should resonate with everyone. We shouldn't have to do these fisheries management actions, we should be taking care of the land and the ocean at the same time. We do still need both though because of where we're at.

COUNCILMEMBER PALTIN: And it hasn't been ten years of just letting it come back, right, I mean it's been ten years of --

MS. FOOTE: The KHFMA...

COUNCILMEMBER PALTIN: --hard work.

MS. FOOTE: Yeah, it goes way far back. Research has been going on, community volunteers have been engaged, folks here have been on the forefront, you know, legal as well as volunteers. So, yeah, the KHFMA was established ten years ago, 2009. In fact, I attached...

COUNCILMEMBER PALTIN: You have the birthday party every year and...

MS. FOOTE: Yes, we are having our annual celebration, the Ridge to Reef Rendezvous this October the 26th. I have a longer version of my testimony that everyone should have with this flier. We would love to have you join us. In fact, part of the event there'll be a reef tour so you can see examples of resilience, promising signs as well as degraded reef where it's dead. And so, that's part of the larger story and that scientific nuance that we really need to be conveying. So, we invite everyone to come out. You'll get to meet all these groups, Ridge to Reef Initiative partners, they'll all be there, they can share their stories and their work and engage folks. So, it's a great opportunity for folks to see for themselves. Bring a mask, get in the water, we'll show you all the stuff we've been talking about.

COUNCILMEMBER PALTIN: But basically it's not just recovering, it's because of a lot of coordinated efforts.

MS. FOOTE: Yes. There's...

COUNCILMEMBER PALTIN: And it's not...nothing is wrong like how some of the kids were saying today.

MS. FOOTE: Yeah, I think the kids think there are other things and not the one thing that we're talking about today but it is really everything.

COUNCILMEMBER PALTIN: Okay.

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MS. FOOTE: A lot of impacts, land and ocean.

COUNCILMEMBER PALTIN: Thanks.

CHAIR MOLINA: Okay, thank you, Member Paltin. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Ms. Foote. So, I'm just trying to get a better sense of...this is your organization, West Maui Kumuwai?

MS. FOOTE: It's a collation, so it's sort of like a...

COUNCILMEMBER KING: Okay. Okay, but you're doing some work with them and directly with the reef. So, I have a question for you and if you can't answer it, it's okay, but because I'm looking at your flier here and you talk about visiting the haunted reef. And I had this question because I know there's fish there that have been eating the algae blooms, and the algae blooms are growing on the effluent from the wastewater treatment facility. Does that make those fish a danger to eat?

MS. FOOTE: No, no, they're fine.

COUNCILMEMBER KING: Okay, 'cause they can process it and it doesn't matter?

MS. FOOTE: Yeah.

COUNCILMEMBER KING: So, but it's still banned?

MS. FOOTE: It's still banned?

COUNCILMEMBER KING: The fishing is still banned there?

MS. FOOTE: The fishing specifically for herbivores. So, the fish as well as sea urchins, and no fish feeding either, so keep the tourists from giving them food. They should be eating the algae.

COUNCILMEMBER KING: Okay. And there's no...nothing on the horizon for bringing back the fishing until...what's the benchmark that we have to reach?

MS. FOOTE: Oh, that I can't really speak to but --

COUNCILMEMBER KING: Okay.

MS. FOOTE: --yeah, that might be for the...

COUNCILMEMBER KING: Well, because you're...if you're talking about the fact that whatever...wherever we're at today is not relevant, because it's starting from such a

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low benchmark that's way below where it should be, at some point, I mean we must know, is there any knowledge about where that benchmark is that is the point where we can say okay, now it's healthy, now we can...

MS. FOOTE: Yeah, probably. As far...that research, we can send articles that show the grazing capacity of the fish and the biomass that's represented by out there now. So, yeah, maybe in the future if there were sufficient herbivores grazing and we had sufficient action on land to reduce the nutrient input and the reef was doing a lot better, you know why not, right? So...

COUNCILMEMBER KING: Okay, we just don't know where that...

MS. FOOTE: We don't...

COUNCILMEMBER KING: Okay.

MS. FOOTE: Yeah, not that I can speak to.

COUNCILMEMBER KING: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Chair. Seeing no other...oh I'm sorry, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Liz, for being here. We received testimony from Darla White and she mentioned that this particular reef is the focal point of the Hawaii Coral Program and the US Coral Reef Task Force. Do you know anything --

MS. FOOTE: Yes.

COUNCILMEMBER SINENCI: --about those organizations?

MS. FOOTE: Yes. And Darla is actually over there and she's going to be testifying later so if you had some specific questions for her too. But yes, it's a large effort. I mean this has been a priority reef because of the degradation and this is the main reason why is over the years.

COUNCILMEMBER SINENCI: And have these organizations put money into restoring the reef?

MS. FOOTE: Yes, there has been significant Federal funding into...well, restoring in terms of various types of action on land as well as the --

COUNCILMEMBER SINENCI: Okay.

MS. FOOTE: --KHFMA.

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COUNCILMEMBER SINENCI: Thank you.

MS. FOOTE: Sure.

CHAIR MOLINA: Okay, thank you very much, Mr. Sinenci. Seeing no other need for clarification, I want to thank you, Ms. Foote, for your testimony. Next to testify Terez Amato. Terez Amato here? Not here? Okay, moving on. Gerry Dameron? Gerry Dameron, to be followed by Rita Massey.

MR. DAMERON: Aloha. Thank you, Chair. Thank you, Council. We have heard from many concerned citizens, many representatives of environmental and community organizations, and we've heard from one environmental scientist, one environmental lawyer today with some very intelligent, very practical, very common sense, and very heartfelt expressions of what they're asking the Council to do. And as you see, most of the testifiers like myself are asking us to spare Maui the embarrassment and to withdraw and settle our case so that we can settle this and handle our environmental challenges that we've had for so many years. Many people outside of Hawaii ask me why in the world has it taken Maui so long to pay attention to these problems with injecting pollution into our nearshore oceans? Now, some people ask the \$4.3 million that's been spent on this, how much of that money has gone directly to corruption counsel...I mean excuse me, I mean Corporation Counsel. How much of that \$4.3 million has gone to that group? When I speak with my colleagues around the country, I'm involved in environmental action and something that's called the lucrative sustainability movement for cities and counties to undertake projects that not only solve environmental problems but actually make money, something that fiscal conservatives and liberal environmentalists both can agree on for the first time ever. The other issue seems to be that many of the lawyers who have shown up today and in my experience when lawyers show up, somebody is usually paying them. Okay. One of the questions remains that why are we not addressing the actual pollution? Well, there's been lots of complicated answers and questions that seem to make this a complex or nuanced issue. But I'm here to say that on January 2nd, I addressed the Council as a citizen who appreciated that you guys are here with your pledge to protect the people of Maui and that means protecting our aina. And I believe that this very complex situation is going to be a very straightforward issue in the next election. It's going to be what County Council people voted for the essence of protecting the environment, protecting Maui citizens, and which of them turn their back on the situation and did not protect and allowed us to continue and maybe go to the Supreme Court and have this affect a wide, wide swath of our culture. So, on November 8th, next year, please remember your decision will be remembered.

CHAIR MOLINA: Thank you, Mr. Dameron. Members, any need for clarification? Thank you very much for your testimony, sir. Next to testify we have Rita Massey to be followed by Anahera Tevaga.

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MS. MASSEY: Aloha, honorable Council. I gave up what looked like a really glorious morning to paddle on the ocean to come and testify in defense of our ocean. No regrets. I think that one thing that we have to look at is where all the influence is coming from that's influencing where we're going with all this and what information, where are you getting your information. The Supreme Court decision that would be in favor of Maui County that would then say that the groundwater is exempt from the Clean Water Act, pretty much gutting the Clean Water Act would be a total windfall for a lot of these polluting industries and the mining and the extraction and coal and oil and whatnot. And this has huge implications, not so much here but hugely on the continent. And seeing that I am a transplant from there, I do have concerns about the well-being of the environment there. So, obviously this is a way for these polluters to keep a lot of money in their pockets instead of being responsible for what they're creating in their activities. And my questioning here is how is this then influencing how people here are making their decisions? Because money talks. I think there's other things I wanted to cover that I don't really feel is that important. I mean definitely a lot of people have gone already over that the cesspool issue is...that the Department of Health has handled it with a letter to the Councilmembers, that our homeowners will not have to worry if we are to settle the case. I also want to mention too is that we have...and it was very well spelled out by the attorney from Earthjustice who just spoke, that there's been several former EPA officials that have been from both Democratic and Republican administrations who have shared amicus briefs in support of our settlement, because and...in the, stating that the Clean Water Act does include groundwater. There are solutions and I think we need to look at it and be willing to be a little more creative, maybe even outside the box. We have to look into the future. Our...we're growing, more and more people, we have more and more effluent to deal with. So, that's all I have to say about that. We need to move forward with this.

CHAIR MOLINA: Okay, thank you very much for your testimony, Ms. Massey.

MS. MASSEY: Yeah, thank you.

CHAIR MOLINA: Committee Members, any need for clarification? Seeing none, thank you very much for your testimony. Moving on to our next testifier, we have Anahera Tevaga, to be followed by Deborah Aweau.

COUNCILMEMBER PALTIN: Oh, Chair, Anahera was with the --

CHAIR MOLINA: Oh.

COUNCILMEMBER PALTIN: --Kula Waena O Lahaina, the first...she was a student.

CHAIR MOLINA: Okay. Oh, she's no longer...

COUNCILMEMBER PALTIN: Yeah.

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CHAIR MOLINA: Ms. Alish is not here? Oh, Anahera, I'm sorry you're talking about. Okay, so Ms. Tevaga is not here as mentioned by Member Paltin. Thank you for that update. Okay, we have Ms. Deborah, and please make sure...remind the Chair if he's mispronounces your name, Deborah Aweau.

MS. AWEAU: Aweau.

CHAIR MOLINA: Aweau. And...okay, and following Ms. Aweau will be Hana Losano. Go ahead.

MS. AWEAU: Okay. My name is Deborah Aweau and I'm here to support moving forward with the lawsuit and taking it to the Supreme Court. I work for Wastewater so I know a lot about wastewater and wastewater reclamation, and I also have a masters in chemical oceanography where I studied the bio-geochemical cycling of nutrients and pollution in coastal waters. And I want to say that this isn't a question of protecting or destroying our reefs as many of the previous speakers have made it out to be. It's a legal question and the outcome of this question determines whether you as County Council are able to make the decisions about how we spend our money, or whether we're mandated to spend it in a way that may not necessarily be the way that protects our reef the best. And what I want to point out is to reinforce what Craig Lekven was saying is that in our understanding, the, because the Clean Water Act wasn't meant to groundwater, the zone of mixing is what normally, like if you have a wastewater treatment ocean outfall, you have a zone of mixing. And that's an area where after the outfall, there is a certain amount of dilution, and at the outside of that zone of mixing, you need to meet the clean water ocean standards. Because we're going into the aquifer, you can't delineate or quantify what the water is doing, and not to mention the groundwater itself isn't meeting the ocean's, clean ocean standard. So, I could pour drinking water down that aquifer and it's not going to meet it. So, basically if we don't go through with this regulation, we're like outlawing our injection wells if we don't go through with this to the Supreme Court. And by outlawing the injection wells, the costs are going to be great. As he, as Craig said, you know, we don't have a cost yet if they don't let us do the land application which they may not as part of the judgment against the County. So, the, there are a lot of potential unintended consequences that nobody's thought about with this lawsuit. And the first is like everybody is talking about the cesspools and that being fear mongering. But the whole point I think is why people are worried about them going after cesspool owners is we're worried about financial hardship for our voter base and for our taxpayers. And this regulation could increase our sewer user fees so much that it causes financial hardship for a lot of people. I also want to talk about quickly unintended consequences. We were forced to chlorinate the water going to the injection well. If we don't think about what we're doing really well, it's damaging. We ended up killing all the denitrifiers in the aquifer and we could see that in the seep study when the nitrogen went up. So, there is electrical costs. We're going to increase the, like our global climate and add a lot of carbon into the atmosphere potentially unnecessarily. There was no ever...okay.

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CHAIR MOLINA: Thank you very much, Ms. Aweau. And just a quick clarification, so you work in the Wastewater Division --

MS. AWEAU: Yeah.

CHAIR MOLINA: --and your title is again could you state for the record?

MS. AWEAU: Maintenance Coordinator.

CHAIR MOLINA: Maintenance Coordinator. Okay, thank you. Okay, we will first recognize Member Lee, followed by Member Kama.

COUNCILMEMBER LEE: Mr. Chair, did we get her testimony in writing? Do you remember?

CHAIR MOLINA: I'm not sure, we've had thousands of...

COUNCILMEMBER LEE: Maybe you could send it to us.

CHAIR MOLINA: Yeah.

MS. AWEAU: Okay, yeah.

COUNCILMEMBER LEE: Thank you.

CHAIR MOLINA: Okay, thank you for honoring that request from Member Lee. Member Kama? You didn't have your hand up? I thought I saw somebody's hand up, go up there. Okay. Maybe it's just a long evening, I'm seeing things. Okay. I saw a hand just go up right now. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Aweau. Mahalo for your testimony today. So, I have a question. My question is did you read the Ninth Circuit's decision on this case where it says that it wouldn't outlaw or ban the injection wells, that the injection wells would need an NPDES permit like they have in Washington and Wisconsin?

MS. AWEAU: Yes, but the issue is we could never meet an NPDES permit, because there can't be...there's no zone of mixing with groundwater injection. And so, while they're not outlawing an NPDES for wastewater into an injection well, it's impossible to do because you don't have that area of dilution like you would with a typical point-source discharge into a navigable or water of the United States.

VICE-CHAIR RAWLINS-FERNANDEZ: So, I guess my understanding is that the EPA, Department of Health would work with the County to figure out how to make the

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NPDES permit work for us. But it sounds like your understanding is not the same as mine.

MS. AWEAU: Yeah, no, it's not.

VICE-CHAIR RAWLINS-FERNANDEZ: Alright, mahalo, Ms. Aweau. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you very much, Member Rawlins-Fernandez. Member Sugimura, followed by Member Lee.

COUNCILMEMBER SUGIMURA: Thank you. So, can you finish off your thought on that from the previous question? Why would we not be able to get an NPDES permit?

MS. AWEAU: So, like I was saying with the point-source injection, you have till the outskirts of the dilution area to meet clean water standards. But because at a injection into a injection well, you don't know where the water is going, you can't measure that dilution, there's no way to delineate where all the water is going and to quantify where every little bit is going. So, you can't regulate it that way. And so, therefore it's going to have to be at its, you know, clean water standards when it hits that injection well. And that's why as Craig was saying those SAT basins also wouldn't work according...as our interpretation is the SAT basins that he was talking about won't be legal with this ruling stance.

COUNCILMEMBER SUGIMURA: So, you support going to the Supreme Court --

MS. AWEAU: Yes.

COUNCILMEMBER SUGIMURA: --to get this clarified?

MS. AWEAU: Yes.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Alright, thank you, Member Sugimura. Member Lee, followed by Chair King.

COUNCILMEMBER LEE: Okay, I think somebody mentioned earlier that there's a general type of permit available covering recycled water reuse. Are you familiar with that, that permit?

MS. AWEAU: Yes, but at the same time, there's like, there's the whole UIC program and, you know, according to the decision was made, all the wells that have been permitted under the UIC program would be illegal. So, I don't know if that still stands based on the ruling or not.

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COUNCILMEMBER LEE: I think it was mentioned earlier that a couple of states--maybe by Councilmember Keani Rawlins-Fernandez--were able to get permits for their municipalities and their systems. Are you aware of that?

MS. AWEAU: Specifically...

COUNCILMEMBER LEE: I don't know, Minneapolis...where?

UNIDENTIFIED SPEAKER: Washington...

COUNCILMEMBER LEE: Oh --

MS. AWEAU: They were able to get what?

COUNCILMEMBER LEE: --Washington and Wisconsin.

MS. AWEAU: They were able to get what? Excuse me.

COUNCILMEMBER LEE: The NPDES permit.

MS. AWEAU: For their injection wells?

COUNCILMEMBER LEE: I assume so, yes.

MS. AWEAU: But that would depend on whether...I think on the East Coast, there's been a precedent set where the opposite of the determination they made here, so I think it might be a different situation over there. I don't know if it really applies unless I read up on those determinations.

COUNCILMEMBER LEE: Okay, thank you.

CHAIR MOLINA: Okay, thank you for that line of questioning. I think we had Chair King, sorry, Ms. Aweau.

COUNCILMEMBER KING: Yeah, thank you for being here, Ms. Aweau. Have you ever written an NPDES permit?

MS. AWEAU: No.

COUNCILMEMBER KING: Okay, so you're not really...are you familiar with the legalities of it?

MS. AWEAU: I am not a lawyer, no. I'm...

COUNCILMEMBER KING: Okay.

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MS. AWEAU: I can tell you --

COUNCILMEMBER KING: Maybe a lot of assumptions.

MS. AWEAU: --I...actually a lot of my talk I never got to even start on, I wanted to talk a lot about reuse and other things like that but...

COUNCILMEMBER KING: Okay, and then you mentioned, you keep...this keep...the cesspool thing keeps coming up and you were talking about it being very expensive. But have you seen the letter from Department of Health that says DOH has no plans to enforce NPDES permit requirements against existing septic systems and cesspools?

MS. AWEAU: Well, our understanding is that they may not have the choice and I mean the whole thing --

COUNCILMEMBER KING: It says that...yeah.

MS. AWEAU: --is if we're really about protecting the environment, cesspools are much worse than wastewater injection. And I think the reason why everybody's defending these cesspools is because everybody's worried about the bottom line and about the financial hardship.

COUNCILMEMBER KING: No, I understand that, but what I'm saying is there was a deliberate question posed of the Department of Health. Should this go through to the Supreme Court --

MS. AWEAU: But I thought they're giving testimony later.

COUNCILMEMBER KING: --and they said...they sent a letter to our Council --

MS. AWEAU: Okay.

COUNCILMEMBER KING: --recently and it says DOH has no plans to enforce NPDES permit requirements against existing septic tanks or systems or cesspools.

MS. AWEAU: Okay.

COUNCILMEMBER KING: So, thank you.

CHAIR MOLINA: Alright, thank you very much for that line of questioning for Ms. Aweau. Any others? Ms. Rawlins-Fernandez?

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VICE-CHAIR RAWLINS-FERNANDEZ: Real quick, mahalo, Chair. Okay, so to follow up on Chair King's question. Cesspools, are you aware...I mean you're aware that cesspools are going to be banned in 2050.

MS. AWEAU: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: And so, that's part of the arguments, like well, we're going to be decommissioning --

MS. AWEAU: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --cesspools anyway. And so, why, you know, enforce against those that we're going to be banning anyway? And so, following up on Member Lee's question about the NPDES permit that was granted in Washington and Wisconsin, that if it's possible to be granted there then it would be possible to be granted here as well, I think that was kind of the question that Member Lee was saying, was asking you. Was that if it was possible there then it would also be possible here.

MS. AWEAU: Well, but that depends if that was, you know, before this ruling, because, you know, the thought was always that injection wells were an indirect connection and that's only changed with the ruling on this case.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I guess --

MS. AWEAU: And so, they may have --

VICE-CHAIR RAWLINS-FERNANDEZ: --we have another...

MS. AWEAU: --permitted it where it doesn't need to meet clean water standards at the point of the injection on those sites. I don't know, I've never seen their permit so I wouldn't know.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. And so, those are just two examples of many and that it's not new, that they've been doing this for decades under other EPA administrations. So, mahalo for your testimony.

MS. AWEAU: Thank you. I hope you're right.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Alright, seeing no other need for clarification from Ms. Aweau, Chair would like to call up the next testifier, I've believe I've just been informed too, Hana Losano has left the building so Ms. Losano is not here. Members, it is six o'clock. Chair would like to just call a brief recess to

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confer with dinner or late-night plans and your availability. So, meeting in recess subject to the call of the Chair. . . . *(gavel)* . . .

RECESS: 6:00 p.m.

RECONVENE: 6:04 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . GET meeting for Tuesday, September 3, 2019 is now back in session. It is four minutes after the hour of six o'clock. Thank you, Members, for allowing the Chair to take a brief result on our biological needs and sustainability for the rest of the evening. Anyway, just thought I'd get creative with basically asking about the Members' dinner break plans. The Chair had originally intended a dinner break for about an hour from 6:00 to 7:00ish. How does the body feel, do you need more time? Just let me know what your thoughts are. Committee Vice-Chair Rawlins-Fernandez, any thoughts? You're okay with an hour break? We do have...Staff, how many more sign-ups do we have at this point? I believe we're on testifier number 58 and we had 95 at last count, am I correct?

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

CHAIR MOLINA: We're at 100 and what again? Or am I exaggerating? I think it was 95 at last count if I'm correct.

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

CHAIR MOLINA: We have roughly 30 sign-ups left, okay, at this point. Okay, Member Rawlins-Fernandez, any thoughts?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So, that's 30 more that we believe are actually here in the gallery or in the lobby or somewhere? Okay, I'm willing to get my dinner served to me at my desk and eat it while we continue to listen to testifiers.

CHAIR MOLINA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: I don't want to lose any of the testifiers to a dinner break.

CHAIR MOLINA: Okay, your thoughts are appreciated. Member Paltin, any...same with Member Rawlins-Fernandez? Chair King? You too? Mr. Sinenci? Any of the other Members for your thoughts? So, basically we want to go as long as...how much more minutes, time do you want to go? To go through the final 30 without a dinner break? Wow. You guys are a tough audience. Member Rawlins, if I lose my ability to sustain myself, I may be asking you to run the meeting.

VICE-CHAIR RAWLINS-FERNANDEZ: I got you, Chair.

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CHAIR MOLINA: Just kidding, just kidding. We just want to make sure we're all nourished. I don't nobody fainting or whatever, so for the sake of getting yourselves energized. Alright...

COUNCILMEMBER KAMA: So, Chair?

CHAIR MOLINA: Pardon me?

COUNCILMEMBER KAMA: So...

CHAIR MOLINA: Okay, Member Kama?

COUNCILMEMBER KAMA: So, what was the decision then, to eat in front of all these people? Is that what we're going to do?

CHAIR MOLINA: So, basically it's like a working dinner if you...we...I don't know what more...basically you eat as you listen to testimony.

UNIDENTIFIED SPEAKER: Isn't that rude?

CHAIR MOLINA: I'm wondering...

UNIDENTIFIED SPEAKER: Because all of...

CHAIR MOLINA: Yeah, I think some people might feel like it may be somewhat rude, but I mean I'm just saying what I've heard. I'll tell you what, Members, let's just go for another half an hour and we'll do a pulse check in about another half an hour, see how the rest of you feel. Now, any Member here, as long as we don't lose quorum, if you really need to step out of the Chambers to get yourselves reenergized, grab something to eat, you're fine to do so. But I need at least four more of you in the Chambers so we can continue taking testimony. Alright. And of course some of you have your staff here, if you want to have your staff bring you a snack like Member Rawlins-Fernandez had mentioned, you're free to do so. It's up to you as an individual Member if you want to eat, consume mass quantities while the testifiers are here or not so I'll leave it at that. So, okay, folks in the gallery, thank you for your patience on this. I know we're sounding...Chair is sounding a little bit loony at some point, but well, let's go for it. Thank you. Chair appreciates your energy. Alright, moving forward with testimony as ordered by the Committee, majority of the Members. We have Elijah Kanekoa. Elijah available here? Not here.

COUNCILMEMBER PALTIN: Oh, a bunch of those kids were the students.

CHAIR MOLINA: They were part of the Lahaina Intermediate group? Okay. Is that the same for Brianna Kapu Kekona? Okay. Kanoelani Steward, I believe that was the kumu.

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Okay, next. Oh, I know this person, she's here, Autumn Ness, to be followed by Peter deAquino.

COUNCILMEMBER PALTIN: I think Peter might have left.

CHAIR MOLINA: Peter also may have left, okay.

MS. NESS: Aloha, Committee. Thank you so much for powering through. My name is Autumn Ness and I'm just testifying in strong support of settling. I'd like to talk about what we actually win or lose at the Supreme Court. At this Committee's hearing on May 20, 2019, Richelle Thomson talked about the fines we have to pay if the Supreme Court rules against the County of Maui. Here they are, in the underlined parts she talks about...you probably have it, she talks about maximum civil penalties and that the Clean Water Act is a strict liability statute which means you're guilty whether you're aware of the law or not. Maximum civil penalties are \$53,484 per day times the 4 Lahaina injection wells for 5 years which is the Clean Water Act statute of limitations. That's \$390,000. She also talks about the 8 Kahului injection wells which we will be fined for if someone files a complaint. The same math said those fines can be \$780,000. No, million, sorry. Million, 390 million and 780 million, that's a total of over \$1 billion that we will be liable for. How about instead of paying that in fines if the Supreme Court decides to rule against us, this body allocates that money over the next decade to actually help fund entities that may be caught up in this come into compliance, unquestionable compliance and we just stop allowing the casual polluting of any bodies of water. I'm under the impression that the current settlement allows the County to use some of the fine money to upgrade their infrastructure instead of paying it to the Feds which is a segue to please making...please, a request to make the settlement public. Literally, if we operate under the current settlement, everyone wins here including our future generations and our environment. She also goes on to say in those minutes that our goal is to operate within the law. If the Supreme Court says you need an NPDES permit and the Clean Water Act applies to groundwater discharge then that's what we have to do. I agree, the gentleman from the DOH and Lance Collins both clarified that cesspools are in a different category, but just for argument's sake, let say it is true that the Ninth Circuit's decision holds up and we have to regulate runoff from car washes and affordable housing projects. Then yeah, let's do that. Ask any of the high school students that were here if car wash runoff and sewage effluent from affordable homes should end up in the ocean, and they're going to tell you no. And they're the ones that are going to deal with this problem. So, instead of handing this off to the Supreme Court whose mission it is to dismantle environmental law in support of corporate profits, let's use the money we stand to lose in fines and our influence at the State to bring our infrastructure and our permitting processes in line with both the letter and the spirit of the Clean Water Act. Two more things that I hope you have time for. There are amicus briefs filed in support of the Hawaii Wildlife Fund against the County, that includes South Carolina dealing with the Kinder Morgan Pipeline rupture, Tennessee dealing with a private landfill wastewater leach, Minnesota dealing with wastewater discharge from mines.

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All of these communities filed briefs asking us to please settle, because this would gut the Clean Water Act. Last sentence, a loss at the Supreme Court would cost us over \$1 billion, a win at the Supreme Court guts the Clean Water Act. Nobody wins, let's not go there, let's keep it here, solve the problem together with all these solutions we heard from people and call it a win. Thank you.

CHAIR MOLINA: Okay, mahalo, Ms. Ness. Okay, Members, any need for clarification from Ms. Ness? Chair King?

COUNCILMEMBER KING: Thank you. Just, can you send us your, that testimony? You had a list of other states and...I mean I have that list of states, I didn't have exactly what those...what was going on in those states.

MS. NESS: I can. It's in bullet points for me --

COUNCILMEMBER KING: Okay.

MS. NESS: --so it's really not...

COUNCILMEMBER KING: It's okay.

MS. NESS: Yeah, but I'll send you what I have.

COUNCILMEMBER KING: Thank you.

MS. NESS: Okay, thank you.

CHAIR MOLINA: Okay. Members, any need...Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Ness. Mahalo for your testimony.

MS. NESS: Hi, thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: So, you mentioned that one of the amicus briefs that were filed came from Minnesota. It's my understanding that it was a native tribe, a Native American...

MS. NESS: A Chippewa...yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Do you have additional information on that specific amicus brief?

MS. NESS: I'm not super familiar with it. I do know in summary that it's about gathering rights, protection of fishing rights for the Chippewa Nation. The *Maui Time* did a

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really, really good write-up of it. I think it's in today's...or no, the one that came out on Thursday that has a longer summary of what I'm familiar with. But...

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. NESS: Yeah, thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Ness. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Any other need for clarification? Thank you, Ms. Ness --

MS. NESS: Thank you.

CHAIR MOLINA: --appreciate your testimony. Okay, Peter deAquino, I believe was mentioned to me that Peter left. Cassie Martin? Is Cassie in the Chambers? I assume Cassie has left. Testifier number 65, John Ciesar? John? Okay, John's here, to be followed by Miranda Camp. Good evening, John, and thanks for enduring the long day we have here.

MR. CIESAR: Well, thank you guys. I appreciate you guys listening to all of our testimonies. And alright, so my name is John Ciesar, I'm originally from Chicago, Illinois, and I've been lucky enough to be living on Maui for the past three years. And I just wanted to bring your attention to a similar real-life story of what happens when pollutants affect the marine life in the oceans. And so, in South Florida, my sister has been living there in Sarasota for the past five years, and they experienced an algae bloom over the past 16 months and one of the worst in recorded history. And just to clarify, an algae bloom consists of millions of tiny organisms which produce a paralyzing neurotoxin which prevents the marine life from respirating, because there's less and less oxygen available in the water. And this neurotoxin is also, it becomes airborne which causes respiratory issues in people living along the coastlines and waterways as well. And doctors don't know exactly what the long-term effects of breathing that neurotoxin would be. And so, just to show you this example, the crystal clear aqua-blue waters in Florida, they became a brown, coffee-colored, putrid-smelling marine graveyard over these 16 months, and the death toll of the marine life became hundreds of manatees, almost 150 bottlenose dolphins. And in just one county along this whole entire 150 miles of coastline that were affected, just in Manatee County they had over 300 tons of fish that they had to remove from the waterways and from the beach lines. And that cost just that one county over \$200,000 in cleanup and over \$90 million in losses of tourism just because of this algae bloom which suffocated the marine life. And although the sources of this algae bloom differ from Maui County, South Florida had a fertilizer runoff which made the waters rich with nitrogen and phosphorus, we have the same problems here with the injection wells being the same excess of nutrients. And so, I'm urging that we need to properly filter this wastewater before we allow it to go into our oceans. And I do not believe at the Supreme Court we will have

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Hawaii's fragile ecosystem in mind if they're the ones to make this decision on this case. And I basically urge you to solve this issue here at home, because if you defer this issue to the Supreme Court, I would be prepared for a catastrophe of our marine life here at home. And if you settle this case here, at least professionals that know this ecosystem can resolve the issue, and we don't have to defer this to glorified attorneys on the mainland. So, thank you so much for listening to all our testimonies here today, and good luck with your decision.

CHAIR MOLINA: Okay, thank you very much, Mr. Ciesar. Members, any need to clarify Mr. Ciesar's testimony? Seeing none, thank you.

MR. CIESAR: Thank you.

CHAIR MOLINA: Next to testify we have Miranda Camp, and following Miranda we have Shay Chan Hodges.

MS. CAMP: I have to bring this way down here. Okay. Thank you so much, Councilmembers, for staying so that we can all go home sooner. And thank you for hearing us out. My name is Miranda Camp and I am a realtor on the island of Maui, and I just want to state for the record that the REALTORS® Association of Maui does not represent me. They are not my voice, I do not agree with their stance that we should take this to the Supreme Court. I feel like Maui County will lose in the Supreme Court and that will be worse than us settling this here. So, I...for Maui County's sake, I'd rather us settle this case here. I am also an avid snorkeler and I snorkel almost every single day. And I have witnessed firsthand the decline of the reef at Kahekili. I appreciate Maui County's efforts to clean the water up that is going into the injection wells, but that water is still not even close to being clean enough for creatures such as coral polyps. And I don't think that a lot of people realize how seriously important coral reefs are. They're important for the entire world, but they're certainly very important for Maui. Without coral reefs, there are not fish for our fishermen to catch that is a food source. Without coral reefs, we lose millions in tourism dollars which we all depend on in Maui County. Without that coral reef, there's going to be a lot more taken away from the shoreline, and coral reefs help protect the shorelines from the bigger waves, they break out on the reefs. And so, those waves are now going to break and take more sand away from our shorelines and threaten structures. As we know, structures are already being threatened on the west side. So, coral reefs are important for many, many, many reasons, and that water is not...you've heard scientific testimony that that water is destroying the coral reefs. So, that's very important. It's 3 to 5 million gallons per day which could be used for irrigation. I know that people testified about if we have pumps that pump the water up the mountain, there's going to be a lot of CO2. Well, Maui County is already going towards clean energy and we're not going to have those pumps in place tomorrow so I think that is a silly argument. So, I just appreciate your listening and I hope that Maui County and our Councilmembers agree to settle this case.

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CHAIR MOLINA: Thank you very much, Ms. Camp. Members, any need to clarify Ms. Camp's testimony? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Camp. Mahalo for your testimony.

MS. CAMP: You're welcome.

VICE-CHAIR RAWLINS-FERNANDEZ: My question is can I add one more to your list of what's important about coral reefs?

MS. CAMP: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Is that it produces up to 85 percent of the oxygen we breath.

MS. CAMP: Right.

VICE-CHAIR RAWLINS-FERNANDEZ: Oxygen is kind of important for humans, yeah?

MS. CAMP: A little bit.

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah. Mahalo.

MS. CAMP: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Any other need for clarification? Seeing none, thank you for your testimony, Ms. Camp.

MS. CAMP: Thank you.

CHAIR MOLINA: Next to testify we have Shay Chan Hodges to be followed by Albert Hahn.

MS. HODGES: Aloha. Good evening. My name is Shay Chan Hodges and I am testifying in support of settlement. I am testifying as an individual; however, as Chair of the Maui County Water Board, it is very surprising to me that the County is actively discarding water and wants to continue to do so at a time when competing water needs is one of the primary issues facing Maui. I know that this Council has been reviewing the Water Use and Development Plan, a 20-year blueprint for all uses of Maui water. In order to protect water sources, the WUDP recommends expanded requirements for new development to connect to recycled water infrastructure, closer collaboration between the Water Department and Environmental Management, and utilizing drinking water State revolving funds to maximize recycled water use. There are many

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ways of using R-1 water that could significantly increase the availability of water and other resources. R-1 use in Lahaina on crops could double water availability. In Kihei, we might be able to use R-1 in hydro pump storage systems to store the curtailed energy from wind turbines and maybe even also provide water for crops. Implementing these kinds of strategies will take investment and transit systems addressing salt contents in determining which crops can tolerate R-1. And I'm sure there are other challenges. But investing in innovative solutions that improve our quality of life for a better future for our kids is what I believe this community wants from its leaders. Instead, we're presented with false choices. Destroy the ocean and reef or face economic penalties. Put up with over tourism or deal with no jobs for our kids. Choose between no water in the streams or no water for agriculture. Protect the culture or support science. The specific words keep changing but the fear-based tactics remain the same. I recently heard a wise person say is this the best we can do? When it comes to all the challenges facing our communities, I believe that the best we can do is look for solutions that truly address our needs now and in the future. When it comes to the environment, culture, economy, and inequality, our goal should be to be the island model for a world in crisis. My son Liam recently wrote an opinion piece in the *Star-Advertiser* where he made the connection between this case and Donald Trump's effort to gut environmental protections. He wrote Maui County has actively engaged in collusion with Trump's Administration in the hopes of swaying the US Supreme Court going so far as to give up one-third of its argument time to Trump's Solicitor General when oral arguments are presented November 6th. If Maui County's efforts are successful, pollution from fracking could be legally disposed of via injection wells, thus a ruling in Maui's favor could help Trump win key states like Pennsylvania and Ohio where large amounts of income are generated from fracking. For me being from Maui has always been a point of pride. I always feel a sense of comradery whenever I run into someone else from the island when I'm away from home, someone else who understands what Maui truly means. And I'm always, always overwhelmed with pride when another young person from our community succeeds. However, if next fall if Maui is known...just one more sentence, Maui is known as a willing accomplice in environmental degradation, pollution, and the prioritization of corporate greed over the health of our planet then I will for the first time in my life be embarrassed to call Maui home. For all our kids and future, we need to do better. Mahalo.

CHAIR MOLINA: Mahalo for your testimony, Shay. Committee Members, any need for clarification from Ms. Chan Hodges this morning? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Real quick. Mahalo, Chair. Aloha, Ms. Chan Hodges. Mahalo for your testimony. So, you're the Chair of the Board of Water...Maui Board of Water Supply?

MS. HODGES: Yes.

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VICE-CHAIR RAWLINS-FERNANDEZ: This testimony is as the Chair or as an individual?

MS. HODGES: As an individual. As an individual. We have not spoken about this at the Board.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, got it. And so, your...you stand by the recommendations in the Water Use Plan and Develop...

MS. HODGES: Water Use and Development Plan.

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you.

MS. HODGES: Yes, yes. We...yeah. And I think you guys are in the process of approving it.

VICE-CHAIR RAWLINS-FERNANDEZ: Reviewing it, yeah, under our Infrastructure Committee, Water and Infrastructure Committee, Chair Lee. Mahalo for your testimony.

MS. HODGES: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Mahalo, Member Rawlins-Fernandez. Thank you for your testimony, Shay. Next to testify we have Albert Hahn to be followed by Elisa Plauche. Mr. Hahn? Okay, Mr. Hahn's not here. Moving on, Elisa Plauche, and please let the Chair know if I've mispronounced your last name.

MS. PLAUCHE: My name is Elisa Plauche. I came today to request that Maui County withdraw the case from the Supreme Court and settle. I have been a Maui resident for 35 years. I love the ocean, I love snorkeling, and in the past 35 years, I've observed the coral reefs, the condition of the coral reefs including Kahekili decline. I have observed an increase of diseased sea turtles and the disappearance of edible seaweed. As a nurse working in a clinical setting I've observed an astounding increase of people who state they contracted staph from swimming in the ocean. I'm not a scientist, I can't say this causes that, but when you have injection wells at Maalaea and then the Maalaea Reef is now declared dead, I think there's a connection. I would like to quote Earthjustice's attorney Mahesh Cleveland when he referred to the impact this case would create for the nation, should Maui County win its appeal in the Supreme Court. Polluting companies would be even given a "illegal loophole in the Clean Water Act that would enable them to pollute with impunity as long as they use groundwater as their sewer." I would also like to comment on a testifier who supposedly represented me as a realtor. To my knowledge there was no vote among members of the REALTORS® Association of Maui. I do not agree with Jason Economou on...when I represent a buyer in a real estate deal, I disclose that any illegal cesspool will need to be replaced with a septic tank and leach field. It's not a big deal. As a realtor, I want

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to foster homeowners who will be responsible stewards of Maui for future generations. That's all my testimony. Any questions?

CHAIR MOLINA: Okay. Alright, thank you very much for your testimony, Ms. Plauche.

MS. PLAUCHE: Thank you.

CHAIR MOLINA: Sorry, Ms. Plauche, we have a...

COUNCILMEMBER KING: I just wanted to clarify.

CHAIR MOLINA: Real quick from Chair King.

COUNCILMEMBER KING: So, you said you were a nurse but you're also a realtor?

MS. PLAUCHE: Correct.

COUNCILMEMBER KING: And there was no vote taken...

MS. PLAUCHE: I'm not aware of any vote, I was surprised to hear his testimony. I was really bothered by it.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR MOLINA: Okay, thank you, Chair King. Member Sinenci, you have a question?

COUNCILMEMBER SINENCI: Thank you for being here. You mentioned as a nurse that there's elevated numbers of staph.

MS. PLAUCHE: I tell people when they go swimming in the ocean if you have any open scratch, anything, shower. I didn't used to do that before, I used to, you know, go and surf and be in saltwater all day, and now it's like an issue that we all...my nurse friends, we all head to the shower the minute we get out of the ocean. I've even like been at the beach where you lean in the sand and just a little abrasion that the sand leaves you, that would end up if you didn't wash off, it would end up being an infection, and that's not something I remember from, you know, decades ago.

COUNCILMEMBER SINENCI: Does the medical field inform whether it be County or health, other organizations that there is an elevated level of staph?

MS. PLAUCHE: I'm not aware of any.

COUNCILMEMBER SINENCI: Okay.

MS. PLAUCHE: Yeah.

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COUNCILMEMBER SINENCI: Thank you.

MS. PLAUCHE: Thank you.

CHAIR MOLINA: Okay, thank you, Ms. Plaucche. Seeing no other request for clarification, thank you for your testimony, Ms. Plaucche.

MS. PLAUCHE: Thank you.

CHAIR MOLINA: Mr. Sinenci, that's certainly a good question maybe to ask the Department of Health about that as well. As someone who grew up here, I think many of us can relate to when jumping into the ocean, we didn't even think about things like that that maybe currently exist now. Not quite as safe as we once remember. Next to testify we have Paul McCurdy, followed by Scott Rollins.

MR. MCCURDY: Thank you, Councilmembers, for staying so late to listen to me. Just kidding. Anyway, I'm a Paia resident, I'm a veterinarian at the Maui Ocean Center, and I'm also a member of the Sierra Club. I have a marine biology background. I grew up in South Florida and so those atrocities that our fellow member mentioned before are definitely true. And it's more than just the fertilizers that is a point source, they have identified a lot of non-point sources which are a lot of the deep-well injections that occur in South Florida, that I think South Florida has something like 190. There's a lot that they're doing with it and I think South Florida is a great case study for Maui to look at. Anyway, we have seen a lot of harmful algae blooms, we've seen practically reef decimation in South Florida and the death of many macro fauna including turtles, manatees, and dolphins. Anyway, I'm really here because I'm a veterinarian and I'd like to just sort of discuss this study that came out of UH Manoa about two years ago, and they did talk about the honu that were affected by rapidly growing marine algae. And those are algae that flourish in nutrified water of our marine environment. Essentially, these macro, benthic macroalgae will grow really quickly and that's the typical diet of the honu. And these weedy algae's are actually quite high in arginine and they're low in lysine, and that's a perfect storm for any herpes virus infections. A lot of these guys do carry herpes viruses, and we know historically they've carried herpes viruses as well but we never really saw fibropapillomas. Recently after they started eating a lot of the seaweed, we have started seeing these fibropapillomas and we know that that's a thing. And we see it actually in felines as well and cats, like I have to give, you know, we see that typical storm as well. And so, you know, it's not related to the ocean or anything, but herpes viruses do feed off of high arginine diets. So, I really just want you guys to settle this issue in Maui, keep it away from the Supreme Court. I think that we do a really good job providing justice to the environment, and I'd like you to help clean up the water for the honu. And as their advocate I hope you can do it. Questions?

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CHAIR MOLINA: Okay, thank you, Mr. McCurdy. Mr. McCurdy, I just have a just quick question, first of all, you're the first marine veterinarian that I've ever had the encounter with. I appreciate that.

MR. McCURDY: There's another one right there.

CHAIR MOLINA: Yeah. Well, and thank you, and thank you for being here. Just a quick question as it relates to the reefs, the health of our reefs in general. Are there any other areas around the world that are experiencing a similar issue with Maui's reef as it relates to injection wells? And I've been hearing things about the great, the health of the Great Barrier Reef for example in Australia.

MR. McCURDY: The Great Barrier Reef actually is about like 40 miles off shore of Australia so we don't really see that sort of issue that far out there. Some of the nearshore reefs they do have some issues, but, you know, a lot of their issues are a little bit different with water temperatures increasing. South Florida probably would be the most perfect scenario. Everywhere from about the Florida Keys, Key West all the way up to, you know, Jupiter, Fort Pierce, Florida. And Doctor Lapointe and Dr. Dennis Hanisak are pretty much experts in that field. And, you know, they studied the algae and they look at the point sources, 'cause they do have the big pipes that come out on the reef and they also look at the non-point sources. 'Cause in the northern part of that coral reef tract actually, they don't have the big pipes, but they're still seeing algae overgrowth, and it's from the deep-well injection so they can say hey, we definitely see a point source in the southern reefs, and we can say those are like, you know, being destroyed from the pipes and you see a big destruction around the pipes. But in the northern reefs, we are seeing algae overgrowth of the corals. Actually they really don't have much coral anymore, and those reefs they've pretty much said it's all from the deep-well injection that we're seeing that high nitrogen load. So, I mean and everything everyone said today, I mean you guys...they talked about the high nitrogen load, really important. And I mean if you want to clean up that water before you pump it down, I think that'd be a great idea, so.

CHAIR MOLINA: Okay, thank you, Mr. McCurdy. Shall I address you as doctor since you're a veterinarian?

MR. McCURDY: You can, yeah, Dr. McCurdy.

CHAIR MOLINA: Okay, Dr. McCurdy.

MR. McCURDY: I go Paul, doctor, whatever.

CHAIR MOLINA: You're earned the title, sir. Okay, we have Chair King.

COUNCILMEMBER KING: Thank you, Chair. Thank you, Dr. Paul, for being here.

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MR. McCURDY: Thank you.

COUNCILMEMBER KING: So, I have seen turtles with the tumors on their neck and actually saw one that looked like ET, it was so bad that it couldn't withdraw its neck back into its body.

MR. McCURDY: Yeah.

COUNCILMEMBER KING: So, it was about, you know, its neck was sticking about like that long. But have you seen...because I think we've had testifiers today that have alluded to the effluent being traced directly to those tumors. Is that...how do they do that? Is that...have you seen those studies?

MR. McCURDY: Yeah, it was in 2016, UH Manoa put it out and I can probably get that study for you.

COUNCILMEMBER KING: That was the study you were talking about --

MR. McCURDY: Yeah.

COUNCILMEMBER KING: --the UH Manoa study?

MR. McCURDY: And it pretty much shows that these that weedy algae species are really high in arginine which is, you know, one of the reasons that herpes viruses flare up. So, once you got herpes, you got it for life, you can't get rid of it, so, you know, you eat these diets that are really high in arginine and low in lysine. We could always put all the sea turtles on a high lysine diet and give them famciclovir everyday which is an anti-viral medication, but I think we could actually treat the underlying...

COUNCILMEMBER KING: And you have to find them and catch them first, I guess. So, thank you for your testimony.

MR. McCURDY: Thank you. Appreciate it.

CHAIR MOLINA: Thank you, Chair King. Members, any need for further clarification of Dr. McCurdy's testimony? Seeing none, thank you very much.

MR. McCURDY: Thank you, guys.

CHAIR MOLINA: Okay, next to testify we have Scott Rollins to be followed by Michael Wildberger.

MR. ROLLINS: Good evening, Chair or Committee Chair Molina and the County Council. My name is Scott Rollins. I am a 35 years engineer and I've recently been appointed as the Acting Division Chief of Wastewater Division. I submitted written testimony earlier

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today, I've been listening to this proceedings on and off in my office all day today, kind of going off the cuff at this point. A lot of things that have been said that I'd like to say. One thing I want you to understand is this Division works very hard for this County. They are all stewards of the environment. They have families, we all play in the ocean every day, we surf, we dive, we fish. We're not trying to pollute the ocean. We've come down to a point now in this lawsuit that's been ongoing for years where we have one question that's going to be answered by the Supreme Court, and that's whether we end up with an NPDES permit or going to continue with a UIC permit to regulate our injection wells. To me, the Clean Water Act was very clear and stated that a non-point...a point source in the groundwater is not part of that act. Underground injection program is handling the pollution problem there. When I first started here, I asked these very same questions you're asking now, and what I found is the UIC program was there to regulate what goes on in the ocean. The last time we tried to renew our UIC permit, we were in a lot of conversations with the Department of Health over what that permit would look like. If we had continued with those negotiations, I think we would have had something everyone here would have liked. Unfortunately, this lawsuit derailed the whole thing. Everyone was put on silence and we've been waiting for this to end. For us at the Division we need this decision so we know how to go from here. We're onboard with reuse. We do a lot of reuse, we do almost 50 percent in Lahaina now on a hot summer day. Not quite that in the wintertime. I've made presentations here in front of Council, I've been to the West Maui CPAC hearings in the last couple of weeks. We've presented all of our plans there. There's a lot of moving parts with West Maui landowners we have to get together with in order to make this work. We can't just let R-1 water run down streams, run down ditches, we need the users to be there, and they need to be willing to use the water. I've seen a lot of controversy going on on who's going to use the water, everyone wants the ditch water. No one understands that this water is not sewage, this water is R-1 quality water, the same thing used for landscape.

CHAIR MOLINA: Okay, thank you, Mr. Rollins. Members, any need for clarification to Mr. Rollins' testimony? Member Sugimura?

COUNCILMEMBER SUGIMURA: So, can you finish or did you finish?

CHAIR MOLINA: Member Sugimura, I'd like your question to be related to Mr. Rollins' testimony if possible, if you could just keep it along those lines rather than adding in something new he didn't say.

COUNCILMEMBER SUGIMURA: Well, he looked like he wanted to finish and he just stopped so I know that was not really a question but just so that...because of his experience --

CHAIR MOLINA: Okay.

COUNCILMEMBER SUGIMURA: --I think he has something valuable to share.

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CHAIR MOLINA: Mr. Rollins, was that...were you continuing a thought before I stopped your testimony? Okay, if that is so, go ahead and finish that thought in response to Ms. Sugimura, very briefly. I'll allow it.

COUNCILMEMBER SUGIMURA: Thank you.

MR. ROLLINS: I'd just like to say that Council has done their job, they gave us the money within the budget this year to proceed with the reuse we want to do in Maui County. But I think this decision is best left to the Supreme Court, it's a bigger decision than Maui County. You should have...you should be proud that this got to the Supreme Court, not many cases ever get to the Supreme Court, and you should have confidence in the judges there. You may not like the two judges that Trump appointed, but you should have confidence in seven others to make the right decision if that's what you...well, let's go on with questions.

CHAIR MOLINA: Member Sugimura, do you have another clarification?

COUNCILMEMBER SUGIMURA: That's it.

CHAIR MOLINA: Okay, moving on to Member Lee.

COUNCILMEMBER LEE: Mr. Rollins, you mentioned the Lahaina plant and the monies that we approved. Can you just highlight some of the major CIP projects you have for the Lahaina Wastewater Plant?

MR. ROLLINS: We do. This year we have about \$13½ million appropriated and that's to build elevated storage. We can't expand our system without elevated storage. This is the third start on this project as the first landowner ended up not wanting to give us the land for a tank, the second site was cut down by local homeowners that didn't want to see a tank. So, we're on plan C now but this is a good plan. We plan on taking over the Honokowai Reservoir, a 4-million-gallon reservoir at 300 feet, pressurize our system and allow us to deliver water 24/7 to customers. Once this is done, we can expand the line into Kaanapali Resort. We can do all the landscape irrigation throughout the resort down there. We can also connect to all the resorts along Airport Beach. Following that, we've been having several discussions lately with all the West Maui landowners, pumping that water up to 730 feet, we need to get consensus among that group for them to use the water. Like I said, we just can't pump it up there and leave it there. We can't leave it in a reservoir under the sun, it will be contaminated and become an eyesore, a problem for the people of Maui County.

COUNCILMEMBER LEE: Mr. Rollins, so with all of the plans that you have and assuming, you know, several of them will, you know, materialize, how many injection wells can we eliminate?

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MR. ROLLINS: I don't think we would eliminate injection wells, I think we would eliminate the use of injection wells. You know flipping the switch to 100 percent reuse will not happen overnight in this County, it's going to take a decade I would think at least to get to that point. We're still going to need those injection wells for excess water, for water that is slightly off spec. If a water doesn't totally meet R-1 specifications, we can't put it in the system, it'll contaminate the rest of the water. So, we need an alternative however often it probably will be used which would be, you know, rarely I would hope.

COUNCILMEMBER LEE: Okay, thank you.

CHAIR MOLINA: Thank you, Member Lee. Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Rollins. And I want to ensure you that we do have a lot of pride in DEM working on the reuse, and this Council was the one that, you know, funded these two projects this year, in this current budget, the 13.5 million, the other one for 700,000. I don't have a lot of confidence in the Trump Supreme Court however, and I do agree with previous testifiers that it's basically a lose-lose to have our name on this case. But I guess my, when you're talking about reuse, are we looking for every avenue? Or were you one of the DEM folks who met with Travis Liggett about his proposal for the pilot project to reuse R-1 water to irrigate, build for a station up above the plant and apparently he has that funded for a pilot project.

MR. ROLLINS: I'm not aware of his project. No, did not meet with him.

COUNCILMEMBER KING: Okay. He said he met with four DEM people and they seemed excited but then he got no response. So, I would just hope that we would stay open to every option for that reuse, and I know you're looking at, you're talking with some landowners but, you know, let's not forget other options that may be out there.

MR. ROLLINS: We are open to all options. We have water available, we need users --

COUNCILMEMBER KING: Okay.

MR. ROLLINS: --to use that water.

COUNCILMEMBER KING: Okay, well, he might be here, I'm not sure if he's still here but we'll link you up with him if we can.

MR. ROLLINS: We are just not looking forward to going in and doing new business at this point. We'd like people to use the water rather than us become the keepers of the forest so to speak or farmers or et cetera. We have the water to use.

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COUNCILMEMBER KING: Okay. So, are you at all open to doing private-public partnerships with a private entity? Because you may not know it, but you are...you have been pushing along trying to work with private entities and Anaergia is one of them. So, you, you know, they're not asking you, the private entities aren't asking you to do the work, they want to partner.

MR. ROLLINS: We agree and we are open to that.

COUNCILMEMBER KING: Okay.

MR. ROLLINS: We were working with Anaergia in the past on the west side --

COUNCILMEMBER KING: Right.

MR. ROLLINS: --to grow energy crops but that fell through.

COUNCILMEMBER KING: Right.

MR. ROLLINS: It's really hard when you have multiple partners trying to achieve a goal. Everyone has some sort of agenda or item they need to be fulfilled.

COUNCILMEMBER KING: Okay. Well, you know, sometimes you just have to keep plugging along until you find the right one.

MR. ROLLINS: That's true.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: Okay, thank you, Chair King. Councilmember Sugimura, followed by Committee Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, my second and last time for questions, but I was just wondering because we're talking about reuse which I think is an important component of this whole discussion. But what is the impact of the Ninth Circuit decision when it comes to reuse? 'Cause it's important for us.

MR. ROLLINS: When it comes to reuse, I think most of the impact is having an NPDES permit and trying to meet it at the injection well site. We've had many discussions with DOH about what a permit would look like. We've taken permits into them and asked them is this workable, can we do it? They seem stuck on the position that we have to meet ocean water quality at the injection well site which can't be done. Several people have discussed that today in their testimony. As far as affecting R-1, you know, there are users now that don't want to use R-1 because of what's going on with this lawsuits and the possibility of NPDES permits, possibility of R-1 reaching the

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ocean through groundwater with their use. So, I think that's an effect that we really need to think about.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Thank you very much, Member Sugimura. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Rollins. Mahalo for your testimony. I would be proud to have Maui County go to the Supreme Court if we were fighting to protect the environment and not to pollute the environment. I...in your testimony you said that you were heading toward improvements to the UIC permit, like talks of doing things better before the lawsuit, before this lawsuit was filed. Is that correct?

MR. ROLLINS: That's correct.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Okay, so I guess there's conflicting information from the two parties. Okay. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Any other need for clarification from Mr. Rollins? Seeing none, thank you very much, Mr. Rollins.

MR. ROLLINS: You're welcome.

CHAIR MOLINA: Next to testify we have Michael Wildberger, followed by Seraph D'Alerta.

MR. WILDBERGER: Hey, Council --

CHAIR MOLINA: Aloha.

MR. WILDBERGER: --Chair Molina, Vice-Chair. Thank you, guys, for being here, you have a lot of stamina. We have one empty chair but, you know, that's how it happens. Just in regards to Rollins, Mr. Rollins, the guys who are operating the wastewater treatment plants, I hang out with some and I know them, they are angels. They're working very hard...

CHAIR MOLINA: Sorry, Mr. Wildberger, can you speak more into the mic? Thank you.

MR. WILDBERGER: Oh. They're big smelly angels and they are working...they're doing a good job. We all want the same thing, you know, we all swim and everything else. But that's not...mostly every single person here says 100 percent, we're as close as to it as we can get, recycled wastewater is the best idea and what we're working towards. Mr. Rollins says they're at 50 percent in Lahaina. If we had a, you know, use for the other 50 percent, delivery mechanism, they'd be near 100 and the injection wells would just be for when the water didn't meet standards. And so, it's all possible. So,

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why go through this, why continue to attack and go to the Supreme Court? We've already settled it. And there are people come up with reasons why we're not, and they're all disingenuous as far as, you know, today everybody knocks up arguments and knocks them down. They're not coming for our cesspools. The cesspool question is under State law, they're going to be outlawed in 2050, it's not a great law, it's really hard to work with. As Representative McKelvey said it is the law of the land. If they could come after cesspools with EPA shock troops, they would have been here, but they're not because the EPA is being cut down by 30 percent every year under the Trump. They lost 500 people this year, they're going to, set to lose 30 percent of their operating budget this year and 30 percent more next year. Don't worry about the EPA, they're just being an accreditation agency, that's all they're going to be, like Trump University when he gets his way. People say it's too hard and expensive to do recycled water but Kona's almost there. They're just waiting on an EIS about a few cultural aspects to their plan and that's on the Big Island. And you can't tell me that Kona, it's easier to run pipe in Kona, you know, through the rock than it is here. It's not that expensive. It's cheaper to run pipes underwater than it is to run a pipe across land to the farm. You know that outflow, that doesn't work. It's cheap to run pipes on land, it's cheap to solar power them.

. . . (timekeeping system beeps) . . .

MR. WILDBERGER: Shit. Pardon. And there's solar power. Settlements don't create more lawsuits. We just settled in Kihei. The water does hurt people. But the biggest crock I heard so far is from our own homeland here from our Mayor. He came down, he said I am going to...I have the settlement, it's a good settlement, I'm a great dealmaker, and it's a secret. And why don't you all let me...meet me in the back, I'll tell you about it. And you did that in May and that was an insult to you guys. You should be insulted by that, by his attitude, and the fact that he's running a scheme on you trying to take up time and do whatever he wants. It's just not right on his part.

CHAIR MOLINA: Okay, thank you, Mr. Wildberger.

MR. WILDBERGER: Thanks.

CHAIR MOLINA: Committee Members, any need for clarification regarding Mr. Wildberger's testimony? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Real quick. You mentioned that one of the wastewater facilities uses --

MR. WILDBERGER: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: --a solar system?

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MR. WILDBERGER: The plant at Makena, it would have been about ten years ago actually went all...while they were still Makena Resort, they set up for almost 100 percent solar powered. It's a wastewater plant, it was very modern in the '90s when they built it. It's a little old hat now but it is virtually 100 percent. I think it was 2007 they put in the panels. And so, that plant is entirely solar powered and it's operational. You know another...it is smaller than the other plants but that just means you need bigger panels. It's not like there isn't a huge solar farm right next to the Kihei plant. David Dwelle's got the old algae farm covered in acres of solar. So, there's plenty of opportunity to find power that doesn't make carbon.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony, Mr. Wildberger. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Any other need for clarification from Mr. Wildberger's testimony? Seeing none, thank you very much for your testimony. Next to testify we have Seraph D'Alerta to be followed by Darla White.

MR. D'ALERTA: Aloha. I am Seraph D'Alerta. I live in Kihei and I free dive almost daily. The...I also volunteer with Hui O Ka Wai Ola, and in doing so, I have become aware of information that most people don't get access to because you have to be there to collect it. I'm going off my speaking points so I'm just going to speak from what I wrote. Since we perform water quality tests for the...submitted to the Department of Health, our two years of collecting data have shown that nitrates and nutrients are at levels exponentially beyond Department of Health requirements for healthy ocean water. The effects of this decline in coral is already being felt. During voluntary sessions collecting water at the shoreline, we have often encountered regular tourists who have been coming here for decades and have observed the severe decline of living coral and fish variety and population. If the tourist population knew the truth about the amount of living coral left surrounding Maui, they would all decide to stay somewhere else where there is living coral, i.e. Cuba, Indonesia, Bahamas, and Mexico, et cetera. On Christmas Eve last year, I had the privilege of being able to save a turtle from drowning in front of Five Palms Restaurant at Keawekapu Beach along the highly touristed coral reef. The reason for the plight of this turtle is that a large chunk of coral had died a few years ago, and a large mass was atop a small section that had eroded away causing the remaining coral ball to land on a green sea turtle resting in one of their safe hidey holes. I've spent thousands of hours snorkeling and free diving from La Perouse Bay to Honolua Bay and the beaches around Hana. It's obvious to see that there is coral crisis because in all these places it's easier to find dead coral than it is to find healthy, thriving coral. While some people are here to split hairs about what is to blame, there is enough evidence through the testing program of Hui O Ka Wai Ola and DOH and the accusing parties in this lawsuit, to show that the Maui, that the way that Maui County processes feces is insufficient and in need of an alternate solution that, than what is currently practiced. Please settle this lawsuit, that we do not run the risk of appealing EPA legislation that defends life-giving water. If we do that, Lord knows what will happen considering who's in power. The

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population of this island is 144,444. The tourist population annually is 2.1 million visitors spending \$3.5 billion from January to October as of 2015, as reported in the *Maui Now* news. You can't tell me that there isn't resources to fix this, and spending \$3 million on lawyers is a waste. And that's what I have to say.

CHAIR MOLINA: Okay. Thank you very much for your testimony. Members, any need for clarification? Seeing none, thank you very much for your testimony.

MR. D'ALERTA: Aloha.

CHAIR MOLINA: Appreciate your four-legged friend as well. Thank you. Okay, our next testifier we have Darla White to be followed by Mark Deakos.

MS. WHITE: Good evening. Just to say upfront, if you still have questions about the phosphorus, the floating workshop, or--what was the last thing--the staph in the water, I can answer those after my testimony. So, good evening and thank you all very much for the opportunity to let us testify on this very important issue. My name is Darla White, I'm a marine scientist, and I'm testifying on behalf of myself today and not any agency or organization. I'm here because I have direct, I have been directly involved with 90 percent of the science that has been done at the reef at Kahekili Beach Park, in response to the pollution from the Lahaina wastewater injection wells and the degradation of the coral reef there. I am coauthor on nine scientific, peer-reviewed papers and technical reports, and acknowledged in seven more journal papers for my contributions. I also coordinated the scientific study to assess the effectiveness of the Kahekili Herbivores Fishery Management Area management strategy. I know this reef and I know the science well. The evidence is overwhelming that the wastewater effluent from the injection wells is entering the ocean where people swim and that it is degrading the reef and has been for decades. The wastewater effluent is warm, it's an order of magnitude more acidic than seawater, it's 50 times higher in nutrients, it's full of toxicants and pharmaceuticals, and it lacks oxygen. This has all been measured and the science is part of the public record. All of these factors are stressors that impact and degrade corals. This is one small reef area and the threats to it made it the focal point of the Hawaii Coral Program and the US Coral Reef Task Force. Maui was designated a priority watershed site in the Pacific. What does that mean? It means that a huge, national, multiagency effort to save the reef went into effect. It means that for the past decade, some of the brightest minds in science have been focused on the reef at Kahekili Beach Park. Corals are amazingly resilient animals but they are losing this battle. Large, decades-old ____ corals in all shades of yellows are becoming patchy fragments of their former selves, their ability to grow and reproduce compromised, and their defenses ____ algae overgrowth and boring organisms are lost. They are being eroded from the inside by bio-eroders and from the outside by the ocean. The coral skeletons tell the story and show the wastewater fingerprints through time in a new paper published recently in *Nature*. Additionally, further from shore, the fragile porous finger corals are collapsing. The structure that provided for reef critters is lost, creating dozens of...creating dead zones

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that are larger and more two dimensional than ever. I can show you. Will you come with me to the reef? Let me show you the fine turf algae that are overgrowing the corals. Let me show you what it takes to save an ecosystem. Fisheries management have shown early successes, yes, and that's great news, but it was in dire straits when it started so there's still a long way to go. Science from scripts as you've heard has shown that it'll take fish 30 years to eat the algae at the current rate. We need to stop the pollution from the wastewater injection wells. Again, let me extend the invitation to take you to the reef. I'm very serious about this. Join us at the Ridge to Reef Rendezvous on October 26.

CHAIR MOLINA: Okay, thank you, Ms. White. Members, any need for clarification of Ms. White's testimony? Member Paltin?

COUNCILMEMBER PALTIN: I just was wondering why those two guys from Oahu were saying that, like do you have to have a marine scientist degree in addition to water quality or if you know?

MS. WHITE: I can't speak...they said that they were engineers. On the nutrient limiting ratio he was speaking of is called the Redfield Ratio and it generally applies to diatoms. But it doesn't necessarily apply to algae.

COUNCILMEMBER PALTIN: So, our bad, we should have asked them if they knew about corals?

MS. WHITE: Well, there's also the...he said that the underground substrate would take all the phosphorous out, and I have...there's science that was done actually on the Big Island at the Kahekili wastewater injection wells going out into the bay there, researchers from USGS who have done the same work here at Kahekili state that the phosphate is carried in colloids in submarine groundwater can be released into that reef system when the freshwater interacts with the saltwater. So, there is actually an additive effect of groundwater delivering phosphate, in other words the phosphate is bound to the very, very, very small particles in the groundwater. And when the salinity changes quickly as it does in submarine ground discharge systems, that releases the phosphate from the small particles and releases the phosphate into the reef system. So, and also Department of Health data shows increased phosphate levels coming out of the wastewater injection wells. And there's another USGS paper as well. So, their information was incorrect so far as the science that I have seen.

COUNCILMEMBER PALTIN: And are you still with DAR?

MS. WHITE: I am, I'm just in a different capacity right now.

COUNCILMEMBER PALTIN: Oh, okay. Alright, thanks.

CHAIR MOLINA: Thank you very much, Member Paltin. Mr. Sinenci?

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COUNCILMEMBER SINENCI: Thank you, Chair.

MS. WHITE: Hi.

COUNCILMEMBER SINENCI: Thank you, Darla, for being here. You mentioned pharmaceuticals and then Dr. Paul earlier mentioned that some of the honu might have contracted some diseases. Is there any data that has or shows any connection with the effluent and the marine species?

MS. WHITE: So, are a couple of different layers to that. So, what the Dr. Paul was talking about was the arginine that is influenced...the amount of arginine and algae on the reef is influenced by the nitrogen inputs and that's the diet that the turtles are eating and that's influencing the increase in the turtle tumors. The corals themselves are telling a story as well. They're becoming weaker, they're...there's a couple of different studies. The one in...that was just posted in *Nature* by the UC Santa Cruz and USGS folks here that took cores directly from the coral colonies right in front of the, I guess like maybe three meters away from the injection well so they're able to read the nitrogen inputs through time 'cause they...elements stay in the skeleton so they can read the story. And it all corresponds to the different things that have been happening with the injection wells at the site. So, the corals do tell that story, we are seeing those impacts in the corals. It's causing more erosion from the inside. The high nutrient content influences algae growth so these tiny turf algae's that you've heard about tonight, they're very, very fine, you wouldn't even notice them. If you picked up just a pinch, you'd have 25 species in your fingers, they're that small. But they're also that insidious. Because they are so small, they can easily outgrow the corals and they crawl over it and they kill it. And then it becomes this patchwork of corals that now are just too small to reproduce and they're too small to grow and build the reef.

COUNCILMEMBER SINENCI: Wastewater is saying that the effluent at the R-1 quality of that water is I guess of a high quality. But is there any, I mean I know it's high in nitrogen but is there any like you mentioned about pharmaceuticals. Is there any connection with that?

MS. WHITE: So, thank you very much for bringing that up, I forgot about that in your previous question. So, Rosa and Hunt...or Hunt and Rosa in 2009, actually myself and Meghan Dailer did the water collection for that and that's the study you'll hear where we have flame retardants, pharmaceuticals, fabric brightener, caffeine, all manner of different wastewater indicators are found just from scooping up water around the seeps and in that nearshore...I mean the water is this deep where we're taking samples. It's where people are swimming. No work has been done on the fish to date to understand if any of those are impacting the fishes' ability to reproduce or their sexual orientation or things that have been known to happen when pharmaceuticals, especially estrogen products are introduced to fish.

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COUNCILMEMBER SINENCI: Okay, thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Alright, thank you, Mr. Sinenci. Members, any other need for clarification from the testifier? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here and for answering that question on the phosphorous. You know just in...I know you didn't get through the entire thing but you did mention that you're in favor of settling, helping to reduce the pollution, and apply for an NPDES permit. Have you ever filled one of those out before?

MS. WHITE: I have not.

COUNCILMEMBER KING: Okay. Do you...are you working with anybody who has? Because I've, I know that Robin Knox has done those, and I just keep hearing about how difficult it is or how we can't qualify. What is your opinion on that as a marine scientist?

MS. WHITE: I usually defer to Robin because she knows what she's talking about.

COUNCILMEMBER KING: Okay. Alright, well --

MS. WHITE: She's the expert on permitting.

COUNCILMEMBER KING: --she did say that she thought we would qualify. So, alright, thank you.

MS. WHITE: Thank you.

CHAIR MOLINA: Thank you, Chair King. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. White. Mahalo for your testimony. Good point on testing the fish reproduction. The pharmaceuticals I'm sure include birth control and we don't want to be giving fish birth control.

MS. WHITE: That's a large part of it.

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah, we want their populations to grow. So, your testimony says that you've been directly involved in 90 percent of the science that has been done at the reef at Kahekili Beach Park, in response to the pollution from the Lahaina wastewater injection wells and degradation of the coral reef there?

MS. WHITE: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Do you live here?

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MS. WHITE: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Are you available on Friday?

MS. WHITE: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, I'm wondering if perhaps, you know, it might be good to have her as a resource in case we have science questions. I don't think we have any resource people that are scientists that have been directly involved in the science at Kahekili and not just science at Hawaii Kai or Kaneohe, so something to consider.

CHAIR MOLINA: Sure. Chair will certainly consider that. Members, any objections to having Ms. White as a potential resource for our, when we do get into the deliberation phase of this matter?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay. Alright, no objections. Proceed, Council, proceed with your line of...

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. That was it for now. And then if I have more questions...the other Members asked my questions so mahalo for the clarification on the phosphorous.

MS. WHITE: Okay, you're welcome.

VICE-CHAIR RAWLINS-FERNANDEZ: I wasn't clear on that one so she helped to clarify that. Mahalo, Ms. White. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Any other need for clarification before I excuse Ms. White from the podium? Seeing none, thank you very much, Ms. White.

MS. WHITE: Thank you, all. Thanks for staying late.

CHAIR MOLINA: Thank you. And with apologies to our next testifier, Mr. Deakos, Members, we've been at it for two-and-a-half hours without a bathroom break, so the Chair has a personal wastewater matter he'd like to deal with if you'll indulge the Chair. Let's take a recess and return to the Chambers at 7:20 p.m. Meeting in recess.
... (gavel) ...

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RECESS: 7:06 p.m.

RECONVENE: 7:25 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . GET meeting for Tuesday night, September 3, 2019 is now back in session. It is 7:25. Thank you very much, Members, for your endurance this evening. To Member Sinenci, King, Lee, Rawlins-Fernandez, Paltin, Sugimura, Kama, and of course Molina, thank you all for enduring this meeting for a very, very important topic. Continuing with our testimony, we have Mark Deakos, and Mark will be followed by Kyle Ginoza.

MR. DEAKOS: Thank you, Chair. Mark Deakos, 23-year resident of West Maui, marine biologist. So, any questions about the coral reefs there, I've spent a lot of time in the water. I just wanted to, you know, a lot of you guys had lots of valid concerns and I changed my testimony about 20 times, but so many great testifiers, I hope they addressed them from the injection wells...or the septic systems. And the NPDES permits, we know they exist in other states, we know that DOH wrote that they were not...they that have no interest in going after the septic systems. We also know that the Appellate Court ruled that, you know, there has to be traceability so there's lots of protection for those people. So, I hope those of you that are concerned about the septic systems, that has been addressed. And as well as the NPDES permit, there is precedent for all that. So, basically, Chair Molina, you...first of all I appreciate you holding this meeting, it's very important and spending all this time. But I share your appreciation for the keiki this morning. I'm really touched, and it's always great to see how they're participating in the process. But it reminds me of the adage of that yeah, we borrow this planet from them. And so, what we're giving back to them is always important, and what we are going to give back to them is not looking so great right now. If we think about it, most of us in this room been around back in the day when we started here, we enjoyed the tremendous fish populations, the healthy reefs, the water quality, the flowing streams, all of that, and all we had to do was not mess it up, right? That was our sole responsibility that we just manage it and that we can pass that on to our children just like we got those privileges. And unfortunately we've made some mistakes, you know, the County didn't want to kill the reefs or anything like that when they did injection wells. We didn't want to armor the shorelines and deplete our water quality. These weren't malicious intent but we made some mistakes. We know why the mistakes were made and now we just have to rectify it. So, I think we had lots of solution-based testimony today on how we all agree there is a problem. We need to move forward, lots of solutions are on the table right now. So, I ask you, we definitely don't want to throw up a softball to our wonderful President so that he can create that loophole. Just a reminder, this is not about changing the Clean Water Act, it's about keeping it the way it is. The Supreme Court would like to add that one word in there that would then open the floodgates to all the polluters in the country. So, please let's think about our keiki, let's do our best to fix what we've damaged, and please settle. Thank you.

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CHAIR MOLINA: Okay, thank you very much, Mr. Deakos. Committee Members, any need to clarify Mr. Deakos' testimony? Seeing none, thank you for the comments, Mark. Next to testify, Kyle Ginoza. Is Mr. Ginoza here? Okay, I don't see him here. Moving forward, next we have Mahesh Cleveland, followed by Satya Douglas. Mr. Cleveland?

MR. CLEVELAND: Good evening, Chair, Committee Members. Really appreciate everyone sticking it out, and everyone in the room really. I am the baby attorney at Earthjustice. There are a couple, you know, Isaac did a good job of covering our written testimony. There were a couple other things I wanted to point out there and then a couple of other things I wanted to reiterate in response to some of the other testimony we've heard. First of all, Mr. Rollins from DEM, I think it's just a matter of people not being informed. The unfortunate thing is when those that are uninformed then go on and spread that misinformation to the public whether through op-eds or through County websites. Bottom line is that people having reservations about reuse who are worried about potentially becoming liable under the Clean Water Act for an NPDES permit do not need to worry about this because the Department of Health already administers an NPDES general permit covering accidental discharges of recycled wastewater. It's, you know, if anyone wants to look it up it's Appendix J to Title 11, Chapter 55 of the Hawaii Administrative Rules which are the DOH's water pollution control rules. So, that's in place. That's not an excuse to take this case to the Supreme Court. Something else I wanted to point out and this may be news to everyone but in 2016 the Hawaii State Legislature passed a law saying that all discharges of raw or treated wastewater to State waters shall be like prohibited completely by 2026. So, injection well treatment facilities, any of these types of facilities that potentially discharge raw or treated sewage to State waters which include the waters of the United States, the ocean areas around the islands which includes our beaches, there's a moratorium on any and all unpermitted discharges to State waters by the end of, after, at the end of 2026. So, you know, this is sort of one of these apparently little known laws that the Legislature has passed. I think it somewhat goes along with the 2050 deadline for getting rid of cesspools. Even that law has exceptions, you know, so people who are...live in really hilly areas are worried about being able to dig a new septic, I mean there's exceptions to every rule but these laws do exist. The only other thing I wanted to sort of point out in the 15 seconds I have left is when Vice-Chair Rawlins-Fernandez was asking one of the other testifiers about the Fond du Lac Band of Lake Superior Chippewa amicus brief, and I have...I can't cover it in one sentence. But if anyone has questions.

CHAIR MOLINA: Alright, thank you, Mr. Cleveland. See what the Members' requests are. Need for clarification? We'll start with Committee Vice-Chair Rawlins-Fernandez, followed by Chair King.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Can I ask...okay. So, you mentioned in your testimony --

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MR. CLEVELAND: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --the Fond du Lac amicus brief.

MR. CLEVELAND: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: What about that is important?

MR. CLEVELAND: So, what's important about that brief, it's a really unique position that this tribe has. They're a Federally recognized Native American tribe. They have treaty rights to gather. So, same way like kalo is for kanaka, aquatic wild rice is for these tribes, for the Chippewa. They basically follow the prophecy from the East Coast all the way to the Midwest, to find this water, this food that grows on water. And so, they harvest aquatic wild rice and fish from navigable waters and their tributaries throughout a treaty territory that actually crosses state lines. So, and this had come up earlier before too, some of these Indian tribes with reservations actually administer Clean Water Act permits in the same way that state, for example, departments of health do. So, they have this authority on their reservation. When they leave that reservation to this treaty area where they have rights to gather the food, those...that territory crosses state lines. So, in order to make sure that they can maintain the quality of water for their resources which are physical and spiritual resources, they sort of rely on the Federal regulations to maintain water quality across state lines and outside of the reservation. Incidentally, this is the same reason why so many of the states filed an amicus brief in support of the plaintiff's position, because a state that's downstream from another state that's polluting a river cannot bring an action against that upstream state under state law because of the Doctrine of Sovereign Immunity. They rely on Federal laws to be able to enforce quality standards across state lines. This is why it's important that we maintain the Clean Water Act as it is, as many people have pointed out, and contrary to the misinformation being spread to the public, this is not an expansion of the Clean Water Act. This is how the Clean Water Act has been enforced and at the very least the Ninth Circuit since the EPA existed. And so, the idea that the plaintiffs are somehow trying to blow this things wide open and create unfettered liability for people is just complete hogwash. Any other questions?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes, a follow-up to that. So, you're saying that native people in other states are being...would be harmed by an adverse decision by the Supreme Court, just like native people here in Hawaii would be?

MR. CLEVELAND: Yes. And I would even venture to say even more so, because of the fact that, like we don't have to worry about enforcing laws across state lines really. We're just worried about we're enforcing it here at home. And...yes. So, these treaty rights that they have, I mean Native Hawaiians don't have the same type of treaty rights as some of those tribes do. And we also don't have the same type of self-governance that those tribes do. Those tribes self-govern in much the same way that states do, as

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independent sovereigns within a Federal system. And so, they're just a great example of pointing out how these other sovereigns are going to be without a mechanism to enforce clean water quality standards in the same way that states are or counties for that matter.

VICE-CHAIR RAWLINS-FERNANDEZ: So, we as a native people here would be taking away or eroding the rights of native peoples in other places such as their ability to protect their food source --

MR. CLEVELAND: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --against a polluter that would be upstream?

MR. CLEVELAND: Right. And their primary challenge there is mining waste. And so, there's a lot of these sort of tailing settling ponds that just let water through. See, the thing about it is that for us it's an injection well for treated effluent, for treated sewage; for other places it's much more insidious environmental harm. When you have heavy metals, arsenic, you know, mercury from coal ash ponds that sort of just leach through these sort of dirt dams into tributaries and streams. For the Fond du Lac Band of Chippewa, it's these mining sort of what they use to clean the water after they clean their facilities. And what happens is this...it just goes through the dirt, comes out in the stream, and starts decimating, you know, the wild rice, the fish populations. And their...those resources are already threatened for these Chippewa. This is not like they're worried about it happening for the first time, it's already happening. If these mining operations are not required to sort of manage and mitigate the pollution that they release into the water then basically the problem that already exists is just going to explode for this tribe.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your explanation of that really important case. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Chair King, followed by Member Lee.

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mahesh. So, I have two things. One, I thought...I wanted to follow up on Ms. Rawlins-Fernandez's comment, because I went to the Hawaiian rights workshop, legal rights workshop, and it was my understanding that all Native Hawaiians have hunting and gathering rights in Hawaii, and fishing rights.

MR. CLEVELAND: So, we have, yeah, certain traditionally and customary rights are protected under State law.

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COUNCILMEMBER KING: Right. So, what happens when their water gets polluted where they're trying to fish or the environment gets polluted where they're trying to hunt or gather?

MR. CLEVELAND: Right. And I mean and the impact to Native Hawaiian traditional and customary rights is it's kind of two-sided too because even the herbivore, herbivorous fish moratorium, I mean recognizing that that is a useful tool to help manage the algae, you know, now you've taken away this whole part of the icebox for people, you know. And if herbivorous fish moratoria are going to be the wave of the future in terms of managing algae overgrowth then you're talking about now closing off all kind of other sections of the icebox.

COUNCILMEMBER KING: And we're going to be violating right...yeah.

MR. CLEVELAND: I mean so it's sort of a slippery slope if you will.

COUNCILMEMBER KING: Okay. And then the other question I had for you is can you clarify, you said in 2016, the Hawaii State Legislature passed a law basically illegalizing any unpermitted discharge into the waters of the US by 2026. Is that correct?

MR. CLEVELAND: Into State water. So, this is a --

COUNCILMEMBER KING: Into State waters, okay.

MR. CLEVELAND: --State law. It's codified as Hawaii Revised Statute Section 342D-50.5. I highly encourage all of you to take a look at it. What it says is that all public or private discharges of treated or raw sewage have to stop without...unless they have permits, have to stop by the end of 2026.

COUNCILMEMBER KING: Okay. Does it specify what type of permit?

MR. CLEVELAND: It doesn't.

COUNCILMEMBER KING: Okay. So, could be UIC, could be NPDES?

MR. CLEVELAND: That law just says that there have to be permits.

COUNCILMEMBER KING: Okay. And it doesn't say who has to give them the permits?

MR. CLEVELAND: It doesn't.

COUNCILMEMBER KING: Okay. So, it could be...

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MR. CLEVELAND: It's a...so that part of the Hawaii Revised Statute specifically addresses the water pollution controls that the Department of Health have. So, I mean they are the ones to administer any water rules.

COUNCILMEMBER KING: Okay, so that's a...so they have to have a State permit --

MR. CLEVELAND: Yes.

COUNCILMEMBER KING: --because it's State waters?

MR. CLEVELAND: Yeah.

COUNCILMEMBER KING: Okay. And then is there a definition...I mean I know we have waters of the US --

MR. CLEVELAND: Yeah.

COUNCILMEMBER KING: --and I know that Trump is trying to change those and lessen the restrictions on waters of the US, because I sat in a webinar where they were proposing the changes. Do we have a similar definition for State waters that...

MR. CLEVELAND: Yeah, there is a definition for that, I don't have that in front of me and I don't know it off the top of my head, but it's substantially similar to the definition of waters of the United States except obviously applied here in the State. So, it would be streams, rivers, lakes, tributaries, and obviously coastal waters.

COUNCILMEMBER KING: Is it going to change with those changes if they change ____, is there...is this...are the State...the definition for the State waters going to change as well?

MR. CLEVELAND: I see no reason to think that the State would have to change their definition of state waters even if the Federal government changes of their definition of jurisdictional waters.

COUNCILMEMBER KING: Okay. Alright. That's all my questions for now.

MR. CLEVELAND: Thank you.

COUNCILMEMBER KING: So, thank you for being here.

COUNCILMEMBER LEE: Mr. Chair?

CHAIR MOLINA: Thank you, Chair King. Member Lee?

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COUNCILMEMBER LEE: You were talking about earlier impacts on different jurisdictions on the mainland --

MR. CLEVELAND: Yes.

COUNCILMEMBER LEE: --yeah? And how many people do you think or how many jurisdictions do you think will be negatively impacted?

MR. CLEVELAND: Just to be clear, the negative impact that I would foresee would be if the County decides to persist in this appeal and then somehow prevails at the Supreme Court. The impact there would be across all jurisdictions in the entire United States, because it would be controlling law over all of the circuit courts of appeal which would control all of the Federal district courts. So, basically if the Supreme Court heard this case and held that discharges that are conveyed via groundwater when it's fairly traceable...and just to be clear, the Ninth Circuit's decision doesn't it make it easier to find Clean Water Act liability, it makes it harder, because...and they've always had to evaluate everything on a case-by-case basis. But if the Supreme Court comes down the other way, agreeing with the County's argument then any facility or industry that wished to dispose of pollutants more easily would simply have to find a way to comply with the Supreme Court's theoretical ruling that only discharges directly from a point source straight into a navigable water would be regulated under the Clean Water Act. This is going to affect people in all jurisdictions because as I understand and pretty much every one of the Federal circuits, there are either municipal or industrial polluters, many of whom are currently regulated under the Clean Water Act and have to comply with NPDES permits.

COUNCILMEMBER LEE: Okay. So, my question really is since you mentioned that many people will be negatively impacted, yeah, if we prevail --

MR. CLEVELAND: Yeah.

COUNCILMEMBER LEE: --so have these people and, you know, and listed attorneys and, you know, filed anything with the Supreme Court or any court in defense of their positions similar to what you're doing against the County?

MR. CLEVELAND: Are you referring to separate lawsuits that have been brought to enforce the Clean Water Act?

COUNCILMEMBER LEE: Yeah, separate lawsuits, right, because...

MR. CLEVELAND: Yeah. And in the...in...I believe in the EPA's brief in 2016 to the Ninth Circuit, in the former EPA administrators and former EPA officials' amicus briefs filed with the Supreme Court, they actually sort of list out a bunch of them. Again I'm sorry, I don't have a list of all of those actions in front of me, but there are other cases that have sort of percolated up to the court systems. And then of course all of the

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people that filed briefs in support of the plaintiffs in this case who felt that it was important to weigh in, because they specifically felt threatened by the potential outcome at the Supreme Court. That's the...

COUNCILMEMBER LEE: So, I would imagine that there's a substantial number of these cases, correct?

MR. CLEVELAND: I don't know how many of these cases there are.

COUNCILMEMBER LEE: Well, if that's important to other jurisdictions, wouldn't there be, you know, widespread lawsuits?

MR. CLEVELAND: Well, so the Federal district courts, right, basically the trial-level courts for the Federal court system, they've...the various district courts, I mean there are many, many cases like this, not all of them have gone up on appeal, not all of them have gone...not all of them have been appealed beyond the Circuit Court of Appeals level. And in fact this is an issue that has basically been working its way up the appellate courts Federally. The fact that this case is the one that brought it to the Supreme Court is kind of ironic to me. As Isaac said earlier, I just graduated law school like a year ago okay, so just bear with me. But in my last year of law school, I was in this competition where they bring together law students from across the country, they look at the state of case law across the country, and then they decide oh, what is the most hot-button issue that's going to be bubbling up through the courts soon, and then let's make these poor law students like dream up arguments off the top off their heads about it. Our problem was discharges via groundwater to waters of the United States. And little did I know it was basically this case, the Kinder Morgan case which is another one that's sort of pending review, and then I think there's...I don't know if anyone else has applied for certiorari to the Supreme Court. But this is definitely an issue that has been working its way through the Federal court system for many years now, and I think that this particular case is seen as a sort of a golden opportunity for the interests that want to sort of take a little bit of the power out of the Clean Water Act, if I can say that, I don't know, other people have said...

COUNCILMEMBER LEE: Yeah but, you know, we're talking about our case.

MR. CLEVELAND: Yeah.

COUNCILMEMBER LEE: Yeah, what, you know, the County and, but the question I originally had was as far as other jurisdictions mounting, you know, lawsuits and challenges to what we're doing, I don't see a lot of that.

MR. CLEVELAND: A lot of other jurisdictions --

COUNCILMEMBER LEE: Yeah.

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MR. CLEVELAND: --challenging what the County is doing?

COUNCILMEMBER LEE: Yeah, what we're doing.

MR. CLEVELAND: Like bringing an action against the County of Maui?

COUNCILMEMBER LEE: Well, or, you know, I just don't know. Can...so you mentioned an Indian reservation.

MR. CLEVELAND: Sure.

COUNCILMEMBER LEE: So, how many more would you say...well, and are they...did they file a lawsuit?

MR. CLEVELAND: They filed a brief in support of the plaintiffs in this case --

COUNCILMEMBER LEE: Yeah.

MR. CLEVELAND: --to the Supreme Court.

COUNCILMEMBER LEE: So, but no, because, you know, you talk about a hot-button issue so I thought maybe there would be this groundswell of opposition, you know?

MR. CLEVELAND: I think that probably in a lot of communities, people try to do what the community here did and actually work with the government before just bringing lawsuits. I think lawsuits are generally seen as a last resort.

COUNCILMEMBER LEE: Because I'm not interested in the big money you're talking about, because that's not, you know, what we represent, yeah?

MR. CLEVELAND: Yeah.

COUNCILMEMBER LEE: You know we don't...manufacturers and so forth.

MR. CLEVELAND: No, I know.

COUNCILMEMBER LEE: Yeah.

MR. CLEVELAND: I know. And I know that you folks work for the people of Maui and I appreciate that, but I think that it would be a mistake to pretend like those interests don't exist and to pretend like those interests and industries are not propping up Maui County in this appeal. Because if you look at your list of amicus briefs, it's pretty clear who's supporting this on the County's side. I don't see anybody...she's got a pretty picture right there. But, you know, the information is accessible to all, you can see very clearly who is supporting the County's position in this appeal and who is

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supporting the plaintiff's position in this appeal. And I understand that to this body, that may not be the ultimate, that may not be the most important consideration, because what you have to think about is what's going to be best for Maui County. I think that it would be unwise to ignore the significance of that varying support.

COUNCILMEMBER LEE: I didn't say that. Did I say that?

MR. CLEVELAND: No, you didn't.

COUNCILMEMBER LEE: Okay.

MR. CLEVELAND: I'm just --

COUNCILMEMBER LEE: Yeah, so please --

MR. CLEVELAND: --repeating.

COUNCILMEMBER LEE: --don't draw any conclusions on your own. I'm just...I was simply asking you who is supporting the other side, yeah? You talked about a jurisdiction on the mainland, an Indian reservation, and I would think from the way you were speaking earlier, there's this enormous list of people and jurisdictions and entities. That's what I was asking about, not on our side, on the opposite side.

MR. CLEVELAND: So, if...

COUNCILMEMBER LEE: So, you did answer that question. Okay? Thank you.

CHAIR MOLINA: Okay, thank you, Member Lee. Members, any other need for clarification from Mr. Cleveland? And by the way, we...I did mention to you Mr. Moriwake as a potential resource once we get into further deliberations, and I guess maybe Mr. Cleveland can kind of rotate if necessary to...when we get into the deliberative phase and Members have any additional questions or clarification needs, if that is the choice of this body. So, anyway, okay, alright. So anyway, alright, moving on if you have no further needs to clarify Mr. Cleveland's testimony then we will move on. Thank you for your testimony, sir.

MR. CLEVELAND: Thank you.

CHAIR MOLINA: Okay, next we have Satya Douglas as well as Keone Kneisler standing by to testify afterwards.

MS. DOUGLAS: Aloha, everyone. Thanks for staying so late. Okay. My name is Satya Douglas, I'm the cofounder of the SHAKA movement, the Community Farmland Initiative, and the Maui Pono Network. Thank you for listening. I took work off today to be able to testify, because I see that your decision in this matter will have

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monumental consequences. I see our islands and the whole country's health at risk, and I see a simple solution to avoid further damage for Maui. We can be good or a horrible example, it is up to us. We are at a crossroad, one road leads to the Supreme Court. Taking the injection well case to the Supreme Court would be doing the bidding of big-money interests, not Maui interests. I don't know of any Hawaiian friends who like the idea of giving our power away to the United States Supreme Court, concerning a matter that we do have jurisdiction over locally. I don't think anyone on the Committee would want to have it on your conscious to be responsible for further environmental degradation of Hawaii and the whole country by weakening the Clean Water Act for all. Please settle the case and dedicate the County money to fixing the environmental problem at hand. When we proposed the GMO moratorium, Monsanto tried to convince voters to vote against it by trying to scare them. They told them that small farmers could get sued, fined, or thrown in jail if the moratorium was implemented. These were all lies. Now, the lies being spread that people with cesspools will be in trouble if the EPA standards don't get lowered and that is why we should support taking this case to the Supreme Court. Again, the polluters are trying to pretend their agenda is in the people's best interest while it only serves the big-money interests of the polluters. I'm the owner of a cesspool, I am not scared. I know that lowering the EPA standards will not serve our needs, and I know that the decision made with this case is not applicable to us. And in case our cesspools posed an environmental danger, I would be happy to do something about it and fix it. What's the game we're playing here where we're putting partially digested sewage in the ocean while the system was meant to keep it out of the ocean? Wastewater is not allowed to be in the ocean, so it's no different than Fukushima. We know that radiation shouldn't be in the ocean, it doesn't belong there, but now it's in the ocean. There's no difference. Let's fix the system, let's use the water for agricultural use. The plants can take up the nutrients, and the microbes in the soil will break down pharmaceuticals and other harmful substances. And it takes...all it takes is pipes and willpower and a commitment to taking care of the challenge at hand. We have solved the problem for Kihei where the water is used for agriculture, now we can do it again for Lahaina and Kahului. It is doable, we just have to get back on track. It doesn't even make sense for Maui County from a purely financial perspective not to fix our problem, our economy depends on tourism. What if all sea life dies? I'll wrap it up. Do not waste the County money with another court case. An American Indian chief once said--I paraphrase--white men will cut down the last tree and pollute the last river and kill his last fish before he will notice that he cannot eat money.

CHAIR MOLINA: Thank you, Ms. Douglas. Members, any need for clarification from Ms. Douglas' testimony? Seeing none, thank you for your comments. Next to testify on GET item 26 --

MS. DOUGLAS: Thank you.

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CHAIR MOLINA: --thank you--Keone Kneisler, followed by Kecia Joy. Keone? Not here? Okay. Moving on, Kecia Joy to be followed by Robyn Kiner or Kinker. Kecia? Kecia not here as well?

MS. JOY: I'm here.

CHAIR MOLINA: Oh, she is, okay. Thank you.

COUNCILMEMBER SUGIMURA: Chair, how many more testifiers?

CHAIR MOLINA: Good question. I have in my, I hold in my hand a total of one...two...three...four...five testimonial sheets at this point.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Thank you. Five more at this point. Good evening, Ms. Joy.

MS. JOY: Good evening. I want to thank you very much for keeping your word and having this very important meeting, that means a lot to me. I've been here since early this morning and I gave up my seat to the only kupuna that could stay. And my name is Kecia Joy and I thank you all for staying late. I'm a marine biologist, an aquatic therapist, a snorkel and swim instructor, and also a diver. And when I was lucky enough to move here 20 years ago, almost 20 years ago, I used to dive Kahekili Beach very, very often when it was beautiful and pristine and very lively, hundreds of fish. And now it's a rubble of coral skeletons covered in algae. And yes, the herbivores have been protected--thank goodness--by my fellow marine biologists who have stepped in, but it was way below what a healthy reef should be. My friend took a photo last week that Hannah Bernard showed you all, and I would love to take all of you underwater with me. 'Cause the first time I put my face underwater, I said grandma, this is a whole other world. And this is other world is why the tourists come here and connect with themselves again by being able to see this beautiful world. So, just a few days ago, we had ten whales wash up on Kihei and I live in Kihei. It was devastating. Six of them did not make it. And likely it was the sonar which feels like very much out of our control 'cause it's the military. This case feels like it is in our control. You all are representing us, you're the closest people to the people. You are us, representing us, and we have this very rare chance to make this decision ourselves. It's not left up the military. So, I, I'm really urging you to please settle this case, take matters into your own hands and remedy this. The indigenous wisdom has been trying to tell us that, you know, we are the mauna, we are the water. What we do, what is good for the mauna, what is good for the ocean is good for us, and I really hope that we can remember that in time. And I thank you for your dedication for staying here this late. Please settle the case. Mahalo nui.

CHAIR MOLINA: Okay, mahalo, Kecia. Members, any need for clarification from Ms. Joy's testimony? Seeing none, thank you for being here, Kecia. Next to testify, Robin

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Kinker. Not here? Okay, moving on. Next signed up for testimony, Joy Hosseinian? Joy Hosseinian? Okay. Okay, is that Joy approaching? Okay. Alright, Joy's not here. Rhiannon Chandler, I know she was here. And Rhiannon will be followed by Donna Brown.

MS. CHANDLER-IAO: Sorry, I didn't realize so many people weren't here. Aloha and thank you so much for being here. I truly mean that from the bottom of my heart. It's late and we're hungry and you're still here because you care and thank you. Aloha, Chair and Councilmembers. You know honestly from...I really mean this, I'm sorry we're so divided. In this room there are many people that I love and I'm sorry that we are not agreeing on this issue, but I know that we all love Maui so we got to stay right there. You know before anything else, I want to thank you so much for all the money you've put into the budget. This Council put a lot of money into reuse of water and that's the best thing that anybody could ever do. And the injection wells are a thing, that's what we have. There's a lot of creative arguments today about discharging outfalls and alternatives and all kind of stuff. There's a lot of engineering stuff. Really? This is about getting a permit or whether or not a permit's not needed, not only for us but the entire nation, right? So, the permit that we have, it's important to note the permit that we have, the UIC permit it just truly doesn't contemplate marine impacts, it doesn't. It's for drinking water. So, phosphorous for example which people used the word phosphorous all day today, but the Lahaina treatment facility does produce phosphorous. The test from UH in 2011 said 177 micrograms per liter of phosphorous. Now, the ambient water quality standard for phosphorous in the marine environment is only 20 micrograms per liter. But that's what an NPDES permit would regulate. The UIC permit doesn't regulate that because it doesn't contemplate marine impacts. Why do marine impacts matter? They matter because marine species matter, 'cause coral matters, it matters to our tourism. So, if money is a thing then it matters to our tourism, and that should be a really great reason to defend our reefs. But more than that, it matters to the people who depend on those resources like me and people who fish and people whose lineage is fishing. What about them? What about their ability to gather from our resources that are declining? We cannot say we don't know that the resource is going downhill, and we know from scientific studies that have been verified that the kind of water that's coming out is degrading the coral which has a catastrophic like domino effect on the other resources. So, when we are unable to fish, it's not just our problem, it's a problem for future generations, it's a problem for the transmission of culture. We are stealing the ability to transmit our culture to the next generation. That's what this is about. It's about more than permits and money and infrastructure, it's about what kind of Maui do we want to have today and in the future for our children? I don't know what else to even say. I just really appreciate you guys so much. Thank you for being here.

CHAIR MOLINA: Mahalo, Rhiannon. Thank you for your thank-yous as well. Committee Members, any need for clarification of Ms. Chandler's testimony? Member Rawlins-Fernandez?

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Chandler.

MS. CHANDLER-IAO: Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your testimony.

MS. CHANDLER-IAO: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: So, in your testimony you spoke to the impacts of generations now and generations into the future not being able to receive the cultural knowledge and wisdom from ancestors before us and those of us today --

MS. CHANDLER-IAO: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: --from gathering. Would you say that like Mr. Cleveland pointed out where the Fond du Lac Native American tribe in Minnesota, it would be a similar impact?

MS. CHANDLER-IAO: Yeah, so not only...I mean so culture matters, culture matters, we're in Hawaii, it matters to the people of Hawaii, but I think that throughout the nation, it is true that what we do is going to impact. I know that we don't want to talk about industries and who's at stake or whatever, but the truth is coal companies are polluting into water, mining companies like the Fond du Lac Tribe pointed out, their resources are threatened by the mining company. And so, if we allow this kind of pollution then we're stopping not only the cultural knowledge of our people to get to the next generation but everybody's gathering practices and fishing practices that are dependent on a healthy environment. Because this will make it okay to discharge into the groundwater which you cannot see the health of the groundwater. It's not like you look underground, you can't see underground like you can see in a river or an ocean. You can't see how healthy groundwater is. So, people are going to be impacted before they even know that they are impacted, right? But in addition to that, those resources that that water filters into 'cause our environment is so dynamic, the impacts are limitless, I mean they're endless, right, to fisheries, to food production as Mahesh pointed out for the that tribe, you know, to things that I think at home we will only know after this decision is made, how the impacts are. There's a lot of things about if this happens then maybe we're going to get fined or many these people are going to be...or liable or maybe, maybe, but there's some certainties that pollution kills animals, it kills people, it kills...cancer kills from oil and gas, it does, all over the nation. And so, it matters to those communities what we do today, but certainly to cultural practices. Thank you so much.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. And so, would you say that this rise, would rise to the level of being irreparable damage?

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MS. CHANDLER-IAO: Irreparable damage. You cannot unpollute an aquifer after...I mean we're kind of living this in Hawaii. It's so sad but you can't take what's already been spilled into the aquifer out. There's no way to clean an aquifer effectively. So, if that's somebody's drinking water or that river is somebody's sole source, and for many tribes they are limited to their river in their area. So, if a mining company comes in, they can't move somewhere else and get a different river or a different aquifer. And so, you know, our world is amazing but it's very easy for us to mess up, you know, the natural system. Thank you, guys, so much for what you're doing, I really appreciate you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your responses and for your testimony. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Ms. Chandler, for being here. So, the Hawaii Supreme Court, the Fourth District Court, and the Ninth District Court voted in favor of the plaintiffs?

MS. CHANDLER-IAO: So, the Hawaii Supreme Court has not expressly ruled on this issue, but the Fourth Circuit and the Ninth Circuit are not in agreement, and so sometimes when there's splits in the circuit then the Supreme Court has the opportunity to clarify the law. But as we talked about earlier, it's not clear whether that would be based on law or based on interest.

COUNCILMEMBER SINENCI: And how significant was this tracer dye in...

MS. CHANDLER-IAO: That's a great question. So, the Ninth Circuit case says that the pollution must be fairly traceable to the source that it comes from which articulates a standard for the first time that's pretty clear. But at the same time, a lot of people have insinuated it's going to make it easier for people to sue, but I think it would make it much harder for people to successfully win. Because what happens is I have to do the dye tracer study, and I have to prove it's that person's specific pollution source. And with cesspools in communities, you can't, unless...you can't. I mean it's just like so hard. Unless that one outlier cesspool is real close to the ocean and it's really, really clear. But you're talking about Makawao and Hana and places, you know, where there's group cesspools and then it would really be DOH who'd be doing this dye tracer study, you know. And a lot of the enforcement fears we have to keep in the universe of who's going to enforce, and DOH is our home enforcement. EPA doesn't come down and enforce locally, that's actually DOH who does the regulation at home. And so, DOH is our main go-to as to are we going to be okay, you know, are we cesspools owners are going to be okay. And as people talked about earlier, there's these general permits that are available to protect homeowners from liability and to protect recycled water from liability so to address a lot of the fears that were brought up. And I thank you for that fairly traceable standard, it's very important to keep in mind the test...the burden is high to prove, yeah.

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COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

MS. CHANDLER-IAO: Thank you.

CHAIR MOLINA: Okay, thank you, Councilmember Sinenci. Member Rawlins-Fernandez, continue.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Real quick. I just wanted to kind of dovetail off of Member Sinenci's line of questioning if you don't mind, Ms. Chandler. Are you an attorney?

MS. CHANDLER-IAO: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: What's your expertise?

MS. CHANDLER-IAO: Environmental law and Native Hawaiians rights law.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Okay, so there was a fear tactic used earlier by a couple of testifiers that spoke to class-action lawsuits for cluster of homeowners' houses that have cesspool and septic. And the attorney said that he would be able to bring a class action against all these, this cluster of houses. And that one property could have an impact on the ocean and therefore this cluster of houses. So, I don't know if you --

MS. CHANDLER-IAO: You know, I...

VICE-CHAIR RAWLINS-FERNANDEZ: --are familiar with that?

MS. CHANDLER-IAO: I...thank you for that question. I try really hard to figure out, you know, to be able to argue both sides of something, but I actually can't figure out how to argue that position because of the fairly traceable standard. 'Cause the class action would have to be a class of...are you going to do the dye tracer for every single house? 'Cause that's what the Ninth Circuit requires, you have to prove that it's essentially like a discharge as if that pipe is going straight into the water. There is no gray area where it's like we think you guys are all polluters so you guys are all going to get sued. You have to prove it. You have to prove every house, every connection between the pollution and entering the waters of the US. That is really complicated.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. So, you're telling me that Member Lee is safe then?

MS. CHANDLER-IAO: I think Member Lee is very safe.

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VICE-CHAIR RAWLINS-FERNANDEZ: Just kidding, just kidding. I know you don't have a cesspool, it was a joke. For the record, Member Lee does not have a cesspool.

MS. CHANDLER-IAO: And for the record, I really believe honestly that homeowners in Maui County are safe, and our DOH has already stated that they have so much kuleana that is more important than people's cesspools. I mean that's the truth, you know, we got real pollution issues across the State and it's not the wastewater treatment in Lahaina. I mean Lahaina's wastewater treatment is actually really great. I mean you guys really are doing a great job. It's that it's going straight into the ocean and it needs a permit, that's the problem. But the good news is people want to help with the permit. Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for answering my additional questions. Mahalo, Chair.

CHAIR MOLINA: Okay, thank you, Member Rawlins-Fernandez. Before I recognize Chair King, just a follow-up on Member Rawlins' line of questioning with regards to any potential class-action lawsuit by someone. So, as I interpret your response, because a person who would file a class-action lawsuit, they have to come up with some evidentiary findings and if they cannot, in your opinion, would a judge consider it a frivolous lawsuit --

MS. CHANDLER-IAO: Yes.

CHAIR MOLINA: --and possibly get thrown out of court?

MS. CHANDLER-IAO: It could be considered frivolous but at the same time you have to meet certain burdens, and the other party who is on the receiving end may just file a motion to dismiss because there's not substantial, you know, reasons to support the arguments being made on the other side. Somebody made a point earlier that, you know, people sue, you can't stop people from suing. But this Ninth Circuit decision really makes it hard to win because you have to prove so much.

CHAIR MOLINA: So, it would be the plaintiff's responsibility to establish the burden of proof?

MS. CHANDLER-IAO: Always, yes, that's --

CHAIR MOLINA: Okay.

MS. CHANDLER-IAO: --very important.

CHAIR MOLINA: Okay, thank you. And I'm using legal proceedings, I watch a lot of those court dram shows.

MS. CHANDLER-IAO: Love it.

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CHAIR MOLINA: Alright, thank you. I guess, Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, innocent until proven guilty. Good one to remember. Thank you so much for being here, Ms. Chandler. And so, I just wanted...I'm trying to find somebody who...I know you're an environmental attorney, have you ever worked with anybody or yourself filled out an application for an NPDES permit?

MS. CHANDLER-IAO: Okay. So, I have not but that's a really important question. My very, very good friend who I am so honored work closely with is Dr. Wendy Wiltse, and she's an EPA, former EPA Clean Water Act scientist and regulator. And she has worked on the wastewater treatment facility in Lahaina for more than 25 years of her career, and she's very familiar with the process. She says that the NPDES process is possible to...I mean so the threshold question is, is it possible? So, the answer, her answer to that is yes, it's possible to do a permit. It's not an easy permit, and she said don't make like it's easy. You know it is complicated but not impossible. And there's already willingness expressed from EPA to support the scientific portion of it, because I know DOH has expressed their staffing and all kinds of budget issues and it's hard, you know, to support. But EPA is a resource, Earthjustice offered to be a resource, Dr. Wendy Wiltse is a resource, and I think someone offered examples of injection wells that go into waters of the US where they have been permitted. And so, it is possible at least in two instances where this has been done before so we would be following that example.

COUNCILMEMBER KING: Okay. And I was hoping that Dr. Wiltse would actually be here because --

MS. CHANDLER-IAO: I really...

COUNCILMEMBER KING: --I was told that she might be here. So --

MS. CHANDLER-IAO: Yeah.

COUNCILMEMBER KING: --but...so just to clarify, the NPDES basically is a plan to get to the cleaner water. I mean it doesn't mean that you have to stop everything you're doing until you --

MS. CHANDLER-IAO: Absolutely.

COUNCILMEMBER KING: --get that permit.

MS. CHANDLER-IAO: Oh gosh, that's a great question. So, the Clean Water Act says that you cannot discharge a pollutant into waters of the US without an NPDES permit. So, you can discharge a pollutant into waters of the United States which is oceans and

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rivers if you have a permit. So, the permit is like the golden ticket to discharge the pollutant. I'm sorry. But really what the permit does is it regulates the water quality standards that need to be met in order for that to go out to the water. So, the truth is they say pollution...that dilution is the solution to pollution. And so, all around the world, people are putting pollution into the water, but these permits, NPDES permits tell you what parameters to stay within, in order to help that natural area still be sustainable.

COUNCILMEMBER KING: Okay. And in your opinion because I think this is a really key point that I'm not sure how long it takes to get this permit but it's taken us ten years.

MS. CHANDLER-IAO: It's a long time.

COUNCILMEMBER KING: I mean, you know, I don't know at what point we, the County actually stopped applying for it. But I mean if we are required to get that permit, are we required to stop any activities while we're applying for it?

MS. CHANDLER-IAO: No, and that's really a great question too is that in fact I think we have a permit in progress and so it's currently on hold --

COUNCILMEMBER KING: Right.

MS. CHANDLER-IAO: --waiting for more information from the County. That current permit, even already is like a shelter, you know, the EPA and the DOH they can see we're trying to get a permit.

COUNCILMEMBER KING: Okay, the fact that we're applying for...

MS. CHANDLER-IAO: You know in terms of violations that may cause, you know, if we settle or whatever. We're already actively trying to get a permit, and the permit is the thing that says to the EPA and to the world, we are not violating the Clean Water Act because we have a permit. That's the NPDES is like the ticket to be able to do it.

COUNCILMEMBER KING: Okay.

MS. CHANDLER-IAO: Yeah.

COUNCILMEMBER KING: Great. Thank you.

MS. CHANDLER-IAO: Thank you.

CHAIR MOLINA: Okay, thank you, Chair King. Okay, seeing no other requests for clarification, thank you, Ms. Chandler, for your responses to the Committee's questions.

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MS. CHANDLER-IAO: Mahalo. Thank you, all. Good night.

CHAIR MOLINA: Okay. Continuing with testimony, we have Donna Brown, to be followed by Amy Fonarow.

MS. BROWN: Hello --

CHAIR MOLINA: Aloha.

MS. BROWN: --and as other people have said, thank you for staying so late. I had to work today so I couldn't come till later. So, I sent in my testimony last week thinking that I wasn't going to be able to be here but I was able to come over after school. My name is Donna Brown and I'm a marine biologist also. I teach at the college here. And I started as a student here and I was studying marine biology, and my very first project that I worked on was the Maui algae bloom study in 1994 with Dr. Wendy Wiltse and it was through the Department of Health. And since then I've worked on numerous projects looking at Kahekili. I've done probably a couple thousand dives at that reef. It's like my favorite place to go, it's always been my favorite place, it's beautiful, but it's really sad. I've cried out there in the last few years at how dead it is. It's really bad. And I would love to, I said in my letter too I would love to take you guys out, Darla would, we've all offered. We'd love to take you guys out and show you. There's a still a few nice parts of the reef, but we'd like to also show you where you can see the water coming out and you can see all the dead. I'm just...anyway, I've lived in Lahaina side for almost 40 years and I've worked on all these studies, and I've been out there...that's what I do on my day off, I go swimming for exercise and I just swim along there. So, I look at it all the time. And the other thing that I've noticed in all those years is after Pioneer Mill left and the pineapple left, the hills are really brown. Lahaina used to be so beautiful from the sea, and it looks like we have a really good situation here where those same nutrients that are fertilizing the seaweed in the ocean could also fertilizer on the land. And I know you've talked about reusing and what...we could use solar and wind power to pump that water up as far as we can get it. Plant native forests back up there. Yeah, it'll be great to do some ag, but the really good thing would be to replant our native forest that was cut down to grow sugar all those many years ago in the 1800s. We could restore West Maui Mountains to be something beautiful with our own waste, and that would be the best thing we could do. Right now, I live in Launiupoko, and we...my husband used to be the irrigation supervisor at Pioneer Mill, and that was one of his fields so it was his dream to have his own farm. And we don't even have water, all of our plants are dying. We have coffee trees, bananas, coconuts, a whole...we have all these things we've planted to try to make a farm, and there's a sign at the bottom of our hill, we only get water three days a week and even then it dribbles out. We can't get...we don't have water, everything's dying. And here we're just dumping all this water and wasting it. So, I would love to see that reused and make our land green again. Thank you.

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CHAIR MOLINA: Okay. Thank you, Ms. Brown. Members, any need for clarification from Ms. Brown? Seeing none, thank you for...

VICE-CHAIR RAWLINS-FERNANDEZ: No. Quick, Chair?

CHAIR MOLINA: Oh, I'm sorry.

VICE-CHAIR RAWLINS-FERNANDEZ: Fast one.

CHAIR MOLINA: Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Aloha, Ms. Brown. Mahalo for the invitation to take us out. While you were doing those water quality studies at Kahekili Reef and diving there where the seeps are, did you contract staph or any kind of infection?

MS. BROWN: No, I think I'm...I have a pretty good immune system. Some of my friends did, they got pretty sick and but I didn't. And actually they do a really good job of getting the bacteria out of the water that makes people sick. But the problem is the methods they use to get the bacteria out, there's also good bacteria that eats the nitrogen and so now that's not being eaten up. So, it's the denitrifying bacteria. You can kind of think of it like, you know, if you are sick and you take antibiotics and then it also kills all your good stomach bacteria, that's the same thing. We've killed all the good bacteria. So, it's...people aren't going to get sick from that, but they...but it's doing other things like fertilizing the algae that's out there. And so, there's...it's not that there's those microbes that are there, they've killed that, but there still are other things like you've heard like the pharmaceuticals and the nitrogen and phosphorous and things like that.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. I'd really like to go see the seeps, I'm just worried about getting infections.

MS. BROWN: Well, I'd be happy to...and I did submit over e-mail my testimony last week and I put my contact information, and I would really be happy to take anybody out there and show you exactly where all the stuff is coming out. So and I mean it, call me up.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Brown. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Before I recognize Chair King, Ms. Brown, you mentioned that you're an educator at the UH college. How long have you been a teacher or an instructor there? Just out of curiosity.

MS. BROWN: Since the early '90s.

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CHAIR MOLINA: Okay. Well, you've been well versed in this issue over time. Okay. Chair King?

COUNCILMEMBER KING: Thank you. Okay. I also want to go out there but I'm going to need some tips on like what to do about potential staph.

MS. BROWN: Oh no, I don't think you have to really worry about that right now.

COUNCILMEMBER KING: Okay.

MS. BROWN: And then also, you know, just like people said, take a shower when you get out.

COUNCILMEMBER KING: Okay. Okay. But I just wanted to clarify your testimony, because we have, you know, piles and so it helps that you're here in person. And are you here to ask the Council to settle the case?

MS. BROWN: Oh, yes. Sorry, I should have said that at the beginning. I definitely would like you to settle the case. And as a long time...I believe most of my life on Maui and I...like somebody else said, I've always been proud to be from Maui, and if this case went to the Supreme Court and they made it so people were polluting everywhere, I think I would want to move away. I would be so ashamed.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR MOLINA: Thank you, Chair King. Members, any other need to clarify Ms. Brown's testimony? Seeing none, thank you. Next to...

MS. BROWN: Thank you all for staying so late.

CHAIR MOLINA: Appreciate the compliments. Thank you. Next to testify we have Amy Fonarow to be followed by Charles Rutkowski. Amy? No, not here? Okay, moving on. Charles Rutkowski, to be followed by Stoph Kasak. Charles Rutkowski? Not here? Okay. Stoph Kasak, followed by Tesha Martines. Okay. Then we have...okay. Alright, we have the individual approaching. Stoph, okay. Good evening.

MR. KASAK: Okay. Thanks for taking this one up at this Committee. It's good we have some ethical watchdogs for the Corporation Counsel. The previous testifiers...Sam Small spoke to the peculiar tricameral government we have in the County here where as you all know and for the viewers at home that are watching, that I also want to thank for tuning in. The whole world's watching 'cause the whole world is downstream on this one, mauka to makai. I mean that's what brought me here originally. I come from the pain land, Champaign, a barren Illinois, it's corn country. And I saw what was happening out here affecting what was happening around us, the people getting sick around us, the land getting sick through pollutants that were being

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allowed to be mass manufactured out here and sent out there. I studied art at the university there and I worked at the water survey library just as a research assistant, librarian running articles, copies for various scientists. You know I'm not a scientist myself or trained beyond a certain level, it's liberal arts, but you don't have to be one to see the effects. It was like the abstracts, it's just staggering, and the stuff that's coming out just in the last month. The reason I waited to testify, I was going to see...I hate democracy, participating, it's too much. But nobody mentioned the rain forests that are fire there and I noticed, I don't know if anybody saw that across the world, the lungs of the planet. What else, I guess the coral reefs, malama koa, identified as the great ancestor of all us people in the Kumulipo. Would be what, the filtration system maybe, the livers and stuff. and the UN reports are staggering right now. Like it is a tipping point moment, corporations are lining up, chomping at the bit to just...they're already reading their tubes to just stick 'em in the ground and dump whatever they can here. So, if you got any questions to that, be happy to speak more about it.

CHAIR MOLINA: Okay. Thank you for your testimony, sir. And could you again just state your name for the record?

MR. KASAK: Stoph Kasak.

CHAIR MOLINA: Stoph Kasak. Okay, thank you. Members, any need to clarify Mr. Kasak's testimony? Seeing none, thank you for staying here and enduring the night with us for your testimony, much appreciated. Alright, our 99th individual to have signed up for testimony and last individual to have signed up, I wanted to say 99th. In all my years on the Council, I've never had the privilege of saying testifier number 99. Tesha Martines?

MS. MARTINES-MELEM: Sorry, I'm kind of short. My name is pronounced Tesha actually.

CHAIR MOLINA: Tesha, okay.

MS. MARTINES-MELEM: It's the Hawaiian E. Well, my whole name is Tesha ____ Martines-Melem but I like to add my ____ Hawaiian name at the end of that too in honor of my grandmother. I'm not a scientist. I don't like to call myself an activist either. I'm just a typical Hawaiian keahi here. I'm here to represent my own family, even though some people know me from Surfrider. I have 14 siblings altogether, 11 younger siblings, and I just got involved with this because I just generally don't think it's fair that my younger siblings are being raised in a more uglier Hawaii than I was raised in which is the very reason why I got involved with Surfrider Foundation. I'm taking care of the ocean and the land every single day. And just hearing the testimonies of the children today, especially that one young lady from Kamehameha Schools that got very emotional here, that testimony stuck with me all day today. I had to actually leave here for a couple hours, 'cause it was so overwhelming 'cause she was getting emotional because she saw other fellow kanakas here speaking up in protest of what's happening there and in support of the settlement. And just me, I'm

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asking for the settlement for the keikis, because they will be living in our mess for much longer than we will at this point, and I think you guys really need to consider that. You guys are making the decision for our keikis and for my younger siblings and I'm fighting for that too. And that's all I really wanted to say, just think about the keikis, okay, because they will be here much, much longer than us and dealing with it. Mahalo.

CHAIR MOLINA: Mahalo, Ms. Martines. Appreciate the perspective. Members, any need to clarify Ms. Martines' testimony? Thank you very much for staying late with us.

MS. MARTINES-MELEM: Thank you.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR MOLINA: Committee Staff, do we have anyone waiting in our sister offices on Molokai, Lanai, and Hana, at this point?

MS. ESPELETA: No.

CHAIR MOLINA: Okay. Is there anyone else in the gallery that would like to testify on our one agenda item today? Seeing no one approaching...

VICE-CHAIR RAWLINS-FERNANDEZ: No one wants to be our 100?

CHAIR MOLINA: Unfortunately, Committee Vice-Chair Rawlins-Fernandez, we're not going to quite reach that 100. Let me ask Committee Staff just for the record, although we had 99 sign-ups, is that the accurate number of people that actually spoke total?

MS. MARTINS: Sixty-four.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh, I guess all the students huh.

CHAIR MOLINA: Excuse me. Sorry?

MS. MARTINS: Sixty-four spoke.

CHAIR MOLINA: Sixty-four spoke, 99 signed up. Okay. For some reason, it seemed more, but okay. That's the running total. Anyway 99 sign-ups, 64 individuals spoke today. So, seeing no one approaching the podium for testimony, if there are no objections, the Chair will close public testimony both here as well as our offices on our sister islands. Any objections?

VICE-CHAIR RAWLINS-FERNANDEZ: No objections.

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CHAIR MOLINA: So ordered, Members. All right, let's go ahead and begin the deliberation phase . . . *(chuckled)* . . . just kidding.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh, sorry! I guess there's a testifier on Molokai.

CHAIR MOLINA: Pardon me?

VICE-CHAIR RAWLINS-FERNANDEZ: Is there really a testifier on Molokai? There might be a testifier on Molokai.

CHAIR MOLINA: Let me, is there a testifier waiting there? Staff, can you confirm? Check with Molokai.

COUNCILMEMBER KING: . . . *(inaudible)* . . . monitoring

CHAIR MOLINA: Okay. Chair's going to call a recess. Recess subject to the call of the Chair. . . . *(gavel)* . . .

RECESS: 8:32 p.m.

RECONVENE: 8:35 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . GET meeting for September 3, 2019 is now come back to order. It is now 8:35 p.m. All right, Members, the Chair is ready to proceed with the deliberative phase of our meeting. Are we ready to go? No, just teasing. We've been at it for nearly 12 hours, Members, with regards to testimony. So, the Chair would like to propose a recess date for the Committee's consideration. Chair is looking at Friday, September 6 at 1:30 p.m. Now, we do have a Council meeting in the morning, but, Chair King, do you anticipate business concluding by that time?

COUNCILMEMBER KING: Yeah, I think it will conclude and if it doesn't, we can recess out. We have the...the dilemma for us that we are going to do that ceremonial resolution in the afternoon because of the kids not wanting to miss school. So, it would actually be helpful to have your GET meeting at 1:30, because otherwise we'll be waiting around with this big gap in the meeting. So, we can recess out at the, at noon or earlier if we're done, and then you can gavel in at 1:30 and then just recess for the ceremonial resolution. This is for the baseball teams because they didn't want to come in the morning, because they've already missed so much school playing in the games. So, that would be helpful actually, then we...it won't take us more than an hour and we have to be done by 4:30, because the boys are going to go downstairs and do the thing with the Mayor.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: So, yeah.

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CHAIR MOLINA: All right. So noted. Alright, Members, any other comments or objections to the recessed date of September 6th? But before I say that, my wonderful Staff has informed me to officially close public testimony, because there was the possibility of someone on Molokai giving testimony. Apparently that person has withdrawn their request.

VICE-CHAIR RAWLINS-FERNANDEZ: That is correct.

CHAIR MOLINA: That is correct.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: So, no 100 sign-ups then for tonight.

COUNCILMEMBER KING: They didn't want to be the hundredth...

VICE-CHAIR RAWLINS-FERNANDEZ: So close.

CHAIR MOLINA: Okay.

COUNCILMEMBER LEE: I think they miscounted anyway. It was 100.

CHAIR MOLINA: It was 100. You claim it was 100, Member Lee. Okay, well, we'll --

COUNCILMEMBER KING: You missed one of the students.

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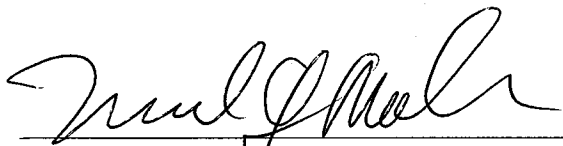
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CHAIR MOLINA: --believe that. Alright, we're getting a little tired in the mind at this point. But thank you, Members, my fellow colleagues for staying throughout the night, also the Staff and Administration, thank you as well, and members of the public. So, the GET meeting for Tuesday, September 3, 2019 is now in recess until Friday, September 6, 1:30 p.m., right, and right here in the Council Chambers. Yes, right back here 8th floor. Alright, if there no other announcements, this meeting is in recess. . . . (gavel) . . .

RECESS: 8:38 p.m.

APPROVED BY:

A handwritten signature in black ink, appearing to read "Michael J. Molina", written over a horizontal line.

MICHAEL J. MOLINA, Chair
Governance, Ethics, and Transparency
Committee

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Transcribed by: Daniel Schoenbeck

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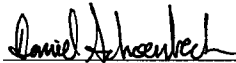
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CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 23rd day of September, 2019, in Kula, Hawaii

_____

Daniel Schoenbeck