

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

September 6, 2019

RECONVENE: 1:31 p.m.

PRESENT: Councilmember Michael J. Molina, Chair (excused from 6:10 p.m. to 6:30 p.m.)
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair
Councilmember Tasha Kama (arrived at 2:33 p.m.)
Councilmember Kelly T. King (arrived at 2:33 p.m.)
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura

EXCUSED: Councilmember Riki Hokama

STAFF: Traci Fujita, Director
Shelly Espeleta, Legislative Analyst
John Rapacz, Legislative Attorney
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci

ADMIN.: Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Sananda Baz, Managing Director, Department of Management
Eric Nakagawa, Director, Department of Environmental Management
Moana M. Lutey, Corporation Counsel, Department of the Corporation Counsel
Edward S. Kushi, First Deputy, Department of the Corporation Counsel

OTHERS: Bruce Anderson, Director of Health, State of Hawaii, Department of Health (via telephone conference bridge)
Special Counsel Colleen Doyle, Partner, Hunton Andrews Kurth LLP
Isaac Moriwake, Earthjustice Attorney
James Kumagai
Darla White
Robin Knox
Plus (36) other people

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PRESS: *Akaku Maui Community Television, Inc.*
 Melissa Tanji, The Maui News
 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 recessed Governance, Ethics, and Transparency Committee meeting of Tuesday, September 3, 2019 is now back in session. Today is Friday, September 6, 1:31 p.m. Thank you to my colleagues who are here to open up this meeting. Due to an unexpectedly long Council meeting today, the Chair's intent is to recess this portion of the meeting in order for you guys to sustain yourselves. So, I know you haven't had, some of you haven't even had breakfast today. So, we will reconvene this meeting at 2:30. Members, any concerns? And to the members of the public who come here at 1:30, my apologies to you, so things went a little long. I want to make sure that all of my fellow colleagues are fully sustained so we can have a very deliberative and constructive discussion on GET item 26. Member Lee?

COUNCILMEMBER LEE: When is Bruce Anderson going to contact us?

CHAIR MOLINA: Good question. We're trying to make sure that he contacts us today at roughly around between 4:30 and 5:00 p.m. He has a conference on Oahu but has stated that he will make contact with us, so.

COUNCILMEMBER LEE: Okay. Thank you.

CHAIR MOLINA: Okay. Members, any other questions before I recess this meeting?

VICE-CHAIR RAWLINS-FERNANDEZ: Chair? Just procedural.

CHAIR MOLINA: Yes, Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Do you have to take attendance for the meeting?

CHAIR MOLINA: Oh. I guess we can do that too at least just for the opening, alright. Well, let me just state for the record, Committee Chair Molina, Member Sinenci, Lee, Committee Vice-Chair Rawlins-Fernandez, and Members Paltin and Sugimura are here for this opening at this time. We are of the understanding Member Hokama will not be here today, and Chairman King will be with us as well as Councilmember Kama will be with us later today. Councilmember Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Just for informational purposes, I believe the Chair wanted to reconvene at 3:30 for the ceremonial.

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CHAIR MOLINA: That is correct, yeah. Thank you for bringing it up. And then for members in the gallery, when we reconvene at 2:30, we'll reconvene for about an hour. The Council meeting is in recess because we have a ceremonial resolution honoring our young baseball players; however, the parents did not want them to come in the morning session because they have missed a lot of school already, so they will be here in the Chambers at 3:30 and then once that matter, the ceremonial resolutions are over, then we will reconvene the GET meeting roughly around 4:30-ish or so. So, just for your information. So, if there are no other questions...yes, I'm sorry.

VICE-CHAIR RAWLINS-FERNANDEZ: Last question.

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: What is your intention for the length of the meeting? Are we going to go on until we vote and pau?

CHAIR MOLINA: I'd like to. As much as you can; however, if we do start to lose members then we may have to look at coming back next week but it is the Chair's hope we can get something done today or shall I say this evening. So, I'm ready to go up to midnight if necessary but I don't know about you guys but I know you guys have shown a lot of desire and strength --

COUNCILMEMBER PALTIN: Right there with you, Chair.

CHAIR MOLINA: --to go long. Pardon me, Member, you're with me, midnight?

COUNCILMEMBER PALTIN: Yeah, midnight.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

CHAIR MOLINA: Alright. Good, good.

VICE-CHAIR RAWLINS-FERNANDEZ: All the way 'til pau. My flight is tomorrow.

CHAIR MOLINA: Okay. Alright. Very good. Well, I appreciate your enthusiasm, so if there are no other questions the Chair will recess this meeting until 2:30 p.m. Meeting in recess. . . . *(gavel)* . . .

RECESS: 1:35 p.m.

RECONVENE: 2:33 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The Governance, Ethics, and Transparency Committee meeting, recessed meeting of Tuesday, September 3, 2019 is now back in session. It is 2:33 on Friday, September 6. Thank you for that respite, Members. The rest...had a

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long Council meeting. And of course, we're dealing with GET item 26, and for the record, we have all members present at the moment except for Committee Vice-Chair Rawlins-Fernandez and, of course, Member Hokama will not be here for our proceedings today. And from Corporation Counsel, we have Mr. Kushi and Ms. Thomson, and we have Director Nakagawa from Environmental Management, and, of course, Corporation Counsel, Moana Lutey. And Committee Staff we have Pauline Martins and Shelly Espeleta and Mr. John Rapacz. Thank you all for joining us today. And thank you, Member Rawlins-Fernandez, for joining our proceedings. So, we have a near full body today, eight members. And we are, of course, discussing GET item 26. And those of you in the gallery, thank you for joining us to watch our proceedings today. This is where the rubber meets the road now. This is our deliberative phase of this item and Chair's going to be a little more strict on conduct in the audience. Chair was a bit more tolerant when there's public testimony. I appreciate everybody showing their enthusiasm and many of you who were here the other day tone yourself down from the applause and any comments from the audience but I have to get, crack the whip on you a little bit here because we need to deliberate, we need to do our work, so whatever's said, if you do not agree with that's okay. And if you have to let out some steam, please go down to another floor or go outside of the building if you do so. But I appreciate most of you have done a wonderful job, so please allow us to work free of any distracting noises. Okay. I would like to first recognize Corporation Counsel. They wanted to comment on the Chair's suggestion to this body on September 3rd about having a representative from Earthjustice to serve as a potential resource like they did back at our previous meeting, which was on May 23rd. I guess I will recognize Ms. Thomson.

MS. THOMSON: Thank you, Chair. I wanted to make this body aware of prior communication between myself and the Earthjustice attorneys. This is in writing on April 22nd and verbally on April 16th. I made them aware of the rules of professional conduct that all attorneys are bound by the State of Hawaii. Rule 4.2 of the Hawaii Rules of Professional Conduct states a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or by court order. The comment that rule states in the case of an organization this rule prohibits communications by a lawyer for another person or entity concerning the matter in representation with persons having a managerial responsibility on behalf of the organization. I informed the attorneys that they were undermining the terms of the existing 2015 settlement agreement because upon which the County has relied for four years and upon which we have expended significant sums of money and time and effort complying with that settlement agreement. So, I wanted to make the body aware of that communication.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. So, since I made that, those statements at the last meeting, have you had any communications with the plaintiff's attorney?

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MS. THOMSON: No, sir, we have not, and we have never provided our consent for the attorneys to speak directly with our clients.

CHAIR MOLINA: Okay. Not even as resource. Again, I guess it depends on the line of questioning that...because it was allowed at the last meeting to, for have them just serve as a resource to get any clarity on any questions related to the lawsuit, but obviously, I know you guys would say something if there is a sensitive matter or where we may not be able to respond because this is active litigation.

MS. THOMSON: Chair, I would say that this is the responsibility of the licensed attorney to be familiar with and comply with the rules of professional conduct in their own capacity so it would not be for us to police them. Although, the professional conduct rules do provide that we have an obligation to notify our Office of Disciplinary Counsel. So, we're...I don't think we'll be making comments along the way, you know, we rely on them to know the professional rules as well.

CHAIR MOLINA: Okay, so noted. Members, any comments or questions with regards to the statements from Corporation Counsel before we proceed? Chair King followed by Members Kama and Sugimura.

COUNCILMEMBER KING: Yeah. We heard a lot of quoting of standards, but what is she...what are you actually saying about using, having the Hawaii Wildlife Fund, a representation as a resource?

MS. THOMSON: What I'm suggesting is that the attorneys for Earthjustice may be in violation of the rules of professional conduct and I wanted to make sure that this body knew that I had communicated that information to them back in April and they are choosing to provide you with legal advice in different forums either individually or as they have done in public settings such as earlier this week.

COUNCILMEMBER KING: And what are you quantifying as legal advice? Because I don't think any of us has sought them out as our legal counsel.

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: I would summarize it in that they are trying to convince you as the County of, representatives of the County of Maui to withdraw a lawsuit that has been in existence since 2012 from the final review of the U.S. Supreme Court. I consider that to be legal advice that they are providing to you directly.

COUNCILMEMBER KING: Okay. I disagree, Chair, but I hear what she's trying to say.

CHAIR MOLINA: Okay. Thank you, Chair King. Member Kama followed by Member Sugimura.

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COUNCILMEMBER KAMA: So, is there a fine or penalty for such an action?

MS. THOMSON: There may be disciplinary action but I don't know what that would be. That would be up to the Office of Disciplinary Counsel should they choose to, so and they would have to be the ones to take action on that.

COUNCILMEMBER KAMA: Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Kama. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, just to be clear, I think that it was mentioned at the last meeting that their legal counsel could be or would be a resource. So now, this is a different decision, right, Chair? This is your decision to comply with that.

CHAIR MOLINA: I haven't made any statements yet. I'm just hearing what Corp. Counsel's saying.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: So, I'm not --

COUNCILMEMBER SUGIMURA: Okay, I'll wait.

CHAIR MOLINA: --going to venture just yet, okay. Alright. Let's have...I believe I saw Member Sinenci with his hand up, followed by Member Paltin. Okay, none. Member Paltin?

COUNCILMEMBER PALTIN: Oh, yeah. Just for me just to be clear, this is, you're talking after January 1st of 2019, because some of us wasn't your clients before that time.

MS. THOMSON: Yes. So, it would...I assume that if you had communications with the plaintiffs' attorneys prior to that time they wouldn't have been communicating with you as a councilmember until you took office.

COUNCILMEMBER PALTIN: I was a plaintiff prior to taking office.

MS. THOMSON: Okay. A member of the plaintiff group. Okay. I'm sorry I wasn't aware of that. I might need to speak with Corp. Counsel Lutey on, you know, whether that would have, generate any issues of conflict with you. But what I'm hearing is that you have withdrawn as a member of the plaintiff group once you joined the Council. Okay.

COUNCILMEMBER PALTIN: Yeah. I resigned before I took office.

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CHAIR MOLINA: Okay. Thank you for that disclosure, Member Paltin. Well, let me throw this out then. I certainly don't want to see anybody facing any disciplinary action based on a request from this body or the Chair, so let me get your thoughts from Corporation Counsel, and I guess we can leave up to Earthjustice if they choose to proceed with our offer as a Committee to serve as a resource, 'cause...let me get an opinion on that, Corporation Counsel. I mean, ultimately, my understanding is the Committee can choose to do whatever they want in spite of advice from Corporation Counsel. It's sort of at our own risk, but at the same time, Earthjustice attorneys are out there. I certainly don't want you to be subject to any potential disciplinary action should you choose to participate with the offer of the Members of this Committee. Ms. Thomson, any comments on that?

MS. THOMSON: No, Chair. I think that you've stated that very appropriately.

CHAIR MOLINA: Okay. So, with that being said, I'll just leave it to Earthjustice then if they do want to...I don't want to call it a risk, but if they do want to serve as a potential resource and take that chance, I'll leave it up to them 'cause again my whole thing, I don't want anybody to get hit with a fine or any type of a sanction.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Folks, Chair's going to call a quick recess to consult with Staff.
... *(gavel)* ...

RECESS: 2:43 p.m.

RECONVENE: 2:48 p.m.

CHAIR MOLINA: ... *(gavel)*is now back in session. Thank you, Members, for the break to consult with our Corporation Counsel and Staff attorneys on the matter, subject at hand. I'd like to ask Ms. Thomson to further expound on this and options as it relates to the possible participation of Earthjustice as a potential resource. Ms. Thomson?

MS. THOMSON: Thank you, Chair. I wanted to follow up. So, part of that rule and the comment to the rule says that the parties, the people suing the County can speak with the County of Maui as a defendant in that case, not the attorneys. So, there are people, the plaintiffs, that may speak to you, that restriction doesn't apply to them that I was talking about earlier, that strictly applies to the attorneys, the Earthjustice attorneys. And the Chair would like me to reiterate that they can do, the Earthjustice attorneys have responsibility for their own conduct. So, they can, you know, take that at their own risk.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. Members, are we all clear, I think? Chair King followed by Member Kama.

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COUNCILMEMBER KING: Okay. So, Chair, does that mean that we can ask the plaintiffs to be a resource but not their attorneys?

CHAIR MOLINA: That is my understanding. So, in other words, you cannot...well, based on what Ms. Thomson said, I guess, if you speak to them, the attorneys or they talk to you, they could be in violation and be subject to some form of sanction, but now if I'm, for example, a board member of Earthjustice, from, as how I interpret what Ms. Thomson is saying it's okay for a member of that organization to talk to you, just not the attorneys.

COUNCILMEMBER KING: Okay. So, we can call up someone from one of the Sierra Club or Hawaii Wildlife Fund or Surfrider to be a resource?

CHAIR MOLINA: Let me ask that of, to get clarification from Ms. Thomson.

MS. THOMSON: Thank you, Chair. Yes, a member of the organizations that sue the County could be resource persons provided that, you know, they comply with the Rules of the Council in terms of how you designate them as resource persons.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Thank you, Chair King. Member Kama?

COUNCILMEMBER KAMA: So, early on when I first came, I had an appointment, it was somebody from Hawaii Wildlife called and I had an appointment with them in my office. So, is that a good thing or bad thing? I mean, I thought it was good 'cause I wanted to meet with people but should I have known that?

CHAIR MOLINA: Well, based on what was told was as long as the person was not an attorney that's actively involved in this case, I guess it would seem it's kosher. Am I correct, Ms. Thomson?

MS. THOMSON: Yes, Chair, that's correct. You know, just as an aside, our Department, Corp. Council is always available to any of the members of the County Council should they have the desire to learn more about active litigation and, you know, at any time you can take advantage of the resources that do exist here within the County.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. My understanding of the rule is that the attorneys cannot consult with us without our attorneys present and our attorney is present. So, I would like to hear from our attorneys.

CHAIR MOLINA: Mr. Rapacz?

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MR. RAPACZ: Thank you, Chair. I would have to look at the disciplinary rules in order to answer that. I believe that plaintiff's counsel could ask defendant's counsel, Corporation Counsel, for permission to address defendants, the County, directly, but Corporation Counsel has said that they would not grant that permission. So, whether or not you can do it without the permission of counsel, I don't know and I would have to research that.

VICE-CHAIR RAWLINS-FERNANDEZ: I'm sorry, are you saying that we as the client need to ask Corporation Counsel, our attorneys, for permission?

MR. RAPACZ: I would defer to Corporation Counsel on that at this point.

VICE-CHAIR RAWLINS-FERNANDEZ: Do you need a recess...would a recess help if you reviewed the rules to give you time to review the rules?

MR. RAPACZ: Hopefully. I'm not sure how long it would take and what it involves but I...

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, can I request a quick recess for our attorneys to review the rules?

CHAIR MOLINA: Well, I don't want a really long recess, 'cause I do want to get on with the work of this item. But...

UNIDENTIFIED SPEAKER: Recess.

CHAIR MOLINA: Five minute recess. . . . *(gavel)* . . .

RECESS: 2:52 p.m.

RECONVENE: 2:57 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . Recessed GET meeting of September 3, 2019, is now back in session. Today is Friday, September 6, 2:57 p.m. Chair would like to recognize Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. Ms. Thomson, if the petitioners or the plaintiff's attorney requests Corporation Counsel's permission to speak with us, would Corporation Counsel deny that request?

MS. THOMSON: Chair? Thank you, Chair. And thank you, Councilmember Rawlins-Fernandez. Yes, I would deny that request. The County Council is part of the organization of the County but is not the entire County. And as the attorney involved in this case, I represent the entire County. So, on behalf of the entire County, I would deny that request.

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VICE-CHAIR RAWLINS-FERNANDEZ: Ms. Thomson, will you please explain who the entire County is?

MS. THOMSON: The Charter identifies our clients as the Mayor, the Administration, County Council, and the departments.

VICE-CHAIR RAWLINS-FERNANDEZ: And the departments over the Mayor? So, if the Mayor decides one thing and the departments decide something else, they would have authority over the Mayor?

MS. THOMSON: Chair?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: I don't understand the question.

VICE-CHAIR RAWLINS-FERNANDEZ: The Mayor is the department head's boss, so if the Mayor decided to give permission but the department heads decided not to, the department heads would have that authority?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you, Chair. No. You are asking who are my clients, in essence, and so I'm reading from the Charter, Section 8-2.3, Section 2, be the chief legal advisor and legal representative of the County of Maui; of the Council, the Mayor, all departments, and all boards and commissions; and of all officers and employees in matters related to their official duties except as otherwise provided in this Charter. So, what I'm saying is that the County of Maui was sued in this matter, so not the Council alone, and that is the capacity in which I'm representing.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, mahalo. Mahalo, Chair. So, I guess, as you stated previously, we'll leave it up to Earthjustice attorneys to decide if they would like to continue to be a resource for the Council?

CHAIR MOLINA: That is correct. So, I guess, and to summarize it, it's sort of at their own risk to as Ms. Thomson is saying based on, you know, rules of the law profession they could be subject to some form of sanction or disciplinary action. So, we'll leave it at that.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for that clarification, Chair, so...

CHAIR MOLINA: But thank you for making the additional inquiry.

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VICE-CHAIR RAWLINS-FERNANDEZ: Yes. Okay. So, the Earthjustice's attorneys can still be a resource if we call them up?

CHAIR MOLINA: I'll just say if they choose to do so. But again, Members, remember we are the defendants, the attorneys are the plaintiffs. It was explained to us that we can have a representative of Earthjustice other than the attorneys, we can use them as a resource. Now, what the representative of Earthjustice or Hawaii Wildlife Fund do in their discussions with, say, their attorneys is up to them, but as far as a resource for us that would not seem to be a problem for our Corporation Counsel. It's more the attorneys, that's where the concern lies.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Thank you, Vice-Chair. Chair King?

COUNCILMEMBER KING: So, yeah, Earthjustice is actually the attorneys, so the plaintiff is actually Hawaii Wildlife Fund --

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: --and we do have a representative from Hawaii Wildlife Fund here, so we could call her up if we have questions and they could speak as the plaintiffs. But I guess my...I have a little confusion. We hired special counsel. Isn't that our attorney on record? We haven't had our special counsel in our, in the room with us once.

CHAIR MOLINA: May I ask Corporation Counsel for a response? Ms. Thomson?

MS. THOMSON: Special counsel is here, Ms. Colleen Doyle from Hunton Andrews Kurth is here. Would you like her to come down?

COUNCILMEMBER KING: Well, I think that if that's our special counsel that person should be sitting, you know, up there.

CHAIR MOLINA: Yeah. I'm sure at a later point once we get into further discussion we'll have our special counsel respond to questions from the Committee. Okay. Chairman King, are you done?

COUNCILMEMBER KING: Yeah. I mean, I just thought that if they're our representatives they should be there where Corp. Counsel usually is. I haven't...I don't think I've met our special counsel once.

CHAIR MOLINA: I think we just ran out of seats maybe. I don't know.

COUNCILMEMBER KING: Well...

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CHAIR MOLINA: But good point, I'm glad you brought that up, Chair King.

COUNCILMEMBER KING: Well, we have a Department Director that's willing to step down, so.

CHAIR MOLINA: Yeah. Okay. Councilmember Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a clarification question. So, if there was any of the Earthjustice lawyers here, would that trump, I guess, well no pun, but that they have the first amendment right to speak in this forum?

CHAIR MOLINA: I was going to make a comment on that but I'll leave it to our attorneys to respond. Ms. Thomson?

MS. THOMSON: Thank you, Chair. I'm not going to comment on that. That's...that'd be providing legal advice to someone who's not my client. So, I'm not going to touch that one.

CHAIR MOLINA: Mr. Sinenci, does that answer your question?

COUNCILMEMBER SINENCI: Well, I'm not a client now, okay. Thank you.

CHAIR MOLINA: Okay, folks. Chair would like to move on from this, but I'll recognize my Committee Vice-Chair one last time before we move on.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I'll be super-fast. I just wanted to clarify. So, we as the client, we are, the Council would be the ones that would be silencing or depriving the first amendment right to someone to speak. So, how would we not be responsible for doing that as your client?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: So, today's proceeding is where, you know, public testimony has been closed, so I believe that they had an extensive interaction with you the other day. I was here, you know, I don't think they held back in any of their communications. Like I said, that was at their own professional conduct risk but they, you know, chose to make those communications with you and that's what they did. In terms, I believe you're saying, do they have a first amendment right to speak as a resource person? And if that's the question, I would need to do some research before I can answer that for you in terms of the complexities of having an attorney who's representing a plaintiff, you know, what their first amendment rights are to address you as a member of the defendant group.

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

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CHAIR MOLINA: Thank you. And before I recognize Member Kama, so now my understanding as a resource, a resource should not be someone who's basically lobbying the Members to vote a certain way, they should only respond to questions, then I think there's a boundary or a line that if a resource starts to lobby and say you should take our side, blah, blah, blah, I think, in my opinion, that's where the line has been crossed, so to speak, 'cause that's my understanding is how resource personnel should be used. So, that's just the Chair's thoughts. Member Kama followed by Member Paltin.

COUNCILMEMBER KAMA: Thank you, Chair. So, is this the time we can call special counsel to answer the question? I mean, if we have another counselor and I don't know if we're paying them or not but we should at least utilize them.

CHAIR MOLINA: Yeah. Well...

COUNCILMEMBER KAMA: 'Cause nobody seems to be able to answer the question, so I mean, it's ludicrous to think that somebody is sitting there but we're not using them but we're talking to these guys and they can't answer.

CHAIR MOLINA: Yeah.

COUNCILMEMBER KAMA: Somebody got to answer.

CHAIR MOLINA: Well, I assume Corp. Counsel knew how to respond without having to use the special counsel on that. But at any point, you know, special counsel can come up and if they feel that the response given by Corp. Counsel was not satisfactory then I'm sure the special counsel would take the initiative to come up and add further clarity to the responses made from Corporation Counsel. But again, we've got a long day ahead, I'm sure we will certainly seek questions from our special counsel. And if she's not afraid, please feel free to have a seat next to Ms. Thomson. So, in the meantime, let's go to Ms. Paltin.

COUNCILMEMBER PALTIN: Yeah. I just wanted to point out, you know, I had more questions for the testifier but I reserved them because I thought that the person was going to be a resource, so I wish that Ms. Thomson would have brought that up and then I could have asked my questions as the person was testifying like all the other testifiers, but that's alright, moving on. Just pointing it out for next time if Corp. Counsel can be a little bit more on the thing then we can get our questions answered from all the testifiers and not have this kind of waste time stuff at the beginning when everybody is ready for get to work and then now it's like oh, this, it's like brah, you should have told us when the thing was going on.

CHAIR MOLINA: So, eloquently put, Ms. Paltin and Chair agrees with you 100 percent. I wish we'd known about this a lot sooner instead of spending the last half hour on this.

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But anyway, thank you for allowing the Chair to proceed with the matters at hand today. We are in GET item 26. There are three resolutions to consider and my understanding the first resolution is not to be considered, I believe from Corporation Counsel Lutey, if she could give us an explanation on that or anyone from Corporation Counsel with resolution number one. I was told that it is not a resolution we'll be considering. We'll be considering either resolution that's attached to, excuse me, numbers three and four, either of those two resolutions but not the first, the resolution that's listed under number one. Can I get an explanation on that, please? Whomever, Ms. Thomson or Miss...Ms. Thomson?

MS. THOMSON: I'm sorry, Chair. So, you're suggesting that resolution number one and that was a resolution from Chair King involving all settlement proposals coming to Council?

CHAIR MOLINA: I was just told number one is not to be considered and that's what I want an explanation on as to why.

MS. THOMSON: Oh. I don't think that there is a reason why it could not be considered, although, practically it is moot at this time, but, you know, if the body wishes it to proceed, I don't know that there's a reason that it can't go forward.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Okay. This is getting more fun by the minute. The Chair is losing his patience. Chairman King?

COUNCILMEMBER KING: Chair, yeah, I think that one was the one that gave us the authority. We already have the authority. We're taking it right now, but I also think that that one was, I'm not sure if we can look at that because it was...

CHAIR MOLINA: Was it redundant compared to the other reso?

COUNCILMEMBER KING: Yeah, 'cause, you know, as Ms. Thomson pointed out, we are, we have the authority and we're considering it now. If you could very clearly tell us which resolutions, which settlements we're looking at by date, the date of the posting on Granicus that would help.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: Or if you know.

CHAIR MOLINA: Well, I believe we're considering both. I mean, one was submitted by the Mayor, a proposed settlement along with the, I guess, the other resolution.

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COUNCILMEMBER KING: Yeah, I think the resolution, the GET-26 refers to was the one that we voted on last time that we were deadlocked on. I don't know that we have the Mayor's resolution on the agenda but, you know, so I mean everybody who came and testified the other day was testifying in favor, you know, well, the majority were testifying in favor of settlement, which was GET-26, so I'm not sure what the other one is.

CHAIR MOLINA: You mentioned the Mayor's...it is listed here on the agenda. I'll read it verbatim. Correspondence dated August 27, 2019, from the Mayor, requesting consideration of a revised proposed resolution entitled Authorizing Settlement in the Hawaii Wildlife Fund, et al. versus County of Maui, so I assume that's the latest settlement proposal from the Mayor. And I believe along with yours, which was number three, right, Ms. King, that's the one we dealt with previously? Okay. So, anyway, Members, are we ready to get started? We're going to have to break here in the next 20 minutes. So, based on that concern from Corp. Counsel earlier, I'm hoping we can put that aside for now so we can move forward. Alrighty. So, again, Members, as the Chair mentioned previously, we met on this matter back on May 23rd, it ended up in a deadlock and so we're back here to further discuss this matter. Hopefully, we can bring some form of closure to this longstanding matter, which is, I believe, started from maybe 2007 if the Chair's correct, a long time. Alright. I'll open up the floor for any questions in open session that you may have on this matter for additional clarity from the Administration. And also, Member Sugimura, you had a consideration for this body to consider for resource personnel?

COUNCILMEMBER SUGIMURA: Oh, yeah, thank you. So, Chair has allowed me to recommend Jimmy Kumagai and Mr. Kumagai has, is in the audience and he flew in from Oahu to be here in case any of you wanted to, to be a resource for the, for us.

CHAIR MOLINA: Okay. And if I can recall from the May 23rd meeting when that request was made there were no objections from the body. So again, any objection for having Mr. Kumagai as a resource person in the event you need clarity on this particular issue? Any objections? Chair King?

COUNCILMEMBER KING: What is his position with the County?

CHAIR MOLINA: I guess he's a retired...Member Sugimura, can you give us more details on...

COUNCILMEMBER SUGIMURA: Yeah, he's not working for the County. He's not a County employee.

COUNCILMEMBER KING: Well, then what is the expertise --

COUNCILMEMBER SUGIMURA: Oh, he's a --

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COUNCILMEMBER KING: --that you're looking for?

COUNCILMEMBER SUGIMURA: --environmental engineer and he's come to testify at the May Committee meeting as well as the last Committee meeting and he basically has historical information and he's, understands how the, you know, law was impacted and enacted and helped actually create it when it was, when it started. So, he's not...he's retired, if you remember. Would you like to see him?

COUNCILMEMBER KING: Well, no, I remember him testifying --

COUNCILMEMBER SUGIMURA: Okay.

COUNCILMEMBER KING: --but I didn't think that he was necessarily connected with...is he on Maui? He came over from...

CHAIR MOLINA: I believe he's formerly with the University of Hawaii and did some water studies, I believe, if I recall and...

COUNCILMEMBER KING: On this particular...

COUNCILMEMBER SUGIMURA: He's not with the County.

COUNCILMEMBER KING: Yeah. On this particular...

CHAIR MOLINA: Yeah, he's not currently...I believe he's retired currently. Member Paltin?

COUNCILMEMBER PALTIN: I just was wondering all the folks that we designated as resource persons they're on already, so if we already designated him as a resource, 'cause we have Darla White, who of DAR --

CHAIR MOLINA: You read my mind.

COUNCILMEMBER PALTIN: --and like that, so I mean, I thought this was covered already too. We designated them as resource persons. They're here. Moving on.

COUNCILMEMBER SUGIMURA: Who else is?

CHAIR MOLINA: I believe that there are...the meeting on Tuesday, the body had no objections to having Ms. Darla White to serve as a resource. She's the...

COUNCILMEMBER PALTIN: Division of Aquatic Resources.

CHAIR MOLINA: Aquatic. Thank you. Yeah. I was trying to think who she was affiliated with. Okay.

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COUNCILMEMBER PALTIN: So, I mean, we already covered this.

CHAIR MOLINA: So, if...any objections to having Mr. Kumagai as a resource?
Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Chair? As I recall from his testimony, I don't think he did actual studies at Kahekili Reef and that was one of the reasons I asked for Ms. White to serve as a resource because she was directly involved in the matter at hand, like doing the studies at Kahekili Reef. And if I recall, Mr. Kumagai talked about studies that he did at Kaneohe and Hawaii Kai, so on Oahu, but not at Kahekili Reef.

COUNCILMEMBER SUGIMURA: So, Chair?

CHAIR MOLINA: I believe you're correct. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, I believe that that's valuable to have that kind of information. I don't disagree with you. But Jimmy Kumagai is, I would say, an expert in this field and over the years as this law has been implemented in the State of Hawaii, he, I don't think he needs to go, you know, be particularly just only at a certain place to become an expert but he understands this law and EPA and how the State of Hawaii and he's an environmental engineer in terms of expertise.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair?

CHAIR MOLINA: Yeah, Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: So, his experience in the law is, you know, I mean, if we need expertise on a law that's why we have lawyers. And his --

COUNCILMEMBER SUGIMURA: So, Chair?

VICE-CHAIR RAWLINS-FERNANDEZ: --experience, his expertise is in engineering but we could choose anyone who has an expertise in engineering. And the reason, again, the reason I asked for Ms. White is because her specific expertise is at Kahekili Reef and the different areas. So, you know, Kaneohe Bay is very different from Hawaii Kai which is very different from Kahekili Reef. And so, he may have knowledge specifically to those areas but not the areas that we're talking about here.

CHAIR MOLINA: Okay. Good point.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Ms. Sugimura?

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COUNCILMEMBER SUGIMURA: Yeah, you know, I...if you would, body, Members, have Mr. Kumagai come here and you can ask him. I'm giving you my analysis of my understanding but, you know, he's sitting in the audience, he flew in...

CHAIR MOLINA: Well, let's do this --

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: --well, the Chair basically wants to, kind of, limit the amount of resources, resource personnel that we have for now. I believe we have, you know, we keep it balanced. We have enough resources from either side and otherwise we might as well just invite all of Maui County to be resources, you know, but let's not end there, right. So, let's kind of keep it to a limit here for now and so that way we can proceed with our work today. Ms. Kama?

COUNCILMEMBER KAMA: So, did you not mention at our last meeting that he would be a...

CHAIR MOLINA: I did say, yeah, and...

COUNCILMEMBER KAMA: Therefore, he flew in from Oahu as you said he could be a resource.

CHAIR MOLINA: Yeah. And Chair's not stating his objections. Yeah.

COUNCILMEMBER SUGIMURA: Okay, thank you. Let's proceed.

CHAIR MOLINA: Yeah.

COUNCILMEMBER KAMA: Okay, thank you.

CHAIR MOLINA: Unless majority of Members don't want him here, I mean, you can state that for the record but I'm just trying to make sure that you guys get all of your questions answered so we all can make a fully-informed decision on this serious matter. Okay. Alright, Members, do you have any questions right now in open session whether it be for Administration or any of our resource personnel as it relates to this item? Of course, we have to at some point today in discussing the settlements, we have to consider executive session as well. Seems like many of your questions might have been answered at the last meeting or maybe even at our testimonial phase, but I'm sure along the way we'll have more questions. Oh, yes, I do want to inform you that Department of Health Director Bruce Anderson, we're hoping will be in contact with us roughly between 4:30 and 5:00 p.m. today. We are going to recess in the next, as a matter of fact we should be recessing real soon. We have a ceremonial resolution with our youngsters that we're going to be honoring today, so I'm sure you'll have questions for our Department of Health Director as well. Ms. Rawlins-Fernandez?

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I know that you...I saw on Granicus that you submitted a letter to the Mayor requesting --

CHAIR MOLINA: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --to have the settlement offer presented in open session --

CHAIR MOLINA: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --or provided to the public.

CHAIR MOLINA: Right.

VICE-CHAIR RAWLINS-FERNANDEZ: And so, I just wanted to find out from you if we got, received a response from the Mayor or if we have the Mayor's representative here if he can respond to that request that you sent?

CHAIR MOLINA: Thank you. Good question. Yeah, on behalf of the public since at our last meeting you folks had inquired about any proposed settlement from the Mayor to be made public. I thought as your Chair to ask, just simply ask. Now, the Mayor doesn't have to do it and it's up to him or the Administration. So, I'm not sure if we have a Mayor's representative that can respond to that. I don't have any settlement in my hand at this point, but I'm sure when the appropriate time comes, we may have to go into executive session to talk about it anyway, but it is agendized. Any...Corporation Counsel, do you have any response to that?

MS. THOMSON: In, yeah, in general settlement negotiations, settlement offers are discussed in executive session so that we can best protect your rights, your interests, any interests of the County so we can have a full discussion of those settlement proposals before they are made to the opposing parties. So, normally it would be done in executive session to preserve the rights of the County Council and the County.

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So, as the client, we would have the authority to waive that privilege?

CHAIR MOLINA: Let me ask the attorney for that. Ms. Richelle Thomson?

MS. THOMSON: Seeing as it's the Mayor's proposal, I assume that he would like to discuss that or make that available to you without making it public because it's not in the record currently.

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CHAIR MOLINA: And that is within the Mayor's rights to make it public or not, right? Ms. Thomson, yeah? Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. That was going to be the question.

CHAIR MOLINA: That's your answer?

VICE-CHAIR RAWLINS-FERNANDEZ: So, if the Mayor chose to, you know, follow the request of the Council and the testifiers and the public to make it public and present it publicly then it would be the Mayor's sole decision to do that?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you, Councilmember. In general, we would advise any of our clients whether it's a department director or the County Council or the Mayor to not discuss settlement proposals or settlement terms in a public forum especially with something as sensitive and with such huge impacts as this particular case. So...

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, she didn't answer my question. Ms. Thomson, I know what your legal advice is but my question is it is our decision, so it'd be the Mayor's decision and the Council's decision to waive that privilege. Is that correct?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you, Chair. If it is a matter that's before the Council, the Council itself would, I believe, would need to be, would take a majority vote on waiving their right to attorney client protection for certain communications.

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

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Chair King?

COUNCILMEMBER KING: Okay. Just to follow up on that, if I'm not sure what the...I guess you're asking for five votes to waive that but if we don't have the votes to go into executive session then does that mean if the Mayor doesn't want this said in public or talked about in public that we just wouldn't address the new settlement?

CHAIR MOLINA: Ms. Thomson?

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MS. THOMSON: I believe that since the communication is coming from the Mayor that that would be the Mayor's choice whether or not he chose to make that, those terms public at this time.

COUNCILMEMBER KING: Okay. I just wanted to point out, Chair, that we have discussed other settlements in public when they didn't have specific dollar issues to deal with and they didn't have specific personnel issues. So, I don't think it's a given that it has to go into executive session because I don't think there's any dollar amount attached to that but and certainly no personnel issues. So, you know, I guess when we get to that point, we can cross that bridge. Thank you.

CHAIR MOLINA: So noted. Thank you, Chair King. Okay, Members, I believe at 3:30 we're going to be convening, reconvening the County Council meeting, so at this time, Members, we're going to call for a recess for and the GET meeting will...Chairman King, you think we should be complete by 4:30 with the ceremonial resolutions for our youngsters?

COUNCILMEMBER KING: Yes, that is the goal and if I could ask folks in the audience if they would be so kind as to leave, open up the first two rows for our youngsters, our little leaguers that we're going to be honoring for their world series achievements. That would be great.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: I notice folks are already moving, we appreciate your accommodating our youngsters.

COUNCILMEMBER KING: We'll be finished by 4:30 and then everybody can move back in. Thank you.

CHAIR MOLINA: Alright. Okay, Members, with that being said we will recess the GET meeting until 4:30 p.m. today. . . . *(gavel)* . . .

RECESS: 3:23 p.m.

RECONVENE: 4:41 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The GET meeting, recessed GET meeting of September 3, 2019 is not back in session once again. It is 4:41 on Friday, September 6th. Members, we have as the Chair had told you earlier, we have Dr. Bruce Anderson from the Department of Health on the line right now to respond to your questions. And just a couple of things first, Dr. Anderson will certainly provide clarity on what the Department of Health can do under their existing authorities and

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the AG's Office has strongly recommended that Dr. Anderson not respond to your specific question that would require him to speculate on the impact on the Ninth Circuit Court ruling, so just an FYI for you. How I intend to proceed here because Dr. Anderson's time is limited, we're going to start the clock like we did with the confirmation for the Mayor's directors. I'm going to allow the Members each one of us six minutes, so you just have at it, ask your questions as much you can within the six minutes, and then we'll go from there. Okay. So, just keep the conversation flowing. So, the Chair will start first. I'll take that privilege. So, anyway, good afternoon or shall I say good evening, Dr. Anderson.

MR. ANDERSON: Good afternoon, Chair Molina.

CHAIR MOLINA: Thank you very much for making yourself available for questioning on the GET item, which has to do with the Hawaii Wildlife Fund case against the County of Maui. And let me ask my Staff, have we begun the clock on the Chair? Okay. Alright, they're not messing around. Dr. Anderson, very quickly, if you can answer my questions in, you can summarize them as much as you can. First question, it's been alleged that the County had submitted an NPDES permit application to the Department of Health a few years ago for the Lahaina injection wells. Can you, one, confirm that the permit was submitted for Lahaina injection wells by the County and also confirm that the application was incomplete or lacking certain information that cannot be processed and can you also confirm that the County requested numerous extensions on this permit application? So, I know it's a mouthful I've given you but can you respond to the questions?

MR. ANDERSON: Chair, your...there's an echo in the phone here. Let me...if you don't mind, I'm going to have to turn . . . *(inaudible)*. . . on my end. I can...I'm sorry. Could you summarize your question one more time? . . . *(inaudible)*. . .

CHAIR MOLINA: Would you like me to repeat the question? Okay. Let's start first with, can you confirm if an NPDES permit was submitted for the Lahaina injection wells by the County? Yes or no?

MR. ANDERSON: Again, your...there's so much echo in the line. It's hard for me to understand the question but it sounded like you wanted me to confirm that the NPDES form is not the appropriate tool for injection wells.

CHAIR MOLINA: No. I'm just asking you if the County submitted, a permit was submitted for the Lahaina injection wells by the County. Can you confirm that? Yes or no?

MR. ANDERSON: Yeah. I wish we had a better connection 'cause I'm having trouble hearing, still having trouble hearing the question. But I think your question then was...I'll repeat the question and hopefully I get it right. That the County did submit an NPDES permit for the injection wells?

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CHAIR MOLINA: Okay. Yes, they did, right. Was it a yes or no?

MR. ANDERSON: That's correct.

CHAIR MOLINA: Okay. I'll take that as a yes. Okay. And was the application incomplete or lacking any information that could not be processed?

MR. ANDERSON: Okay. Again, I'm going to try to answer the question, but for some reason the audio here is really bad. But let me say the County did submit an NPDES application for the injection wells. That was shortly after the hearing several years ago that the district court had ordered the County to submit an application and they did that. That application has actually been sitting on our desk for about three years. We haven't had a chance to look at it or we have looked it, we honestly don't know quite what to do with it. There's no real guidance on how to issue a NPDES permit for protecting groundwater and at the Federal level and we've never done it at the State level. So, the application was deemed incomplete. I believe some additional information was submitted but we haven't been able to process that application to date.

CHAIR MOLINA: Okay. Thank you, Doctor. That's sufficient for that question. Next question, under your authority, the Department of Health currently does not choose to regulate injection wells with an NPDES permit. Can you tell us how you feel with a UIC permit? Is that a better permit process for injection wells in your opinion?

MR. ANDERSON: Again, I'm sorry, Chair. Maybe someone there could...I don't know if you have another way of relaying the question. There is this incredible echo in the phone system and I'm not able to hear the question well. Can you hear me by the way?

CHAIR MOLINA: Oh, you're coming in loud and clear.

MR. ANDERSON: Okay. Then again, there must be some feedback in the audio system that I'm not hearing --

CHAIR MOLINA: Okay.

MR. ANDERSON: --that you're not hearing. But again, I hate to do this again.

CHAIR MOLINA: Okay. Well, let me try and...

MR. ANDERSON: You can to relay the question one more time.

CHAIR MOLINA: Okay. I'll just try to summarize the question that I asked earlier. Do you feel a UIC permit is a better permit process for injection wells rather than the NPDES permit?

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MR. ANDERSON: Yes. I actually heard that question very well. Whatever you were doing was easier for me to hear it. Yeah, we have essentially two programs. The NPDES program, which is intended to regulate point source discharges into surface water. That's how, that's what we use to regulate sewage outfalls and almost all other sources of that of, that discharge directly into surface water. The UIC program has been used for many, many years, decades in fact to regulate injection wells. And virtually all of the 600 or so injection wells in the State are regulated using the UIC program, which is authorized under the Safe Drinking Water Act. We have administrative rules that determine what is required and to limit the discharges into those injection wells. We review permit applications for injection wells under the authority we have in Chapter 340E. It's part of our Hawaii Revised Statutes. But let me expand a little bit. We can impose limits in those permits, limits, whatever limits we feel are necessary to protect drinking water and surface water, coastal water quality. It's unusual to have concerns associated with impacting nearshore waters but there's nothing to restrict us from putting conditions into those rules to...

CHAIR MOLINA: Dr. Anderson, my time for questioning is up right now. I want to thank you for answering those questions as best as you can. I think what the problem was on my end was I think I was maybe too close to the mic. Am I coming in much clearer now?

MR. ANDERSON: I can hear you much better now. Yes, thank you for making that adjustment.

CHAIR MOLINA: Oh, okay.

COUNCILMEMBER PALTIN: Chair?

CHAIR MOLINA: Oh, yeah.

COUNCILMEMBER PALTIN: You can have my six minutes.

CHAIR MOLINA: Yeah, okay. Thank you, Member Paltin. Alright. Dr. Anderson, we're going to go to another councilmember who will have some questions for you. Councilmember Kama, questions for Dr. Anderson from the Department of Health.

COUNCILMEMBER KAMA: Good afternoon, Dr. Anderson.

MR. ANDERSON: Hello.

COUNCILMEMBER KAMA: Can you hear?

MR. ANDERSON: I can hear, yes, but I hopefully can hear you, hear the question well. Thank you.

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COUNCILMEMBER KAMA: So, I just wanted to make sure that what you were telling us today is basically the same thing that you had iterated the afternoon that we had lunch with Michael Spalding?

MR. ANDERSON: I'm sorry. I heard Michael Spalding name in the question. I know Michael Spalding, yes.

COUNCILMEMBER KAMA: So, do you remember the luncheon that we had with him early on this year where we talked about the injection well? 'Cause what he had done is he had taped portions of that conversation and he had submitted it as testimony.

MR. ANDERSON: Okay. I think...well, the question I think I heard was what was discussed during discussions with Mr. Spalding. Is that correct?

COUNCILMEMBER KAMA: Pretty much.

MR. ANDERSON: Yeah, well we talked briefly about this issue and I don't recall the specifics of our discussion, but generally we were discussing regulatory process associated with permitting injection wells. I explained the same thing to him that I just did to Chair Molina, that is we do have the authority to regulate injection wells through our rules and as authorized under the statutes and we thought that was an appropriate mechanism to continue to regulate the injection wells there going forward. It is . . . *(inaudible)* . . . to control emissions from those injection wells to groundwater. I'm sure we covered that issue when I spoke. I also wanted to emphasize and I might have said this to Mike that the real, anyhow, whether an NPDES permit is issued or revised UIC permit, the solution to this problem is, of course, expanding the reclamation system there in Lahaina. Avoiding use of those injection wells, which was originally the intent I believe. When the wells were originally permitted almost all the effluent, if not all the effluent was being used for irrigation and the wells were used as a backup well. And that's consistent with how, you know, we were looking at all the reclamation facilities there on Maui. And the problem came up when Pioneer Mill shut down or refused to take wastewater and the County simply didn't have any place to put the effluent, to reuse it. And then at that point they then had to rely more heavily on the injection wells as a primary means of disposal and that pretty much continues today. But if you really want to get to the issue, it's not just issuing another permit is not going to solve the problem. That's a paper exercise. The real problem is going to be or the solutions going to be in finding ways to reclaim that water and to cease using those injection wells unless there are during the heavier rain or times when you simply can't use it for irrigation. I believe we, my discussion with Mr. Spalding also was centered around that issue. So, I am, I'm sorry that I don't remember any, any more of the specifics in the case.

COUNCILMEMBER KAMA: So...

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MR. ANDERSON: And I certainly and let me add this to my previous comment. I don't...I'm not going to take a position on what the County should be doing regarding its legal appeal or whether the County should accept a possible settlement. I don't think I discussed any of that with Mr. Spalding. We're not lawyers and we certainly wouldn't want to provide any advice on that. And as Chair Molina mentioned, I certainly wouldn't want to speculate on the outcome of any legal decisions at the, at circuit court level or at the Supreme Court level. It's hard for us to know what the decision might be and I certainly wouldn't want to guess at what it would mean to the State. I will say this though that we have over 600 injection wells in the State and 70 on Maui. So, obviously what's down at Lahaina would be a potential precedent for some other these other wells.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you very much, Member Kama. Okay. Now, we have Councilmember Sugimura, questions for Dr. Anderson from the Department of Health. And by the way, Dr. Anderson, just as an FYI for you, we are here in Wailuku on the 8th floor of the County Building doing our proceedings this evening. Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Dr. Anderson. Can you hear me?

MR. ANDERSON: Hello. Yes.

COUNCILMEMBER SUGIMURA: Okay. I wanted to know regarding the NPDES permit for our injection wells here on Maui, Maui County. Does this set a precedence [sic] for future discharges into ground water that eventually reaches the ocean?

MR. ANDERSON: I'm sorry. Your question again, you're...I'm familiar with, you know, what happens to the water. I think everyone is accepting the fact that there's a connection between the injection wells and the ocean. That's not an issue of debate if I understand it of the impacts of the waters that are, of course, _____. But it's not surprising that the water that, the groundwater that we're injecting to there is eventually seeping out into the ocean that's, that happens all over the State. That's typically what happens to groundwater, it ends up in the ocean. So, that's not a...

COUNCILMEMBER SUGIMURA: Thank you.

MR. ANDERSON: That's not an issue really. The concern as it relates to the NPDES program is that it's not designed to protect groundwater. It's designed to protect surface water and we have surface water quality standards that we can reference in the permits. We typically allow for a zone of mixing. We're...the permits . . .(inaudible). . . --

COUNCILMEMBER SUGIMURA: So, Dr. Anderson...

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MR. ANDERSON: --but in an area around the discharge point outside of the zoning of mixing we expect the water to, the effluent to where they discharge to meet . . . *(inaudible)*. . . --

CHAIR MOLINA: Dr. Anderson?

MR. ANDERSON: --Hawaii standards...

CHAIR MOLINA: Dr. Anderson, sorry, if I could interrupt. I think you've answered Councilmember Sugimura's question. She has another question for you, Dr. Anderson. Proceed, Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Yeah, thank you. So, there are, my constituents for Upcountry Maui have cesspools and we're the, according to Department of Health, we're the number one target for the whole State to change or convert from cesspools to septic tanks. And I just got an e-mail this morning from two constituents worried about how is this going to affect their cesspool septic tanks.

MR. ANDERSON: We have rules and regulations that, other rules and regulations to regulate cesspools and septic tanks. We, you know, for decades been reviewing and approving wastewater disposal systems under our Chapter _____, which is governing what, how wastewater systems are established without requiring any NPDES permits for homeowners. We don't believe the additional . . . *(inaudible)*. . . the NPDES permit is necessary or even appropriate for septic tanks and cesspools. Again, we have other rules and regulations that govern where they can be installed and so forth. So, I'm very comfortable that our existing rules are sufficient to regulate septic tanks and again we wouldn't see any reason to have an overlying NPDES permit for those. It seems to be unnecessary and inappropriate.

COUNCILMEMBER SUGIMURA: So, I believe that we received e-mail from Anna Wildeman from the EPA indicating that it may.

MR. ANDERSON: I...maybe if you're little further away from the microphone that would help a little. I'm still having trouble hearing the question. If you wouldn't mind repeating one more time.

COUNCILMEMBER SUGIMURA: So, we receive an e-mail from EPA, Anna Wildeman saying that contrary to what you just told us.

MR. ANDERSON: I did see the e-mail. I think it was from the Water Division. I believe they focused their comments on the NPDES program and that it really was not intended to protect groundwater but rather it was there to protect surface water. And from point-source discharges, which is consistent with our understanding. They also mentioned the cesspools and septic tanks and I honestly don't know why they went there. That doesn't seem to be relevant to the issue. And certainly they know as well as we do

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that there are, we have already had rules and regulations in place that regulate individual wastewater systems. So, I don't know why they went the way they did, but I am aware of the memo and I think their initial focus in the memo as I recall was around the how the NPDES program is set up and what it's intended to regulate.

COUNCILMEMBER SUGIMURA: Does Department of Health have any rules, admin rules as you do for the UIC permit for NPDES permits?

MR. ANDERSON: I, again, apologize but I'm...I think your question was is an NPDES or UIC permit the preferred regulatory option?

COUNCILMEMBER SUGIMURA: I wondered if you had admin rules for NPDES as you do UIC? My time is up.

MR. ANDERSON: I wish this connection were better because it's really hard for me to understand the question.

COUNCILMEMBER SUGIMURA: Yeah, I'm sorry.

MR. ANDERSON: But I will try to answer what I think is the question. The...and let me just repeat, that the NPDES program it's intended to regulate point-source discharges into surface water. That's what it has been doing for years. Virtually, every outfall we have here is required to have an NPDES permit. It also has applied to any other point-source discharges that are directly into surface water including runoff from construction sites that impact surface water. Those in the construction business know that we issue what we call stormwater permit under the NPDES program. We do not...we've never used the NPDES program to regulate injection wells. That's done exclusively under our authority to protect drinking water and our UIC program is a program that issues the permits to protect groundwater from injection wells. I hope that answers your question. I didn't hear it very clearly.

COUNCILMEMBER SUGIMURA: I think you just explained the problem with the Ninth Circuit Court opinion and why I think it's interesting that we have this disparity in the law 'cause you're talking about UIC permit and the Ninth Circuit Court ruled that the NPDES would be the required permit for injection wells but we haven't used it or you haven't used it for the Department of Health.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. Sorry, the clock has run out on you, so we got to go on to the next councilmember. Okay. Members, just again, as a reminder I believe what will help with reducing the echo for Dr. Anderson is you can maybe say roughly six inches away from the mic so there, it lessens the reverberation that Dr. Anderson is getting. So, anyway, and speaking of West Maui, let's go now to West Maui Councilmember Tamara Paltin to ask Dr. Anderson questions.

COUNCILMEMBER PALTIN: Thanks. You pau with yours?

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CHAIR MOLINA: I got more later on but that's okay. We'll play it by ear, it just depends on Dr. Anderson's availability. So, proceed.

COUNCILMEMBER PALTIN: Dr. Anderson, have you issued an NPDES permit before?

MR. ANDERSON: Have I ever seen one before?

COUNCILMEMBER PALTIN: Have you issued one before?

MR. ANDERSON: We've issued hundreds over the years. I was the...I don't know if you know my history. I was the State Epidemiologist . . . *(inaudible)*. . . --

COUNCILMEMBER PALTIN: Oh, just say yes or no. Thanks. I only got a limited amount of time.

MR. ANDERSON: --. . . *(inaudible)*. . . those permits for 12 years --

COUNCILMEMBER PALTIN: Thank you.

MR. ANDERSON: --and I was Health Director for another four years, and then I've come back recently to work as the Health Director. So, I've seen many of these permits and it involves many of the issues associated with them.

COUNCILMEMBER PALTIN: That's great. So, my next question is I know you cannot speculate, but in regards to prioritizing what types of enforcement that you do, I was wondering where cesspools and septic tanks are on the prioritization *[sic]* of enforcement.

MR. ANDERSON: I think the question was what, how do we enforce our regulations related to septic tanks or cesspools? Is that...

COUNCILMEMBER PALTIN: No, what's the priority. What's the priority of that enforcement?

MR. ANDERSON: Yeah, we...if a cesspool is failing, we will take enforcement action and, of course, we do permit all new wastewater systems including septic tanks. We don't allow cesspools anymore but everyone who puts in a septic tank comes to department and gets approval to install that tank and we apply any criteria that we follow in our rules to those applicants. Then we go out and inspect the system after the systems are installed to make sure they're installed properly. So, we have a major role in reviewing and approving septic tanks and cesspools. We call those individual wastewater systems. And we also regulate larger wastewater systems, including sewage treatment plants. And again we approve the systems and regularly inspect those systems.

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COUNCILMEMBER PALTIN: Thank you. That's very nice. I'm asking if the priority of the large wastewater treatment facilities is higher than the priority of a septic system in enforcement and regulation, it's an issue of prioritization not permitting.

MR. ANDERSON: Yeah. Well, we...that's a good question. We, of course, regulate very closely the large wastewater systems, usually municipal systems that are serving, you know, hundreds of thousands of people. They have lots of different reporting requirements that don't apply to owners of septic tanks or cesspools. In fact, the only times we typically get involved with enforcement actions on the septic tanks or cesspools is if they're failing and water is spilling out into the streets or --

COUNCILMEMBER PALTIN: Thank you.

MR. ANDERSON: --if they are --

COUNCILMEMBER PALTIN: I appreciate that answer.

MR. ANDERSON: --causing problems with the septic tank or cesspool. So, it's not something we regularly inspect. In fact, once you've installed your system, very often we will never go back...

CHAIR MOLINA: Dr. Anderson, you've answered Member Paltin's questions. Doctor? Hello? Okay. We got to work on this connection. But anyway, Dr. Anderson, just want to remind you that you did answer Member Paltin's question and she's got another question to ask you.

MR. ANDERSON: Sure.

COUNCILMEMBER PALTIN: Thank you. So, I was wondering in your role as Department of Health, what is the mission? Like, do you care about clean water or things like that?

MR. ANDERSON: Yeah, well, our overall mission is to protect and enhance the health and environment of people of Hawaii. That's a very broad mission but we take it very seriously and I'll have . . . *(inaudible)*. . . --

COUNCILMEMBER PALTIN: Thank you. I appreciate that as well.

MR. ANDERSON: --and making sure that the water quality is not compromised. And, of course, we also...

COUNCILMEMBER PALTIN: And so, you actively work towards that goal of...

MR. ANDERSON: So, that's very much a part of our mission.

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COUNCILMEMBER PALTIN: Thank you. So, you actively work towards that goal of protecting, enhancing the environment of Hawaii and in the West Maui side that we noticed of these algae blooms, degradation, and clear seeps of freshwater, R-1 water, and are you and your Department willing to work with the County to regulate what's been going on? We're not saying that there can be no injection of water, we're saying like this needs to be measured, regulated, and addressed, are you willing to do those things?

MR. ANDERSON: Yes, of course. And let me...

COUNCILMEMBER PALTIN: Awesome.

MR. ANDERSON: Thank you for asking the question. We're more than willing to work with the County on trying to resolve this problem. We realize the difficulty ...*(inaudible)*... --

COUNCILMEMBER PALTIN: Thank you so much. You've been great.

MR. ANDERSON: --changed and you're having to deal with new challenges. I must also say I personally have met with Russell Sparks and some of the biologists there, marine biologists, and he, I know he's convinced that there is a problem and I've talked to others who deal with the injection wells or are at least contributing to some extent to the problem. It may not be the entire cause of the problem but they're a part of the problem and I appreciate that, you know, they have expertise in this area and they have identified that there's an issue that needs attention.

CHAIR MOLINA: Dr. Anderson, that...sorry to interrupt you, Doctor. You've answered the question and time has run out on Councilmember Paltin. So, thank you for your responses to the councilmember. Next, we have Council Vice-Chair Keani Rawlins-Fernandez. She's got questions for you. Member Rawlins-Fernandez, you're on the clock.

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

MR. ANDERSON: Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for answering our questions. So, after your Q&A session with Member Paltin, I realized that you probably can't hear when we tell you like that you've answered our question. Mahalo, so I don't know if you can kind of listen for that.

MR. ANDERSON: I'm sorry. I'm still having trouble hearing you. But could you please _____ one more time. Repeat that one more time.

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VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, when you've answered my question, I'll let you know and then can you just listen for that.

MR. ANDERSON: This is frustrating. One more time. . . .*(inaudible)*. . .

VICE-CHAIR RAWLINS-FERNANDEZ: Farther away. Okay. I'm gonna...

MR. ANDERSON: I would go a little further from the mic because I think that's part of the problem.

VICE-CHAIR RAWLINS-FERNANDEZ: Alright, I'm going to start my questions, if you can keep them brief. Can you hear my okay now?

MR. ANDERSON: It's a garbled question, I'm sorry I'm having a hard time. Whoever spoke last, I could hear her very well what she said or what she was asking. Maybe if you could emulate what she's doing that would help to make the question clearer.

COUNCILMEMBER PALTIN: Want me to ask your question for you...

VICE-CHAIR RAWLINS-FERNANDEZ: Can I do that? Can Tamara ask my questions then?

CHAIR MOLINA: It's up to you if you want to yield. Dr. Anderson, Member Rawlins-Fernandez will be submitting her questions to Member Paltin for your consideration. So, if you hear Member Paltin's voice, she's asking questions on behalf of Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Do you agree...

MR. ANDERSON: Okay. By the way, I can hear you very well, Chair, right now. Whatever you're doing there you were crystal clear so that helps. Thank you.

COUNCILMEMBER PALTIN: Do you agree that DOH has the authority to protect the ocean water quality through the UIC program permit? Yes or no?

MR. ANDERSON: I do. I believe the --

COUNCILMEMBER PALTIN: Thank you.

MR. ANDERSON: --program is primarily intended to protect...

COUNCILMEMBER PALTIN: Okay. Is DOH considering applying that authority...

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you.

MR. ANDERSON: But we are firmly...

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VICE-CHAIR RAWLINS-FERNANDEZ: Thank you.

CHAIR MOLINA: Doctor? Dr. Anderson, sorry to interrupt again, I guess if you can answer these questions very briefly with some of them --

COUNCILMEMBER PALTIN: Yes or no.

CHAIR MOLINA: --yes or no, yeah. That's the request being made from Member Paltin and Member Rawlins-Fernandez. So, can...you don't need to be very extensive, just short and to the point if possible.

VICE-CHAIR RAWLINS-FERNANDEZ: There's a time limit.

COUNCILMEMBER PALTIN: Is DOH considering applying that authority in this case to address the ocean pollution from the Lahaina facility? Yes or no?

MR. ANDERSON: Yes.

COUNCILMEMBER PALTIN: Are you aware that NPDES permits have been issued for pollution of surface water via groundwater as a conduit? Yes or no?

MR. ANDERSON: NPDES permits are intended to protect surface water.

COUNCILMEMBER PALTIN: Via groundwater as a conduit, yes or no?

MR. ANDERSON: No.

COUNCILMEMBER PALTIN: Did you see the amicus brief filed by former administrators of the US EPA in support of Hawaii Wildlife Fund? Yes or no?

MR. ANDERSON: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Did you see that they listed different states that have the NPDES permits?

COUNCILMEMBER PALTIN: Did you see that they listed different states that have the NPDES permit for surface water, pollution of surface water via groundwater as a conduit? Yes or no?

MR. ANDERSON: No.

VICE-CHAIR RAWLINS-FERNANDEZ: It's in the...

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COUNCILMEMBER PALTIN: It's in the amicus brief filed by former administrators of the US EPA in support of Hawaii Wildlife Fund, you might want to check it out. Does the UIC permit match the parameters to protect marine life? Yes or no?

MR. ANDERSON: The permit isn't...it has to be written to protect marine life. It normally is not.

COUNCILMEMBER PALTIN: Reclamation...oh, sorry. Reclamation reuse of as close to 100 percent of the effluent is the preferred but since it's not, until it is, need to monitor the discharge from the wells with a proper permit. Is that correct? Yes or no?

MR. ANDERSON: That's correct. The UIC wells should be a backup to the primary disposal system which should be reuse.

COUNCILMEMBER PALTIN: Thank you. Will the DOH hold the County or homeowner accountable for not having an NPDES permit for injection wells, cesspools, or septic? Yes or no?

MR. ANDERSON: No.

COUNCILMEMBER PALTIN: The EPA's comment about cesspools was not relevant to this issue that the DOH has rules, regs that govern cesspools. Is that correct? Yes or no?

MR. ANDERSON: I wouldn't want to speculate on what the consequence of this court action would be. I think EPA did and I don't think that's appropriate.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Anderson. I'll yield the rest of my time to the Chair.

CHAIR MOLINA: Thank you very much, Member Rawlins-Fernandez and Member Paltin. Boy, both are so generous to me. Thank you. Alright, moving on. Dr. Anderson, now we're going have our Wailuku Councilmember Alice Lee who may have a question or two for you. Member Lee, you're on the clock.

COUNCILMEMBER LEE: Thank you, Mr. Chair. Why has it taken DOH over three years to review and issue the County of Maui a permit?

MR. ANDERSON: Yes, it's been about, I think it's been about three years since that permit was submitted, the permit application was submitted.

COUNCILMEMBER LEE: Why has it taken that long? Are you almost done?

MR. ANDERSON: It's taking that long because we don't, we've never issued a permit, NPDES permit. There are no groundwater standards and we frankly even don't know what to with the application. We've never done this before nor has anyone at EPA done it. So,

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we're sort of perplexed that what we can do. I think the County's made a good-faith effort to submit an application as they were directed to do but it's taken us a long time because frankly, we're not quite sure what to do with it.

COUNCILMEMBER LEE: How can...

MR. ANDERSON: And also of course we have this case pending but more important is that we we'll have to probably develop rules that include water quality standards for groundwater before we can actually that application.

COUNCILMEMBER LEE: Okay, thank you.

MR. ANDERSON: There's no --

COUNCILMEMBER LEE: Thank you.

MR. ANDERSON: --guidance that's out there...

CHAIR MOLINA: Hey, Dr. Anderson, sorry to interrupt again. Yeah, you've answered Member Lee's earlier question. Member Lee, do you have another question?

COUNCILMEMBER LEE: Oh, yes. I have several. Okay. Next, is if you cannot issue the County of Maui a permit, is the County of Maui in noncompliance?

MR. ANDERSON: Well again, if a permit is required, then if they don't have a permit they will be out of compliance. I think it has yet to be determined whether a permit is required. That's the subject matter of the current court deliberations.

COUNCILMEMBER LEE: But if they can't get a permit from you, how can they be in compliance?

MR. ANDERSON: Well, that's a very good question. They have applied for a permit . . . *(inaudible)* . . . say we're not quite sure what to do with that application, they are currently operating under the UIC permit and as far as I know there's no violation of the permit conditions there. So, we're not planning to take any enforcement action as it relates to the current situation.

COUNCILMEMBER LEE: Okay, I got that.

MR. ANDERSON: Having said that, we'd like to, we'd simply extended the permit that...

CHAIR MOLINA: Dr. Anderson, you've answered Member Lee's question. She's got another question for you.

MR. ANDERSON: Sure.

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COUNCILMEMBER LEE: Does the Ninth Circuit's decision effectively transfer regulatory control over Hawaii's groundwater resources to the Federal EPA?

MR. ANDERSON: No. We, the Department of Health actually has delegated authority to enforce the Clean Water Act and the Safe Drinking Water Act in Hawaii. It's the other way around. So, if there was a problem, the EPA could step in and issue a permit or on top of the State permit. But typically they work with us on helping us write permits and we don't have any duplication in that regard.

COUNCILMEMBER LEE: Okay. Does...this might be another way of asking, does the Federal EPA have primary oversight over the Clean Water Act permitting program?

MR. ANDERSON: Yes, they do and they, again, delegate authority to the Department of Health to actually write the permits and enforce those permits in most cases.

COUNCILMEMBER LEE: Okay. Thank you.

CHAIR MOLINA: Thank you very much, Member Lee. Dr. Anderson, we have now Council Chair Kelly King with questions for you. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. Aloha, Dr. Anderson. Can you hear me? I appreciate you meeting with me a couple weeks ago, you know, with the, via phone in when I was at your office with your deputy. And so I'm not...I don't have a whole lot of questions, but just a couple things that we discussed. The first question I wanted to ask you because it keeps seeming to come up is my understanding is the Department of Health is, acts for the EPA in the State of Hawaii, is basically the --

MR. ANDERSON: That's correct. That's correct.

COUNCILMEMBER KING: --effect...okay. That's what I wanted to ascertain because I know when I went to Guam and I saw basically that island has like 50 EPA agents and I asked them why we didn't have so many over here and they said because you have a Department of Health. So, the other question I have for you is and I think you've kind of alluded to it but the Department of Health, I believe, right now, you feel that you prefer the UIC permit for the injection well system and are you willing to...do you feel like you have sufficient authority and are you willing to strengthen that permit so if we can stick with UIC so that it gives the protections against ocean pollution?

MR. ANDERSON: Yes, well, let me answer the question this way. We, I have consistently used the UIC program to permit injection wells. In fact exclusively used it historically so of course we're comfortable with that. We've never tried to issue an NPDES permit for an injection well, so we really don't know how to do that nor does EPA. So, to answer your second part of your question, yes, we can limit the discharges from an injection well under our current rules and, frankly, I believe that's necessary in the

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situation. We'd like to work with the County in coming with a program, but ultimately, I would like to see a system there where the injection wells are only used as a backup system when the irrigation systems not able to be used and that would have to be reflected in the permit. We can easily write the permit that it would only be used during storm events or heavy rains or mechanical failures or whatever and that would, I think, dramatically change the operations there. So, I would look to some changes in the rules to that effect, or I'm sorry, to the permit to that effect and, again, we can make other changes to the permit as necessary. We're glad to work with the County on that.

COUNCILMEMBER KING: Okay. That's great. So, it could be functionally equivalent protections that the NPDES permit has but we would be working under the UIC permit.

MR. ANDERSON: Yeah, I'm sorry. I can't hear it. I couldn't hear it well enough to know the question there, but we do anticipate that we'll continue to regulate injection wells under the UIC program and, of course, their permit is what gives, what guides the Department and the County on what is allowed and what's not allowed. So, that's how I expect things will continue.

COUNCILMEMBER KING: Okay. But I just wanted to verify, just to confirm that you feel like it is possible to make, to create a UIC that's functionally equivalent, gives the functional equivalent protections against ocean pollution as the NPDES permit.

MR. ANDERSON: Yeah, as far as it goes, we can put almost any conditions we want in a UIC permit limiting the amount of water that's injected into the ground and the quality of the water and that's allowed under our rules. That's, as I...again, we haven't discussed exactly what should be there and of course it would largely depend on how, what the system as a whole will look like and we would adjust the permit conditions accordingly.

COUNCILMEMBER KING: Okay. Thank you, Dr. Anderson. I appreciate it.

CHAIR MOLINA: Okay. Thank you, Chair King. Hey, Dr. Anderson, now we have Councilmember Shane Sinenci from Hana with questions for you. Councilmember Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. And some of the councilmembers have asked some of my questions, but I will just ask some clarifying questions. So, currently the Lahaina wastewater facility has a UIC permit.

MR. ANDERSON: Correct.

COUNCILMEMBER SINENCI: And so, the UIC permit regulates discharge into the groundwater.

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MR. ANDERSON: Correct.

COUNCILMEMBER SINENCI: And so, in the, I guess, in the suit there was a tracer dye study that traced the effluent from the groundwater source out into the nearby reef. Now, does that still comply with the UIC permit?

MR. ANDERSON: Yes, there's no harm in putting a tracer into the injectate and that's not a, that's not disallowed in the permit.

COUNCILMEMBER SINENCI: Can you repeat that?

CHAIR MOLINA: Dr. Anderson, can you repeat your response to Councilmember Sinenci?

MR. ANDERSON: I am sorry. I didn't hear the question. Could you...was there another question I missed?

COUNCILMEMBER SINENCI: No, so does the tracer dye, does that, I guess, solidify the argument that it was from a point source?

MR. ANDERSON: Yeah, the tracer dye was just simply used to show there's a connection between the injection wells and the ocean. The dye is moved out with, were diluted, of course, in the groundwater and eventually ended up coming out into seeps into the nearshore environment. My understanding is they detected the tracer dye in those, in the ocean. So, there is apparently a connection between the injection wells and the ocean which doesn't surprise me at all. I might add that all the injection wells in the State are on the coast. There's none inland, we don't allow injection wells over our drinking water. So, they're all located along shoreline areas. And they're all discharging into groundwater and very likely all that water is eventually getting into the ocean at some time, some place. That's the way the groundwater works. So, it's not surprising to me that the water is getting into the ocean. The debate seems to be mostly about whether it's causing harm and, of course, what should be done about it if it is.

COUNCILMEMBER SINENCI: Thank you. For the UIC permit, does it require the point source to be a certain feet off the shoreline?

MR. ANDERSON: There are criteria for the injection wells. You cannot put an injection well mauka of the, what they call, the UIC line. It's a line that goes around the island, all the islands, but on Maui and the areas mauka of the UIC line are assumed to have drinking water. The areas makai of the UIC line are usually salty and do not contain drinking water. That's the purpose of the line is simply to delineate where there are drinking water supplies and we, again, we would not allow a UIC well to contaminate a drinking water supply. So, they're all makai of that line and most of them are pretty close to the shoreline.

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COUNCILMEMBER SINENCI: Is there a distance, a required distance of that UIC line?

MR. ANDERSON: You know that's a good question. I don't seem to remember the _____. Obviously, you can't put an injection well right on the shoreline but there are probably setbacks that are required and I'm, but I don't know what they are off hand. I'd have to check the rules to find out what they might be.

COUNCILMEMBER SINENCI: Okay. Thank you, Doctor.

MR. ANDERSON: The injection wells vary in terms of the distance from the shoreline. Some are relatively close, some are more further mauka and a lot of it depends on where the drinking water supplies are located and, again, not to beat a dead horse, but we would not allow an injection into our, into any drinking water supply.

CHAIR MOLINA: Okay. Thank you very much, Dr. Anderson. You've answered Councilmember Sinenci's questions. I've got a quick follow up with regards to the UIC permit. Can you as the Director of Department of Health make the UIC permit stricter than an NPDE [sic] and can you also comment the difference as far as expense and, I guess, the requirements of an NPDE [sic] permit versus a UIC?

MR. ANDERSON: Yeah. With regard to your first question, typically a NPDES permit is a more extensive permit that does require monitoring of the receiving water. That is expensive. Typically we're taking a vessel or going off from shore to take samples to make sure that you're not exceeding water quality standards around the zone of mixing and that's a routine requirement. So, it does, it is expensive to maintain a, the monitoring requirement around the NPDES permit. With the UIC permit, you're typically measuring what's going into the ground at the point it's going into the ground, so it's a much simpler permit to monitor and enforce. You're simply looking at the amount of gallons per day that's going down into the well and generally looking at the quality of the effluent that's being discharged, that's only at one point, so it's easier to monitor that. But again getting back to the first part of your question, an NPDES permit typically is, it takes a lot longer to process and to issue because of the complexity of the permit. The UIC permits are relatively straightforward and include, you know, conditions to protect the groundwater which in turn may impact either drinking water or coastal water. But generally the NPDES permit program is a much more complicated program and for both the Department and for the ____ community. It's a more difficult permit to write.

CHAIR MOLINA: Okay. Thank you, Dr. Anderson, that answers that question. And just quickly, you know, you previously mentioned that additional permitting may not be or will not be necessary for septic tanks or cesspools, but I know you've stated that because of the AG they're not asking you to speculate on the impact of the Ninth Circuit Court rulings. So, I'm just trying to make sense how you can, you make that determination that, you know, additional permitting will not be necessary for septic

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tanks and cesspools because in 2050, I believe, we are required to have all cesspools shut down as, I guess, mandated by the State Legislature and the Department of Health. Can you comment on that?

MR. ANDERSON: Yeah, I certainly wouldn't want to speculate on what the impact of this court ruling would be and whether it applies to septic tanks or cesspools or anything else. It's not clear what the ruling will finally be. I made the point earlier and I'll reinforce that, that we are very comfortable with the permitting program we have in place now and I can't imagine requiring a NPDES permit for the small individual wastewater systems. Obviously, there's tens of thousands of those systems around the State and arguably many of them are having some impact on nearshore water. But I don't want to speculate on whether a permit would be necessary or not under the Ninth Court ruling.

CHAIR MOLINA: Okay. Thank you, Dr. Anderson. We're about ready to close. I know you're on a time situation over there and I want to thank you for calling. I just have, I guess one Councilmember has a couple of follow-up questions.

COUNCILMEMBER SUGIMURA: Just related to what you said. So...

CHAIR MOLINA: Yeah, I guess related to the cesspools and septic system. So, I'm going to recognize Councilmember Sugimura. She's got some questions for you on that. Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: So, thank you. So, Dr. Anderson, based upon what you just said, could Department of Health, then, issue a UIC permit for injection wells instead of the NPDES permit?

MR. ANDERSON: Well, we, again, we have a UIC permit in place. We feel that's an adequate way to regulate these wells and I do think some additional review is necessary given the circumstances. We've only extended those permits as they were. With the understanding now that there may be some impact on nearshore water, I think it's appropriate to go back to look at the conditions and modify those. And again, we'd be glad to work with the various parties to make that change as necessary. And again, I don't want to beat a dead horse here but the solution of...the problem I have with this whole court ____ situation . . . *(inaudible)* . . . are focused around the wrong thing, around what permit should be required. The real question should be what needs to be done to address the concern that these wells are impacting the nearshore water. That's not a permitting issue. That's really...how do you manage your wastewater so that you don't have to rely on those injection wells, and we can accommodate whatever the decision is there with permits. But again, an NPDES permit is just a permit to pollute, it's not going to solve the problem, it's just going to perhaps impose some limits that we can easily put into and a UIC permit. So, I just think the legal...the framework of the legal arguments is really not solving any problems, it's only complicating matters and I wish more, the focus could be on the real problem

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coming from, understanding what can be done to address that other than just issue a permit. That's a paper exercise.

CHAIR MOLINA: Okay. Dr. Anderson, you answered that question from Member Sugimura. She's got one more for you. Member Sugimura?

COUNCILMEMBER SUGIMURA: So, thank you because I think you have just expressed what the problem is and why it's important to get this law clarified because you're saying you can continue to do the UIC permit but the Ninth Circuit District Court of Appeals decision --

COUNCILMEMBER KING: He didn't say that.

COUNCILMEMBER SUGIMURA: --talking about discharge of groundwater within the purview of the Clean Water Act which would then issue, then force you to issue through a NPDES permit. So that's the problem, there's this problem with what you think you need to do versus what EPA is telling you should do based upon this Ninth Circuit Court decision. So, I think it's hard for you to issue...I don't know why you haven't issued the NPDES permit for three years now, but I think it's a reflection of what you said that that's you don't have the rules for it or the direction but the Ninth Circuit Court decision basically changed the law right from under you and the and us on the West Coast and Hawaii and that's the problem that we have right now to comply. So, thank you.

CHAIR MOLINA: Okay. Thank you very much.

MR. ANDERSON: I understand the problem and I wish I could give you some legal advice but I'm not in a position to do that and I certainly wouldn't want to speculate on the impacts of the Ninth Circuit Court decision. I hope that there's some possible settlement available to you all, 'cause it would be a simpler way to go, I think, than to try to figure out how to make an NPDES program work.

CHAIR MOLINA: Okay. Thank you very much, Member Sugimura. Last...anybody got one question before Dr. Anderson has to go? We have one from Council Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Just a quick one. Just to kind of help Member Sugimura with that. So, Chair King asked this question earlier about the UIC permit and if it would be possible for it to be written in a way that would be a functional equivalent of a NPDES permit and Mr. Anderson answered Chair King's question with a yes. And so, to follow up that, Member Sugimura, you're correct that using the UIC permit to regulate the injection wells is possible and we could just make it stricter and that would solve this issue and it's clear and there's no need to go to the Supreme Court for clarity. Mahalo, Member Sugimura.

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COUNCILMEMBER SUGIMURA: That's not the issue...it's a legal problem.

CHAIR MOLINA: Okay, Member Rawlins-Fernandez, do you require a response from Dr. Anderson or you just wanted to make a clarifying point?

VICE-CHAIR RAWLINS-FERNANDEZ: I just wanted to make sure that that was the correct understanding.

CHAIR MOLINA: Okay. Thank you. Alright. I believe seeing no other request for any follow-up questions for Dr. Anderson, am I correct, Members?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR MOLINA: Okay. Dr. Anderson, on behalf of the Members of the GET Committee, we want to thank you for taking time out of your very, very busy day to share your thoughts as it relates to the item at hand. Thank you again and we really appreciate your input. It will certainly be helpful in final decision making.

MR. ANDERSON: Thank you for the opportunity to comment and again I just...and I'm sorry about the bad connection here 'cause I really, I hope I haven't misspoken based on my misunderstanding of the questions, but I think I've gotten most of the information I intended to provide or certainly the good questions that you all asked are all relevant to this case. If you have any further follow-up questions, you're more than welcome to give my office a call and we'll try to get you the answers or if you need clarification on any of the comments I've made, I, again, would welcome any questions you might have. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Dr. Anderson. Okay, members, I think it's time for a brief recess. We're going to disconnect our call and get back into sessions. So, Members, would you like a, let's have a, what, seven-minute recess, ten minutes, what do you want?

UNIDENTIFIED SPEAKER: Seven minutes.

CHAIR MOLINA: Alright, seven minutes. You guys are ready to go. So, let's get back here at 5:45. GET meeting in recess 'til 5:45 p.m. . . . *(gavel)* . . .

RECESS: 5:39 p.m.

RECONVENE: 5:50 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of September 3, 2019 is now back in session. It is ten minutes to the hour of 6:00 p.m. on Friday, September 6th. Members, thank you for that session with Dr. Anderson. Now, we're at a point we do have some resource personnel that was requested from some of you. Before we do

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that, Chair's trying to get a pulse feel for all of you as far as a potential dinner break tonight. What is your call? I'm open to both either powering through with what we have depending on how far we get. We do have two settlement proposals, one from, of course, Earthjustice, that was introduced by Council Chair King as well as the Mayor's proposed settlement which will, you know, for Chair's sake I would consider executive session on that. But I just want to get a feel from you guys. You guys want to take a break at some point to nourish yourselves or do you want to take a chance and see how far we get at this point? Member Lee?

COUNCILMEMBER LEE: We have two proposals to review?

CHAIR MOLINA: Well, that's what's on our agenda, but --

COUNCILMEMBER LEE: Yeah.

CHAIR MOLINA: --a point I want to make is we did review the previous proposal from our last meeting, so I don't see there's anything new with that on that proposal. The new proposal we have, the other proposal I should say is the one from the Mayor.

COUNCILMEMBER LEE: Okay. So, if we powered through, what time do you think we'll be done?

CHAIR MOLINA: I mean, I'm just trying to take an educated guess, I mean, if we power through, I don't want you guys falling down and getting sick now without any food or...and I want you guys to have your minds set, because I know how tiring it can get.

COUNCILMEMBER LEE: Yeah.

CHAIR MOLINA: I was going to make it _____ seven o'clock?

COUNCILMEMBER PALTIN: I'm down to power through, but whatever you guys like.

COUNCILMEMBER LEE: Yeah.

CHAIR MOLINA: We'll go for about an hour.

COUNCILMEMBER LEE: I think you're looking at very healthy people over here.

COUNCILMEMBER PALTIN: Yeah, we all healthy.

COUNCILMEMBER LEE: We could probably miss a few meals.

COUNCILMEMBER PALTIN: Yeah.

CHAIR MOLINA: Okay.

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COUNCILMEMBER PALTIN: Can. True.

CHAIR MOLINA: Okay.

COUNCILMEMBER LEE: Okay.

CHAIR MOLINA: Alright. Well, we'll do this, we'll see how far we can go without anyone falling down sick or I don't want to affect anyone's health with this.

VICE-CHAIR RAWLINS-FERNANDEZ: No, thank God it's Friday and then we have the weekend.

CHAIR MOLINA: That's right. You got the weekend to recover. Boy, I tell you a bunch of dedicated souls in this Chamber.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Alright. Let's go then now...yes, Chair King?

COUNCILMEMBER KING: Thank you. I'm willing to power through but I, if you could give us some guidance, I mean, I think we, you know, we've hit all the major questions and I would just say let's not, let's just encourage each other not to ask the same questions of different people unless you think there's going to be a different answer. But, you know, if we could limit the question period unless someone's got some burning new issue and then we can get into deliberations. Because to tell you the truth I think most people have figured out what they're going to do by now and, you know, prolonging it, you know, further discussion I think is it's just not, it's just kind of beating a dead horse, so whatever we can do to make sure that we're truly seeking new information and we're not...and then and we're not deliberating until we get into a deliberations once we have a motion on the floor. But if we're ready for a motion I'm willing to make one.

CHAIR MOLINA: Okay. Alright. You've heard Chair King's thoughts. Yeah. And I think you make a good point. At our May 23rd meeting, a lot of questions were asked so if we could as much as possible refrain from asking the same questions over and over, and even with testimony the other night, there were a lot of questions asked of the testifiers, which included the attorneys from Earthjustice, so, and some of the people that we're considering for resource this evening. So, what I'd like to do then just start first with, I guess, one person that...well, Councilmember Sugimura asked Mr. Kumagai. If you have any questions for him. So, I assume, Member Sugimura, you have a question or two for him.

COUNCILMEMBER SUGIMURA: Did you want him to go up to the, there or there?

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CHAIR MOLINA: Yeah, for...well, it doesn't matter where I want him but you made the request for Mr. Kumagai, so I'll ask Mr. Kumagai then if you can come up to the lectern. And afterwards, I'm going to ask if Members have any questions for Ms. White, who I believe was asked because of her experience out in Kahekili. That was, I guess, Member Paltin's request. So, we'll start first with Mr. Kumagai. And I'll recognize you first, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: So, thank you, Dr. Kumagai, for being here and I forgot to mention if we forgot that you're a graduate of Lahainaluna. So, everyone's trying to figure out who you are. So, thank you for being born and raised here. So, about point source versus non-point source, right, so that's the big issue with this issue of the Ninth Circuit settle and go or go to Supreme Court. So, why and why is an NPDES permit, why was it never required for injection wells or any other groundwater discharge? Why was NPDES not used for injection wells?

CHAIR MOLINA: Okay. And, Dr. Kumagai, before you answer, if at all possible if you can get, you know, straight to the point like we did with Dr. Anderson.

MR. KUMAGAI: Yes.

CHAIR MOLINA: Okay. Go ahead.

MR. KUMAGAI: The reason why it wasn't set up that way because according to the Federal Law 92.500 or the Clean Water Act amendments of '72, it was set up that way. It was...the law defined all sources of pollution, in particular point sources, non-point sources. Point sources were defined is basically cleaned up so that was the focus very early on. They set up under Section 402. So, it was going on, they know who was responsible, where it was coming up, how to deal with it. Non-point sources are defined in Section 208 and as well as Section 304. Now non-point sources involved all else, everything else other than point sources, included in the non-point sources was the injection wells and then words, definitions such as subsurface, excavations, which will be cesspools, septic tanks, anything that you put in the ground, constructed in the ground come under that category; otherwise, had stormwater and so on. But anyway, injection wells, point sources, non-point sources defined by law as far as I'm concerned, I'm not an attorney, I came through the science of it, the engineering of it, the application, we've lived and worked with it for more than half a century. From that standpoint, injection wells are defined as non-point sources. In the law, Section 208, the Ninth Circuit defined or from what I understand, defined injection wells as point sources. That means in my own mind from a practitioner all of that that was defined as non-point sources become point sources. Dr. Anderson didn't know what to do with an NP...of course not. It wasn't meant to be that way. And as a consequence they going to UIC, and so UIC is a drinking water act to protect drinking water sources. To protect surface water sources, basically the, you know, water quality it's the Clean Water Act, Section, you know, 208, in particular for non-point sources. Now, NPDES has very defined procedures from engineering technical

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standpoints to take care of it. Non-point sources includes just about everything that comes out. You can't really decide what is it any set procedure, you can't pick and choose. The procedure defined by law, the way we learned it, you got to look at it holistically. Look at the whole area and, you know, basically as a whole, take it, define everything that goes out there, not pick and choose, but include everything systematically, objectively, following scientific method, and from there, determine what the impact is. Now, NEPA is part of the Clean Water Act. That came first, then came the Clean Water Act, but then the Clean Water Act encompassed NEPA. So, there's an environmental impact. So, there's basic, a scientific, engineering, evaluation of the impact what is causing pollution. Then the question is what do we do about it.

CHAIR MOLINA: Dr. Kumagai, I think you answered that first question from Member Sugimura.

MR. KUMAGAI: Yeah. Okay. I'm sorry.

CHAIR MOLINA: Member Sugimura, do you have another --

MR. KUMAGAI: Okay.

CHAIR MOLINA: --question for Dr. Kumagai?

COUNCILMEMBER SUGIMURA: Okay. Good. So, you touched upon the problem of the current Ninth Circuit Court decision and what it's doing to handling of the injection wells --

MR. KUMAGAI: That's right.

COUNCILMEMBER SUGIMURA: --is the problem. So, can you state that clearly which I think --

MR. KUMAGAI: Okay.

COUNCILMEMBER SUGIMURA: --Dr. Anderson didn't want to.

MR. KUMAGAI: He couldn't speculate but it's clear as far as us practitioners who have been in the business for at least 50, 60 years. When you define a non-point source to become a point source, arbitrarily for that matter, then the procedures and everything else gets all bent out of whack, you know, basically there's all kinds of confusion and so on. So, that's, it's what it amounts to be, so it turns out that that's the guts as far as some of us practitioners, that's the guts of the act. You change all of that, you change the thinking, the science, the experience, and everything about it and just create all kinds of confusion. The Department of Health, if the regulatory agency can take a stance, we're gonna go do anything about it, but what it amounts to is the citizens that are involved and affected just gets jerked around. If Health Department

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is sitting three years without acting on the NPDES permit and whoever is asking for some action from it got to wait three years and require five years or whatever then, of course, it's affecting the citizen. Health department can say, we don't know what to do and wait another three or five years. But as far as the citizens are concerned, they just going to get jerked around. I, for one, been in the business for 50, 60 years and I know what it's like to be jerked around by the system.

CHAIR MOLINA: Thank you. On that note, we'll end your response to Member Sugimura's question.

MR. KUMAGAI: Okay. Fine. Okay.

CHAIR MOLINA: I got another member that has a question for you.

MR. KUMAGAI: I'm getting carried away with it. Okay.

CHAIR MOLINA: No, no, it's...I appreciate your passion. Member Sugimura, if you don't mind yielding the floor to Member Rawlins-Fernandez. She has a question for Dr. Kumagai.

COUNCILMEMBER SUGIMURA: Okay, sure.

VICE-CHAIR RAWLINS-FERNANDEZ: I just wanted to make sure that Mr. Kumagai is sticking to answering the question and not advocating for a position.

CHAIR MOLINA: Yeah. Okay. And Dr. Kumagai...

MR. KUMAGAI: Okay. I'm sorry for it.

VICE-CHAIR RAWLINS-FERNANDEZ: Like you said, if you can keep it brief and tight.

CHAIR MOLINA: Okay. Alright.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

CHAIR MOLINA: Member Sugimura, do you have a question? If not, I will scan the floor for any other members that may have a question for Dr. Kumagai. Okay. Member Paltin?

COUNCILMEMBER PALTIN: Hi, Dr. Kumagai. Thanks for coming here today. I just was wondering that you came here, you paid your own flight over?

MR. KUMAGAI: That what?

COUNCILMEMBER PALTIN: You paid your own flight over?

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MR. KUMAGAI: Yes.

COUNCILMEMBER PALTIN: And your title was again, sorry?

MR. KUMAGAI: My what? Title? I don't have a title.

COUNCILMEMBER PALTIN: Oh okay. Okay. Thanks.

MR. KUMAGAI: I'm a...well.

CHAIR MOLINA: Okay. Thank you. Doctor, you, so for the record, so you're retired, you know, from the, was it, University of Hawaii?

MR. KUMAGAI: Well, I was with the water resource. I didn't retire from the University of Hawaii. I'm from...I was with the Water Resource and Research Center and worked at private consultants, was Deputy Director of Health from 1975 to '80 and worked at Queen's...well, I worked in several places.

CHAIR MOLINA: Okay. You have a very extensive work career. So, okay, Member Paltin?

COUNCILMEMBER PALTIN: I just was confused as a practitioner, like, what is the practitioner, like cultural practitioner...

MR. KUMAGAI: No, I'm sorry. I'm a registered professional engineer as well, specialty in environmental engineering, have science, you know, PhD, et cetera, et cetera. But I worked in the design, application, the management of all the environmental programs. So, I called it practitioner as somebody that has to take and either build something and make it work or implement a program and make it work. So, that's what I mean by a practitioner.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Member Paltin. Members, before I excuse Dr. Kumagai, is there any last questions for him? Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. So, Mr. Kumagai, simply put, to me in my own simple mind, it sounds like we're trying to put a square peg in a round hole.

MR. KUMAGAI: That's right.

COUNCILMEMBER KAMA: Thank you.

CHAIR MOLINA: Okay. Thank you for that.

MR. KUMAGAI: That's exactly right.

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CHAIR MOLINA: Alright. Any other last questions for Dr. Kumagai before I excuse him?
Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'm not sure...Mr. Kumagai, mahalo for being here. What is your interest in being here? You know, many people have come, submitted testimony, have come in person and testify because they've come to protect the environment. So, what is your interest in being here?

MR. KUMAGAI: That's a good question. I'm perhaps from a old school, from a professional engineering, you know, be in a professional in the engineering field. We have always believed that we have a professional and personal obligation to give back to the community and whether it involve with any kind of project and so on but we should do everything we can to participate in community affairs. And in this particular case, when we see something that's going that's not quite right, we feel it's our obligation to do something about it as much as we can.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo.

MR. KUMAGAI: So, that's why there was a group of us that came and we get together...

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

CHAIR MOLINA: Okay, thank you. Thank you, Member Rawlins-Fernandez. Okay, seeing no other request for questions for Dr. Kumagai, I'd like to thank Dr. Kumagai for taking your own time and to express your manao and knowledge on this whole subject matter.

MR. KUMAGAI: Well, thank you so much, my pleasure. Thank you.

CHAIR MOLINA: Mahalo. Okay, Members, is there request for Ms. White to come up and respond to any questions? There is, I assume, because she was asked to be a resource. So, Ms. White, if you could take the same area that Dr. Kumagai was at earlier and we'll have a question or two from our members. Okay. Dr. White did author a piece for your consideration regarding Kahekili. So, we'll have Staff...and thank you, Corporation Counsel, for also offering that as well for review. And I believe the request was made by Member Paltin, so I'll recognize Member Paltin for her questions to Ms. White or is it Dr. White?

MS. WHITE: No.

CHAIR MOLINA: Okay. Alright.

MS. WHITE: Just couple masters.

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CHAIR MOLINA: Okay. Go ahead, Member Paltin.

COUNCILMEMBER PALTIN: Thank you. Thanks for being here today. I was wondering, you're familiar with the Kahekili reef area and what is the issue with the injection wells affecting the reefs? Is it, like, should they be NPDES?

MS. WHITE: So, from my understanding of the law, the Clean Water Act is that when waters from a point source go into navigable waters, that are covered under the Clean Water Act, this is where of course a lot of this conflict is coming from. But it is my understanding that because those waters are coming into the reef area and they are impacting the reef that the Clean Water Act protects fishable, swimmable waters, and so that's what's in question here. We know that it's impacting the reef. We know that it's killing the corals. We know that they're literally crumbling from the inside out.

COUNCILMEMBER PALTIN: And does it matter about the phosphate?

MS. WHITE: So, phosphate is one of those nutrients that influences the growth of algae. So, they need a bunch of different nutrients, nitrogen, phosphorus are the biggest ones, but a bunch micronutrient as well, but yes.

COUNCILMEMBER PALTIN: So, say the phosphorus is in the ocean just floating around, it may or may not have come from the injection wells and then you add the nitrogen to that situation, that's the problem?

MS. WHITE: There is actually data, not only from the Department of Health but from USGS and two different surveys at Kahekili taking water specifically from the seeps that indicates high levels of phosphate in the water. It's coming from the actual source. And then the algae can store it as well.

COUNCILMEMBER PALTIN: Okay. And then are you familiar with the NPDES permit?

MS. WHITE: Only what I know from Robin Knox.

COUNCILMEMBER PALTIN: Okay.

MS. WHITE: Yeah.

COUNCILMEMBER PALTIN: Thank you. Thanks, Chair.

CHAIR MOLINA: Members, any other questions for Ms. White? Right now, I'm going ask my Committee Vice-Chair to facilitate for few minutes. I have to tend to a personal matter, so.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Member Sinenci, you have questions?

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COUNCILMEMBER SINENCI: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Go ahead.

COUNCILMEMBER SINENCI: I just have one. Thank you, Chair. Thank you for being here. So, I had a question, you mentioned that under the Clean Water Act it regulates ocean water, is that correct? So, are there any...what kind of standards are there as far as ocean water?

MS. WHITE: So, I'm not personally familiar with the water quality standards, but the State of Hawaii does have them and they were changed...did Robin Knox leave already? Yeah. Darn it. They used to be the highest standards in the country, but they were raised to be in line with the country, so that's some of the wastewater injection on Oahu did not need to be changed.

COUNCILMEMBER SINENCI: Say that again. What was that?

MS. WHITE: There are, were back, I'm going to estimate, seven, eight years ago, two of the wastewater facilities on Oahu were exceeding their pollutant loads and because we had the lowest standards, I mean, the highest standards in the country, they decided to instead of reducing the pollution to change the standards, so that they could pollute more. You know, Hawaii we use our waters way more than anybody on the mainland, so.

COUNCILMEMBER SINENCI: Thank you. And one more, Chair. And so in your professional experience, do you feel that Lahaina wastewater facility exceeds their, beyond polluting Kahekili?

MS. WHITE: All of the science shows that they're exceeding the standards but more importantly it's impacting the ecosystem there and we didn't talk about it much the other day, but the staph in the water there is really high and it's ubiquitous. So, it's a health hazard and it's literally killing the reef and that's important.

COUNCILMEMBER SINENCI: Last question, Chair. And so, DLNR had went ahead and put some kind of fishing restriction on the area. Can you quickly speak to that?

MS. WHITE: Absolutely. So, there's a lot literature that shows that if you have a healthy fish population, especially herbivores who eat algae, it's what they do, that you can try and set the balance back more, back right because if you have lots of herbivores, they're like goats, right, they just graze all day long, it's what they do and the algae grows fast and the coral grows really, really slow. So, all those nutrients coming in are fueling that algae, if you have more fish then they can help, but we need both actions.

COUNCILMEMBER SINENCI: Yeah, okay. Thank you. Thank you, Chair.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Sinenci? Okay, Members, any other questions? Okay, I just I have one question to follow up on Member Sinenci's. So, to have a healthy fish population in the area, what happened was they had to ban fishing in the area, is that correct?

MS. WHITE: So, they put on a kapu, basically, on just the herbivores. So, you can fish, you can fish there, you just...they want to...it's not about closing the refrigerator, it's about keeping it running and healthy and stocking it again. So, that was the strategy, right. We don't want to ban fishing but we need to fix the ecosystem, and you need the land-side pollution reduction as well.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. White. Okay, so we have questions from Member Paltin and then Pro-Temp Kama. Member Paltin? Oh, okay. Mahalo, Member Paltin. Pro-Temp Kama?

COUNCILMEMBER KAMA: Oh, thank you. Thank you for being here.

MS. WHITE: Thank you.

COUNCILMEMBER KAMA: So, I just, I have just two questions. So, are the injection wells the only causes the reefs dying?

MS. WHITE: In this particular location and this particular reef it is the prominent problem.

COUNCILMEMBER KAMA: But not the only one.

MS. WHITE: No.

COUNCILMEMBER KAMA: Okay.

MS. WHITE: Fishing's part of the problem too.

COUNCILMEMBER KAMA: Okay. Thank you. So, if all the injection wells and particularly this one that we're speaking about were to be cut off or shut down, will the reef recover?

MS. WHITE: We believe very strongly that this one would. It has a lot of signs of resilience. The fish populations are doing their part and we've seen positive swings, so if you could reduce the nutrient pollution and other things in that wastewater, I think the corals might just be resilient enough to get through it. We do know that new corals, new baby corals are coming into the system, they come from other places, probably like Olowalu to the south, but there's a lot of signs of resilience that show that this reef probably could recover if it was, if everything was put in check.

COUNCILMEMBER KAMA: Thank you, Chair. Thank you.

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VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Pro-Temp Kama. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. So, somebody was saying that the way you, like, manage the ecosystem is to make the fisheries and so I was wondering is the plan to just not allow herbivore fishing indefinitely?

MS. WHITE: That is the plan. There was no plan other than assessing the effectiveness after five years.

COUNCILMEMBER PALTIN: Oh. So, it was never going to be allowed to fish for herbivores ever again at Honokowai is the plan?

MS. WHITE: Unless somewhere down the road that changes, but there is no plans to change that on the books. And the science from Scripps Institution of Oceanography showed that it's going to take 30 years for the fish to do their job there at the current status quo.

COUNCILMEMBER PALTIN: Okay. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair King and then Member Sugimura.

COUNCILMEMBER KING: Okay. Thank you. Thanks for being here, Ms. White.

MS. WHITE: Thank you.

COUNCILMEMBER KING: So, I know you're not an attorney, but you, since you've dealt with these permits and you did this study, do you think it might be possible as Mr. Anderson was, said he was willing to do to rewrite the UIC permit to include the same protections that are in the NPDES as far as ocean pollution?

MS. WHITE: I really can't answer that.

COUNCILMEMBER KING: Okay.

MS. WHITE: Sorry.

COUNCILMEMBER KING: We need Robin for that again?

MS. WHITE: Yeah.

COUNCILMEMBER KING: Chair, I was hoping that we could actually call her as a resource. I guess she left. I didn't do that soon enough.

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VICE-CHAIR RAWLINS-FERNANDEZ: Chair King, she did submit, send me information that I can share with the Council.

COUNCILMEMBER KING: Okay. Okay. I don't know if you want to do that now or...the, I guess, I really want to read this statement to you and see if you agree with it, and this is from the *Star-Advertiser* editorial today, which says, one paragraph says, the Ninth Circuit concluded, "this case is about preventing the County from doing indirectly that which it cannot do directly." So, I mean, to me that says the Ninth Circuit judgment was trying to prevent the County from polluting indirectly because they know they can't do it directly, but, I mean, is that what's happening right now is basically through the groundwater is indirect pollution?

MS. WHITE: Absolutely.

COUNCILMEMBER KING: Okay. I mean, that's basically what they're saying and that's why the Ninth District Court is clarifying the Clean Water Act, I believe, so that we know we, what we can and can't do. Okay, thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair King. Member Sugimura and then Member Paltin.

COUNCILMEMBER SUGIMURA: Nice seeing you here.

MS. WHITE: Likewise.

COUNCILMEMBER SUGIMURA: So, I went snorkeling with you on a DLNR, I mean, it was an excursion, I forget what it was called but thank you. It's been like three years ago.

MS. WHITE: Floating Workshop.

COUNCILMEMBER SUGIMURA: Floating Workshop. It was very interesting. But I wanted to just comment on your Page 25 in your report. I was trying to read it as you were talking but it looks like things are improving, right. Do you have a comment about that just by your graphs?

MS. WHITE: Yeah, no, it's absolutely excellent. The herbivore biomass has increased by over 300 percent. To put that into context, it was only 10 to 15 percent of what it should be if you compare it to a marine life conservation district where there isn't fishing permitted and is basically your proxy for natural environment. So, we went from levels that are 10 to 15 percent of what they should be and now maybe there are 30 to 50 percent of what they should be.

COUNCILMEMBER SUGIMURA: Getting better.

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MS. WHITE: Yeah, it's getting better. We got lucky. There was a lot of things that happened that we had no control over. There were fish, there were some large recruitment pulses, which is when you have a lot of fish, baby fish come out and land on the reef in the summer like they do. But nobody knows how or why those are going to happen, we just got lucky in the beginning. And then, for anybody who spends any time in the water, the macro algae, the big limu, is just gone everywhere, right. So, we didn't have anything to do with that and it's giving the corals a break and it's allowed for that crustose coralline algae to become really prominent and that's important because it's the landing pad for new baby corals, and so, that's a sign of resilience.

COUNCILMEMBER SUGIMURA: Great job. Good. That's the biology part of the story. So, thank you, very encouraging.

UNIDENTIFIED SPEAKER: Right.

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

COUNCILMEMBER PALTIN: Just in your understanding, if a dye tracer connects the receiving water to a non-point source, such as an injection well, does it then become a point source?

MS. WHITE: In my understanding it would be. I look at it as a point source.

COUNCILMEMBER PALTIN: Because the tracer dye connected it so that now it is a point source from going from a non-point source.

MS. WHITE: Yeah. And there's a lot of other studies that happened that in, that show that as well. I mean, from the very first limu study that Meghan Dailer did. You can put your hands in that water, it's 83 degrees night and day, it is not normal.

COUNCILMEMBER PALTIN: So, are you...can you...I mean, your field is like marine biology and like looking at the system as a whole ecosystem and is that different than environmental engineering?

MS. WHITE: In environmental engineering, engineering definition that I'm familiar with is they basically design and build things, right. So, I look...I'm more of an ecologist and I do have a history in water quality and analytical lab analyses.

COUNCILMEMBER PALTIN: So, more at looking at the whole picture as it is rather than trying to build something to fit into the whole picture?

MS. WHITE: Yeah, like, I wouldn't know the first thing about designing an injection well, but I do know the relationships that are happening out on the reef and I understand how they grow and how they die and the things that impact them.

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COUNCILMEMBER PALTIN: Okay. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Paltin. And just to help with that question, the term point source means any discernible, confined or discreet conveyance included, including but not limited to any pipe, ditch, channel, tunnel, conduit, et cetera, et cetera. Mahalo, Member Paltin. Okay. Members, any other questions for Ms. White? Okay, seeing none, thank you so much for staying with us and serving as a resource for the Council.

MS. WHITE: Thanks for having me and thank you for your working on this important decision.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. White. Okay, Members, I'm not super sure where Member Molina wanted to take this. Okay. So, I don't know if we have any more resource people that you wanted to call up or if you had questions for anyone on the floor. Now would be the time to ask those questions. You don't have any questions. Okay. Do the Members have any questions before I give the floor over to Ms. Thomson? Oh, okay, thank you. Oh, right now? Oh, okay. Alright. Ms. Thomson and then if Members would like we can take a dinner break.

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

VICE-CHAIR RAWLINS-FERNANDEZ: I don't know. I'm not sure. Okay. Ms. Thomson?

COUNCILMEMBER SUGIMURA: Should we call for the question?

VICE-CHAIR RAWLINS-FERNANDEZ: I don't know if the Committee Chair would appreciate that right now. He's not here to vote and he's the Chair. Member Lee?

COUNCILMEMBER LEE: . . .*(inaudible)*. . .

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, alright. I got some guidance from our Chair.

COUNCILMEMBER KING: Oh, here comes our Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: We're going to take a quick recess. Okay. All right. We're going to recess at the call of the Chair. It's 6:23 on September 6.

COUNCILMEMBER SUGIMURA: How long?

VICE-CHAIR RAWLINS-FERNANDEZ: At the call of the Chair. Mahalo. Recess.
... *(gavel)* ...

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RECESS: 6:24 p.m.

RECONVENE: 6:30 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . Recessed GET meeting for Tuesday, September 3, 2019 is now back in session. It is about 6:30 p.m. on Friday night, September 6th. Thank you very much, Members, for that break and I appreciate my wonderful Vice-Chair Keani Rawlins-Fernandez. Thank you for covering at a moment's notice.

VICE-CHAIR RAWLINS-FERNANDEZ: You're very welcome, Chair.

CHAIR MOLINA: Chair, got his personal matter taken care of at least for now, you know. hopefully, no more, no more other...I have no other need for your use tonight other than to vote on this matter like the rest of you. Okay. At this point, the Chair wants to recognize Ms. Thomson from Corporation Counsel with remarks as it relates, I presume, to the, either the Mayor's settlement or anything otherwise. Ms. Thomson?

MS. THOMSON: Thank you, Chair. I wanted to make a couple of comments on some of the things that we've heard tonight and also in the testimony from the previous day this week. The Ninth Circuit's decision is law in Hawaii and throughout the Ninth Circuit states until and if the U.S. Supreme Court changes it. The Ninth Circuit's decision does not address ocean water quality or harm to ocean life. The Ninth Circuit's test says that if your point, if you can trace pollution from point A to point B into the ocean water, you need an NPDES permit. What Dr. Anderson was describing tonight is that the DOH has been regulating ocean water quality through our UIC permit. That's not new. That's been happening for...the wastewater ____ can tell you, but it's been several years or decades perhaps. It's one of the reasons that we have both a Federal UIC permit and a State UIC permit. The Ninth Circuit's decision means that regardless of what that UIC permit may say, we still will have to get an NPDES permit in addition. And you heard Dr. Anderson say that they have not issued NPDES permits for UIC wells. There are almost 7,000 UIC wells only in the State of Hawaii. Those are classified UIC wells, which is the similar type of well to the Lahaina injection wells. There are about 110,000 onsite disposal systems, so those are septic, cesspools, and other types of onsite individual wastewater treatment systems. This decision has...the Ninth Circuit's decision has very, very broad impacts. The US EPA has said in writing to this body that it believes that in addition to other types of ground discharge systems, septic and cesspool may be required to get NPDES permits. The Department of Health under the Clean Water Act has delegated authority to administer the NPDES program. What that means is that if the Federal EPA says that septic and cesspools in certain conditions have to get these permits, DOH can't do something different. They have to listen to that regulating, the primary regulator in that. The Ninth Circuit's decisions has also blurred the lines between point and non-point source pollution sources, which means that as Dr. Kumagai was saying all of those items on the list that were previously non-point sources such as injection wells,

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he mentioned subsurface discharges, storm water, cesspools, and septic. I'm quoting from what he told you earlier tonight. Those previously non-point sources will now be considered point sources and this is a brand new way of looking at the NPDES program and we have heard from the Department of Health in other settings they've called it a nightmare to try to permit this. They don't know how to do it. And I'd like to see if Colleen has anything else to add to those comments.

MS. DOYLE: Not really. I just want to emphasize what Richelle said about the Ninth Circuit ruling. Regardless of what you heard today from Dr. Anderson, a NPDES permit is absolutely required for these County wells. There's no doubt about that. The court understood that the County had a UIC permit for their wells, both the State one and a Federal one, but that was not sufficient. So, what is important for you to understand that without a doubt if this decision stands, an NPDES permit is going to be required.

CHAIR MOLINA: Okay. Thank you, Ms. Doyle. Members, any questions for either Ms. Thomson or Ms. Doyle? Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you for those comments. So, I'm thinking, you know, listening to you and saying that, hey, if it goes to the Federal, to the Supreme Court and we're speculating that it could be this, I mean, I can see where the Legislature has already put out Act 125 where we need to move to septic systems by 2050. Why would we put ourselves in jeopardy of being further, you know...we're already moving in this direction, so, you know, it's like, whoa, we're going to get fines, we're going to get this huge, you know, cesspools and all. Why would we even consider putting ourselves in that situation when I think there is a chance tonight that we just say, hey, we're not gonna go there? So, that was, that's one of my issues is that let's not even give them that opportunity to make that decision for us or even change any of that. And I think the second question was...oh go ahead. Sorry.

CHAIR MOLINA: Go ahead, Ms. Thomson.

MS. THOMSON: Thank you. I think you've nailed it on the head. So, the Ninth Circuit's decision is what we have to live with if we withdraw this case from the U.S. Supreme Court. And the Ninth Circuit's decision is exactly what you said. It is the unknown, not only for the County but for all other sources that under the Ninth Circuit's test would have to get these NPDES permits. Going to the U.S. Supreme Court gives that court the opportunity to clarify the law nationwide, so it's the opportunity to either, the U.S. Supreme Court can agree with the Ninth Circuit, they can disagree with the Ninth Circuit, it can create a new test, but regardless of the outcome at the Supreme Court at least we will know for certain what the law requires. Right now, it's basically a mess.

COUNCILMEMBER SINENCI: Right. And so...oh, sorry. Chair? I mean, I...it just seems that, you know, if we're looking at this and I...just a lot of people have said, hey, we want to fix this. And so, if we're gonna be changing...it just seems everything is about

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everything else when this is specific to Kahekili, this is specific to Lahaina wastewater reclamation, it doesn't include anybody anywhere else. It's specific to this, this very spot. It's not about...this is what the Ninth Circuit had ruled, not about East Coast, not about the West Coast, they've ruled on Kahekili Beach. And so, the thing about Kahekili Beach is the, to mean, it's the tracer study, not everybody else is doing a tracer study. So, I mean, I think I want to focus on Kahekili and, you know, what has been decided at the Ninth Circuit Court, but I think when it, when you try to make it apply to everybody else it's starting to confuse everybody when it could basically be, to me, really simple. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Any other --

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: --questions for Ms. Thomson or Miss...

COUNCILMEMBER KING: I just have a comment.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: It's not really a question, but I just want to comment on this, the constant fear mongering about the cesspools and what EPA might do. We have a letter from DOH saying DOH has no plans to enforce NPDES permit requirements against existing septic systems and cesspools. I'm looking at an article where the first 18 months of the Trump Administration, 16,000 EPA agents have left and fewer than 400 have been hired. They don't even have enough people to come down here and try to enforce against the cesspools and the septic tanks even if they wanted to. But, you know, the letter that we got, I don't believe that letter would have come from any previous EPA administration. We're dealing with the Trump EPA. That's why the amicus briefs were, are joined by former EPA administrators, both in the Bush, Clinton, and also the Obama administrations. The EPA that we're looking at that we're talking to today, and it's not the EPA on the ground, I know the people on Oahu who are EPA agents. They're great. They love the environment. They're trying to protect the environment. They've thanked me for trying to be an advocate in this case and, but it's the top down that where those messages are coming from because of the rollback of environmental regulations. Eighty-four environmental regulations are being rolled back. More than half of those are already rolled back. I think 35 of them are in the process. So, you know, let's...we...I understand what they're trying to do, what Corp. Counsel is trying to do, and I understand that they're hired to support the Mayor's point of view and the point of view of where we're at with this case because this case is longstanding but this case happened before most of got to this Council and most of us who got on this Council got here because of our environmental protection promises. So, I just want to be clear that any statements about what the EPA may or may not do are probably not realistic but the dictates that we're getting from the EPA are coming down from the Trump EPA. You know, we have law

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professors from around the country, who about almost 30 of them who have said, please settle this. So, anyway, I don't want...it's not a question it's just a statement that I want to make because I just want to get over this, you know, let's honor the letter from our Department of Health that says they're not going to enforce against cesspools and septic tanks and let's move on from there and stop fear mongering. Thank you.

CHAIR MOLINA: Okay. Thank you--hang on--Chairman King. I have Member Kama, followed by Member Paltin.

COUNCILMEMBER KAMA: Well, I thought that somebody was going to respond to Shane's questions and then it went sideways. So, I'd like that to happen first.

CHAIR MOLINA: Well, it's our meeting. The Chair gives priority first to the Members to give comments.

COUNCILMEMBER KAMA: Okay. Okay.

CHAIR MOLINA: So, you had your hand up. So, Member Kama?

COUNCILMEMBER KAMA: Yeah. Okay. So, this is my question. If the County settles the case, will the County be required to obtain a NPDES permit to continue its use of the injection wells?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Yes.

COUNCILMEMBER KAMA: Okay. But didn't Dr. Anderson just tell us that he doesn't know how to do that? Okay. Just want to be clear in my head, 'cause every time we talk about it, stuff happens. Second question, if the County is successful at the Supreme Court and then chooses to amend the UIC permit to mirror the NPDES requirements, what would be our likely cost to comply with those requirements and what would it be like, or what would the, what would be the likely sewer rates that would result from that?

CHAIR MOLINA: So, maybe Mr. Nakagawa, would you like to respond to the...go ahead.

MR. NAKAGAWA: Yes, Chair. So, my understanding of the question is you're just trying to see if we are required, right, to have an NPDES permit, right, for our injection wells and what would that cost be, right? First of all, if...I think I explained it in our presentation before, if an NPDES permit is required for our injection wells it basically would be impossible. You cannot meet an NPDES permit with an end of pipe type of solution for injection wells, which is why you heard from various testimonies, right. NPDES permit is for an outfall that has a zone of mixing and you measure that type of

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discharge. The...so the only solution would be if you need an NPDES permit, like I said before, is really an outfall because an outfall, once again, is an end of pipe, you know, exactly where it's coming from. Bruce Anderson talked about there's a zone and mixing and then you can meet that permit requirements at the boundaries of that zoning of mixing. Now, an outfall I think our estimations were roughly just for Lahaina only was roughly \$130 million. So, 130 million...sorry, I got to do the math in my head. I'll get back to you on how... 'cause you asked about rates or how does that affect the rates?

COUNCILMEMBER KAMA: Right.

MR. NAKAGAWA: Yeah. So, let me calculate in my head and then if you want to ask...

CHAIR MOLINA: Mr. Nakagawa, while you're calculating, I think Corporation Counsel Thomson wanted to add her thoughts regarding Member Kama's question.

MS. THOMSON: I just wanted to address that an NPDES permit would not only be required for the Lahaina facility but it would be required for any injection well that would be, that would meet the Ninth Circuit's test. So, any well that can be traced, if you can trace it from point A to point B to the ocean that would require an NPDES permit. And just a follow up with Councilmember Sinenci, I don't know if you can see this but the yellow, this is, you know, map of the states, so the yellow portion is Region 9. It includes Alaska, Arizona, California, and Nevada, Idaho, Oregon, Washington, Montana, and us, and Guam, Northern Marianas. All of those states are within the Ninth Circuit and so the Ninth Circuit Court of Appeals decision applies to every source here in Hawaii as well as all of those other states. So, it's not limited only to Kahekili Beach or the Lahaina injection wells. And that's why we have...I hope the _____ are going to look at the amicus briefs that were filed in support of the County's position, you know, 15 total entities that are very similar to Maui County signed on to the briefs including San Francisco and Denver, the City of New York, the California Association of Sanitation Agencies, Idaho Water Resources Board, you know, I could go on and on. The reason that this case is getting such national attention is that it has immense broad implications, not only for Maui County but for Hawaii and for the rest of the states. So, if, to be clear, if you withdraw from the Supreme Court, the Ninth Circuit decision stands and we will have to have NPDES permits for all of the sources that meet that test.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. Ms. Kama, a follow-up question?

COUNCILMEMBER KAMA: Final question. Final question. So, if the County settles or is unsuccessful at the Supreme Court and we can't use the injection wells because we couldn't get the NPDES permit, what would be Staff's recommendation or alternatives?

CHAIR MOLINA: I guess, Mr. Nakagawa, you able to answer that question?

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MR. NAKAGAWA: Yes, Chair. So, that was basically the ocean outfall.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Okay, thank you. Just...and I...Chair's just, a thought just kind of crossed my mind. I know the Mayor stated he made a 100 percent commitment towards, I guess, recycling and I assume that includes the necessary infrastructure which is going to cost money and I know there's a concern about sewer rates. Well, it sounds like if the Mayor's making that commitment, we're gonna do it anyway and obviously it's the Council, or future councils will have to decide on rate increase or support any proposed rate increases from the department, so I don't know why that just came to my mind, but just food for thought. Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I'm...Eric is doing the calculation...

CHAIR MOLINA: Oh, you know what, Member Sugimura, I apologize. I think it was Member Paltin --

COUNCILMEMBER SUGIMURA: Oh, sorry.

CHAIR MOLINA: --that was first and then we'll follow up with you right after. Member Paltin?

COUNCILMEMBER PALTIN: Thank you. I just had couple questions on Ms. Thomson's statements. I thought the law said traceable, which means someone would have to do a dye study on their neighbor's septic to prove the connectivity which would require a NPDES permit. And when we had the Planning Department in here the other day, you can't just go on to somebody's property and put a tracer in their septic. You can't just go on there and enforce illegal TVRs, you can't just trespass on people's property. So, how are you saying that you're proving the connectivity?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you, Chair. So, I handed out a memo earlier tonight. It has tabs on it. And if you go to, it's tab number four is a, it's PowerPoint presentation about a study that was done on a residential subdivision on the Big Island called Puako. And this study was using tracer dye in cesspools or septic tanks and it proved that the septic or the cesspool was connected to the nearshore waters in under ten days of travel time. For comparison the Lahaina injection wells a minimum of three months from the time the dye was put into the well to when it showed up. In terms of can you get onto other people's property, tracer dye is not the only way that you can prove a connection. The Department of Health has already studied the problems associated with onsite disposal systems, cesspools, septic, and similar throughout the State, so they knew where these cesspools and septic are. They know the zones that are close to, like they have the numbers, you know, how many are, how many thousands are

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close to the coast or to a river way or a river or a gulch or other waterway. So those, the modeling already exists and you can use computer modeling in addition to tracer dye to prove a connection between the sources and the ocean.

COUNCILMEMBER PALTIN: So, then, to me, it kind of sounds like when you know that this system is having a negative impact on it you just want to turn your head the other way. I mean, worse, in that case where it was proven to be having a negative impact you want to just let them continue to have that negative impact, like, I mean, Department of Health, us, the County Council, and like that we want to have cleaner nearshore waters, we don't want to...I mean, this R-1 water is a resource. We're fighting over water from the stream, we're seeing a septic or whatever a septic, an injection well here or there, you're saying how many injections wells and how broad it is, that's the extent of the pollution that humans are doing here and you want to just be like I don't see it because I got a UIC, like I don't...I mean, what are we here for? To do that?'

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Chair, thank you. I believe that Managing Director Baz was trying to flag me down to answer.

MR. BAZ: Yeah, thank you. Mr. Chair, if you don't mind.

CHAIR MOLINA: Mr. Baz?

MR. BAZ: Yeah. So, you know, Ms. Paltin, we thank you for bringing that point up because we do care about, as we've mentioned throughout this whole case and as Chair Molina mentioned the Mayor's already committed to going to 100 percent reuse. We still unfortunately need the injection wells immediately because we don't have the capital improvement projects established, the funding's not there to get that done, and what we previously calculated and what we offered in that May 23rd meeting was 100 percent reuse in Lahaina would cost us around 60, a little over \$60 million and we could get that done within the next seven or eight years, maybe a little bit quicker if I, you know, push him a little harder. But it's...what the Administration's concerned about right now is the immediate impact of the acceptance of the Ninth Circuit Court's opinion and the immediate determination that what we're doing is illegal and that we need to apply for a permit that Department of Health says, obviously, that we can't, they don't know how to give us yet, right, so.

COUNCILMEMBER PALTIN: Can I...

MR. BAZ: Yeah.

COUNCILMEMBER PALTIN: So, we heard from Ms. Chandler and Mr. Lester that, you know, you have all these people right now that are willing to help the State to create the

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NPDES permit process, and to say that getting the NPDES means that you can never use an injection well again is false because it just regulates and monitors the discharge. So, if it's impossible to never use injection wells because of our capacity right now or because of heavy rainfall episodes and things like that. I mean, do you really think that the DOH, that Earthjustice, that all these people are that...that they're not gonna see the situation? I mean, nobody's asking anybody to perform magic. You know, we realize that we still need the injection wells. All that they're asking is to be regulated and, I mean, like Ms. Chandler said, NPDES gives you the right to pollute, it just wants to have these controls where how much and whatnot. So, I mean, I think this is something that we can address within our State without handing it off to the continental U.S. The people from Lahaina, the people from my district, we've been working on it longer than those kids been alive, you know, and they don't want it, we don't want it, this is my district. We just want it to be regulated. We've been working on this issue, Arakawa even supported us the first time around until he got into office the second time.

MR. BAZ: Chair? The stance that we've always taken is that we're already regulated and if the regulations need to be tightened up, then yes, Department of Health can tighten those up and it's clear and then Dr. Anderson was, I think was very clear about that. And if these groups were able to assist the Department of Health, it would have been nice for them to do that over the last three years because or even longer since we actually applied for the NPDES permit and Department of Health hasn't been able to issue us a permit. So, if, I don't know if those offers were made to the Department of Health before or if those offers were accepted by them, that's between the Department of Health and not necessarily us, so. What we, from the Administration standpoint, have been doing is increasing our availability of reuse water by cleaning it up over the years. We have spent millions of dollars. As the Budget Director, I remember numerous projects, millions and millions of dollars being invested in our, especially Lahaina treatment plant and our Kihei treatment plant on, not just the cleaning up of the water but also in expanding the reuse system so that we can get it out to those that can actually use it, and we want to continue that and we're willing to make that investment with your support in that. And, yeah, so that's, so my point is that's really where we're at right now and we feel that if the Ninth Circuit Court opinion didn't exist, then we might be able to do that.

COUNCILMEMBER PALTIN: So, not to be disrespectful, but promises from politicians aren't good for longer than they're in office and there's nine of us here and so like, you mean, I mean, the Mayor cannot promise anything because the nine people control the budget.

MR. BAZ: Right. The Mayor would propose these projects and as we discussed in the previous settlement agreement that the Mayor proposed that was a part of the settlement agreement that we would have committed to with that but that wasn't accepted. So, a court decree then, you know, would require, would necessitate this Council to support those eventually, otherwise, there's other ramifications. We've

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dealt with those with ADA consent decrees in the past and with EPA consent decrees that we've done with this department actually so, yeah. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Baz. Thank you, Member Paltin. Chair wants to step in here right now. It's almost an hour we've been at it, been a long day. I know you guys, some of you can plow through but we got to think about the Administration and Staff for a possible break but before I do that since we're talking about the Mayor and his commitment to, you know, 100 percent recycling, we got two resolutions to consider today. One is, of course, the resolution that we considered back on May 23rd and the other is the Mayor's new proposed settlement. I believe in my opinion to get more details about this, as well As Corp. Counsel advised that we should consider executive session. So, with that being said, Members, I'm going to try to move this meeting along here. I think it's been a long night. I'm going to propose a motion for executive session based on HRS 92-5(a) for the Council to consult with the attorney and everyone else. So, we do need six votes to go on to executive session. And again, this is to discuss the Mayor's proposed settlement. Is there a motion to go into executive session?

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Member Sugimura, seconded by Member Kama. Any discussion? Okay. Member, you had your hand up for discussion on the motion for executive session? Member Paltin, go ahead.

COUNCILMEMBER PALTIN: I just was discussing that's what you want to do?

CHAIR MOLINA: Yeah, and it's high time I think we need to discuss. We've already discussed the other proposed resolutions that was put out by Member King at the previous meeting, so we pretty much know the details of that proposed settlement which relates to the plaintiff's matter. What we do have is a new proposal from the Mayor and as Corp. Counsel had mentioned to us earlier, we may have to consider executive session for this. So, that's why I'm putting it out there for consideration to executive session. We do need two-thirds vote to go onto executive session, so six votes. If we do not attain the six votes, we'll see what happens.

COUNCILMEMBER PALTIN: So, you're just putting it out there, but that's not your personal preference?

CHAIR MOLINA: Well, my personal preference is to go into executive session but I'm only one of nine, well, eight people tonight, so it's up to this body if a minimum of six members want to go into executive session. If not, then the motion to go into executive session will fail.

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COUNCILMEMBER PALTIN: Okay.

CHAIR MOLINA: Okay. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'm all in total support of moving this meeting along. I'm not inclined to vote to go into executive session. The Mayor has made it abundantly clear that he is not in favor of withdrawing the case from the Supreme Court and as I understand from the plaintiff's attorneys that the plaintiffs will not settle for anything less than withdrawing the case from the Supreme Court. The Mayor has not presented the details of the settlement offer to Earthjustice, and so therefore, we don't know if it's something that Earthjustice and their plaintiffs and their clients would be, would approve. And I feel it's almost a waste of time for us to go into executive session, because if it's not even something that would be approved by the plaintiffs then why are we spinning our wheels? If the Mayor were going to offer withdrawing the case from Supreme Court, then I have a strong suspicion that he would have made that public because that's something a lot of people are calling him to do. And so, I suspect it's not to withdraw from the Supreme Court. Therefore, I am not in favor of wasting the Council's time and wasting everyone's time here and going into executive session for something that the other party, the plaintiffs will not be, you know, supportive of anyway. And, you know, thank you so much as the GET Chair for sending that letter to the Mayor asking him to present that offer to the plaintiffs to see if they would, you know, support his settlement offer and would save everyone time. So, I will not be voting for the motion. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez. Chair appreciates your comments. Chair King followed by Member Lee.

COUNCILMEMBER KING: Thank you, Chair. I am very happy to hear the Mayor's proposal in public. The other proposal for the settlement is on Granicus. It's posted for all to see. And so, I think in fairness, the Mayor's proposal should also be in public for all to see. But I won't be voting to go into executive session because I think it's a little bit shibai for him to spring this on us last minute when this, I mean, this ____ has been going around for over a week. So, it was early enough to be posted along with everything else that's posted. And I don't believe there are any more monies attached to it, there's certainly no personnel issues that require executive session and, you know, if he were...I agree with our Vice-Chair, if we were, if he were going to offer to withdraw from the Supreme Court, he would have made that public, I believe. We have petitions with over 16,000 names on it asking him to do just that. So, that's my position, you know, come and speak to us in public and let the people hear what you're proposing. Thank you.

CHAIR MOLINA: Thank you, Chair King. Member Lee?

COUNCILMEMBER LEE: Mr. Chair, I'm in favor of either deferring this item so that, you know, it's up to the body, they can ask the Mayor to come down and explain his offer

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or filing it. I think we've gone around and around in circles long enough on this. I mean, I'm beginning to feel like an environmental engineer myself at this point, you know. I don't know. We're beating this to death. It's time to vote one way or the other.

CHAIR MOLINA: So noted, Member Lee, but we do have a motion to go into executive session right now. Member Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a question for you. So, the Mayor did not respond or did he respond to your letter?

CHAIR MOLINA: At this point, I haven't received anything in writing from the Mayor on this.

COUNCILMEMBER SINENCI: Okay. And would there be, I guess, the other question, would there be parts of his proposal that could be discussed in open session?

CHAIR MOLINA: Well, that's a good question. Maybe that's depending on what happens with this matter of going into executive session. If the six votes are not attained, well maybe that a question that can be asked of Corp. Counsel. Okay. Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I make a motion to file just by this discussion.

CHAIR MOLINA: We have a motion right now to go into executive session. So, let's deal with that matter first.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: Okay, alright. So, seeing no other comments the Chair will call for the vote. The motion again is to go into executive session. We need six votes. Ms. Espeleta, let's do a roll call. Let's begin with Member Kama and work our way down the line for executive session.

MS. ESPELETA: Thank you, Mr. Chair. Starting with Member Kama?

COUNCILMEMBER KAMA: Yes.

MS. ESPELETA: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yes.

MS. ESPELETA: Member Paltin?

COUNCILMEMBER PALTIN: I kind of don't know. Can I --

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CHAIR MOLINA: Pass.

COUNCILMEMBER PALTIN: --do a pass?

CHAIR MOLINA: Move on and we'll come back to Member Paltin.

MS. ESPELETA: Member Hokama is excused. Member Lee?

COUNCILMEMBER LEE: Yes for executive session.

MS. ESPELETA: Member King?

COUNCILMEMBER KING: No.

MS. ESPELETA: Councilmember Sinenci.

COUNCILMEMBER SINENCI: No.

MS. ESPELETA: I'm gonna go back to Member Paltin and end with Vice-Chair and Chair.

CHAIR MOLINA: To clarify rules, if a Member does not acknowledge yes or no, what is that taken as? As an "aye," right, if you don't make a call with a yes or no? It'll be recognized as an "aye." Member Paltin, the clock is running.

VICE-CHAIR RAWLINS-FERNANDEZ: I'm ready to vote if we want to give Member Paltin more time.

COUNCILMEMBER PALTIN: I'll go with a no.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

CHAIR MOLINA: Okay.

MS. ESPELETA: Paltin is no.

CHAIR MOLINA: Move on, Staff.

MS. ESPELETA: Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: A`ole.

MS. ESPELETA: And Chair Molina?

CHAIR MOLINA: Aye.

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VICE-CHAIR RAWLINS-FERNANDEZ: Chair, I just wanted to quickly share with the Council, I'm not sure if everyone saw the breaking news that came out today, September 6, that the one circuit that was the conflicting circuit that didn't agree with the Ninth Circuit's decision settled today. And so, this whole need to clarify the law is a moot point, because the other circuits, the Fourth Circuit, the Second Circuit, they agree with the Ninth Circuit's ruling. And now that the Sixth Circuit has settled, they're case which was the...I mean, even a polluting coal plant recognized the need to clean up its mess. And so now there is no conflict and there's nothing to clear up. So, I just wanted to share that with the Council.

CHAIR MOLINA: And what was the source of that story that just broke, I mean, from was it on AP or...

VICE-CHAIR RAWLINS-FERNANDEZ: This article came from the *E&E News* reporter, Greens ask justices to toss coal ash contamination case. And so, that's the Tennessee Valley Authority with the Clean Water Act, the conservation groups, and the coal plant settled and so yeah.

CHAIR MOLINA: Okay. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: So, we should follow in their lead.

CHAIR MOLINA: Okay. Thank you. Member Sugimura followed by Chairman King.

COUNCILMEMBER SUGIMURA: I actually want to hear what Corp. Counsel says about that.

CHAIR MOLINA: Okay.

COUNCILMEMBER SUGIMURA: So, I'll wait.

CHAIR MOLINA: Corporation Counsel? Okay.

MS. DOYLE: So, just to clarify, TVA was the coal ash polluter in the Sixth Circuit and they did settle. The environmental group took a petition to the Supreme Court. They settled the case and withdrew the petition. Important to know, though, is in the Sixth Circuit that law still stands. So, we still have a conflict. The Ninth Circuit and the Fourth Circuit still has a conflict with the Six Circuit.

CHAIR MOLINA: Thank you, Ms. Doyle. Member Sugimura, any other comments? We're on right now --

COUNCILMEMBER SUGIMURA: Yeah.

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CHAIR MOLINA: --first the consideration of the Mayor's settlement proposal. They've decided not to go into executive session, so are you...

COUNCILMEMBER SUGIMURA: Well, I just wanted to get further clarification. But I'll wait if you want to talk about the Mayor's...

CHAIR MOLINA: No, no, no, go ahead. I thought when you raised your hand first was to talk about --

COUNCILMEMBER SUGIMURA: Oh, yeah.

CHAIR MOLINA: --what just transpired from Administration regarding the Mayor's proposed settlement.

COUNCILMEMBER SUGIMURA: So, just to be clear, right, I just want to hear from, you know, whether it's from Corp. Counsel or, you know, our legal, or whoever that it is correct that now we do not have a discrepancy with the Ninth Circuit Court's decision. And it, to me, it's a permitting problem, right, so did that go away with this new information?

CHAIR MOLINA: Corporation Counsel?

MS. THOMSON: Thanks. I'll take a stab at that. So, there still is a circuit split meaning that Federal circuit courts across the U.S. are deciding these types of groundwater conduit cases differently. Whether a circuit...whether there's a difference in the circuits or not, the Ninth Circuit's decision, which is what we're here talking about today still stands. So, regardless that something might have happened in the different circuit, that doesn't take it anything away from the Ninth Circuit's decision and nor does it take away the County's petition to the Supreme Court and the opportunity to have clarity at that level.

COUNCILMEMBER SUGIMURA: Okay. Same problem. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, I just wanted to follow up, you asked where this was published, it was in the *Energy & Environment News, E&E News*, which is a national news reporter. I think they're based out of Washington. I've actually done some interviews with them. But what I wanted to say about this case is the Trump Administration, I'm reading from this story, the Trump Administration previously urges Supreme Court to sideline Tennessee Clean Water Network versus TVA, arguing that the petition is "materially identical to another Clean Water Act disputes set for argument this fall." So, we can assume that's probably Maui. And basically, I just asked our attorneys what they thought about this and, you know, there's nothing, you can't say definitively but it could be inferred reasonably that the

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Trump EPA thought they had a better case of winning the Maui court case, so we can be the face of pollution across the country and probably happy that this is going to be sidelined. But if we go to court, the Supreme Court, and it becomes law of the land, this one's moot anyway because these people can go back and pollute. So, you know, they're just going leave it up to us to do. What I wanted to ask you, Chair, is if we have somebody who returned, Robin Knox, and I had a question for her about the NPDES permit. She's the only one I know of in this room who's actually written one and so if we could...if the Members don't have any objection, we could bring her up and we could ask her questions about the permit.

CHAIR MOLINA: Okay, Members, any objections to having Ms. Knox respond to questions regarding NPDES permit from Chair King? Seeing no objection, Ms. Knox, please come up to the podium, being escorted by a wonderful four-legged little guy. Chair King, proceed with your line of questions.

COUNCILMEMBER KING: Thank you, Chair. Thank you so much for coming back. I know it was a long drive from Maui Meadows and I appreciate you offering your expertise because I've been asking a lot of people about this permit and everybody keeps saying you got to ask Robin.

MS. KNOX: Well, it is what I've been doing for 35 years --

COUNCILMEMBER KING: Okay.

MS. KNOX: --so I'll try to answer your questions as best I can.

COUNCILMEMBER KING: Okay. So, I've had discussions with the Director of Department of Health, and he was on the phone with us here today and confirmed both times that he would be willing to...he doesn't like the NPDES, but he would be willing to strengthen the UIC permit to the standards of NPDES. So, I just wanted to get your thoughts on can that be done. I mean, I've talked to some people on the plaintiff side and they said that would be acceptable to them. Regardless of what the Ninth Circuit Court says, can that be done with the UIC?

MS. KNOX: Yeah. There's a lot there to dig into. The first thing I'll tell you is that I recall that when we had the hearings with EPA, way back in 2009, that we did ask them to do that, to just make the UIC permit limit similar to what the NPDES would be and we were told that they didn't have the authority to do that.

COUNCILMEMBER KING: EPA said that?

MS. KNOX: Right, under Safe Drinking Water Act. I will say from my long experience in the Clean Water Act, I did learn from an enforcement officer that they can put things that they have no authority to do in a permit if the permittee agrees to it, so there's that. I also have not researched if there's authority at a State level that might not exist at the

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Federal level. However, I will say that there's a lot more to the NPDES program than just limits and the two programs are technically very different. Bruce was telling you the NPDES permits are more complex. That's because the water environment that you're dealing with is more complex. You would monitor differently, probably more frequently than what the County's doing now. The set of pollutants that they monitor would be different. They would be required to do toxicity testing. There would be different test methods, different sample type, composite samples as opposed to grab, and also there's a very important part of the Clean Water Act that's very powerful and it's a certification that has to be signed with all information that's submitted and that certification says basically under penalty of law this is true to the best of my knowledge and I had it prepared by people who know what they're doing, who are qualified to make those decisions.

COUNCILMEMBER KING: And that's not required with the UIC permit?

MS. KNOX: Not...I looked into that and not that I can see. I haven't found that. I did look for it at one point. I haven't recently, but when I looked into that was one of the differences between the two programs.

COUNCILMEMBER KING: Okay. And the value of that certification would be?

MS. KNOX: It's very valuable, because if you're having to sign something that says you can go to jail if you're lying, you're going to be much more diligent in your work and your quality control and then who you hire to do that work than you are if you're not really held that accountable. You know, I suppose it might be possible to craft a UIC permit that's as strong as an NPDES permit but it would be a lot of work and it would be recreating the wheel. There are procedures and technical support and all kinds of guidance and expertise available to help write this NPDES permit. I do think that the State Department of Health is a little bit intimidated as any permit writer would be. I mean, I was working on some of the research and it took me about two years to figure out how to write this permit. But I think with the dye studies that were done, that we know the data that we need to write the permit. I think it's erroneous or perhaps more complicated than necessary thought that we have to protect the groundwater 'cause I don't think that's what this case is about or what the concerns are. No one's saying our groundwater is being impacted and it's causing terrible things. No, they're saying the ocean's being impacted. So, you don't need to protect the groundwater. You just protect the ocean. You apply the ocean water quality standard where the water comes out in the ocean, you know the dilution factor between the injection well and the, where it comes out in the ocean 'cause we did the studies, so you can back calculate what the limit needs to be at the pipe, at the well, or the pipe or wherever your final effluent sampling location is and so you can calculate all that with the data we already have. And then, I think people are also worried about some kind of magical instant compliance where we have to shut down the well and what do we do and that's not how it works either. The NPDES applications and the writing of those permits usually takes no less than two years and a complicated one can take five or six years or even

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longer. The writing of the permit can be expedited by compliance schedules that say, okay, right now today we're going to give you a performance-based standard that's what you're doing right now 'cause we know you can comply with that. And, you know, four years from now, you need to be 20 percent lower. And four years from that, you need to be 20-more percent lower. You can...whatever the permittee thinks is feasible, usually the agencies if it's within their realm and their authority to do so they'll agree to it. They don't want unnecessary expenditures or things to be too complicated. They want to control water pollution. So, I don't think the program is as ominous as everyone has made it sound. I think it is challenging and this would probably be the most challenging permit to write that I've ever seen, but I think it can clearly be done. So, I went, you know, maybe a little long. Do you have other questions?

COUNCILMEMBER KING: Well, no, because that's, well because, you know, the DOH clearly thinks that it's much easier to do this under UIC even if they were to make more stringent standards to apply the standards of NPDES. So, is it, I mean, in your opinion, is it, would it be just as easy to do the NPDES? I mean, I just thought --

MS. KNOX: I think so.

COUNCILMEMBER KING: --because they clearly don't want to do this.

MS. KNOX: Yeah. I would like to see what their idea of doing it under the UIC looks like. That's the real thing to see, but just knowing how much goes into an NPDES permit and knowing that UIC permit writers are not at all familiar with the kind of data that they need, the methods, the kind of monitoring, this whole idea of, you know, the compliance schedules and so forth. You know, I don't know that the UIC staff has that expertise. I do know that the permits people that DOH has are pretty sharp, some of the sharpest engineers I've ever met, so and I found DOH to, including Bruce, to be very easy to work with. So, you know, I hope to sit down with him and share some of my thoughts on this.

COUNCILMEMBER KING: Okay. Great. Thank you. I think that was really helpful because I have, I do have an amendment I want to propose to the settlement, you know, based on what he told me two weeks ago and what he said today, and then what I know that the plaintiffs had told me about what they're willing to accept as well. But I do think that the main goal here is to make sure that we have standards in place and that we're marching towards. But so, the information that they're not gonna us have to reach those stringent standards of whatever the ultimate goal is tomorrow or even next year. They...it's a plan to get there.

MS. KNOX: Right. And I think it's also important to understand that the Clean Water Act is an adaptive management program, and so every two years they look at our data like the data that's being collected, you know, with some of the Council funding, every three years, they review standards, and every five years, they review the permits. So,

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it's learn as we go and adjust as we go kind of program. And, you know, so I...all of whatever challenges there are get worked out and this is how it works all over the country and every county I know of has an NPDES permit except Maui County. So, you know, I don't know why it's so much more challenging for us given, I mean, the whole injection well thing makes it more technically challenging but I don't think in other ways that it should be so much more challenging. It's the same thing that other people do. It's the same thing they fund.

COUNCILMEMBER KING: Okay. They're doing it in other counties in the State of Hawaii?

MS. KNOX: No, in the country, like the entire other 50 states or 49 states. Yeah.

COUNCILMEMBER KING: Okay. Thank you for that information.

MS. KNOX: And actually there are other counties in Hawaii that do have NPDES permits but they have them for ocean outfalls, not for injection wells.

COUNCILMEMBER KING: Right.

MS. KNOX: Yeah.

COUNCILMEMBER KING: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Chair King. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Knox. Mahalo for returning to serve as a resource for the Council. I wanted to follow up on one of the questions that you responded to by saying that Mr. Anderson you find to be easy to work with. And so, are you willing to help Department of Health and Mr. Anderson in fulfilling this requirement? You're willing?

MS. KNOX: Absolutely. Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Okay. Mahalo. That's all. Mahalo, Chair.

CHAIR MOLINA: Thank you. Thank you. Members, any other question for Ms. Knox? Member Paltin?

COUNCILMEMBER PALTIN: I just wanted to clarify like you said that you did approach them, the State in 2009 or something.

MS. KNOX: No, it was EPA. It was at the, when we had the hearings. Remember the hearings in Lahaina and we all went and testified, yeah --

COUNCILMEMBER PALTIN: Oh, yeah, yeah.

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MS. KNOX: --and like nobody was supporting injection wells. It was like the first time ever on Maui 100 percent of the people on one side.

COUNCILMEMBER PALTIN: Yeah, yeah, yeah, sorry, I remember.

MS. KNOX: And, yeah, I, at that time, asked the groundwater people who were there if they could just, you know, do water...it's called water quality based limits when you base it on what the water quality can handle and they said that they could and they did do the two things that they could do under their authority, which was require disinfection and that was required right away and then they, the whole reason they have even a nitrogen limit most UIC permits, you know, wouldn't have the nitrogen limit and it's not needed to protect drinking water supply. It's more to protect the ocean. But they felt that they couldn't go lower than the ten milligrams per liter because that is the drinking water standard. They felt they couldn't go as low as the surface water quality standards. So, and that was, I'm not remembering his name but he was the, like division manager of the groundwater program at EPA Region 9 --

COUNCILMEMBER PALTIN: Yeah.

MS. KNOX: --who told me that.

COUNCILMEMBER PALTIN: I forgot I was there too. But, 'cause Director Baz was saying, like, why we didn't do that earlier and so we tried to do that earlier and that's why we're where we're at right now. So, I mean, it's kind of like, oh, why didn't you do this, oh, remember we did, it's so long ago I forgot we remember that we did.

MS. KNOX: I don't know if we explored the option of what could be done with a State level permit. States can be more stringent than EPA, but EPA can't be more stringent than the Federal regulations. So...

COUNCILMEMBER PALTIN: But then at one Council Chair King said that the State is the EPA in Hawaii.

MS. KNOX: It's delegated the Federal authority. So, the State cannot be less stringent than EPA but they can be more stringent than EPA. So, EPA's saying we can't be that stringent but perhaps the State can, perhaps that's what...you know, I've been hearing just this past week about this idea of a State level UIC permit, so perhaps they do have that authority. I don't know. But I do know it would be a lot of work to try to do it that way because it's completely different technical thing and, you know, the people in the UIC program really aren't trained for that.

COUNCILMEMBER PALTIN: So either way it's going to be a lot of work to measure and regulate it, but it should be measured and regulated somehow?

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MS. KNOX: If you want to control the pollution and actually reduce it. If you don't do the right kind of monitoring, you can't tell if it's going down or up.

COUNCILMEMBER PALTIN: Just like just because the fish population is increasing, but the coral isn't increasing, that's kind of like same situation?

MS. KNOX: The permit writers actually take into account a great deal of information of all kinds. Biology is one, chemistry, mixing and the physics of the situation, all of that gets taken into account. It's a very integrated exercise. It involves a lot of different specialties.

COUNCILMEMBER PALTIN: So basically, you could make an NPDES permit that would regulate injection wells but it's just really hard and it's a lot of work?

MS. KNOX: It's only harder than any other water quality based NPDES permit because you're dealing with the groundwater, but if you, you know, if you were trying to model that groundwater which is what's been suggested that's would be really a lot of work but we don't need to do that. We have the dye study. We don't really need to know what's happening in the groundwater to control what's reaching the ocean and to reach our goal in the ocean. We just have to control at the end of the pipe so that it doesn't exceed the concentration in the ocean that we want to meet and we can calculate that with the information we have now.

COUNCILMEMBER PALTIN: And then somebody was saying, I think Bruce Anderson said that there's amicus briefs of other counties that do regulate injection wells with NPDES permit. So, wouldn't that be like a natural place for the State of Hawaii to start by modeling, not reinventing the wheel if there are other counties that do regulate injection wells with NPDES?

MS. KNOX: Yes, I would look at that first thing on the research of how to do it, you know. I've got my own ideas just based on writing permits and knowing the data pretty well and knowing the situation, but we might have to research. It would definitely be valuable to research what other jurisdictions have done.

COUNCILMEMBER PALTIN: Okay. So, not impossible, just kind of hard and a lot of work?

MS. KNOX: Right.

COUNCILMEMBER PALTIN: Okay. Thanks.

MS. KNOX: Yeah.

CHAIR MOLINA: Okay, thank you. Ms. Knox, would your friend like to add a further response, elaboration to Member Paltin's line of questioning?

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MS. KNOX: He's trying to tell you that 8 o'clock is his bedtime.

CHAIR MOLINA: Alright. Pretty good. Alright. Well...

COUNCILMEMBER KING: Chair, can I...

CHAIR MOLINA: Any other...Chair King?

COUNCILMEMBER KING: Thank you, Chair. Just wanted to follow up with one question. It was funny 'cause I thought that was Mr. Sinenci. I thought he hadn't had enough to eat. So, I have a note here that pursuant to Hawaii Revised, HAR 11-55-01, and "NPDES permit" includes and "equivalent control document issued by the EPA or the Director of the Hawaii Department of Health to implement the requirements of 40, CFR, Code of Federal Regulations, Parts 122, 123, and 124." So, what that tells me is that there's actually something in, you know, HAR that describes NPDES permit as including an equivalent type of document. So, if the Ninth Circuit Court is saying you have to have NPDES permit, it also would allow us to have an equivalent permit. It doesn't...it can be a UIC. Or what is...

MS. KNOX: I'm not familiar enough with the exact wording of the courts, the Ninth Circuit, you know, in order to answer that, but I think what you're reading from is the reg where the delegation for the Federal authority is being given to the State. So, the State actually issues the Federal permits. The State can also have its own permitting program. I used to work in a state that had both and that was fun trying to get those two permits to match up, but...

COUNCILMEMBER KING: Okay.

MS. KNOX: Yeah. So, I think that's what that section is about.

COUNCILMEMBER KING: Okay. So, it's giving the authority to the State to come up with something equivalent if it doesn't want to...

MS. KNOX: But it's got to be, like I said, at least equivalent to the Federal but it can be more stringent.

COUNCILMEMBER KING: Okay.

MS. KNOX: Yeah.

COUNCILMEMBER KING: Great. Alright, thank you.

MS. KNOX: Okay.

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CHAIR MOLINA: Thank you, Chair King. Members, if there's no objections, I'm going to excuse Ms. Knox from the podium. I know her four-legged friend there is starting to chew the leash, so signifying your time to go. But thank you, Ms. Knox, we certainly appreciate your input on the matter. Corp. Counsel, you had wanted to make a comment to with regards to, I believe, one of Ms. Knox's responses.

MS. THOMSON: Thank you. Just wanted to remind the Members that Craig Lekven was here testifying. He has done studies to determine whether we could meet water quality standards, ocean water quality standards at the pipe, at the end of the pipe that goes into the ground and we cannot technologically meet those limits. So, it is impossible right now to meet water quality limits at the plants, which is why when Director Nakagawa says the, if the Ninth Circuit decision stands, the option that provides regulatory certainty is ocean outfalls. And I want to remind the Members that we're talking about Lahaina but we have four plants that use injection wells. Those are only, you know, four sites. There are almost 7,000 UIC wells in, just in the State of Hawaii. So, this isn't limited to Lahaina, it's across the State.

CHAIR MOLINA: Okay. Thank you, Ms. Thomson. Alright, Members, we're at this point, allow the Chair to make a, I guess a reminder as to where we're at and what we're considering on our agenda. What I asked earlier is to just provide more clarity. Chair King's original resolution which we dealt with back on May 23rd, I believe, is not being considered today according to Corporation Counsel, they said it's unnecessary because she's voluntarily transmitting settlement proposals for the Council's approval so which means the two other resolutions is what we're considering. The resolution listed in paragraph three, dated May 23, 2019, that would settle the case based on the plaintiff's proposal and, of course, the other resolution listed in paragraph four on your agenda, dated August 27, 2019, that would settle the case based on the Mayor's proposal and Administration has stated they will not disclose the settlement proposal from the Mayor. So, with that being said, the Chair is open for considerations.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Madam Chair?

COUNCILMEMBER KING: I'd like to move that we approve the settlement from the plaintiff, dated May 23, I believe, 2019. If I can get a second, then I have an amendment to propose to that.

CHAIR MOLINA: Okay. So, dated May 23, 2019, paragraph three, motion made by Chair King. Is there a second?

COUNCILMEMBER PALTIN: Second.

CHAIR MOLINA: Okay. Seconded by Member Paltin. Chair King, you have the floor as the movant.

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COUNCILMEMBER KING: Okay, thank you. And I don't want to...can I do the amendment first before I go through all the...okay, so --

CHAIR MOLINA: Proceed.

COUNCILMEMBER KING: --my proposal for the amendment is in paragraph four, it's numbered four, and it would be to add the phrase after NPDES permit which could be "an equivalent control document" and then in parentheses (see HAR 11-55-01) and then another dash and then continue with on for the Lahaina wastewater reclamation facility injection wells. So, I have a copy of it here, Chair, if you want I can give it to the...because I also...because part of this is also a note below that says, that it explains HAR 11-55-01...

CHAIR MOLINA: Okay. Wait, you know what, let's do we have a second for the amendment?

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Okay. Seconded by Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: And I also, since the party is here, since we're amending the proposed settlement, if we could call the party up.

CHAIR MOLINA: Okay. I guess, well, if it's...I'll leave it up to the party if they want to comment based on what was told to us by Corporation Counsel if they want to...so basically, you're asking them to comment on the proposed amendment from Chair King?

VICE-CHAIR RAWLINS-FERNANDEZ: That's correct.

CHAIR MOLINA: Okay. I'll just leave it up to the plaintiffs if they would like to respond to that amended proposal from Chair King. Can you restate that...well, you know, what, let's do this, do you need a recess and have this --

UNIDENTIFIED SPEAKER: Yes please.

CHAIR MOLINA: --hammered out in writing? Okay. Recessed to the call of the Chair. We'll have the amendment memorialized in writing. Meeting in recess. . . . *(gavel)* . . .

RECESS: 8:06 p.m.

RECONVENE: 8:18 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of September 3, 2019 is now back in session. It is Friday evening, September 6, 8:17 p.m. Members, you should

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have been distributed the proposed amendment from Chair King as it relates to the resolution to settle with the plaintiffs. Chair King, just for the record again, it is a motion to amend. If you could again, restate the motion.

COUNCILMEMBER KING: The actual amendment?

CHAIR MOLINA: Yeah, let's see, just a moment please. I think all the Members get the written version of it. And this comes from the April 26, 2019 with May 9, 2019 edits from the settlement proposal.

COUNCILMEMBER KING: Well, the document in Granicus is May 23, but the actual settlement communication is date April 26. So, if you go to...it's actually labeled on that correspondence as Exhibit "A" the Earthjustice settlement document and this is on, the amendment is for Page 3, paragraph 4.

COUNCILMEMBER PALTIN: Question?

CHAIR MOLINA: Yes, Member Paltin, you need clarification from Chair King?

COUNCILMEMBER PALTIN: Yeah. For the May 23, is it May 23, 2019 meeting handouts correspondence from Corp. Counsel?

COUNCILMEMBER KING: Correspondence from Corp. Counsel, not the one that says Mayor.

COUNCILMEMBER PALTIN: The other one?

COUNCILMEMBER KING: The other one.

COUNCILMEMBER PALTIN: Okay, thank you.

CHAIR MOLINA: Yeah. Thank you for clearing that up, so nobody gets confused. It's attached to a May 23, 2019 document from Corporation Counsel to your Chair of this Committee.

COUNCILMEMBER PALTIN: Okay. Got it.

CHAIR MOLINA: Continue, Ms. King.

COUNCILMEMBER KING: Okay. So, it would read, as long as the County makes good-faith efforts to reduce its reliance on the Lahaina Wastewater, LWRF--which is Lahaina Wastewater Reclamation Facility injection wells--to dispose of treated wastewater, to increase the beneficial reuse of that treated wastewater, and to secure and comply with the terms of an NPDES permit, and then the part I'm adding is a dash, which could be an equivalent control document, and then it refers to see HAR 11-55-01, dash, and the rest of it is the same. Or the LWRF injection wells, the community

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groups will not bring litigation seeking additional penalties based on the County's lack of Clean Water Act compliance for use of the LWRF injection wells. And then the note that would go at the bottom of the page with an asterisk is attached also, it says, note that pursuant to HAR 11-55-01 an NPDES includes an equivalent control document issued by the EPA or the Director--meaning of the Hawaii Department of Health--to implement the requirements of 40 CFR, which stands for Code of Federal Regulations, Parts 122, 123, and 124. So, that would be the new reading, Chair, and then if I can go into what that actually means in layman's terms.

CHAIR MOLINA: Okay. Just one quick question before you do that. So, I know you have it bracketed out of the Hawaii Department of Health and just Director, so...

COUNCILMEMBER KING: Because Director in this section means the Hawaii Department of Health.

CHAIR MOLINA: Okay. So, it's already assumed it'll be the DOH Director?

COUNCILMEMBER KING: So, you know, yeah, when we do ordinances and we have a directors described at the beginning of it and then this one is to put, I'm putting it in there just so, because it's a separate amendment that's not attached, I'm trying to address it as efficiently as possible.

CHAIR MOLINA: Okay, alrighty. So, you go ahead and put it in layman's. This is one of the longest amendments I've ever experienced. Go ahead.

COUNCILMEMBER KING: Well, it's not really that long. It's just one sentence that goes into that section four. So, it's basically adding...if you look at the section four that we already have, after the words NPDES permit, it adds, dash, which could be an equivalent control document and then in parentheses (see HAR 11-55-01), dash. So, that's the actual amendment inside of the existing paragraph. It's really not that long.

CHAIR MOLINA: Okay, thank you. Members, any comments on the proposed amendment before the Chair calls for the vote on the amendment?

COUNCILMEMBER KING: Okay. I didn't get my explanation in.

COUNCILMEMBER PALTIN: The layman's terms.

CHAIR MOLINA: Okay. Sorry, go ahead.

COUNCILMEMBER KING: So, because the Department of Health has suggested that it has sufficient authority to protect against ocean pollution through its UIC program, although the Lahaina plant UIC permits haven't done that at, to date, and the DOH rules give it such authority. The new proposed language recognizes that the County could comply with the requirement to get an NPDES permit by obtaining a UIC permit

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with functionally equivalent protections such as an NPDES permit. So, it's basically saying what Director Bruce Anderson said, which is that they would be willing to rewrite the UIC permit to the standards that would give the same protections as an NPDES permit. And checking with the plaintiffs on this, the plaintiffs would not oppose this route and would not litigate against the County if the County/DOH chose this route to comply with the law. So, we can bring up the...

CHAIR MOLINA: Okay. Is that it? Now, alright, comments from the Members regarding the amendment? I believe, I saw Member Sugimura and Member Paltin, followed by Member Lee.

COUNCILMEMBER PALTIN: . . .*(inaudible)*. . .

CHAIR MOLINA: Oh, you just, Member, you just giving me a thumbs-up, okay. So, basically, you're okay with it. Member Sugimura followed by Member Lee.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair? Chair?

CHAIR MOLINA: Yes, I'm sorry. Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: I had asked if the party would want to come up and respond to the amendment that Chair King proposed.

CHAIR MOLINA: Okay. Member Sugimura and Member Lee, would you wait...are you okay with that? Okay. Do we have a choice? Yes, you do, you have choice. This is your meeting. It's up to you. Any objections to having the plaintiff come up to respond to the amendment?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay. I presume it's Mr. Moriwake. Yes, Member Kama?

COUNCILMEMBER KAMA: Do we get a right to ask or consult with our attorneys before that happens?

CHAIR MOLINA: That is your call. We are the defendants, so.

COUNCILMEMBER KAMA: Okay. So, I want to have a clear understanding about what we're doing at this moment, at this juncture, and what does this actually mean to us.

CHAIR MOLINA: Okay. If you will pardon us, Mr. Moriwake, we're going to consult with --

MR. MORIWAKE: Sure.

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CHAIR MOLINA: --based on a question Member Kama to Corporation Counsel, this is in regards to the amendment from Chair King.

COUNCILMEMBER KAMA: Yes, correct.

CHAIR MOLINA: Okay. Corporation Counsel?

MS. THOMSON: Thank you, Chair. As I understand it, this proposal requires the County to withdraw its action from the Supreme Court which would mean that the Ninth Circuit Court of Appeals decision controls Hawaii and the western U.S. States that are in the Ninth Circuit. It also requires the County to immediately pay attorney's fees which we would not have to do if we prevailed at the Supreme Court.

CHAIR MOLINA: Ms. Thomson, I'd think, I'd like to center the discussion on the amendment itself, not the motion first. I believe, that's what Member Kama wanted.

MS. THOMSON: Okay. The, this equivalent control document, we tried that route, back before I believe the Hawaii District Court ruled, so we had tried very hard to work with Department of Health to try to see if there was a way to resolve this without further litigation, and one of the routes that we tried was to approach the Department of Health and ask, is our UIC permit, can we do something within that permit to have it be considered an equivalent control document, you know. So, that was one of the routes that we tried early on in hopes of settling and that was not accepted by Department of Health.

COUNCILMEMBER KAMA: Chair, could we ask the other counsel the same?

CHAIR MOLINA: Sure. Go ahead, Ms. Doyle.

MS. DOYLE: That's exactly right. I mean, we did ask, we did, we thought this was a way for everybody to have a win-win and Health Department would not do it. It...if it...the language, this is okay, the language is okay as far as we're concerned, it's okay with us, but just recognizing that it indeed under the Ninth Circuit ruling has to have, has to be equivalent to the NPDES requirements. It has to be equivalent or we'll be in violation of the law.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

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

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Our conversation with the Director or the Chair of Department of Health, Mr. Anderson said that was he was encouraging us to do was to go with an equivalent and make it like the equivalent function of an

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NPDES permit. So, perhaps when the County tried years ago before Mr. Anderson was the Chair of Department of Health, maybe that didn't work but just today that's what Mr. Anderson was encouraging us to do. And so I think this amendment is something that would be favorable to Department of Health at this time based on the conversation that we had with Mr. Anderson just a few hours ago.

CHAIR MOLINA: Thank you very much for...

COUNCILMEMBER KING: Chair, can I ask for clarification from Corp. Counsel?

CHAIR MOLINA: Ms. Thomson?

COUNCILMEMBER KING: So, what year did you say you went to the Department of Health with this idea?

MS. THOMSON: So, this case was filed in 2012, the first decisions at the lower court came out in like 2014, 2015, so it was in the early years of this case, but I don't know the exact year off the top of my head.

COUNCILMEMBER KING: Okay. So, it was after the court case was filed. It wasn't like you went to try to...

MS. THOMSON: It was after the court case was filed, yes. And just...

COUNCILMEMBER KING: I think you were kind of giving me the impression that you were trying to do this before a court case was filed because that would be a win-win but it was actually after it was filed but it was during a different administration as well. Correct?

MS. THOMSON: It was as a method of hopefully resolving the case prior to further litigation. Just a super-fast point of clarity, what I heard Director Anderson saying is that he does not think the NPDES is the correct route, that he can impose ocean water quality related standards through the UIC permit.

COUNCILMEMBER KING: Right.

MS. THOMSON: That doesn't do anything to take away the Ninth Circuit Court of Appeals ruling so we're stuck in a hard place here.

COUNCILMEMBER KING: I disagree because the State law says you can use an equivalent control document. But I think my point earlier, Chair, was that there, back in 2012 we had different administration, different Department of Health Director, and so it's quite likely we got a different message back then. But we have a different Council today that's looking at this settlement and the Council never looked at settling this before.

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CHAIR MOLINA: I wish they had settled it way when and we wouldn't have to be here tonight so late.

COUNCILMEMBER KING: It would have...we were all hoping, I mean, the community was hoping to settle this before, way before we spent \$4 million, but you know.

CHAIR MOLINA: Okay. Members, any, before we move on to Mr. Moriwake, any other questions for Corp. Counsel? Okay, I believe, Member Rawlins-Fernandez, made the request. You have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to get the feedback from the party regarding the amendment that we're making to the settlement stated by Chair King.

MR. MORIWAKE: If I may clear the air, initially just regarding the issue of my ethical obligations because it was directed really at my professional integrity and reputation, if I may? Thank you. So, very quickly, because again, time is short, I am not violating my ethical rules by exercising my first amendment right to address this public body and these elected officials. In fact, I explained this to Ms. Thomson already. And so, I'm confident that I'm complying with my ethical obligations and I just wanted to make that clear so if there's any unease on the part of these Councilmembers about what's going on here, rest assured, it's okay.

CHAIR MOLINA: Continue, Mr. Moriwake.

UNIDENTIFIED SPEAKER: Chair?

MR. MORIWAKE: Thank you. With regards to this proposed amendment, yes, the community groups would support this amendment and it's all about options, really, and focusing on solutions. And so, if it's an NPDES permit that gets the job done, like Ms. Knox said, it's totally doable, other people have done it, other states have done it, let's go that route. If under this Administration, Dr. Anderson is clear that he can get the job done through a UIC permit that complies with the NPDES permit requirements or is a functional equivalent of that protection, then let's get the job done that way. And I think all of us were in the room and we heard very clear that it was an invitation on his part not to talk about the terms, not to talk about the paper, it's really what he said was let's focus on the real problem and that's what I mean by getting the job done. And so, yeah, this the spirit of what I seen in this amended language, which is the County has options, DOH has options, if DOH with Ms. Knox and others wants to get the job done, either way, we're all about the solution here and working together to accomplish that.

CHAIR MOLINA: Okay. Thank you, Mr. Moriwake. Ms. Rawlins-Fernandez, any other request from the plaintiff?

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VICE-CHAIR RAWLINS-FERNANDEZ: So, just to clarify that you would be, or the, your clients would be supportive of the amendment that Chair King made?

MR. MORIWAKE: I'm sorry. Maybe I should have just said yes. It's not about the...the bottom line is it's not about the paper. It's about the solution.

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

MR. MORIWAKE: Can I clarify one more thing too?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

MR. MORIWAKE: I have the Ninth Circuit ruling here. And nowhere does it say, we want an NPDES permit and only that. It says, the County has violated the Clean Water Act by polluting the ocean, both in the beginning and that's how it ends up to. And so, again, this DOH rule, the State rule makes clear that Dr. Anderson or the Department of Health has the authority to address that pollution through an equivalent control document. And if that's the way that DOH, working with County, and others want to go, we're okay with that, yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for that clarification, Mr. Moriwake.

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Members, any other inquiries for the plaintiff's attorney? Seeing none, thank you, Mr. Moriwake.

MR. MORIWAKE: Thank you.

CHAIR MOLINA: Okay, Members, if there's no other discussion, Chair's going to call for the vote on the amendment to the motion. Okay. Okay, all those in favor signify by saying "aye."

COUNCILMEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBERS: No.

CHAIR MOLINA: Okay. Let's do roll call. Staff, let's again, start from Ms. Kama's direction.

MS. ESPELETA: Thank you, Chair. Member Kama?

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COUNCILMEMBER KAMA: No.

MS. ESPELETA: Member Sugimura?

COUNCILMEMBER SUGIMURA: No.

MS. ESPELETA: Member Paltin?

COUNCILMEMBER PALTIN: Aye.

MS. ESPELETA: Member Hokama is excused. Member Lee?

COUNCILMEMBER LEE: No.

MS. ESPELETA: Member King?

COUNCILMEMBER KING: Aye.

MS. ESPELETA: Member Sinenci?

COUNCILMEMBER SINENCI: Aye.

MS. ESPELETA: Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Aye.

MS. ESPELETA: Chair Molina?

CHAIR MOLINA: Aye.

MS. ESPELETA: That's five "ayes," three "noes," one excused. The motion passes.

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about preventing the County from doing indirectly that which it cannot do directly. The Supreme Court agreed to hear the case after circuit courts around the country were split over various rulings on the reach of the Clean Water Act. For its part, Maui County maintains that it's in compliance with the law and points to a West Maui fish study as proof that ocean water quality has even improved over the last decade. Supporters contend the ruling at the top judicial level is needed to eliminate confusion on this issue as CWA compliance will be costly, easily upwards of 100 million for the Lahaina facility. Currently, none of the 600 injection wells Statewide require a CWA permitting. It's a given that if the Supreme Court sides with the County backwards of Trump Administration efforts to roll back Obama era protections will cheer it as a win for correcting perceived Federal overreach, but an outcome that condones the status quo would be a loss for Maui's environmental health. For the sake of restoring and preserving reefs, the County should prioritize mitigation and increasing wastewater reuse. We heard from our Department of Health Director that we should focus on reuse and solutions and that he was willing to work with the County to strengthen the UIC permit to give it the protections of the NPDES permit. We have amicus briefs filed by former EPA administrators, both Republican and Democrat, former EPA officials, including regional administrators and assistant administrators for water, and almost 30 or maybe more than 30 law professors including many prestigious environmental law programs from across the nation. And we all know that we're being watched nationally on this one. We have over...plaintiffs have over 16,000, 1,600 names on their petition as of Tuesday, probably more today. And we're all getting multiple testimonies on a daily basis. My office has in the hundreds this week additional from last week and I think there's just a public outcry. Let's take care of our water. Let's stop trying to fight for the right to pollute. And let's stop helping Trump roll back our environmental protections and possibly even help him get another term. We've had some horrible, horrible rollbacks just in the last month and they have to do with immigration, they have to do with endangered species, they have to do with our national parks. Now, our libraries are being threatened as well as our U.S. Post Office. You know, at point are...when we got into office, we understood, I thought, that our job is to protect our County at the County level because the administration is not going to do it, but I never dreamed that we would join with the administration to destroy the environmental protections that are out there. So, I'm just hoping that Members will think about it, think about the, our responsibility to our community and to the rest of the nation and to the greater environment, and vote to settle. Thank you.

CHAIR MOLINA: Thank you, Chair King. Any other comments? We have Member Lee, followed by Member Kama.

COUNCILMEMBER LEE: Thank you, Mr. Chair. Thank God this is America where people are still entitled to their opinions. First of all, my first opinion is that I actually question whether the County Council has the authority to withdraw an appeal. In the years of my experience, it has always been an administrative function. But because I've been gone a few years, I don't know if the law changed. I highly doubt it. There

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needs to be a separation of powers and I, therefore, would like to request Corporation Counsel opinion on whether or not we have this authority. Secondly, what really bothers me is, you know, all this criticism about not being concerned about the environment and so forth is utterly ridiculous. We just finished a Budget Session where we committed over \$20 million to reuse and to the reduction of the use of injection wells. That's a very significant commitment and we did it. So, to say that we're not concerned is unbelievable. Also, the Ninth Circuit's decision, to me, is tantamount to an unfunded mandate and here we go 'cause the Federal government is famous for doing that. They pass...they make a decision whereby we have no guidance, we have no resources, we have any, you know, hardly any options to implement this new policy. What we have is a Department of Health trying to figure out how to create and craft a permit and without which we will not be in compliance and they've been dickering with that for over three years and we applied for that permit in good faith. So, again, this is no fault of the County, the DOH is incapable or incompetent or both for not being able to come up with a permit that we need and want and have been trying to apply for. So, under the circumstances, you know, the fact that even testifiers for withdrawing have said that these NPDES permits are difficult and I don't know why 'cause if there's so many throughout the country, I don't really know why, I don't understand why, but apparently it's not easy to create this type of permit. And from what I hear the DOH, Dr. Anderson and others have talked about a permit which is vague, uncertain, sketchy at best, and we're supposed to, you know, continue on as, and hope and dream that somebody will complete and create the permit that is acceptable to the courts. So, under the circumstances, I really believe that we're moving in the right direction, regardless of the courts, and that we should continue on in that direction because that is the right thing to do. It's not...the right thing to do is not to separate our County or divide our County over very indefinite, indistinguishable issues that nobody can get a real handle on. But what we can get a handle on is the fact that we've committed to doing what we can to save our environment by reducing the use of injection wells. So, that's my position. Thank you.

CHAIR MOLINA: Thank you, Member Lee. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. So, as I read the portion of what we talked about in the amendment, it says community groups will not bring litigation seeking additional penalties based on the County's lack of Clean Water Act compliance for use of the LWRP injection wells. Well, that's cool community groups won't but other people can but that's not what I was getting at. What I was getting at is, okay, so what is it going to cost us in dollars and cents to settle? 'Cause there's nothing in here that tells me that, so I want to know what we're going to pay upfront.

CHAIR MOLINA: Well, I don't know. We have a motion on the floor. Maybe that question should have been asked...

COUNCILMEMBER KAMA: But I'm asking it now.

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CHAIR MOLINA: Okay.

COUNCILMEMBER KAMA: Didn't think about it earlier, sorry, Chair.

CHAIR MOLINA: Well, you want the...because the proposal is to settle with the plaintiff...

COUNCILMEMBER KAMA: Yeah.

CHAIR MOLINA: Well, you want to ask the Department first on their thoughts --

COUNCILMEMBER KAMA: Sure.

CHAIR MOLINA: --versus the --

COUNCILMEMBER KAMA: Sure.

CHAIR MOLINA: --plaintiff? Mr. Nakagawa, are you able to explain in your best guesstimation what this may cost the County if we go this route with settling?

COUNCILMEMBER KAMA: Thank you, Chair.

MR. NAKAGAWA: Yeah, Chair. So, I think we basically covered this before of if we settle and the Ninth ruling stands, right, the only way to meet those water quality standards is developing an outfall. I mean, no matter what, you can reuse all you want, you can have 100 percent reuse but there are certain days when flow keeps coming and the water got to go somewhere and that's why in the past it's been injection wells as backup and that won't meet water quality standards that are developed by the Department of Health.

COUNCILMEMBER KAMA: Thank you, Chair. I think what my question was what does Earthjustice get paid? What are they going to get paid from this?

CHAIR MOLINA: Mr. Moriwake, would you like to respond to that question from Member Kama?

MR. MORIWAKE: Thank you for this opportunity to respond. I think the question was what does Earthjustice think this is going to cost?

COUNCILMEMBER KAMA: No. The question is how much is it going to cost in terms of what we're going to have to pay you to settle?

MR. MORIWAKE: So, first of all, the suggestion that we need to go straight to the deep ocean outfall is just completely off base.

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COUNCILMEMBER KAMA: I was asking...I was looking for a dollar figure.

MR. MORIWAKE: Yeah. So, let's start with the recycling infrastructure that this Council already allocated.

COUNCILMEMBER KAMA: No, I'm asking what is Earthjustice going to receive when we settle this. What are you going to get paid?

MR. MORIWAKE: Oh, I'm sorry. I misunderstood your question. Pursuant to the existing order, it would be all of that time that we put in and attorney's fees and also the cost that the community groups had to dig out of their pocket to fund this litigation and I don't have the exact amount but it's more than \$1 million at this point. But I can tell you right now, don't make an issue about that because we be open to...

COUNCILMEMBER KAMA: I'm just asking the question, sir.

MR. MORIWAKE: Okay. Don't make an issue about that because we be willing...we were talking to the Mayor about that, we be willing to talk to the County about that. If folks are open to discussing it, let's talk about it but don't make an issue about it.

COUNCILMEMBER KAMA: You're misinterpreting what I said. I just asked the question.

CHAIR MOLINA: Whoa, excuse me. Let me play traffic cop here. Member Kama, I appreciate you but let's just, you know, let each other say. So, okay.

COUNCILMEMBER KAMA: I don't want people putting words in mouth, Chair.

CHAIR MOLINA: Mr. Moriwake, go ahead and state your...

MR. MORIWAKE: Well, so I answered the question.

CHAIR MOLINA: So, you said you're being open to negotiating?

MR. MORIWAKE: Yeah.

CHAIR MOLINA: Okay. Member Kama, you have the floor again. You can ask Mr. Moriwake.

COUNCILMEMBER KAMA: No, he told me more than a million dollars. Thank you.

CHAIR MOLINA: Okay. Was that the answer? Alright. Okay.

COUNCILMEMBER KING: Chair, follow-up question?

CHAIR MOLINA: Hang on. I have Member Kama on the floor. So...

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COUNCILMEMBER KING: I thought she was done.

CHAIR MOLINA: Okay. This is...Mr. Sinenci? Okay. Go ahead. Is this for Mr. Moriwake or...

COUNCILMEMBER SINENCI: Oh, no.

CHAIR MOLINA: Oh, okay. Alright, Mr. Moriwake, I can excuse you.

COUNCILMEMBER KING: Okay, but I had a follow-up question for him so I...

CHAIR MOLINA: For who?

COUNCILMEMBER KING: For Mr. Moriwake, while he was here.

CHAIR MOLINA: You just said you didn't need Mr. Moriwake, so I excused him. Okay. So, do you need Mr. Moriwake?

COUNCILMEMBER KING: No. He doesn't. He doesn't. I do.

COUNCILMEMBER SINENCI: She does.

CHAIR MOLINA: Oh, you do. Okay. Get too many hands going up at the same time. I see Mr. Sinenci's hand.

COUNCILMEMBER KING: No, no. That's why I raised my hand while he was here --

CHAIR MOLINA: Okay. Let's be clear here.

COUNCILMEMBER KING: --to follow up...

CHAIR MOLINA: Alright. Chair King?

COUNCILMEMBER KING: Okay. So, thank you. Okay, so to clarify what this, first of all, what this settlement does is it requires 2.5 million to be used, to either be paid as a fine or to be used towards the reuse of the water which we've already done through the money that we've allocated this year in our budget for reuse, so that's all taken care of. The...what you're talking about...I just wanted to clarify what you're talking about as far as not making an issue is you're willing to negotiate the attorney's fees, so if that's an issue you're willing to negotiate with this Council on the attorney's fees. The fees of the people pulled out of their pockets which is probably the most reimbursable part that needs to happen. Do you have an amount for that?

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MR. MORIWAKE: The fees that the community members had to dig out of their pockets to fund this litigation and all the costs, that amount is about \$130,000.

COUNCILMEMBER KING: Okay. So, we're talking about that would be the minimum, \$130,000. Is that correct or is this something we should go into executive session to...

MR. MORIWAKE: You know, I kind of defer to the Council and its attorneys how we should address this. This is a sensitive issue, and so I'm willing to, for example, put something in writing that would be made part of the record under seal for the Council's consideration and maybe if the Council's wanting to make this an issue or part of their ultimate decision because after this Committee it still has to go to the full Council. Maybe you could add as part of the settlement agreement subject to a mutually acceptable arrangement around litigation costs, and then I could then follow up or however that process runs we could follow up on what that would exactly look like.

COUNCILMEMBER KING: Okay.

MR. MORIWAKE: But I just want to be emphatic and I apologize, Member Kama, for being very direct because this issue has come up in community chatter, Earthjustice just wants to get paid or something like that, and frankly, I'm hurt by those accusations because it's never been about the money for us and it never will be. It's about the solution.

UNIDENTIFIED SPEAKER: Chair?

CHAIR MOLINA: Okay, thank you.

COUNCILMEMBER KAMA: Mr. Moriwake...I'm sorry.

CHAIR MOLINA: Chair King, are you done?

COUNCILMEMBER KING: No, so yeah, I just wanted to be clear that we could put a stipulation in that if we're passing it today and then get that settled by the time it comes back to full Council and that would be acceptable to you try to work on mutually agreeable fee.

MR. MORIWAKE: Sure. And, again, because it's sensitive, because this is ongoing litigation, we would ask that, you know, those types of negotiations or discussions be kept confidential until it's finally approved.

COUNCILMEMBER KING: Right. I agree with that and I appreciate your willingness to, you know, to give us some consideration on that part. Thank you.

MR. MORIWAKE: Thank you.

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CHAIR MOLINA: Okay. Thank you, Chair King. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: And followed by Member Sugimura.

COUNCILMEMBER KAMA: Mr. Moriwake, it was never an issue for me. I think you assumed too much about me. I have nothing to do with chatter that you hear. I'm not even in your same, in the world you're in. So, I didn't appreciate that. I apologize for that but I don't want people putting words in my mouth. I don't want anybody interpreting what I'm thinking, what I'm saying except what I say to you directly and the only purpose of me asking that question was because at some point in time we're gonna have to talk about the money issue. I only just wanted to make sure I was on the right page. So, that's all it was about.

MR. MORIWAKE: Thank you very much.

COUNCILMEMBER KAMA: And then we ended up being a big issue.

CHAIR MOLINA: All right. Thank you, Member Kama.

MR. MORIWAKE: Thank you very much. I appreciate that.

CHAIR MOLINA: Okay. Thank you, Mr. Moriwake. Member Sugimura, do you have any questions for Mr. Moriwake or not?

COUNCILMEMBER SUGIMURA: I don't know if he knows this, so let me just ask the question. So, if we're going to talk about settling, you know, if that's what the proposal is...

CHAIR MOLINA: Okay. Wait, we have a motion on the floor right now as amended.

COUNCILMEMBER SUGIMURA: To...which is what? Which is to...

CHAIR MOLINA: To settle with the plaintiffs.

COUNCILMEMBER SUGIMURA: Correct.

CHAIR MOLINA: Yeah, so...

COUNCILMEMBER SUGIMURA: So, this is what I want to ask. This is very relevant. So, if we go down this path, settle versus continuing on and getting clarification of the Ninth District Court decision as it sits today, I am curious what is the impact this is going to have as Member Kama said about relative to our budget? What is this going to cost

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and the taxpayer? Because if I read and heard, I read Scott Rollins, the, his document that he submitted to us, right, he's with DEM and he said that it would be, or maybe Director Nakagawa said, it would be 150 to 200,000 per injection well, oh no, per outfall to solve this if that's going to be the solution that we couldn't use the injection well system, then that would be...there's, there, we have, what, 4 systems, so that's like 800,000, \$800 million and if we had to do 4 outfalls, 1 in Molokai and 3 on this island and our total budget, CIP alone was 153 million, right, and we're talking now about an expense that's astronomical that I don't think the taxpayer can afford it. We also have our operating budget 'cause we got to pay for all the people who help us run the County and our total budget was a little bit over \$800 million. It's huge amount of money that we're talking about, this expense. And I don't know if we need to pause and ask the departments or, you know, Administration what is the impact to this to our total budget? What is this going to cost the taxpayer? What are we actually talking about? You know, and I so agree with Member Lee. We all care about the environment. I was just telling Eric I never knew so much about wastewater and reuse and all of that, I mean, and it's something that I stand by the Department of things that we need to do. We love the reefs. We love everything, but we're trying to figure out a problem which is a law that is contrary to...there's been discrepancies in the law with the circuit courts and we need to take it to the Supreme Court so we can get it, you know, fixed, the law. We not talking about do we hate the reefs, do we like the reefs, we're really just talking about this law that is a problem. And the other problem is we settle today, what is this going to cost the taxpayers? What is it going to cost 'cause it's a lot of money? Penalties, \$53,000 a day. I think the calculation from the last meeting that you had, Chair, where this was discussed, that alone is 1.5-something billion, if we can go back 5 years and I think a calculation was given by your questioning, Chair. So, I took it down and I just said, oh my god, this is like astronomical, we talking about something so serious that is greater than just this subject. It is about all the payroll that we have to pay to our employees, the health benefits, the, you know, the operations of our departments, this is huge. This is not something that we can say because we want to, you know, fix the reefs only, but it is something that is so serious. I appreciate Earthjustice. I appreciate their love for what they're trying to do. We love that, too. But let's get the law clarified and let us understand what the financial implications are 'cause it's huge, 1.3 billion for just the penalties, right, if this law stands and then as we said, Department of Health, they cannot figure out how to do this NPDES permit, they do UIC permits, they've been doing a good job of it, but the law doesn't call for that. The law calls for NPDES. But, Chair, sorry, thank you for letting me go on and on. But I am very concerned about what is this going to cost the taxpayers, what is it the impact to our operations, what is the impact to all that work the we just did as a body and paid for this budget that we did that was a little bit over 800 million is what we just passed and this one conversion to do outfalls, that alone is 800 if the estimations are correct. So, I'm concerned about the dollar. I know you're really good at money, Chair. So, I know you understand those things and you brought up those questions during that, you know, our May Committee meeting and you asked all the important questions --

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CHAIR MOLINA: So did everyone else.

COUNCILMEMBER SUGIMURA: --down to what is this gonna cost. What is this gonna cost?
So...

CHAIR MOLINA: Okay. Yeah. Alrighty. Thank you. Anyone else would like to speak to the motion as amended? Chair's going to reserve the privilege to speak last on this motion.

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: Member Paltin...oh, okay. Now you ready, Mr. Sinenci. Next...before I do, any other questions for Mr. Moriwake before I excuse him?

COUNCILMEMBER SUGIMURA: Sorry, Ms. Moriwake.

CHAIR MOLINA: Last call, okay 'cause, I'm sorry, Mr. Moriwake, I thought, I assumed Member Sugimura wanted to ask you a question. So, you're excused, sir.

MR. MORIWAKE: Thank you.

CHAIR MOLINA: Thank you. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just wanted to speak to the motion. You know, we had a testifier on Tuesday, came in and they mentioned about 84 environmental rules that was being rolled back under the current administration and so I went in and I looked and there was a *New York Times* article last month and how the administration has made eliminating Federal regulations his priority and has targeted environmental rules it sees as burdensome to the fuel, fossil fuel industry, and other big businesses. So, it does go over and it shows air pollution emissions that he's rolled back, drilling and extraction, infrastructure and planning, toxic substances and safety, water pollution. And so, you know, all through these proceedings we've talked about, you know the tenure of the administration up on the EPA, the Supreme Court, and so when you read some of this stuff, like rescind water pollution regulating for fracking on Federal and Indian lands, permitted use of seismic air guns for gas and oil exploration, a practice that can kill marine life and disrupt fisheries, approved construction of the Dakota access pipeline, streamlining the approval process for drilling oil and gas in national forests, what else, of the 80, I'm just reading a couple of the 84, overturn a ban of the hunting of predators in Alaskan wildlife refuges, ending the rule to barring hunters in Alaska public lands for using bait to lure and kill grizzly bears, reject a proposed ban on ____ potential neurotic pesticide. So, you know, we talk about, this is the tenure that's going on the mainland and we have it in our jurisdiction, in our State Constitution Article 11, it says that the State has its obligation to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people, past, present, and for the future . . . *(speaking in Hawaiian)* . . .

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So, this is what we're looking at that we can...we've heard some of the testifiers, it's going to take a lot of work. I think this Council is committed to seeking out those people that can help us get this done and get it done here in our own aina on Maui County. And so, I would want to promote Maui as, you know, us doing what is right for us and not taking it to somebody else who has, potentially can steer us down the wrong path or potentially a detrimental one for all of us and for our future. So, I'm all for home rule. We've heard the keiki. We've had keiki today. We heard keiki on Tuesday. And the decisions we make tonight is not our decision, we won't see it, but we want to be good stewards and we want to leave something for our keiki. So, I want to support the motion on the floor. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Let's see, I believe we have Member Paltin and Member Rawlins-Fernandez have yet to speak on the motion if they choose to do so.

VICE-CHAIR RAWLINS-FERNANDEZ: Sure.

CHAIR MOLINA: I see Member Rawlins-Fernandez, to be followed by Member Paltin.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: And thank you for being so generous with your, with time and allowing us to speak to this motion and I speak in strong support of this motion. You know, before the '70s, an outfall of raw sewage into the ocean was the technology and everyone thought it was a brilliant idea. Then we did studies and found all the damage and health risks the outfall posed and we did the right thing and we developed injection wells and water reuse. Primarily though effluent went to ag and the excess was injected into the ocean via groundwater. And just as before, well, and then ag slowed down and then the effluent was primarily injected into the ocean via the groundwater. And then we did studies and we found how much damage it has done to our reefs, to our marine life, and to our health. And it's that time now that we move forward and we do the right thing just as they did in the '70s. And just as Member Lee said, this is the Council to do it. We have invested so much in doing the right thing, and I believe that this Council will do the right thing tonight. No one supports an outfall for the exuberant amounts. Injection wells aren't banned, we just need a permit. Ms. Robin Knox is willing to help and I think we can do it. I know we can. As Mr. Anderson said, the EPA delegated its authority to Department of Health, to the State. Department of Health will not enforce against the County or the homeowners for not having an NPDES permit. All these fines that we're talking about they've already said they're not gonna fine us. The EPA has in their amicus brief, the former EPA directors cited all the different states and municipalities that have, are using NPDES permits. So, as Member Paltin said earlier, these are guides. They're being done already. This is not something new as Ms. Thomson said. The existence of these permits, some of which date back almost three decades demonstrates both that

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the decision of the court and...of appeals represents the regulatory status quo as will be discussed in more detail below, but basically that these permits have been in place for almost 30 years already, so it's not new. Ms. Thomson also encouraged us to look at the amicus briefs that were filed and I did. And those that filed in support of the County were agribusiness organizations that have, that are like port producing companies, cattlemen's, pesticides, you have the Energy Transfer Partners which do over 86,000 miles of pipeline transmitting oil and gas, you have the Wychmere Shore Condominium which has this large cesspool, which is truly polluting, the Kinder Morgan Energy Partners, and the Plantation Pipeline Company, again, more oil. And all of them, they want to be able to pollute. And if you look at those who filed amicus briefs in support of the plaintiffs, it's the former EPA administrators, the Trout Unlimited, former EPA officials, craft brewers, all the people that want to see, all these organizations and industries that rely on a clean environment, those are the ones that are filing amicus briefs in support of the plaintiffs, Hawaii Wildlife Fund. So, for all these reasons, I strongly encourage my colleagues to vote in favor of this motion because it is the right thing to do. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Member Paltin, would you like to share your thoughts on the motion on the floor?

COUNCILMEMBER PALTIN: Yes, please. Thank you, Chair. So, I live in Lahaina and I worked in the ocean for 17 years, almost 18 years. And, you know, maybe this wasn't the reason that I ran for office but I was involved in the issue from prior to the EPA coming to Lahaina. And I don't understand like why people aren't hearing how the proposal, amendment says that UIC permits would also work. I don't understand how some lawyer from the mainland is pushing us to take this to the Supreme Court instead of working together to fix the solution. The way I see it when we go to the Supreme Court, it's either win or lose, and either way that it turns out you're still, we're still going to lose because if we win, we lose because the impetus to fix the solution, fix the situation is not there and having more fish by stopping people fishing doesn't help the coral situation. The corals leveled off. They're not coming back and without the corals then we don't have the fish, like intermediate school kids know that, you know. Intermediate school kids from, generationally from Lahaina know this because they know it. So, that's if we win, we lose because it takes the focus off of what's going on in Lahaina where the coral reefs generate majority of the revenue so we can pay for big-ticket items like parking garages, parking spaces for \$150,000 a car. So, I mean, you got the negative publicity from winning and polluting of the rest of the nation. So, lose even if you win. If you lose, then you lose because that's when the billions come into effect, the fines compounding daily and whatnot. Right now, we're in the settlement so the settlement is not that you're paying money, it was the losing at the Supreme Court, that's when the fines start when you lose at the Supreme Court. I think Ms. Ness even calculated it for us in her testimony. As far as maximum civil penalties and I'm not saying this to, you know, try to elicit fear mongering, this is what the statute says, it's a strict liability statute, the Clean Water Act is so it doesn't matter whether you know about the law or not, you're guilty. The

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maximum civil penalties are 53,484 per day, skip this one, I did some math, 4 injection wells, 4 wells times 53,484 a day times the Clean Water Act has a 5-year statute of limitations going back 5 years, 390 million in change. Kahului has 8 injection wells, do the math on that. So, I mean, sounds like some people are going for the lose-lose, but for me, I'll go for the win-win, and, you know, I don't got much else to say except for that. It's hard representing Lahaina when you always vote against the majority on issues affecting Lahaina. It's really hard because, you know, I'm trying to speak for the people of Lahaina that live in Lahaina, that work in Lahaina every day, and things they tell me and they approach me and been in it together for like the last over a decade and I come over here and it's like waste time, waste money, waste breath, and to just keep coming into this building with no windows every single day is just difficult.

CHAIR MOLINA: Thank you for your thoughts, Member Paltin. Well, it comes down to the final words of...

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Yes?

COUNCILMEMBER KING: Can I just make one more point? Because I wanted to respond to, I think it's a little bit of fear mongering to say it's going to cost us hundreds of millions of dollars this year. I just wanted to make the point that whether we do NPDES or UIC that I'm clear from the information we got from Ms. Knox who's the only one I know of in this room that's done NPDES but also from talking to Bruce Anderson. What they're asking for from us with the Ninth Circuit Court decision is for a plan. A plan where we will march towards 100 percent reuse or march towards that water quality we need. We don't have to do that tomorrow or next year or even five year from now. This is a plan to get to that point and I think that, you know, and I do agree with Ms. Lee that this Council has funded a lot of, put a lot of money into reuse. We're going to be doing that probably for the next five years and we're marching towards that plan. So, I just want it to be clear that what we're voting on is not the impact of it, nobody really knows but I know it's, they're not asking us to put out hundreds of millions of dollars this year or next year or the next year. What that permit wants us to do is to create a plan where we have benchmarks and we work towards that water quality that we should be having; we should be proud to work towards that. So, let's just not get off track and put these large numbers in front of us, like that's what we're voting on. Thank you.

CHAIR MOLINA: Okay. Thank you, Chair King. Alright, your Chair's final comments as it relates to the motion on floor, let us start off first with a lot of appreciation and thank you to our Administration, our attorneys, our Director of Environmental Management, and to the employees, our unsung employees, and I can agree with Member Lee, we're not, they're not polluters. Nobody's trying to do, intentionally pollute our environment, totally insane thinking if anybody out there is thinking that. Are you

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kidding me? The environment is the biggest thing here in Hawaii. I mean, why do people come here for? As part of the, you know, Hawaiian, the host culture. So, let's stay off of that kind of thinking just because you work for the County you don't care about the environment and especially in our wastewater facilities. So, thank you, Members. Chair appreciates all of your comments. It's been gut wrenching. I, as many of you know, I previously served on this Council, this is the toughest decision I've ever been involved with. The first one I can ever recall where it's gotten national and global attention as well. Who would have thought, yeah, little ole Maui County suddenly at the epicenter of this controversy that's been polluted with national politics. I was hoping that it just be focused only on science but now we got national politics involved, Trump Administration, Supreme Court Justice, I mean, my God, my God. As we know, we dealt with this back on May 23rd and it deadlocked, that four-four. As the Chair of your Committee, I just felt we need to vet this issue some more, to bring closure, and that's another reason why this matter has lingered on for years. I've always operated on the premise, you got elected by the people, you do your job, you do what it takes to get things done. My previous tenure, I dealt with two very highly controversial land use projects that had languished in Committee for years upon years. I was fortunate to get together with my colleagues at the time. Let's take care of this. Let's call to action, if you will. Let's do something to move things out. Let's...to me, it, we should not make the public wait. That's what we're elected to do is to make the tough decisions, stop kicking the can down the road, and it's also for this subject. So, I've learned a hell of a lot, I can tell you that and I'm sure many of you have as well. I was asked by numerous constituents to consider at least have only final hearing and I held to my commitment on that. I've tossed and turned, I've tried to fully understand both sides of the issue, because I think that's our responsibility is to hear both sides. And all of us, whatever decision we make tonight it's a leap of faith, you know, some people might call it a no-win situation, if it is that, so be it, but it's a decision we all have to make. I've heard a lot of conjecture and speculation on both sides, a lot of what ifs, maybes, this and that, and honestly, it's confusing. I mean, you don't know, at some point, I don't know who to believe, you know. Some say we go to the Supreme Court and the sky will fall. Others say we settle the same thing could happen. We could lose our sovereign rights to our water. People get whacked with NPDE [sic] permits for cesspools and septic systems. I think it helped, too, we had some clarity from Mr. Anderson and the Department of Health. I mean, everybody has their own interpretation of what he said and that is why I had this meeting. We never had that full disclosure from the Department of Health at our first meeting. So, again, another reason for having this meeting, to make sure that we get as much information as possible so we all nine of us can make a fully-informed decision whichever way you go. But granted, it's one of those situations where we're going to be praised and condemned with whatever decision you make. You know, it's...either way, there's going to be impacts on the decisions we make, the decision we make tonight. But it is my hope that something can come out of this because I don't want to wait another 12 years for something like this. Enough's enough. So, I'll leave it at that. Staff, we'll do a roll call vote, please. And we'll begin with Member Kama.

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COMMITTEE**

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COUNCILMEMBER KAMA: Chair?

CHAIR MOLINA: Yes, Member Kama?

COUNCILMEMBER KAMA: If you would indulge me in a moment of silence?

CHAIR MOLINA: Okay.

UNIDENTIFIED SPEAKER: Yes.

CHAIR MOLINA: Prayer?

...(pause for a moment of silence)...

CHAIR MOLINA: Thank you, Member Kama.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Before I start the roll call vote, also, another thank you to those of you in the gallery for staying up late with us tonight. It shows that you care and I think even those watching tonight care about this decision. Ms. Espeleta?

MS. ESPELETA: Thank you, Mr. Chair. Starting with Member Kama?

CHAIR MOLINA: Again, let me, if you don't mind, I'll restate the motion on the floor. Again the motion is to settle with the plaintiffs the resolution. Proceed, Member Kama.

COUNCILMEMBER KAMA: No.

MS. ESPELETA: Member Sugimura?

COUNCILMEMBER SUGIMURA: No.

MS. ESPELETA: Member Paltin?

COUNCILMEMBER PALTIN: Aye.

MS. ESPELETA: Member Hokama is excused. Member Lee?

COUNCILMEMBER LEE: No.

MS. ESPELETA: Member King?

COUNCILMEMBER KING: Aye.

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UNIDENTIFIED SPEAKER: Thank you, Chair.

CHAIR MOLINA: Members and folks in the audience, this is the first step, this matter will go on to the full Council for a final consideration. So, with that being said, if there's no other questions or concerns, the recessed GET meeting of September 3, 2019 is now adjourned effective 9:20 p.m., September 6. . . . *(gavel)* . . .

ADJOURN: 9:20 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

get:min:190906r:mb

Transcribed by: Michelle Balala

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

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CERTIFICATE

I, Michelle Balala, 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 30th day of September, 2019, in Kihei, Hawaii



Michelle Balala