Joint Statement of Plaintiff Community Groups


Wailuku —

We, the people who challenged Maui County over its Lahaina injection wells, offer this joint statement in response to the U.S. Supreme Court’s April 23 ruling in our case. Our four groups – Hawaiʻi Wildlife Fund, Sierra Club Maui Group, Surfrider Foundation, and the West Maui Preservation Association – have advocated long and hard for the County to clean up its Lahaina wastewater mess. With this important victory at the highest court in the land, we’re one step closer.

The Supreme Court made clear that pollution cannot be released into navigable waters such as our ocean without a permit. You cannot get around that requirement by dumping the pollution into a hole near the ocean because that is the “functional equivalent” of dumping it into the ocean.

We, and people across the country, breathed a huge sigh of relief. The Supreme Court ruled firmly on the side of clean water, and against large-scale polluters that were looking for a groundwater loophole. From a strictly legal point of view, we got what we wanted, and the nightmare scenario of an open door for polluters was avoided. **For clean water advocates across America, this was a big, big win.**

To help the public understand more clearly what the Supreme Court decision means to our community, we will be posting the answers to some of the questions that we have been hearing from the community. We will also host a webinar in mid May where the community can get answers to specific questions about this historic case, its implications, and how we can move forward together to seek long-term solutions.

The Supreme Court sent the case back to the Ninth Circuit Court of Appeals – which has already ruled that the County cannot avoid the permit requirement – to re-evaluate our case in light of the Supreme Court’s “functional equivalent” standard. The Ninth Circuit may, in turn, send the case back down to the federal district court that originally heard the case. Both the district court and the court of appeals have already ruled that the discharges from the Lahaina injection wells are the functional equivalent of direct discharges into the ocean and, thus, require a Clean Water Act permit. We are confident that they will do so again.

But we didn’t get in this fight to win lawsuits; we got in it to save reefs. The County now has a choice between delaying the inevitable by spending more taxpayer money, dragging out the lawsuit, or investing in fixing the problem, as we’ve been urging since day one.

Fortunately, **there are solutions available**, and they’re staring the County right in the face. The Lahaina plant was designed and intended to re-use the treated R-1 water to irrigate sugar cane; that’s why it’s called the Lahaina Wastewater Reclamation Facility. The sugar might be gone, but other agricultural needs have risen to take its place. The golf courses, hotel grounds, and diversified agriculture of West
Maui are perfect candidates for irrigation with R-1 water. The Department of Hawaiian Home Lands, which owns 800 acres of former sugar land, including several former plantation reservoirs just mauka of the injection wells, needs water for agricultural development. The state Water Commission, which has the kuleana of managing our fresh water resources, supports using R-1 water for agriculture, and conserving precious West Maui stream water in the process.

**Re-use is the win-win scenario we should all get behind.** The more R-1 we can use for irrigation, the less R-1 ends up in the ocean, polluting the water and destroying the reef.

The County Administration has already blown through millions of taxpayer dollars paying its hired gun mainland lawyers to make arguments that the Supreme Court ultimately rejected as “unreasonable.” It’s time for the government to stop kicking the can down the road and wasting money on a losing fight, and invest in the long-term health of our West Maui community instead. Working together to solve the problem will be the real win, and we remain committed to doing so. We are so grateful to the hundreds of community members and organizations who have shown up to support this historic effort for clean and healthy ocean waters.