

The Maui News

BREAKING NEWS

Updated 1:15 p.m.: Brush fire near Maui Country Club burns 200...

Maui County's appeal is not to 'gut' the Clean Water Act

Our County

Across the nation, nongovernmental organizations have pushed to expand the federal Clean Water Act. In 2012, this national fight was brought to our shores.

Earthjustice sued Maui County, contending that in addition to state and federal Safe Drinking Water Act permits, the county needs a permit under the Clean Water Act to dispose of its recycled water in West Maui injection wells. No state or federal agency has ever brought a similar enforcement action against the county and, in fact, the Lahaina facility has operated in compliance with state and federal Safe Drinking Water Act permits for decades.

Congress designed the Clean Water Act as an "*end of pipe*" regulatory tool for river, lake and ocean outfalls where the quality of effluent and its effect on the receiving water body can be measured and regulated at a single point. The Clean Water Act reserves the states' authority to protect and regulate impacts to groundwater resources.

The Safe Drinking Water Act and other laws govern injection wells, septic systems and stormwater retention basins to protect both public health and

the environment.

While a Hawaii U.S. District Court and the U.S. 9th Circuit Court of Appeals agreed with the expansion of the Clean Water Act, not all courts were willing to step as far away from Congress' original intent. This is why the U.S. Supreme Court agreed to hear Maui County's case, to give clarity to this important area of law.

Despite rhetoric aimed at persuading our lawmakers to withdraw from the Supreme Court, Maui County's appeal is not to "*gut*" the Clean Water Act.

Recent media misinformation has painted a false picture of offshore conditions in West Maui. The focal point has been to allege a connection between water from injection wells and poor reef and fish health offshore of Kahekili Beach in Kaanapali.

A short online search shows photos of fish, sea turtles and a coral reef that appear to be in relatively healthy condition at Kahekili. Earthjustice has used photos dating prior to 2004 to show poor off-shore conditions then at this location. Misleading nearshore photos suggest there are coral "*dead zones*," but the fact is coral typically does not grow in the areas where waves break.

More recent studies show conservation measures in West Maui are improving the health of reef and fish.

In July 2008, the Kahekili Herbivore Fisheries Management Area was created, with proactive fisheries management measures used to control invasive algae and improve overall reef resilience.

In 2014, the county hired Drs. Steve Dollar and Eric Hochberg to evaluate the effects of recycled water/groundwater from the Lahaina wastewater reclamation plant on the reef at Kahekili Beach and along the coastline. If underground seeps of recycled water were causing impacts to the reef, there would be "*halos*" of reduced reef cover around the seeps, but no such halos were observed.

A 2017 study by the National Oceanic and Atmospheric Administration found that, with coral coverage of 30 to 58 percent, the Wahikuli and Honokowai watersheds contain the greatest extent and concentration of coral-rich habitat in West Maui. Relatively well-developed, spur-and-groove coral reef complexes thrive off of Canoe Beach, Kahekili Beach Park and Honokowai Point.

The Maui Nui Marine Resource Council reports that since the Kahekili herbivore management program went into effect, there has been a 331 percent increase in parrotfish biomass on the reef. This means that parrotfish have been growing larger and are being found in greater numbers, making for better algae grazing and reef cleaning. Surgeonfish numbers increased 71 percent from 2008-09 to 2018 in this area.

The County of Maui has been working with partners, including the University of Hawaii, the State of Hawaii and nongovernmental organizations, to address pollution on a watershed basis. In West Maui, runoff from long-fallow agricultural fields and seepage from cesspools is a far greater stressor to nearshore ocean quality than the disposal of highly treated recycled water. This is where the county should focus its resources.

Staying the course with the county's U.S. Supreme Court appeal protects our county and taxpayers, and it allows the county to continue to manage its recycled water disposal in the most environmentally and economically responsible way now available and feasible.

* *"Our County,"* a column from Maui County Mayor Michael Victorino, discusses county issues and activities of county government. The column usually appears on the first and third Fridays of the month.