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REPORTED BY: Tonya McDade
Hawaii Certified Shorthand Reporter #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner
info@iwadocourtreporters.com

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ATTENDANCE
David Albright, Hearing Officer, Groundwater Office,
Environmental Protection Agency
Nancy A. Rumrill, Environmental Engineer, Groundwater
Office, U.S. Environmental Protection Agency
Brett P. Moffatt, Office of Regional Counsel, U.S.
Environmental Protection Agency,
Wendy Wiltse, U.S. Environmental Protection Agency
Chauncey Hew, Environmental Management Division, State
Department of Health
PRESS: Akaku, Maui Community Television, Inc.

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AUGUST 20, 2009
TRANSCRIPT OF PROCEEDINGS

1 HEARING OFFICER ALBRIGHT: Welcome, everyone.
2 Thanks for coming tonight. My name is David Albright.
3 I'm the Manager of the Groundwater Office at the U.S.
4 EPA in San Francisco. And we are here for the next
5 couple of hours to take oral comments, oral testimony on
6 our proposed Class V Permit for the County of Maui's
7 Lahaina Wastewater Reclamation Facility.

8 And I have a few people up here who I want to
9 introduce. Brett Moffatt is on the end, he's with our
10 Office of Regional Counsel. And then Nancy Rumrill, who
11 is in my office, she's an Environmental Engineer with
12 the Groundwater Office. And then we have Wendy Wiltse,
13 who is also with EPA, U.S. EPA, and she's based in
14 Honolulu, and focus is on water quality issues. And
15 then we also have Chauncey Hew who is with the
16 Underground Injection Control Program with the State
17 Department of Health.

18 So this is an opportunity to provide oral
19 testimony on the proposed permit. We have a court
20 reporter, who is over here, who will be taking a
21 word-for-word transcript. And we'll make that
22 transcript available. There is an opportunity tonight

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1 to provide comment.

2 And we've had people sign up on these speaker
3 request forms. So if you would like to provide oral
4 testimony and have not yet signed up, there are some
5 forms over on the table. And I would ask you to sign
6 up. And then we'll -- we're going to call people in the
7 order that they signed up.

8 In addition, if you have written comments that
9 you wish to submit, you can submit those tonight as
10 well. And, actually, if you have testimony that you're
11 reading, for example, it would be good to give it to the
12 court reporter so that she would have that as she is
13 recording your testimony.

14 So we're going to ask if people could try to
15 restrict their comments to no more than five minutes.
16 We have a good list of people who want to speak, and we
17 wanna make sure that we have an opportunity for everyone
18 to be heard tonight.

19 And what we're going to do -- actually, we
20 have Mayor Tavares with the County of Maui here. And
21 she has asked to provide testimony. And so we're going

22 to have her start us off, and she will give her
23 testimony, and then we'll move into the other folks who
24 have signed up.

25 (Applause.)

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1 MAYOR CHARMAINE TAVARES: Thank you.
2 It's kind of weird being with my back to the
3 audience.

4 MEMBER OF AUDIENCE: You wanna use this?

5 MAYOR CHARMAINE TAVARES: No. That's fine.

6 Mr. Albright and Ms. Rumrill, thank you very
7 much for being here, Wendy, and the rest of you. It's
8 nice to see you again after many, many years.

9 Good evening and aloha.

10 I am Charmaine Tavares, Mayor of the County of
11 Maui. And I want to thank you for the opportunity to
12 provide comments during this hearing on the Lahaina
13 Wastewater Reclamation Facility's UIC Permit.

14 All of Maui County, as well the State of
15 Hawaii, and the world, for that matter, have experienced
16 drought conditions for a number of years, decades, in
17 fact. Attention has been focused on water and water
18 availability. It is becoming increasingly more
19 difficult and expensive to develop potable water.

20 I have long regarded wastewater as a water
21 resource that can actually help preserve precious
22 potable water for human consumption while providing for
23 non-potable uses, such as irrigation and toilet
24 facilities.

25 I personally feel that injecting treated

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1 wastewater is a waste of a resource that we could be
2 using more productively.

3 My administration has been exploring options
4 for reclaimed water besides the obvious landscape and
5 other irrigation applications. New uses related to
6 renewable energy are surfacing and are quite attractive.
7 I am proposing to dovetail the production of algae as a
8 fuel source with the need to redirect nitrogen-rich
9 treated wastewater to a new use.

10 For example, the cultivation of algae as a
11 transportation fuel source is creating much interest.
12 In this case, wastewater would be delivered to a holding
13 pond or other such device in order to provide the food
14 source for algae. The algae would be harvested and then
15 processed to produce the transportation fuel.

16 The possibilities are exciting as algae can
17 thrive in nitrogen-rich water. We have a source of
18 nitrogen-containing wastewater that has been treated
19 here at our Lahaina Wastewater Treatment Plant. And we
20 can use that. We may have to add many more other
21 nutrients in order to feed those hungry little algae,
22 but at least this is a part of their diet. And we could
23 supply part of that diet.

24 We request that the County of Maui not be
25 required to spend scarce resources to reduce nitrogen in
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1 our treated wastewater now. Instead, let's use the
2 nitrogen-filled water to attempt to grow algae that can
3 be used for this transportation fuel.

4 When we expand our vision to include removal
5 -- include removable and sustaining resources, we find
6 new opportunities in a fast-changing world.

7 Over the past year, my administration has been
8 exploring and researching an algae pilot project for
9 Maui. We are in the preliminary stage and will actively
10 continue pursuing and solidifying a project that will
11 work for Maui. I intend to continue to actively pursue
12 this prospect.

13 Oahu, Kauai, and the Big Island of Hawaii have
14 pilot algae projects either ongoing or soon to commence.
15 Maui is in a position to build on their own efforts and
16 move forward with our own.

17 Why the excitement? An algae energy project
18 will move us closer to renewable energy sustainability
19 and, at the same time, reduce our need to place treated
20 wastewater in injection wells.

21 I request that the EPA consider a five-year
22 extension of the UIC Permit to operate the Lahaina
23 injection well. This will give my Administration time
24 to formulate a plan for the reduction of injected
25 wastewater. If the EPA so desired, benchmarks or
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1 milestones could be included as conditions of the
2 permit, in 12 to 18 months, on a clear and detailed plan
3 to reduce the volume of wastewater being injected. We
4 need time to identify options; analyze costs, time and
5 other factors; and set volume reduction targets.

6 Late last year, Director Okuma presented me
7 with her idea of forming a community advisory group to
8 assist in addressing wastewater concerns. In February
9 of this year, she presented a draft proposal for the
10 formulation of this working group. After revisions over
11 the past few months, the working group concept is ready
12 to be implemented.

13 And I believe that a group of interested
14 citizens will frame a plan that is comprehensive,
15 implementable and beneficial to all of us. This group
16 will be convened next month, September 2009.

17 As you are aware, my Department of
18 Environmental Management has continued to request the
19 comment period September -- comment period to September
20 21st, in order to develop and suggest permit language
21 for a five-year extension of the existing permit.

22 In closing -- in closing, I believe that we
23 all have the same goal. We can put our ideas,
24 experiences and expertise together in order to create a
25 better Maui for all of us on land and in the sea.

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1 Thank you very much for your consideration.
2 (Applause.)
3 HEARING OFFICER ALBRIGHT: Thank you for those
4 comments, Mayor Tavares.
5 And I understand that her testimony is
6 available. I think there's still copies of it back on
7 the back table if people are interested.
8 So the next speaker will be Tony Povilitis.
9 MR. POVILITIS: I think this is the first time
10 I followed the Mayor in making a statement. I'm
11 honored. It also makes me feel a little emboldened at
12 the same time.
13 Like so many of us on Maui, I am deeply
14 concerned about the future of our coral reefs.
15 Scientific authorities and progressive environmental
16 agencies worldwide are calling for bold measures to save
17 coral reef ecosystems. Regional and local threats,
18 including pollution from injection wells, must be abated
19 if our coral reefs are to stand a chance, given
20 increasing stress from higher sea temperatures, ocean
21 acidification, and greater storm surges as a result of
22 global heating.
23 Well, you know all this. And I -- I guess I'm
24 perplexed -- or thoroughly perplexed as to why you have
25 not come to Maui to hold a public hearing on the need

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1 and options for phasing out the -- the -- the wastewater
2 injection well, replacing it with an entirely
3 non-polluting wastewater treatment system, in order to
4 protect coral reefs and provide other benefits. I just
5 don't understand what's up with government these days.
6 This community needs your leadership. It's
7 actually begging for it, from the testimony that I've
8 heard previously. Less so in dotting the "I"s and
9 crossing the "T"s on permits, but in helping us tackle
10 the growing coral reef crisis.
11 Fortunately, Maui -- or Maui's DIRE Coalition
12 has provided private sector leadership by addressing the
13 ecological, human health, economic and legal aspects of
14 this issue. We hope DIRE's testimony will convince you
15 to change course.
16 Some 40 years ago, David Brower told writer
17 John McPhee that he would do everything possible to get
18 people back into balance with the environment, that they
19 are, in fact, way out of balance. Our environment won't
20 last and we won't, said Brower.
21 Given the course of history since, please get
22 together with your colleagues at EPA and help this
23 community save its coral reefs. It can be done. It
24 must be done. And this is -- and there's absolutely no
25 time to waste.

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1 EPA has a clear choice. You can allow

2 substantial coastal pollution from Lahaina for years to
3 come under the current permit or you can issue an
4 alternative permit that both reduces pollution in the
5 near term and ensures rapid transition to sustainable
6 reuse of properly treated wastewater.

7 So in closing, I'd just like to thank you for
8 this opportunity to comment. And I am one of many
9 citizens, I'm sure, that is looking for government
10 leadership on this important matter.

11 Thanks a lot. Mahalo.

12 (Applause.)

13 HEARING OFFICER ALBRIGHT: Thank you for your
14 comments.

15 The next commenter is Jeff Schwartz.

16 MR. SCHWARTZ: Sorry I don't have copies of
17 the whole long document for everybody, but the short
18 version is here. And we'll get you extra copies if you
19 want it.

20 Thank you, EPA Hearing Officers, and -- and
21 State representative from the Department of Health. We
22 appreciate your holding this hearing. I very much
23 appreciate the earlier meeting, question-and-answer
24 meeting, that enabled us to have a discussion about
25 these matters.

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1 I'm -- my name is Jeff Schwartz. I'm speaking
2 on behalf of the DIRE Coalition, which is a group of
3 Maui County residents, visitors and organizations who
4 seek to protect the County's reefs, the public health
5 and the economy by urging the County to phase out
6 wastewater injection wells, improve wastewater
7 treatment, and reclaim and reuse properly treated
8 wastewaters on land for a variety of beneficial uses.

9 I wanna emphasize that we have never said,
10 "Shut down the injection wells now." That is not our
11 position. We recognize that there has to be some kind
12 of transition or program.

13 Before I go any further, I really neglected to
14 do one thing that I ought to have done at the outset.
15 And that is to honor the memory of Uncle Ed Lindsey,
16 who, for all of us, taught us not only the importance of
17 the land and the ocean, but addressing the kinds of
18 discussions that we're having with aloha spirit. And so
19 as we might find disagreement, nonetheless hear us all
20 working as a community to try and bring that kind of
21 aloha spirit and shared -- shared ethos to our common
22 goals.

23 And in that spirit, we applaud the visionary
24 goal of 100 percent wastewater reuse and zero injection
25 that Mayor Tavares has announced on May 22nd and

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1 reiterated today. We are here to support the Mayor's
2 goal and to ask EPA and the Mayor and the City [sic]
3 Council, and the Department of Environmental Manager --

4 Management to work together to achieve this goal as soon
5 as possible. And we welcome the Mayor's indication that
6 she -- she is interested in doing exactly that.

7 And while we don't have -- haven't had time to
8 meet and talk about -- as the DIRE Coalition yet, the
9 request for the extension for an additional month in
10 order to work -- work out a plan for a five-year permit
11 approach, my sense is the group would be very positively
12 inclined to support at least another month of the
13 extension period.

14 At the November 2008 hearing, the testimony
15 was unanimous. We -- every public witness and all those
16 present made clear on the record their support for
17 ending Maui's discard of wastewater into injection wells
18 that run into the ocean and for reusing inadequate --
19 adequately treated wastewater as a valuable resource on
20 land as soon as possible. Since that time, EPA has
21 revised its proposed permit in beneficial ways. And we
22 wanna acknowledge that we see progress and appreciate
23 the progress in the revised proposal over what was
24 initially proposed. But the proposed permit would allow
25 10 more years of wastewater injection without ensuring

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1 sufficiently higher levels of treatment and reuse of the
2 wastewater. And that's why we cannot support the
3 proposed revised proposal.

4 Again, public opinion has been nearly
5 unanimous. The record shows nearly 200 groups and
6 individuals who are opposed to the proposed revised
7 permit for the overriding reason, as well as others.
8 For the record, we have specified the basis of our
9 concerns with EPA's revised proposal in the written
10 testimony that I've handed you and submitted online,
11 which we will provide only major highlights and
12 conclusions of these thoroughly documented comments.

13 Overall, we wanna make four main points.

14 First: EPA should not grant the 10-year
15 injection well permit at Lahaina, which, in 19 -- which,
16 in 2019, may leave us no closer to realizing the Mayor's
17 goal than we are today. In our view, any permit for
18 injection at Lahaina must be conditioned on a number of
19 specific requirements leading to achievement of the
20 Mayor's goal as promptly as possible.

21 The essential conditions include reductions of
22 nitrogen and phosphorous levels, and effective
23 disinfection of pathogens, effective monitoring of
24 groundwater and ocean water quality, and bio impact of
25 public reporting. Within one year, development

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1 submission to the public and the EPA and the State of a
2 detailed plan with benchmarks of progress for design,
3 financing, construction and operation of the necessary
4 treatment upgrades and wastewater facility reuse and --
5 and reuse facilities and phase-out of the injection

6 wells as soon as possible, but, in no event, later than
7 January 1, 2015.

8 Second: EPA should require the County to
9 submit an expedited compliance schedule for obtaining an
10 NPDES permit for the injection well discharges to the
11 ocean as a condition of any UIC Permit that the agency
12 may approve. We think this is well within your
13 authority. And, in fact, it may be your responsibility.

14 Because, Number Three, EPA may not and should
15 not grant a UIC Permit which authorizes behavior that's
16 expressly prohibited by the Clean Water Act. That is
17 the discharge of pollutants into the ocean through the
18 wells without an NPDES permit. And we cite chapter and
19 verse as to the cases that show why the -- why, in our
20 view, this is illegal behavior that must stop.

21 Four: The EPA should not grant the Lahaina
22 well until the State has provided the certification
23 required by Section 401 of the Clean Water Act,
24 including the effluent limitations of other requirements
25 necessary to ensure compliance with all applicable

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1 state, constitutional and regulatory policies and
2 requirements. These, too, should begin conditions --
3 should be added as conditions to any permit that the EPA
4 may grant.

5 I urge you to look at the Hawaii State
6 Constitution. It is very clear. And -- and it's so
7 clear, as a matter of fact, that it constitutes water
8 quality -- an element of water quality standards in
9 Hawaii, that conservation is to be required, not
10 discard, that the State has a public trust for all
11 waters of the United States -- of the -- of the State,
12 and that -- and under the case law, so does the County
13 have that same responsibility.

14 As a result of the November 2008 hearing, and
15 extensive research then -- since then, we've learned
16 many important things relevant to this hearing. And
17 I'll only quickly summarize these highlights.

18 One: As you folks have acknowledged, the
19 wastewater effluent going into the Lahaina injection
20 wells does not stay in the wells, but migrates into the
21 ocean. That's now indisputable on the record.

22 Two: The wastewater effluent contains high
23 levels of nitrogen. The nitrogen fuels algae growth --
24 we already heard that from the Mayor. It can do that
25 beneficially if it's done in the right circumstances,

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1 which, in turn, contributes to -- significantly to the
2 decline of the reefs. We never said that this is the
3 only cause of the problem for the reefs, but it's a
4 significant one.

5 While nutrient releases from County injection
6 wells are not the only cause of reef decline, a
7 compelling body of scientific information, over 20

8 sources since 1993 that we've laid out, including
9 reports from the National Academy of Science, DAR, EPA,
10 and the -- and in U of H implicate the County injection
11 wells at Lahaina, Kihei and Kahului as significant
12 contributors to serious reef decline.

13 Number three: The proposed permit will allow
14 over 800,000 additional pounds of nitrogen to go into
15 these wells and into the ocean over the permit's 10-year
16 life. That's just too much given the urgent need for
17 protection of our reefs.

18 Four: The releases to the ocean through the
19 injection wells without an NPDES permit constitute a
20 violation of 402 of the Clean Water Act. Under the
21 significant nexus doctrine of the Rapanos Supreme Court
22 case, and, most tellingly, and more recently, the
23 Northern California River Watch case, which specifically
24 is a Ninth Circuit case addressing facts very similar to
25 these.

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1 EPA should not and may not lawfully issue a
2 permit under the Safe Drinking Water Act which
3 authorizes illegal behavior under the Clean Water Act.
4 Knowing these things, EPA should require the County to
5 obtain an NPDES permit under the Clean Water Act as soon
6 as possible.

7 Number five: Over 1,900 other communities
8 throughout the U.S. are now raising levels of treatment
9 and reusing more of their wastewater instead of
10 discarding them into the ocean. They have found ways to
11 pay for this. And we can, too.

12 Number six: We know that the injection wells
13 at Lahaina cannot be shut down until there's a viable
14 alternative. But a strict timetable needs to be set as
15 a condition of the permit for developing that
16 alternative. The County has not borne its burden of
17 proof. And we urge you to look at the cases cited as to
18 why it has the responsibility in this case to show that
19 a 10-year-or-more year of injection is necessary or
20 desirable.

21 Again, we're pleased by the Mayor's decision
22 announced tonight to try and work out a situation that
23 will get us more like a five-year permit. And we think
24 that's progress. And we're happy to work with her.

25 We believe that, within one year, Maui County

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1 can establish a plan, schedule required benchmark of
2 progress for the design, financing and construction of
3 wastewater treatment upgrades and the facilities
4 necessarily to safely and beneficially reuse the
5 effluent on land.

6 We believe that five years is adequate to
7 complete the process and have provided information to
8 that effect. If the County can show us why that is not
9 the case, well, we'll be open to listening to it, and so

10 should you, but, so far, we haven't heard that.

11 Number eight: The DIRE website, Don't Inject,
12 lists a number of communities in which this has been
13 accomplished. The wastewater reuse recycling has been
14 accomplished, including Prescott, Arizona, which
15 auctioned off its rights to reclaimed water effluent for
16 up to \$67 million.

17 Number nine: Our website also references
18 federal grants of tens of millions of dollars made in
19 the last year to help alleviate drought and enable
20 communities to improve treatment of wastewater and reuse
21 of effluent. Moreover, the County estimates that the
22 necessary improvements will cause no more than three to
23 five percent increase in waste management fees. Planned
24 development could help pay for these costs.

25 Number 10: Working together, we are confident
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1 that we can achieve the Mayor's goal. And we are very
2 pleased at the overtures from the County to its citizens
3 to work with -- with the County on that direction. And
4 we welcome that.

5 For the reasons stated here, but elaborated in
6 our -- in our written testimony, we at the DIRE
7 Coalition urge EPA not to move forward with the proposed
8 revised permit, but, instead, to work with all concerned
9 parties to develop a permit that includes compliance
10 with the Clean Water Act and a binding schedule for
11 realizing the Mayor's goal no later than five years at
12 Lahaina.

13 Number 11: We not only believe this is wise
14 policy, we believe this is the only permissible outcome
15 based on the science and the applicable federal and
16 state law, and the record of the proposed permit that
17 you have before you.

18 Number 12: The cost of ensuring reuse will
19 only increase over the next 10 years. And as the
20 appendices to our testimony show, we can find the funds
21 if we have the will to take action now to protect our
22 reefs and preserve our precious water resources for safe
23 and beneficial use on land for the current generation
24 and for future generations.

25 We thank you for the opportunity to testify.

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1 (Applause.)

2 HEARING OFFICER ALBRIGHT: Thank you for your
3 comments, Mr. Schwartz.

4 Next is Teri Leonard.

5 MS. LEONARD: First of all, aloha. And thank
6 you for allowing this opportunity to speak.

7 I represent myself here, but I'm going to tell
8 you that I'm the manager of Maui Dreams Dive Company in
9 Kihei, and I have been employed as a scuba instructor
10 there for 10 years. I'm also a member of the Maui Nui
11 Marine Resources Council, the Maui Reef Fund, Sea Link,

12 and I chair the Reef Sustainability Committee of South
13 Maui Sustainability as well.

14 Tonight I'm addressing three major issues
15 surrounding the Lahaina injection well permit process;
16 reef pollution, water wastage and permitting precedence.

17 First, through my job experience, I have dove
18 thousands of dives along the Maui coastline and have
19 witnessed the ongoing degradation of our reef system.
20 What began as a subtle layer of algae building across a
21 vibrant coral reef has now become a thick and solid
22 carpet of algae which smothers more and more of our
23 coastal areas.

24 Scientific evidence gathered by the University
25 of Hawaii and the State of Hawaii Department of Land and
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1 Natural Resources clearly indicates that pollutants and
2 contaminants entering the ocean from injection wells are
3 having a direct effect on the health of our Maui coral
4 reef systems.

5 Yes, it is true that we have many areas of
6 human activity which contribute to reef pollution that
7 must be addressed; overfishing, misuse and loss of
8 wetlands, runoff issues, overdevelopment and
9 overpopulation are just a few. But here tonight, we
10 have an opportunity and, according to the Clean Water
11 Act, a responsibility to reduce and ultimately end the
12 injection of pollutant wastewater into our coastal
13 waters and our reef environment.

14 Second: With water shortages always imminent
15 here on Maui, the waste of millions of gallons of water
16 per day that could be used for irrigation purposes seems
17 criminal. I would like to see a mandate demanding the
18 investigation into and the enacting of alternative
19 methods of water disposal and reuse included in the
20 permit as well as a shorter permit lifespan.

21 As more qualified experts and scientists than
22 I are telling you tonight, incredible amounts of reef
23 pollution and wastage of water will result with the
24 status quo being maintained over the next 10 years.

25 Third: I am concerned with the precedent set
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1 with the Lahaina -- with the Lahaina permit, that they
2 will affect the permit process when it comes to my home
3 in Kihei.

4 And -- and, lastly, I would like to address
5 funding for the County's benefit. The County's
6 injection well website and page mentions many times that
7 any improvements or alternative disposal methods will
8 cost taxpayers. However, as recorded in the Water Trust
9 Fund Summary of July 14, 2009, from the U.S. Treasury
10 Department, according to Title 1, Section 101 of the
11 Proposed Water Protection and Reinvestment Act, monies
12 collected from corporate profits will fund appropriate
13 public wastewater treatment and reuse programs. Section

14 406(a) establishes a national water infrastructure
15 research development and demonstration program within
16 the EPA to develop, demonstrate and transfer innovative
17 or improved technologies and methods for the treatment,
18 control, transport and reuse of drinking water and
19 wastewater. This will help the agency, as well as local
20 treatment works and water systems, meet the needs of the
21 21st Century.

22 Section 102 states that 48 percent of that --
23 of those monies will be spent on the Clean Water State
24 Revolving Funds, almost \$5 billion. These funds are
25 grants to capitalize state funds which then provide

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1 loans to publicly-owned treatment works for wastewater
2 treatment construction to meet Clean Water Act
3 requirements and provide sewage services.

4 Yes, we would have to pay the money back, but
5 the investment will ultimately save untold future lost
6 revenues if we allow the reef to perish.

7 Therefore, I support Mayor Charmaine Tavares
8 and County Council Members Wayne Nishiki and Michael
9 Molina on their choice to commit to ending County
10 injection well usage. Many challenging steps are ahead,
11 including the determination of alternative uses for the
12 15 million gallons per day of water that is currently
13 being thrown away into Maui coastal waters and onto Maui
14 reefs. Now is the time for actions to speak at least as
15 loud as words.

16 The first step is for the EPA to not issue
17 another 10-year permit to the County for the operation
18 of the Lahaina injection wells. A much shorter time
19 period for these permits must be established, along with
20 the mandate that alternative methods of wastewater usage
21 are to be investigated and ultimately be used to replace
22 this incredible waste and misuse of our precious water.

23 You represent our Environmental Protection
24 Agency. Please protect our environment.

25 Thank you.

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1 (Applause.)

2 HEARING OFFICER ALBRIGHT: Thank you for those
3 comments, Ms. Leonard.

4 Rene Umberger.

5 MS. UMBERGER: I also wanna thank you for the
6 question-and-answer session. I thought that was really
7 beneficial. So thank you for that.

8 My name's Rene Umberger. Thank you for the
9 opportunity to comment today. I speak on behalf of the
10 Maui Nui Marine Resource Council, which is dedicated to
11 the restoration of our nearshore waters and marine life.

12 We also appreciate that the current permit
13 proposal is an improvement over the original. However,
14 many of our requests have not been adequately addressed
15 in this new draft. And in addition, we are aware of new

16 information.

17 As Jeff has already gone over a lot of this in
18 detail, but there is -- we know there's a large body of
19 evidence confirming that nutrients in coastal waters are
20 a problem associated with the mismanagement of waste.
21 According to statements made here this afternoon and
22 previously by current and former County wastewater
23 personnel, the nitrogen-laden effluent from the County
24 wells does make it into the ocean.

25 There's evidence that was submitted by the
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1 Division of Aquatic Resources Director, in November,
2 that there is evidence that there is a substantial reef
3 degradation immediately offshore of the Lahaina
4 facility. That they have years of data clearly showing
5 a correlation between wastewater injection, decrease in
6 coral cover, and increased problems with invasive algae.
7 And there is scientific evidence that the injection well
8 plumes are percolating up into the nearshore waters.

9 We ask you to keep in mind that coral reefs
10 are a national and global resource. And a large
11 percentage of the U.S.'s coral reefs are in Hawaii.

12 Yes, they are threatened by more factors than
13 nutrient pollution. However, according to leading
14 scientists, we no longer have the time for arguments
15 over which factor is the worst culprit. Each one needs
16 to be addressed if we value coral reefs and want to stop
17 their degradation.

18 As you may know, the socioeconomic value of
19 Maui's coral reefs is tremendous. Continued habitat
20 degradation will spell disaster for our fish
21 populations. And fishing for sustenance is a very
22 important part of Hawaii's culture. In addition,
23 healthy coral reefs are critically important to Maui's
24 economy. For instance, Kihei reefs annually contribute
25 at least \$28 million to the economy from property

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1 biodiversity and recreational value. West Maui reefs
2 are at least equally valuable.

3 These are just some of the reasons why
4 developing the infrastructure for higher levels of water
5 reuse is economically, not to mention legally,
6 justifiable. The costs of not doing so outweigh the
7 costs of creating alternative methods of treatment and
8 reclamation.

9 We all know that very substantial progress has
10 been made in other communities to address reuse issues.
11 Here on Maui, using more reclaimed water, instead of
12 injecting it, will help solve critical water shortage
13 issues by helping to alleviate competing water uses.

14 Given all of this information, we stand by our
15 earlier request asking EPA to address comprehensive
16 watershed planning to ensure that decisions and
17 solutions are beneficial to all concerned.

18 We also ask for timetables for Maui County to
19 meet all EPA Clean Water Act requirements.

20 We ask for deeper cuts to nitrogen loading as
21 soon as possible. 27,000 pounds quarterly is too much
22 today. And nitrogen injected today won't enter the
23 ocean for years. Our reefs require better than that to
24 survive.

25 We also ask for groundwater/ocean water
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1 quality and marine resource monitoring that is
2 implemented with resolution, that can detect change over
3 time, so it's possible to know if mandated changes are
4 sufficient.

5 In addition, we support the Mayor's goal of
6 100 percent wastewater reuse and ending all injection
7 wells. We support substantially upgrading the
8 treatment, reusing the water and shutting down the
9 injection wells as the new water reuse system is built.
10 And we request a less than 10-year duration on the
11 Lahaina permit.

12 Thank you.

13 (Applause.)

14 HEARING OFFICER ALBRIGHT: Thank you for those
15 comments.

16 Next will be Robin Knox.

17 MS. KNOX: Hello. My name is Robin Knox. And
18 I am a water quality professional with 25 years
19 experience in Clean Water Act regulation and water
20 pollution control, wastewater treatment, that kind of
21 thing.

22 I would like to say aloha and welcome to Maui.
23 And mahalo for all of your hard work. We really see
24 improvements in this revised draft permit.

25 And I support -- I'm speaking for myself, but
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1 there are many like-minded souls who agree with me. I
2 support what you've done with injectate volume limits
3 and mass nitrogen limits and bacterial limits. As
4 you've pointed out, I think those are absolutely
5 necessary to meet the mandates of the Safe Drinking
6 Water Act and to protect underground sources of drinking
7 water. I think it's a great benefit that it also
8 reduces loading to the ocean, as we've been talking
9 about. So I support you in concept in those limits.

10 I do think that the limits still need to be
11 tightened up some. Like, for instance, injectate
12 volume, you still have 7 mgd, but the County website
13 says that the reliable design capacity of the plant is
14 4.5 mgd on an average dry basis, which would be like
15 about 5.5 long-term average mgd. And that makes a big
16 difference.

17 If you look at nitrogen loading rates, if we
18 can get rid of a million gallons a day of the -- of the
19 water, then that cuts the nitrogen -- at seven

20 milligrams, that cuts almost -- or more than 20,000
21 pounds per year out of the discharge. So limiting that
22 injectate volume is important. So I don't wanna see the
23 permit limits being any higher than they absolutely need
24 to be in terms of volume.

25 And then, of course, we also could reduce
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1 nitrogen. And in talking to the Mayor this week, I'm
2 really encouraged that there are some really short-term
3 solutions. Because looking at some of the numbers, that
4 maybe we can reduce concentration just a little bit, get
5 a little bit better performance out of the plan, and
6 reuse just a little bit more water, we can significantly
7 start reducing the nitrogen loads. And I don't think
8 that's gonna take five years. I think, within five
9 years, we could figure out how to reuse a million
10 gallons a day of water. I just can't believe that that
11 can't be done.

12 And I would encourage you to ask the County to
13 show you why it can't be done if they're telling you
14 that it can't be done.

15 Also, I would like everyone to realize that we
16 need to finalize this permit. I think it's great to
17 keep having these opportunities to have input, but as
18 long as we keep talking about it, there are no limits on
19 nitrogen. And I really feel that clock ticking. Every
20 day, it's 200 more pounds of nitrogen on the reef.
21 Every year, it's 70,000 more pounds. So when you're
22 talking about compliance schedules, please remember
23 that.

24 And I'm very encouraged by the Mayor and the
25 County. Talking to some of the treatment plant

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1 operations people this week and the Mayor, I feel like
2 we're really close to having some agreements that will
3 work with everybody and move forward.

4 I would like you to add monitoring of
5 groundwater, ocean and additional effluent monitoring.
6 I think that we really need to understand this system
7 more.

8 The County has rightfully said that we don't
9 really know what level we need to reduce the total of
10 all nitrogen discharges to in order to protect the reef.
11 We know what we have today is too high. We know it
12 needs to be reduced. But some monitoring and
13 understanding of the groundwater movement of that plume
14 and what kind of degradation is going on in the
15 groundwater would really help us understand where that
16 bottom line is on nitrogen load that we need to get to.

17 I think the limits need to be in the permit to
18 get the nitrogen out of the permit. The County has
19 their choice of ways of doing that. As we've said, it
20 could be reducing flows, it could be reducing
21 concentrations. So it can either be treatment, reuse or

22 other options. I really don't care, as long as we get
23 it off the reef. I think there's a number of good
24 things we can do with it.

25 So that's the extent of my kind of technical
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1 comments.

2 On a personal basis, I would just like to
3 share with you what I've seen personally. I came here,
4 I moved here, I left my home of 51 years, the house that
5 I grew up in, my children and my grandchildren, to come
6 here to tell you this, to work here for three years so
7 that I really understood this. Because I am horrified
8 at the lack of implementation of the Clean Water Act
9 here.

10 And I will remind you -- I will reiterate
11 everything Jeff said about the nexus and the fact that
12 we think that this might be unlawful to continue to
13 permit this to happen. I will remind you that knowing
14 violation of the Clean Water Act is a criminal act. And
15 what is happening out there right now is criminal. And
16 I think any one of the scientists or recreational users
17 or professionals in the marine industry who are out
18 there every day feel the same way. We cry about this.
19 Scientists cry at meetings. You know what, we're
20 supposed to be all cold and logical and factual, we're
21 crying.

22 I have to worry about getting sick when I go
23 to do my job. My co-workers are sick. They have the
24 antibiotic resistant staph infections. It's from diving
25 in the places where the injection wells are come --

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1 effluents are coming out on the reef.

2 I have seen a friend come to the island for a
3 week and swim in the ocean with a cut, and his foot
4 swole up this big and had to go to the emergency room.

5 There is no requirement for disinfection for
6 most of the wastewater on this island. It goes into
7 cesspools. And some of it, thank goodness, gets some
8 treatment in the County plants. And even that's not
9 disinfected unless we reuse it. It gets injected out.

10 I mean, this is like third world. Let's stop
11 it. Because my personal observations are that this is
12 an outrageous, appalling, possibly criminal negligence
13 to implement the Clean Water Act.

14 The Clean Water Act came about because people
15 were angry. People here on Maui are sad and angry about
16 what's happening to our water quality.

17 And I thank you for reaching the fullest
18 extent of your authority under the Safe Drinking Water
19 Act and this permit. I can see what you're doing, and I
20 appreciate it and I encourage you to continue it, to
21 protect our drinking water supplies and, also, to
22 protect our surface water supply.

23 So please go home, tell your administrators

24 that we told you, you can't say it's not your table.
25 It's -- it's EPA's table. It's EPA's job. And we have
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1 every faith that you will help us resolve this.

2 Thank you.

3 (Applause.)

4 HEARING OFFICER ALBRIGHT: Thank you for that
5 testimony.

6 Next speaker is Irene Bowie.

7 MS. BOWIE: Aloha, EPA officers and State
8 Department of Health staff. I'm Irene Bowie, Maui
9 Tomorrow Foundation. And I wanna thank you for
10 returning to Maui to hold this meeting.

11 Maui Tomorrow Foundation is a member of the
12 DIRE Coalition, representing the interests of many
13 members of our community concerned with the state of our
14 County's reefs, public health and economy. We strongly
15 support Mayor Tavares' goal of 100 percent wastewater
16 reuse and zero injection. And ask the County's
17 Wastewater Management Department to work with the
18 community and DIRE Coalition to achieve this goal.

19 We ask that EPA not grant the requested
20 application as written, but, instead, issue a permit for
21 no longer than five years conditioned on a number of
22 requirements, including more stringent waste treatment
23 of nitrogen removal and effective disinfection of
24 pathogens; effective ground and ocean water quality
25 monitoring and public reporting; development, within one
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1 year, of a detailed plan for building and funding
2 necessary treatment upgrades in wastewater reuse
3 facilities.

4 EPA should decline to approve a 10-year
5 renewal permit for Maui County to continue to discharge
6 inadequately treated wastewater effluent into the
7 injection wells because this effluent flows into the
8 ocean, stimulates algal growth, harms coral reefs, and
9 releases pathogens that threaten the health of those
10 using West Maui's nearshore waters.

11 Maui Tomorrow believes it is feasible to end
12 all reuse within five years. We ask that EPA not grant
13 a UIC Permit as it allows behavior prohibited by the
14 Clean Water Act.

15 A five-year term is warranted to ensure that
16 progress is made and to also ensure that this situation
17 is revisited more than once in a decade.

18 We ask for reductions in nitrogen loading and
19 injectate rates during the five years as Maui County
20 moves towards an ultimate goal of eliminating
21 underground injection as a disposal option.

22 With the 2030 Maui Island Plan projecting
23 growth of more than 5,000 units in West Maui, it is
24 imperative that we move towards more water reuse and
25 away from detrimental practices.

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1 Maui Tomorrow Foundation asks the EPA not
2 approve the permanent renewal application as the current
3 wastewater injection practice at Lahaina violates the
4 policies of the Federal Pollution Prevention Act, Hawaii
5 State Water Pollution Control regulations and policies,
6 and the Hawaii Constitutional requirement that the
7 counties, as well as the State, treat all waters of
8 Hawaii as a public trust.

9 We ask that the County of Maui phase out
10 wastewater injection wells and reclaim and reuse
11 properly treated wastewaters on land for a variety of
12 beneficial uses as soon as possible, and no later than
13 January 1st, 2015.

14 And, again, ask EPA to issue a permit for
15 Lahaina Wastewater Treatment Facility for only five
16 years.

17 Again, we applaud Mayor Tavares' commitment to
18 100 percent wastewater reuse and zero injection and look
19 forward to working together towards that goal.

20 Thank you.

21 (Applause.)

22 HEARING OFFICER ALBRIGHT: Thank you for your
23 comments.

24 Next speaker is Ramon Madden.

25 MR. MADDEN: Hi, folks. My name is Ramon K.

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1 Madden and I'm here representing myself as a citizen of
2 West Maui.

3 First of all, I would like to just start by
4 saying that this is -- we're celebrating our 50th year
5 of statehood here. And Maui has seen a lot of changes
6 over the past 50 years, but, unfortunately, they haven't
7 all been for the better.

8 In the early Seventies, a new deal for
9 development was implemented over here on West Maui. And
10 the people knew that there would be issues with the
11 wastewater treatment. They were promised that -- and
12 assured that the environment would be protected. And in
13 my opinion, they failed miserably.

14 We have problems with our coral reef. We have
15 problems with our turtles, they have fibropapilloma,
16 they have cancer. We have algae blooms. They're
17 disgusting to swim in. Not to mention rampant staph
18 infections. All of these could be attributed to
19 improper wastewater treatment, among other things.

20 Now, our population is already overburdened
21 with this current wastewater treatment. And we're
22 asking for another 10 years. I just -- if you look at
23 this map for a second, this is a -- all the colored
24 areas are proposed new developments in accordance with
25 the -- with the 2030 plan. So as you can see, our

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1 population is gonna be hugely, massively increased, but

2 this would all be happening during this time that this
3 -- this 10 years. So I'm not sure how you can say that
4 under the -- that we'll be able to stick with the
5 current standards with increased population.

6 In addition, I'd like to say that, you know,
7 clean water is a -- is a global challenge and a key
8 concern in many industries.

9 The nitrogen produced is responsible for
10 uncontrolled algae blooms. Virtually, the high cost for
11 waste disposal, mostly can be attributed to not having
12 enough power. Because the cleaner the water needs to
13 be, the more power that gets consumed.

14 So I took the time to do a little bit of
15 research. And I found this company that does fuel cell
16 energy which, basically, what they do is they do a
17 direct full -- a direct fuel power plant and they use --
18 recycle the sludge and create batteries that not only
19 power all the necessary -- the electricity needed to
20 create 100 percent clean water, but, also, they give
21 power back to the community.

22 So as I -- as I go back down, I would like to
23 give you some -- some of these.

24 In -- in closing, I would like to say that
25 Hawaii's coral reefs, on Maui and elsewhere, have an

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1 exceptionally high biodiversity. They don't -- it's not
2 just fishing, but it's also an integral part of our
3 economy, with -- with tourism. And we can't afford to
4 kill the goose that laid the golden egg like that.

5 And so, with that, I'd just like to thank you
6 for your time in coming here tonight. And I'll drop
7 these off.

8 (Applause.)

9 HEARING OFFICER ALBRIGHT: Did you want to
10 submit the map as part of your testimony?

11 MR. RAMONE: Yeah. Thanks. Thank you very
12 much.

13 HEARING OFFICER ALBRIGHT: Okay. Thank you
14 for those comments, Mr. Madden.

15 And the next speaker is Hannah Bernard.

16 MS. BERNARD: Hi, again.

17 I will pass out my written testimony after I
18 speak since I don't have enough for everybody right now.

19 I do have two hats that I'm wearing tonight.
20 I am representing the Hawaii Wildlife Fund, and this
21 nonprofit organization is a member of the DIRE
22 Coalition, and the Ohana Coalition, Maui political
23 action committee.

24 So, first, I'll share -- basically, what I
25 have to say is ditto to what Jeff Schwartz said, and

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1 most of the other speakers.

2 Once again, I just wanna thank you so much for
3 this second opportunity on Maui. And especially for the

4 earlier opportunity to have the exchange. We -- we --
5 the DIRE Coalition, as you know, really lobbied for
6 that. And we really appreciate your willingness to be
7 here for that. That meant a lot to us. And it helped
8 us a lot.

9 I also would like to have -- take this
10 opportunity to say a special mahalo to our Mayor Tavares
11 in the audience for her leadership in this issue, for
12 her willingness to step forward and support reduction in
13 the 10-year permit process, and finding ways to reuse
14 the water rather than having it go down the injection
15 wells.

16 (Applause.)

17 MS. BERNARD: We really appreciate her.

18 (Applause.)

19 MS. BERNARD: So, you know, it was nearly a
20 year ago that we stood before you and voiced our
21 opposition to having another 10-year permit for the
22 injection well in Lahaina.

23 And as you know, millions of gallons of
24 wastewater continue to flow down into the injection well
25 and seeping -- eventually, they'll seep into the ocean

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1 during this time. And I would just like to reiterate
2 that we don't have time. And you folks know this. And
3 folks in the audience know this. We don't have time to
4 -- to waste.

5 We cannot support the proposed revisions to
6 the permit as you represented them. Even though the
7 burden of proof under the Federal Administrative
8 Procedures, the Federal Safe Drinking Water Act, and the
9 Hawaii State Constitution is on the applicant, County of
10 Maui, for the renewal of the underground injection well
11 permit, not -- not those of us who oppose the issuance
12 of this permit, we've prevented -- we've presented more
13 than enough documentation, both legal and scientific, to
14 persuade the EPA, and the County of Maui, as a public
15 trustee, that this permit should be modified, at least
16 according to the DIRE Coalition's suggestions.

17 And that this situation is urgent. It impacts
18 our reefs, possibly our own health, our quality of life,
19 and our way of life. So we definitely, Hawaii Wildlife
20 Fund, support the expanded DIRE Coalition testimony
21 given by Jeff Schwartz, and -- and even the 15-page
22 document that he submitted to you as well.

23 I've also attached to my testimony the two
24 pages that he read to you. Just to reiterate, we're
25 proponents of that testimony and -- and participants in

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1 the coalition.

2 We agree with the basic four principles that
3 he's already shared, and so have several of the other
4 members. And I'm just gonna quickly go over them for
5 the record.

6 We wanna see reductions of nitrogen and
7 phosphorous levels and effective disinfection of the
8 pathogens, effective monitoring of ground and ocean
9 water quality, on bio impact, and public reporting,
10 within one year, development and submission to the
11 public and the EPA of a detailed plan, with benchmarks
12 of progress for design, financing, construction,
13 operation of necessary treatment upgrades and water
14 reuse facilities. And, finally, phase out the injection
15 wells as soon as possible, but in no event later than
16 January 1, 2015.

17 So, once again, thank you for much for you
18 being here and for working with us. And we look forward
19 to working with our Mayor, who's already demonstrated
20 her willingness to support our wishes on this issue.

21 And I'm just gonna quickly go over the Ohana
22 Coalition testimony, which is very similar.

23 The Ohana Coalition welcomes you to Maui. We
24 deeply appreciate your coming to explain the terms and
25 conditions of the Draft UIC Permit and to consider

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1 community input on the issue.

2 The Ohana Coalition is a political action
3 committee formed in 2002 by citizens of Maui County,
4 including, already mentioned, our beloved kupuna, Ed
5 Lindsey. It was formed to serve the best interest of
6 the people and the `aina. And since then, we have been
7 active in each election, raising public awareness on
8 issues, promoting candidates who meet our criteria and
9 reaching thousands of voters. Our mission is to support
10 the election of ethical government representatives who
11 are committed to protecting the culture and the
12 environment and promoting sustainability, social
13 justice, education, and island-style small-town living
14 for Maui. The Coalition also communicates with elected
15 officials about relevant community issues.

16 The issue of injection wells was featured in
17 our discussions with candidates in the last election.
18 We asked them where they stood on the issue of
19 transitioning from injection well disposal to reuse of
20 treated reclaimed water. And I want to emphasize
21 "treated reclaimed water." This matter is of great
22 concern to our group and, obviously, our community.

23 So at present, we understand that one
24 committee chair of the Maui Council is drafting
25 legislation to submit to the Council which would phase

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1 out injection wells for all of Maui County. And, also,
2 once again, that Mayor Tavares announced, in May, her
3 goal of 100 percent phaseout of injection wells and
4 recycling reclaimed water at Maui wastewater plants.

5 And although she did not specify that -- that
6 she also could commit to the end of injections wells in
7 five years, we support her intention to have a plan in

8 place and bring our community together to formulate ways
9 to -- to reduce injection well water. We do need an
10 expedited timetable. And, once again, feel like one
11 year is pretty much the maximum we need to work on this
12 plan. A five-year term for the permit is something that
13 we agree with and not -- not another decade.

14 If it is not feasible to end injection
15 practices in five years, then the Ohana Coalition would
16 ask for reductions in nitrogen loading and injectate
17 rates during that five years, toward the ultimate goal
18 of eliminating underground injection as a disposal
19 option. Every small amount of reuse is better.

20 I'm gonna skip over some of it. It's been
21 already stated by a number of the other participants who
22 testified, some a bit redundant.

23 Once again, we're concerned about the amount
24 of nitrogen that is already going to be percolating
25 through the groundwater and into the reefs.

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1 So, once again, the Ohana Coalition wants to
2 see a strong water quality monitoring plan with
3 information accessible to the public as part of the
4 permission -- permit conditions.

5 With regard to funding, more and more housing
6 and commercial development is being proposed, as you
7 already heard, for West Maui. And most of it will
8 depend on the present treatment facility. So having
9 that cap on the nitrogen that was proposed is at least a
10 good start.

11 The County should have a plan in place also to
12 use these -- to use new user fees to help fund a
13 transition to cleaner and more efficient use of treated
14 effluent.

15 So, once again, on behalf of the Ohana
16 Coalition, Maui Steering Committee, of which I am a
17 member, mahalo for coming to Maui and giving us this
18 opportunity.

19 (Applause.)

20 HEARING OFFICER ALBRIGHT: Thank you for those
21 comments. I just want to make sure we have what you are
22 submitting. Okay.

23 The next speaker is Shawn Reid. Is Shawn Reid
24 here?

25 MR. REID: Halfway.

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1 Aloha. My name is Shawn Reid. I'm a citizen
2 of the land, a child of the sea.

3 And I would like to thank you for everything
4 that you've done so far today in reviewing the permit
5 and making revisions.

6 However, I'm slightly upset that there's so
7 much emphasis on the drinking water and ground surface
8 water, and not the reefs. You're gonna hear more
9 testimony tonight regarding the reefs. I read the

10 document online, it was 108 pages. Every testimony on
11 there was regarding the reef. And I'm really
12 disappointed that the revisions haven't been put into
13 place in the new permit, application requirements that
14 address more of those concerns.

15 I echo everything that everybody here has
16 said, is going to say.

17 You know, I wanna thank all you, too. You
18 fill my heart, definitely. Thank you so much for coming
19 out here and being a part of this process. It's
20 important.

21 With that being said, I know that, you know,
22 your jobs are -- you have to follow laws and regulations
23 and standards that are put into place by law.

24 The UIC -- I believe it's UIC Permit, okay,
25 it's about injection wells. I also -- I would like to
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1 see more revisions put in place for a five-year maximum.

2 We're looking at 15 years now from the last
3 time, right? Okay, 10 years. Five years from now, so
4 we're almost at 15 years, I believe, since the last
5 permit.

6 So five years, get rid of all the -- all of
7 them. I want to see a president -- a precedent set.

8 Teri said that she was concerned about
9 precedent being set here for injection well permit
10 renewals. Those things need to be phased out
11 completely, especially on an island. They may work on
12 the mainland somewhere, but we're a reef system, a
13 continental shelf system, on the coastline. They do not
14 work here. They have not worked here.

15 I know on the north shore of Oahu, four more
16 or five hotels are planned. And they're also requesting
17 that a injection well treatment plant be allowed for
18 that. If the State is here, I'm asking you to take a
19 look at that, deny that, whatever, at all costs, come up
20 with a different method.

21 And I don't have written testimony. I'm
22 speaking from my heart. And I'm asking you to do the
23 same, think with your heart. I know you have to follow
24 the rules and regulations. And please do whatever you
25 can, also, to bring the laws and regulations up to
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1 today's needs.

2 One other gentleman said we have a lot more
3 buildings coming in or wanting to come in. Our
4 infrastructure can't hold what we have now. And they
5 put up another monstrosity across the street -- right
6 across the street from the current treatment plant.

7 That, luckily, one good thing coming out of
8 this crisis of -- of economics, is that they don't have
9 all those units sold and filled. Someday they might.
10 And the current treatment plant that we have right
11 now -- I'm speaking overall treatment plant, not just

12 injection -- also needs to be reviewed and looked at.

13 So thank you again. And thanks.

14 (Applause.)

15 HEARING OFFICER ALBRIGHT: Thank you,

16 Mr. Reid, for those comments.

17 And the next speaker is Russell Sparks.

18 MR. SPARKS: Good evening. And thank you for
19 coming back again.

20 My name is Russell Sparks. And I'm
21 representing the Division of Aquatic Resources,
22 Department of Land and Natural Resources.

23 Last time you guys came, I thanked you and
24 expressed the fact that I'm normally in that seat
25 listening to the public. And what was interesting is,

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1 shortly after you left, I was in that seat, listening to
2 the public again. And I heard a very strong message
3 from many people in the public that they were not happy
4 with us for always picking on fishermen and fish.
5 Unfortunately, the same way you explain your
6 jurisdiction and legal authorities is the same way that
7 I felt.

8 But I -- I did comment to a lot of people in a
9 lot of discussions in the past, that our division is --
10 is committed to working out holistic approaches to
11 better managing the nearshore reef environment.

12 Coral reefs are very complex, probably a
13 little more complex even than the bureaucracy and the
14 working arrangement of the EPA. Maybe just a little
15 bit.

16 On a very simplistic note, however, coral
17 reefs can be broken down, or at least reef degradation
18 where -- associated with problems with algae, can be
19 broken down to things that control the growth of the
20 algae, fish, grazing, sea urchins, things of that sort,
21 and things that promote the growth of algae. And a
22 simple -- or explanation there is nutrients, oftentimes
23 coming from land.

24 The reefs off of the Lahaina Wastewater
25 Reclamation Facility have experienced somewhere around

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1 50 percent coral decline since we've been monitoring it,
2 since 1994. The Department decided to do what we could.
3 And we took measures to protect grazing fish, to help
4 control the algae. And not everybody may be aware, but
5 that rule was actually passed and was effective July 25,
6 2009.

7 (Applause.)

8 MR. SPARKS: But that, as I said, is only part
9 of the problem. And we do not expect the reef to come
10 back if we're not able to address this holistically.

11 And so we really do need measurable steps taken to
12 reduce the factors that promote algae growth and
13 degradation, i.e., land-based nutrient loads.

14 I'm not gonna read everything because we're
15 going to go on all night here, but I wanted to mention
16 something else that is kind of important.

17 The Division of Aquatic Resources Coral
18 Program is funded by the United States Coral Reef Task
19 Force. Okay. Your EPA Administrator does sit on that
20 task force as well. The funds that they give the State
21 to better manage and reduce coral reef loss has been
22 prioritized for two areas in the State of Hawaii. One
23 of those areas is, in fact, the reefs at North
24 Kaaupali. So there will be a fair amount of research
25 and priority put to this very reef to further study it

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1 over the coming years. And we fully expect that there
2 will be a fair amount of natural etching as well.

3 This is good, I think. Hopefully, this will
4 help for the problem we've discussed about, within the
5 EPA, within the State Department of Health, even within
6 the County, willingness to really get together and
7 address this holistically and deal with the overall
8 problem.

9 With all of this in mind, I offer the specific
10 recommendations. The protocols for the Underground
11 Injection Control Program within the EPA and the Hawaii
12 State Department of Health need to be modified so as to
13 assess impacts to Hawaii's coastal waters. The Clean
14 Water Act, in addition to the Safe Water Act, must be
15 considered when regulating existing and future injection
16 well permit applications.

17 We applaud the efforts that you've made, that
18 the EPA has made, in implementing permit -- or
19 attempting to implement permit conditions to regulate
20 all the nitrogen loads and wastewater injectate volume.
21 We're particularly happy with the efforts to encourage
22 wastewater reuse by requiring treatment of all
23 wastewater to R-1 standards, and by gradually reducing
24 permitted levels of daily nitrogen over the -- over the
25 course of the permit's 10-year time period.

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1 We feel, however, that the draft permit
2 conditions do not go far enough. And we offer the
3 following specific suggestion.

4 Currently, the County injects between three to
5 five million gallons a day, average's around 3.34. This
6 data comes from 2006 to 2008. The draft permit would
7 allow for daily rates of seven million gallons per day,
8 whereas we're currently averaging 3.34. It would even
9 allow for maximum daily limit of 10 million gallons. We
10 feel this allowed average injection rate should be
11 capped at no more than what is currently being injected,
12 four to five million gallons per day.

13 Furthermore, we feel it's appropriate to
14 implement stage reductions in injectate volume over
15 time. At the very least, we would like to see the

16 permit conditions set as to prevent any further
17 injection volumes from current levels.

18 Although much concern has been placed on
19 nutrient loads, marine scientists have also expressed
20 concerns that high volumes of fresh water entering
21 marine ecosystems can alter water chemistry and
22 adversely affect coral reef health. This concern is
23 especially important in areas where coral reefs have
24 evolved in the absence of natural fresh water or, at
25 least, significant fresh water. Real short, you can

0053

1 change the chemistry of the water, change the pH, and
2 adversely impact the way corals fix calcium and build
3 the skeleton that supports 'em. Reefs off of Lahaina,
4 or outside of the wastewater injection facility, are
5 collapsing on themselves. We feel this could be one
6 reason why.

7 Currently, the wastewater treated at the
8 wastewater facility has an average total nitrogen action
9 level of 6.87 milligrams per liter. The draft permit
10 would allow this to be a 10. We suggest the permitted
11 total nitrogen action level be capped at 7, with permit
12 conditions set to further reduce this over time.

13 Currently, the facility injects total daily
14 nitrogen loads of about 192 pounds per day. And monthly
15 loads that average about 5,788. Your permit conditions
16 limit these loads at levels well above these current
17 levels.

18 The draft permit conditions required to be
19 implemented in December 31st, 2015, are actually about
20 where we're at today. So we suggest that the permitted
21 caps, the maximum daily nitrogen loads, be set at the
22 current levels, and that further reductions be required
23 by the year 2015.

24 The current 10-year permit timeframe is too
25 long. Science and technology is rapidly increasing our

0054

1 ability to identify wastewater plumes and to measure
2 their impacts on natural aquatic ecosystems.

3 The designation of the North Kaanapali area
4 has a priority research site for the Hawaii Coral Reef
5 Program, will likely increase our understanding and
6 impacts from the facility. As new information is
7 gathered, the EPA needs to be able to apply these
8 findings as quickly as possible. We suggest the permit
9 timeframe to reduce to no more than five years. And
10 just so happens, that seems to be the timeframe
11 everybody else is talking about tonight. So our stars
12 must be all aligned.

13 Just -- just in -- in concluding, the -- we
14 appreciate the willingness of you folks to continue to
15 come back and hear from us, continue to work towards
16 permit conditions to help reduce impacts of Lahaina
17 Wastewater Reclamation Facility.

18 We applaud the Mayor's testimony tonight. The
19 reality of the world, however, is that if there is not
20 real conditions to ensure this, I'm afraid political
21 winds may change, and things may never ever get funded
22 and done. So we really need the County to work together
23 with the EPA, with the Department of Health, and with
24 all of the citizens of Maui to -- to really work forward
25 to that goal of reducing or eliminating completely

0055

1 injection wells and using that water for a reuse.

2 Thanks again for coming.

3 (Applause.)

4 MR. SPARKS: I have a copy. I think you got
5 one in the mail, but I'll leave it with the reporter.

6 HEARING OFFICER ALBRIGHT: Is that -- Russell,
7 is that your letter, the August 13th letter?

8 MR. SPARKS: Yes.

9 HEARING OFFICER ALBRIGHT: Okay. Thank you
10 for those comments.

11 Okay. The next speaker is Lucienne de Naie.

12 MS. De NAIE: It's a tall person.

13 Thank you. Lucienne de Naie, once again,
14 speaking on behalf of Sierra Club, Maui Group.

15 Well, I'm really glad that we had that earlier
16 session. That was so helpful to try to get questions
17 answered. Because, you know, for the average citizen,
18 this is a very complex and convoluted process. And the
19 more we can understand, the more we can have some sort
20 of solution where everybody can, you know, put their
21 ideas in the same direction rather than just arguing
22 about details, because nobody understands what is going
23 on. So mahalo nui loa, as we say here.

24 The Hawaii Chapter of the Sierra Club has a
25 long history of working with the EPA to improve water

0056

1 quality in our fresh water and marine environment. In
2 fact, we've been at it in Honolulu, I think, for 15, 18,
3 20 years, something like that. The Maui Group of the
4 Sierra Club is part of the state-wide chapter. And I'm
5 the vice president of the State Chapter and I'm also a
6 member of the Maui Group. Sierra Club is also part of
7 the DIRE Coalition.

8 And at the November EPA hearing last year
9 here, we presented testimony in support of setting a
10 specific timetable for conversion of the injection well
11 disposal system at Lahaina into a system which allows
12 all reclaimed water to be processed to a level that
13 meets State and Federal standards for reuse.

14 Now, we also supported the UIC Permit,
15 including conditions which require planning and
16 implementation of the infrastructure that's gonna be
17 necessary to deliver the plant's reclaimed water to
18 non-potable use in extremely water-deficient West Maui.
19 So we're grateful that the EPA's staff has returned to

20 Maui for an update before final decision is made on this
21 permit and its conditions.

22 Like others before us, we do support the
23 shorter timeframe for the permit. In part, because we
24 all wanna stay involved. And, you know, we're glad to
25 hear that the Mayor feels that that would be reasonable,

0057

1 too.

2 You know, it's like government and the public
3 work together. It's hard for the government to do
4 things without knowing that there's public support and
5 public involvement. And it's hard for the public to
6 give that support and involvement if there is no
7 opportunity to learn what's going on.

8 So you're our opportunity. So we -- we are
9 grateful for that.

10 Well, Sierra Club Maui was among the earliest
11 groups to question the assumption that injection of
12 nutrient-rich waters into the nearshore waters of
13 Maui -- of West Maui would have no effects. Now
14 scientific studies have come to support the presence of
15 those same nutrients in the algae that's smothering West
16 Maui reefs in the immediate vicinity of the Lahaina
17 injection wells.

18 And I, for one, in 1995, was pushing to see if
19 we could get Earth Justice to sue you guys, you know.
20 And I have to admit it, because we were just so
21 disgusted by what was happening with our waters.

22 Well, it hasn't gotten any better, but I think
23 our -- our conditions between government and federal
24 regulatory agencies are improving. So I have little
25 hope for the future.

0058

1 We are in full support of Mayor Tavares'
2 stated goal to have a solid practical plan to phase out
3 the injection wells and use the water in all of Maui's
4 wastewater facilities, to -- to reuse it. This sensible
5 strategy can help alleviate water shortages and return
6 the valuable resource to a more natural ecological
7 cycle.

8 And this is very important. I mean, it is not
9 the natural cycle for all this water to be gathered from
10 our streams and our underground aquifers and then sent
11 out in a different state out into the ocean. This isn't
12 what nature does. Nature does send water out into the
13 ocean, but it sends it out with different stuff than
14 what we're doing here.

15 So the more that we kind of go against nature,
16 the more problems we're going to have, that then we have
17 to spend money and time to clean up. We would like to
18 avoid that part of the puzzle here.

19 One thing is very clear. It's time to act.
20 And we are counting on the EPA, the watchdog of our
21 irreplaceable natural resources, to lead the way.

22 Now, we don't know -- you know, Sierra Club,
23 too, like other members of DIRE, we've not analyzed the
24 Mayor's plan. It's my understanding that there aren't
25 any operant algae-to-energy plants that -- right now

0059

1 that we can, you know, point to and say, hey, yeah,
2 that's really a great thing. They're all like in the
3 experimental stage. So that might be where we go, but
4 it may not.

5 However, I think it's very good that the
6 Mayor's convening a task force. I would urge this task
7 force to have a very finite timetable.

8 And I'm just saying this -- you know, I'm an
9 old battle veteran here. I remember years ago when the
10 Iao Aquifer was being overpumped. This is 1995, 1996,
11 1997. And a group of citizens appeared before the Water
12 Commission and say, you know, you're gonna decimate this
13 aquifer, you know, it's being degraded. And, oh, no,
14 no, no, a task force was proposed. Well, guess what?
15 All we did was see our chlorate levels get higher and
16 higher over the five years that that task force
17 operated. And, finally, we had to sue and get
18 designation as the eventual result of that.

19 So task forces are great, but let's make sure
20 that they're really directed and that they have some
21 goals that they have to meet. And we're not back here
22 five years from now saying, well, the task force tried
23 this and tried that, and we're still injecting a lot of
24 nitrogen into the ocean.

25 So I believe the Mayor has, you know, a good

0060

1 effort here, but I just wanna put that caveat in. You
2 know, we all need to be aware we don't live in the
3 perfect world. So let's give a little nudge.

4 Now, Maui's reefs, as you probably know, are
5 extremely important to Hawaiian cultural practices. And
6 these practices are protected under Article 12, Article
7 12, Chapter 7 of the State's Constitution. In fact,
8 there's no action that can really legally take place in
9 this state that has a deleterious effect on Hawaiian
10 cultural practice. Now, this ain't what happens all the
11 time, but it is the law.

12 And you may be familiar that in the Creation
13 Chant that the Hawaiian people have, that tells about
14 the evolution of the Hawaiian islands, the very, very
15 first life form to emerge is the coral polyp. It is the
16 building block of all life for the Hawaiian view of the
17 world.

18 And traditional Hawaiian land management
19 considered the actions from the summit all the way to
20 the reefs, not to the edge of the shore, but all the way
21 to the reefs. So we feel, you know, if we're gonna give
22 lip service that we live here in Hawaii and we respect
23 Hawaiian culture, we need to look at our actions from

24 the summit to the reefs, whether they're an injection
25 well or a grading permit. We cannot stand by and watch
0061

1 while one of the cornerstones of Hawaiian culture is
2 degraded to the point of lifelessness simply because
3 change comes with a price tag. We need to figure out a
4 way to meet that price tag.

5 Maui's reefs are also an integral part of the
6 island's economic infrastructure. A Sierra Club survey
7 done of 1,000 randomly selected visitors in 1998 found
8 that swimming in ocean waters and observing reef life
9 was the activity most drawing visitors to Maui. A
10 similar survey by the Hawaiian Tourism Authority, in
11 2006, found exactly the same response. This is why
12 people come. It's such a unique experience to swim in
13 warm, hopefully clean, water and see this amazing world
14 under the surface, on our reefs.

15 We, at Sierra Club, have used the courts for
16 years to seek compliance with the Clean Water Act
17 policies and provisions. And we note that a group of
18 citizens in Maui recently got impatient and filed suit
19 to compel the County to phase out injection wells in
20 South Maui and to create infrastructure to distribute
21 reclaimed water. We were approached to consider
22 becoming part of this suit, the Sierra Club was, but we
23 felt there were better opportunities to work in
24 partnership with Mayor Tavares' administration and the
25 EPA to achieve the same goals through a collaborative
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1 process.

2 So I just wanna state this for the record, you
3 know. But we wanna see something happen here because
4 Sierra Club is famous all over the nation for suing on
5 sewage treatment plants. San Diego, you name it, you
6 know, you name it, they've sued. We don't wanna go that
7 route, but we wanna see something happen.

8 Based on the stated intentions of the Mayor
9 and her administration, we ask the EPA to craft a
10 shorter term permit with strong benchmarks and
11 conditions that will result in support for turning good
12 intentions into sound actions.

13 The draft proposal does not currently meet
14 this need. Please keep in mind that between 3,000 and
15 6,000 new residential units and scores of new commercial
16 units are being supported by County planners to be built
17 in the West Maui area as part of our new General Plan
18 Urban Growth Boundary. This does not even take into
19 account the thousands of units that could also be built
20 on Hawaiian Home Lands parcels that flank the Kaanapali
21 area. They're just on either side of the sewage
22 treatment plant area, and will not be subject to any
23 County review. All of these are likely to be depending
24 on this treatment facility. Not all, but the majority.
25 And these units will be constructed over the next 20

0063

1 years and are a potential source of funding for repaying
2 bonds which may be necessary to finance improvements
3 needed in Lahaina, to make the changeover from injection
4 wells to high-quality recycled water. If there was no
5 vision and no plan to make this change, every new unit
6 will just become part of the problem rather than part of
7 the solution.

8 So we ask this agency to craft a permit that
9 gets answers to the tough questions regarding the
10 treatment plant's compliance with Clean Water Act rules.

11 We note that the nearshore waters around
12 Honokowai Stream, which is just a few thousand feet from
13 where these injection wells are, are listed as impaired
14 on the State's 303D list. We can and must do a better
15 job of protecting our marine and fresh water resources
16 and the public health that depends on them through the
17 current permit process.

18 We ask that the permit address the following
19 concerns:

20 A clear transition plan, in a timely manner,
21 to deal with physical, infrastructure and economic
22 aspects of ending the injection of wastewater, and
23 producing and distributing reclaimed water, and specific
24 benchmarks and timetables to set incremental goals
25 during this transition process.

0064

1 We also support the reduction of nitrogen and
2 phosphorous levels in affluent during the phaseout, and
3 state-of-the-art treatment testing and monitoring for
4 pathogens.

5 This is a must. We hear complaints all the
6 time. Robin Knox is not making this up. This is a fact
7 of life here. It's a dirty little secret. People are
8 getting sick from swimming in our waters, people that
9 have to spend a lot of time in the waters. So they're
10 boat captains, they're scuba dive leaders, they're
11 surfers, they're people who, you know, just like to
12 snorkel every morning. And it's not fair. And it's not
13 right. We're the health state. And we got to do
14 something about it.

15 We also support improved and continuing
16 monitoring the ground and ocean water quality.

17 So we look forward to working with the EPA and
18 Maui County to find the best ideas, technologies and
19 sources of funding to make 100 percent reuse of Maui's
20 wastewater a practical reality. Hopefully, we'll go a
21 long way in the next five years.

22 Thank you.

23 (Applause.)

24 MS. De NAIE: By the way, I'm not gonna turn
25 this in, but 50 other people who couldn't be here signed

0065

1 a petition saying they more or less support these same

2 things. I'm gonna Xerox these and mail them to you,
3 because I wanna keep touch with these people.
4 HEARING OFFICER ALBRIGHT: Okay. Thank you
5 for those comments.

6 The next speaker is Ke`eaumoku Kapu.

7 MEMBER OF AUDIENCE: Not here.

8 HEARING OFFICER ALBRIGHT: Okay. And Vilani
9 Kapu.

10 MEMBER OF AUDIENCE: Not here.

11 HEARING OFFICER ALBRIGHT: Then Darla White.

12 MS. WHITE: Aloha. As you mentioned, my name
13 is Darla White. I am testifying this evening on behalf
14 of myself.

15 I have been a coral reef research diver here
16 in Hawaii for nearly a decade now. I currently work for
17 the Division of Aquatic Resources here on Maui and
18 collaboratively with the University of Hawaii's Botany
19 Group to conduct research on the reef at Kahekili.

20 I know I speak on behalf of the greater island
21 community when I say mahalo for the time and attention
22 the EPA has given to the revision efforts of the Lahaina
23 UIC Permit. There has been substantial positive
24 progress towards incorporating the concerns of the Maui
25 community. And we sincerely thank you.

0066

1 However, there's a lot more that can be
2 accomplished. And I hope that the EPA and the County
3 will commit to a plan to move forward towards reduced
4 wastewater injection, reduced nitrogen, disinfection of
5 the injectant, advanced treatment, and increased water
6 reuse under the revised permit.

7 The reef at Kahekili, as you may well know by
8 now, is -- it's in trouble. It's been declining at an
9 incredible rate. A lot of time and money and manpower
10 have been dedicated to try to understand what's going on
11 and implement measures to save it.

12 The university, federal and state researchers
13 have spent an inordinate amount of effort trying to
14 collect data and understand the complexities of the
15 reef's deterioration. And they've done a great job in
16 furthering our knowledge of the impacts there.

17 In addition -- this is just gonna echo what
18 Russell said a moment ago. The new Kahekili Herbivore
19 Fisheries Management rule that was designed to help
20 reduce the algal threats, and recently signed into law
21 by the governor, the Hawaii Coral Program and the U.S.
22 Coral Reef Task Force has identified Kahekili as the
23 number one priority site in the main Hawaiian islands.
24 That's pretty big stuff. Scientists from NOAA and
25 Scripps are starting to come here to design and

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1 implement new research strategies because this area is
2 so incredibly important.

3 We have a few of them sitting right over

4 there, all the way from Scripps.

5 This ecosystem is in peril. And any
6 successful recovery will depend on efforts to remove
7 impacts of land-based pollution, a major component of
8 which has been identified as wastewater intrusion. We
9 note that the current levels of wastewater are too high.

10 One of my primary concerns, being one of the
11 people that always works there and gets sick all the
12 time, is the antibiotic resistant pathogens, things such
13 as endocrine receptors and toxic and hazardous compounds
14 that are found in wastewater. I know that there's
15 probably a lot I don't understand as far as definitions
16 and semantics goes, but if it's hazardous and toxic by
17 any standard, it should be considered.

18 I would like to see the UIC Permit address
19 this issue for the health of the public and the
20 nearshore environment. The levels of toxins and even
21 nitrogen in the environment, even at acceptable levels
22 for people, can be deleterious to more sensitive
23 organisms such as corals. Several coral diseases to
24 date have been linked to land-based pollution. And I
25 can tell you there is a lot of coral disease at Kahekili

0068

1 and a lot of reefs around Maui.

2 I personally have also had MRSA seven times,
3 three of which have been confirmed by hospitals, with
4 one minor surgery. MRSA is not fun. And I have a
5 number of colleagues and friends who are also water
6 researchers, water people, who are constantly getting
7 sick. And if you haven't had this before, it's just not
8 fun. It's a super bug.

9 Public health and safety is a very important
10 issue here, and so is the health of the marine
11 organisms. Testing needs to be done and treatment needs
12 to be consistent with potential health threats. We know
13 enough to take action and enact better requirements.
14 The Clean Water Act is applicable here.

15 I want fishable, swimmable waters that support
16 my personal health and the health of the coral reef
17 ecosystem.

18 I would also like to ask for accountability
19 for the environmental monitoring as an aspect of the
20 permit for injectant as well as reuse. This could come
21 in several forms, such as working collaborative --
22 collaboratively with state, federal and university
23 institutions. The fate and transport of pollution,
24 including nutrients, pathogens and toxins, needs to be
25 monitored and accounted for.

0069

1 The burden of proof should not always be on
2 the scientific community to define causal connections
3 when an ecosystem is headed towards collapse. It should
4 be on the polluter to demonstrate where it is going and
5 it is not causing a problem.

6 Again, monitoring is needed for reuse as well
7 as injectant.

8 There's much too much to cover, so I would
9 like to state my emphatic support for the testimonies
10 provided this evening and in writing by the Hawaii DLNR,
11 Division of Aquatic Resources, the DIRE Coalition, Robin
12 Knox, Meghan Dailer and Liz Foote, who have yet to
13 testify, but you'll hear them.

14 And thank you again for your time.

15 I would also like to thank Mayor Tavares for
16 her willingness to commit to reuse of this important
17 resource. I know that it is an achievable goal. And
18 with a political will, it will succeed.

19 Thank you again.

20 (Applause.)

21 HEARING OFFICER ALBRIGHT: Thank you for those
22 comments.

23 Did you want to submit something in writing or
24 were you -- oh, you did. Okay. I'm sorry about that.
25 Thanks.

0070

1 Liz Foote.

2 MS. FOOTE: Hello. Thank you. Thanks for the
3 chance to provide my testimony. I'm Liz Foote. And I'm
4 testifying as an individual, but I do serve as the
5 Hawaii Field Manager for the Coral Reef Alliance, as the
6 Executive Director of the project S.E.A.-Link.

7 I would like to state that I support the
8 testimonies of DIRE Coalition, the Hawaii DLNR Division
9 of Aquatic Resources to address many of the details that
10 have been brought up here today by others, so I will not
11 waste time by repeating those now. However, I do want
12 to take this opportunity to make a few general comments
13 that I feel are necessary in these deliberations.

14 First, I recognize that this is a complex
15 issue, that there are a lot of factors involved, such as
16 feasibility and cost. However, I think that the science
17 as well as the local community have demonstrated that
18 the issue of injection wells and wastewater treatment
19 needs to be addressed sooner rather than later.

20 The main thing I'd like to speak about today
21 involves the nature of science and its role in forming
22 political action.

23 When we say that management decisions need to
24 be based on the best available science, that has a lot
25 of implications. What it should not imply is that a

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1 particular question must be proved in order to justify a
2 particular decision. The reality is nothing can ever be
3 proved through scientific processes; scientists can only
4 fail to disprove something. And in doing so,
5 methodology is constantly refined and improved, and
6 supporting evidence is gathered so that a more thorough
7 understanding can be achieved.

8 It's also important to note that marine
9 ecological processes are complicated and dynamic. It is
10 often difficult to develop effective methodologies, to
11 conduct the sampling necessary for question-driven
12 research. Many interrelated factors may be at work and
13 are difficult to tease apart due to all sorts of
14 constraints and confounding factors. Science is an
15 adaptive process and is constantly refining itself.

16 In addition, an absence of studies and
17 significant data don't necessarily imply the absence of
18 a particular condition; it only indicates a study may
19 not have been conducted or that they are still in the
20 process. Research activities and peer-reviewed results
21 are themselves constrained by funding, agency
22 priorities, research available, technology and so forth.
23 A key responsibility of science is to inform the
24 rulemaking process, but the presence or absence of data
25 should not be the sole determinant factor.

0072

1 In this case, I do believe we have some
2 compelling evidence from the University of Hawaii Botany
3 Department and DIRE that demonstrates the impact of
4 injection wells and provides support for mitigative
5 action. I absolutely applaud those scientists who are
6 willing to stand up for their data -- you know who you
7 are -- and get involved in shaping public policy.
8 Science often needs translating. And we need to look to
9 those who have carried out the studies for clarification
10 and assistance when applying their findings.

11 In closing, the many human-induced threats
12 that impact reefs are interconnected and will all need
13 addressing in a concerted effort between community
14 stakeholders and resource managers. Addressing the
15 injection wells is one part of what should be a
16 comprehensive data strategy to reduce all types of local
17 threats to our nearshore resources and to maintain our
18 water resources.

19 We should always seek to employ the
20 precautionary principle and base decisions upon a
21 combination of sound science, relevant anecdotal and
22 common sense, erring on the side of caution.

23 Thank you very much.

24 (Applause.)

25 HEARING OFFICER ALBRIGHT: Thank you for your

0073

1 comments.

2 Tamara Paltin.

3 MS. WHITE: She had to leave.

4 HEARING OFFICER ALBRIGHT: Victoria Martocci.

5 MS. MARTOCCI: Aloha. Good evening. My name
6 is Victoria Martocci. I'm a Lahaina resident. I'm here
7 tonight on behalf of the Maui Reef Fund. And thank you
8 for this opportunity to express our point of view.

9 The Maui Reef Fund is a group of

10 conservation-minded individuals, organizations and
11 businesses. That's right, you heard me,
12 conservation-minded businesses. We are part of the DIRE
13 Coalition. And I know I am so ecstatic to hear the
14 community's all in support of your working toward a new
15 plan here. And so I'm gonna go with the DIRE
16 Coalition's recommendations here, and spare us all a few
17 moments of our time.

18 So thank you very much. And thanks to the
19 Mayor for her recommendation. So thank you.

20 (Applause.)

21 HEARING OFFICER ALBRIGHT: Thank you for your
22 comments.

23 We have four more speakers who have signed up,
24 so we're doing pretty good here on time, I think.

25 Andrew Lehmann.

0074

1 MR. LEHMANN: Hi. My name's Andrew Lehmann.
2 I'm here tonight on behalf of myself.

3 I just wanted to testify that I'm really glad
4 the EPA is here because I really think that our
5 nearshore waters need some protection.

6 My case is that if I go in the water between
7 Launiupoko and North Kaanapali, I get staph. It's
8 gotten worse over the last 15 years. Initially, I could
9 just come home and put Neosporin on a cut or something
10 like that, and I'd be fine. In the last five years,
11 it's gotten to the point where I have to take
12 antibiotics at least five to six times a year. Right
13 now, I have staph right there that developed since
14 Sunday.

15 Sick case in point: I -- earlier this summer,
16 I went for a surf here in town. I had a small nick on
17 my shin, on this shin. And two days later, I left for
18 Australia. When I get off the plane there, my foot was
19 swollen and I had staph. I went to the doctor there,
20 was prescribed an antibiotic. And I asked that doctor
21 if I should stay out of the water. He said that's not
22 the problem, you can go in the water, just take your
23 antibiotics. And I spent a month there and got a few
24 cuts here and there while I was there, never developed
25 staph. I have been home for two weeks, I went in the

0075

1 water for the first time on Sunday, and I have staph
2 again.

3 So I think the thing about this is I have a
4 choice, I cannot go in the water here, which is pretty
5 much becoming the case, but the reef has no choice. And
6 it's being killed.

7 So I just really appreciate if you do
8 something to stop these injection wells because they
9 definitely have made this water unsafe for people. I'm
10 probably an extreme case, but it's gonna happen to
11 everybody soon. So anything you can do, we would

12 appreciate it.
13 Thank you.
14 (Applause.)
15 HEARING OFFICER ALBRIGHT: Thank you for your
16 testimony.
17 Next is Ellen Levinsky.
18 MS. LEVINSKY: Good evening. My name is Ellen
19 Levinsky. I've lived in Lahaina for 25 years.
20 I wanna thank you so much for coming here to
21 hear our testimony.
22 During my 25 years, I've been the adult taking
23 a lot of children out surfing and swimming. And I have
24 seen many cases of staph. From 25 years ago until this
25 year, they're constantly getting it. It's really sad to
0076
1 see. And a lot of the kids here don't have adequate
2 medical coverage, so a lot of times it keeps going and
3 gets worse and worse. And adults, also.
4 I've worked in many hotels on the west side
5 during this 25 years. And I've also heard different
6 guests, visitors, complaining about rashes and
7 irritation on their skin from swimming. And I've also
8 heard people in the hotels talking among themselves and
9 blaming it on what's in the water, whether it's been
10 runoff. Or, you know, every once in a while in the
11 newspaper, on radio, we hear there was a spill at the
12 sewage treatment plant, but none of it got in the ocean.
13 90 percent of the time, it always includes "didn't get
14 into the ocean." But where did it go? It goes down
15 into the soil, it's gonna filter into the ocean.
16 Also, driving up north, many times, I can
17 smell, going by the sewage treatment plant, which is --
18 always makes my kind of shudder going by.
19 The other point, with -- doing something
20 besides the injection wells is there's quite a few
21 communities in other states that recycle, reuse the
22 water, rather than just putting it through injection
23 wells. Here in Hawaii, we're dependent on the weather
24 for our fresh water, drinking water, bathing water,
25 water for the hotels, for their swimming pools, for the
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1 ponds and fountains, the farmers are dependent on it.
2 And it just seems to make so much more sense to recycle
3 that water, reuse it, instead of just injecting it and
4 it goes away.
5 Our water rates keep increasing. It's more
6 costly to get water. There's articles in the newspaper
7 about how the farmers, especially the taro farmers,
8 aren't having enough water for the crops. And if it's
9 possible to recycle this wastewater, then why not.
10 I was in Australia 20 years ago and went to a
11 golf course. And they said it was all recycled sewage
12 water watering the grass there. If we could, if nothing
13 else, use the water to water the golf courses here on

14 Maui. That would certainly save a lot of fresh water
15 usage.

16 So I wanna thank you for coming. And, also,
17 to everyone else who's testified, especially the people
18 with the scientific information. And, hopefully, we can
19 improve the water quality and conditions here on Maui.

20 (Applause.)

21 HEARING OFFICER ALBRIGHT: Thank you for your
22 comments.

23 Next speaker, Daniel Kanahele.

24 MR. KANAHELE: Aloha ahiahi, good evening,
25 representatives of the EPA and the State and the County.

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1 And mahalo nui loa, you know, for going the second mile,
2 for having this public hearing. Thank you so much for
3 the previous meeting, because I think it helped to give
4 the -- the public who attended a context for this
5 meeting and the parameters of your jurisdictional
6 authority.

7 I think that each of you here are, you know,
8 no doubt, very concerned about the environment, if not
9 passionate about what you do, Brent, Nancy, David,
10 Wendy, and Mr. Hew. And you're in a field where you can
11 do a great deal of good. And I'm sure sometimes it must
12 be very frustrating for you to not to be able to do
13 everything you would like to be able to do, but may be
14 constrained by budgetary or jurisdictional restraints,
15 regulatory restraints, what-have-you. And I can
16 appreciate that. And -- and I'm sure that you're very
17 sympathetic and empathetic to many of the testimonies
18 that have been given thus far.

19 And personally, I -- I -- I support the
20 testimonies. Many of the speakers, including Jeff
21 Schwartz from DIRE, and Russell Sparks and Robin Knox
22 and -- and some others, also.

23 Having said that, I -- I wish you could put on
24 your other hat for a second, the hat that tasks the EPA
25 with the protection of our aquatic wildlife and

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1 recreational uses of our surface water so that our
2 waters will be fishable and swimmable. Now let's
3 pretend you're wearing that hat for a second.

4 Now, I'm wondering how many of you here have
5 ever seen a drowning victim. Growing up here in Hawaii,
6 all my life, I have seen many drowning victims pulled
7 out of the water, out of the surf, male and female,
8 young and old. And some of them have been resuscitated
9 and saved. And some of them, unfortunately, haven't,
10 and the blanket is put over them and they're left on the
11 beach until someone comes to take away the body.

12 That is kind of the way that I think I and
13 many of us here are viewing our aquatic wildlife, our
14 pukua, the reef, and the marine animals that depend on
15 the reef, that they are in critical condition. And so

16 many of us are here because we're doing CPR on the reef.
17 We wanna do CPR on the reef. We're doing everything we
18 can on our aquatic resources to save them before they
19 are gone forever.

20 Because, sadly, once it is gone, in many
21 cases, it's gone forever. And it doesn't matter what
22 laws you have down on the books and regulations. Once
23 it's gone, it's gone forever.

24 Many of the deleterious effects to our reefs
25 are man-made. We are doing CPR, but maybe CPR isn't

0080

1 enough. Maybe we need a defibrillator. And maybe, for
2 some of us, we see the Clean Water Act as a
3 defibrillator that's going to save some of our aquatic
4 wildlife before it's too late.

5 You folks have a defibrillator and you have
6 the power to implement -- we're pretending you have that
7 hat on right now, okay -- the Clean Water Act. And so
8 we're coming to you as the voice of the people to bring
9 consciousness to what is happening here. Because we
10 believe that you're caring people.

11 And it will be hard for me to believe that
12 you're not gonna go back home and tell somebody
13 something, you're not going to take some of this emotion
14 back with you. I know you are. And I know -- and I
15 appreciate it ahead of time.

16 I would just like to conclude by saying, as
17 Lucienne de Naie talked about the creation story, it's
18 called the Kumulipo, it's the ancient Hawaiian story,
19 the Kanaka Maoli story of the creation of the world.
20 And in the genealogy of creation, the very last creation
21 is man, man, and we're the last ones. We're the
22 youngest siblings. And as the youngest siblings, we are
23 responsible for everything else that came before us; the
24 trees, the plants, the things that live in the ocean,
25 coral reefs. We, as youngest siblings, have the

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1 responsibility to our kupuna -- kupuna means our elders,
2 it's one of the meanings -- to take care of that. We
3 have a kuleana, a moral obligation, and a
4 responsibility. So it's not just you, everyone in this
5 room, including me, we all have a moral responsibility
6 to take care of our national resources.

7 So we're all in this canoe together, but you
8 have the defibrillator and we could use it. And we hope
9 that the Clean Water Act will make a difference in
10 saving some of our reefs before they're gone forever.

11 Mahalo.

12 (Applause.)

13 HEARING OFFICER ALBRIGHT: Thank you for your
14 comments. I appreciate that.

15 And Maury King.

16 MR. KING: Daniel, you stole some of my best
17 material. But I wanna thank everybody else that came

18 tonight and shared their wisdom. So I won't go over any
19 of that because I -- I hope you at least believe what
20 you are being told about our reef suffering and the
21 concerns people have in sickness and all these issues.

22 I feel like we've come full circle. I was the
23 very first person up after Nancy gave her initial
24 report. And my comments were about how all I heard
25 about was drinking water, and a lot of people were

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1 concerned about the reef. And what I got was you guys
2 have a limited job. So when people are talking about
3 improving the waste treatment plant, it's really not
4 your job to do that. In fact, what I got is you would
5 be happy if we weren't putting anything into injection
6 wells at all, but, if we are, then it's your job to
7 regulate it.

8 So what I'm hoping is that you can just go
9 home and find a way to include your Clean Water Act
10 buddies in this conversation, find a way to include 'em,
11 instead of finding every way you can not to. If it just
12 means that we prove there's poop on the reef finally,
13 whatever it is, you have some power here. I realize
14 you're -- you're defined by the niches of your jobs, but
15 open up your hearts, open up your minds and get creative
16 and find a way to partner and bring it all together in
17 one piece. And I think that would really make a
18 difference to this issue. And I hope there's a way you
19 guys could do that.

20 Thanks.

21 (Applause.)

22 HEARING OFFICER ALBRIGHT: Thank you for your
23 comments.

24 Vilani Kapu? Ke`eamoku Kapu? Okay. That
25 brings us to the end of all the speakers who requested

0083

1 to speak. We need to take just a moment to confer, if
2 you'll just give us a moment or two.

3 (Pause in proceedings.)

4 HEARING OFFICER ALBRIGHT: Okay. Thank you.
5 I, first of all, will ask if there is anyone who didn't
6 sign up who still would like to provide any oral
7 testimony before we wrap this up? Okay.

8 MS. KELLY: I'm sorry. I apologize, I'm
9 feeling a little bit unprepared to do so, but, also,
10 very excited to have this opportunity.

11 I'm a graduate student -- my name is Emily
12 Kelly. I'm a graduate student at the Scripps
13 Institution of Oceanography in San Diego, part of the UC
14 system. And myself and a number of other people are
15 here from the Scripps Institution of Oceanography, a few
16 have been here earlier this summer as well, and we are
17 some of the people that are spending some of that
18 research money from the Federal Government at the reef
19 at Kahekili.

20 And just from our perspective, the reef
21 brought us down here and the issues surrounding the reef
22 brought us down here. Unfortunately, not for happy
23 reasons, but for the reasons that there are a number of
24 different threats to this ecosystem. As a number of
25 people mentioned, there's a new herbivore fisheries

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1 management in place at this time, but, also, the
2 nutrient levels, in addition to the fishing pressures,
3 are issues that we're looking at as part of our
4 research.

5 So I am particularly looking at the
6 interactions between fish, algae and -- excuse me -- and
7 coral. And others have been looking at the microbes on
8 the reef as well as other impacts in the ecosystem,
9 ranging from the little guys that exist in the rubble
10 that help break down dead pieces of the reef to some of
11 the microbes that have caused staph infections, from
12 people who have spoken, to coral cover which you know
13 has decreased by about 50 percent over the last 15 years
14 or so of this particular reef.

15 So I just wanted to comment that there are a
16 number of us working on this issue, and we find it
17 extremely important to look at, and that's why we're
18 here. And so we're also very interested in seeing how
19 this can be improved in the future so that, as our
20 research continues, including our Ph.d, which will last
21 about five or six years, we can, hopefully, see positive
22 changes in the reef and see recovery, also.

23 Thanks.

24 (Applause.)

25 HEARING OFFICER ALBRIGHT: Thank you, Emily,

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1 for your comments.

2 So, again, thanks to everyone for coming
3 tonight and providing testimony.

4 We did get a few requests to extend the
5 comment period. We got a request, a specific request
6 from the County, and we had several testifiers also make
7 that request. So I am going to extend the comment
8 period for this proposed permit for 30 days. So the
9 comment period is now extended to September 21st. We
10 are going to put a notice on our website. We have a
11 website that we've put up with information about the
12 permit, with all the comments that have been submitted
13 thus far, and that will reflect the extended comment
14 period to September 21st.

15 If people have additional comments they wish
16 to submit, they should submit them to Nancy Rumrill.
17 And Nancy's information is on that website. You can get
18 to our website at www.epa.gov/region9, and follow
19 various prompts to get to the permit site. And if
20 anyone has a question about how to do that, when we
21 break up here, we'll be around, we can give you our

22 card, and you can contact us for further information.
23 So, again, I just wanna thank everyone for
24 coming out for your comments. We really appreciate the
25 interest of the community in coming out. We appreciate
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1 the County and Mayor Tavares for being here as well, and
2 Chauncey with the Department of Health. Thank you all.
3 And with that, the hearing has ended.
4 (Applause.)
5 (Hearing concluded at 9:00 p.m.)
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1 CERTIFICATE
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4 I, TONYA MCDADE, Certified Court Reporter of
5 the State of Hawaii, #447, Registered Professional
6 Reporter, Certified Realtime Reporter, Certified
7 Broadcast Captioner, do hereby certify that the
8 proceedings contained herein were taken by me in machine
9 shorthand and thereafter was reduced to print by means
10 of computer-aided transcription; and that the foregoing
11 represents, to the best of my ability, a true and
12 accurate transcript of the proceedings had in the
13 foregoing matter.

14 I further certify that I am not an attorney
15 for any of the parties hereto, nor in any way concerned
16 with the cause.

17 DATED this 23rd day of September, 2009.
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Tonya McDade
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