

WATER POLLUTION

Maui council retreats from Supreme Court battle

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U.S. Supreme Court. Flickr

A Hawaii county has taken a big step away from a highly anticipated Supreme Court fight over the scope of the Clean Water Act.

The Maui County Council voted 5-4 on Friday to approved a [resolution](#) supporting a settlement of a permitting dispute at the heart of *County of Maui v. Hawai'i Wildlife Fund*. The decision could eliminate a foothold for the nation's highest bench to address a key question: Does pollution that travels through groundwater on the way to federally regulated waters trigger Clean Water Act permitting requirements?

Environmental lawyers celebrated the county's decision, which they expect will wipe planned Nov. 6 arguments from the Supreme Court's calendar.

"The Maui County Council showed true leadership today in its decision to settle outside of court and not risk a historic standoff over the future of America's clean water at the Supreme Court," said Isaac Moriwake, managing attorney at Earthjustice's Mid-Pacific office. "This decision is a win not only for Maui, but for the country at large."

But during Friday's meeting, Maui County officials questioned the council's authority to settle the case. Maui Mayor Mike Victorino said he would review the county's options in light of the council's vote.

County lawyers brought the case to the Supreme Court after lower courts sided with environmentalists' arguments that Maui County should have secured Clean Water Act permits for disposal wells at the Lahaina Wastewater Reclamation Facility.

Green groups had demonstrated that pollution from the injection wells had traveled through groundwater to the Pacific Ocean.

The settlement agreement the council approved Friday requires county officials to pay a \$100,000 fine, make "good faith efforts" to decrease use of injection wells at the Lahaina facility, invest in opportunities for wastewater reuse and seek National Pollutant Discharge Elimination System permits.

In exchange, environmental challengers wouldn't pursue further litigation.

The council's Governance, Ethics and Transparency Committee deadlocked on a previous attempt at a settlement ([Greenwire](#), May 24).

If the Supreme Court doesn't review the Maui dispute, the justices could eventually reach the groundwater question through other cases. A related petition, *Kinder Morgan Energy Partners LP v. Upstate Forever*, deals with contamination from a pipeline leak in South Carolina.

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