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WLF Urges High Court to Adopt Reasonable Limits on Clean Water Act Permitting Requirements

(County of Maui v. Hawaii Wildlife Fund)

**“Congress adopted the Clean Water Act to address discharges into ‘navigable waters.’ The law was never intended to regulate releases of pollutants into groundwater.”
—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overturn a Ninth Circuit decision that vastly expands the scope of the Clean Water Act (CWA) and threatens to require regulated entities to seek millions of new discharge permits from environmental authorities. In an *amicus curiae* brief filed in *County of Maui v. Hawaii Wildlife Fund*, WLF argues that the CWA does not regulate injections into wells, a practice that is already regulated under numerous other federal and state laws. WLF’s brief was joined by the Allied Educational Foundation.

The County of Maui, Hawaii operates sewage treatment facilities to assist with the safe disposal of sewage. Like many other municipalities, Maui injects effluent (the treatment facilities’ end product) into wells, from which the effluent migrates into groundwater. Maui’s injections comply with a host of environmental laws, including the Safe Drinking Water Act (which ensures that no well injections endanger sources of drinking water. But some of the effluent eventually migrates (after a year or more) into the Pacific Ocean, a “navigable water” protected by the CWA. Environmental groups sued Maui, claiming that the county violated the CWA by “discharging” its effluent into navigable water without a permit.

WLF argues that the CWA is inapplicable here; it applies only to discharges of a pollutant into protected waters from a “point source” (*e.g.*, a pipe or a ditch). WLF notes that groundwater is a diffuse medium that does not meet the definition of a point source. While Maui’s wells do qualify as point sources, its well injections are made into groundwater, not into navigable waters. WLF argues that the Ninth Circuit’s contrary interpretation vastly expands the CWA’s scope and leaves many regulated entities unable to determine whether they need to seek CWA discharge permits.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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