

BEST BEST & KRIEGER LLP

ATTORNEYS AT LAW

Legal Ramifications of Water Quality Impacts Associated with Climate Change

IMLA's Mid-Year Seminar

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PRESENTED BY

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Big Picture Impacts

- Changes in flow
- Flooding
- Drought

Federal Clean Water Act

- Water Quality Standards and TMDLs
  [CWA sections 301 and 303]
- NPDES permitting
  [CWA section 402]
- Wetlands and other dredge and fill permitting
  [CWA sections 401 and 404]
- Nonpoint Source Pollution
  [CWA sections 208, 303, and 319]

Federal Clean Water Act (cont.)

- Clean Water Act sections 101(a) and 303 (c):
  - Standards must be "fishable" and "swimmable" at a minimum
  - Standard made up of:
    - Designated use
    - Numeric or narrative pollutant criteria necessary to attain that use



Federal Clean Water Act (cont.)

- Clean Water Act sections 303 (d):
  - States must list all waters not attaining WQS
  - States must issue TMDLs for all waters not attaining WQS
  - TMDLs must attain WQS capturing all sources, point source and non-point source



Federal Clean Water Act (cont.)

Clean Water Act section 301:

- No discharge of a pollutant from a point source to waters of the United States without a permit



Federal Clean Water Act (cont.)

- Federal Regulations:
  - 40 C.F.R 122.26 – requirements for MS4 permits
    - Programmatic requirements
    - BMP-based approach
- 40 C.F.R. 122.44 – requirements for all NPDES permits
  - Permits must include effluent limits necessary to attain Water Quality Standards and consistent with adopted TMDLs
- *Defenders of Wildlife v. Browner*

In-stream conditions matter!!







Current State of the Law

- *VA Department of Transportation v. EPA*
  - flow is not a pollutant



Current State of the Law(cont.)

- 40 CFR 122.2 - Groundwater is not Waters of the United States



Current State of the Law(cont.)

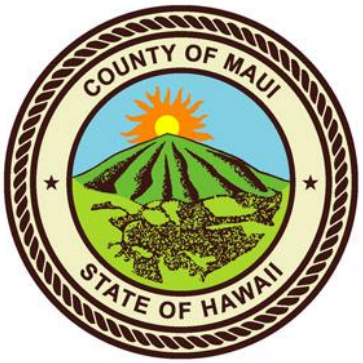
- Farm Bureau v. EPA - TMDLs must account for groundwater



Current State of the Law(cont.)

- Hawaii Wildlife Fund et. al v. County of Maui - Conduit Theory





Thank you for attending.

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