

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

June 18, 2010

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on June 3, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated March 22, 2010, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL BRONSTER HOSHIBATA, A LAW CORPORATION, WITH RESPECT TO LEGAL CLAIMS RELATING TO WATER AND WASTEWATER UTILITY SERVICE ON MOLOKAI". The purpose of the proposed resolution is to authorize \$200,000 in additional compensation for Bronster Hoshibata, A Law Corporation, as special counsel in the case, for a total compensation of \$500,000.

Your Committee notes that the Council authorized initial compensation of this matter by Resolution No. 08-67 in an amount of \$100,000, and additional compensation by Resolution No. 08-105, in an amount of \$200,000.

Your Committee received an update on the status of litigation from a Deputy Corporation Counsel and Special Counsel Margery Bronster. The Deputy Corporation Counsel explained that the previously authorized compensation amounts are nearly exhausted due to the multiple legal actions the County is involved in relating to water and wastewater utility service on Molokai.

Ms. Bronster informed your Committee that a trial in County of Maui v. Molokai Properties, Ltd., formerly known as Molokai Ranch, Ltd., et al., Civil No. 08-1-0493(1), was originally scheduled for June 14, 2010 but has been continued to October 25, 2010. The court has scheduled a mandatory settlement conference for July 9, 2010.

Ms. Bronster reported that the County intervened in the proceedings before the Public Utilities Commission (PUC) with the primary role of ensuring that Molokai Properties, Ltd., did not insist that the County take over water and wastewater utility

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services on Molokai. She stated that Molokai Properties, Ltd., has admitted that, based on contracts entered into with the County, it has no basis to ask the County to take over those services and is not asking the County to do so.

She informed your Committee that the Consumer Advocate, who was a party to the proceedings, had the duty to protect the interests of Molokai consumers. However, the Consumer Advocate entered into a secret agreement with Molokai Properties, Ltd., that included substantial increases in rates. The PUC then issued an interim order and increased rates by approximately 25 percent for users of water and wastewater utility services, resulting in monthly bills of approximately \$350 to \$400 a month. Although the County had little control over the rate increases agreed to by the Consumer Advocate, Ms. Bronster said she was successful in persuading the PUC to reject approximately \$100,000 in rate increases for wastewater consumers. The County will appeal the PUC's final order if it is not in the best interests of the Molokai consumers.

Ms. Bronster stated that she is in the process of preparing and filing legal briefs for two cases on appeal involving orders issued by the Department of Health.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 8-0 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Kaho`ohalahala, Nishiki, Pontanilla, and Victorino voted "aye". Committee member Medeiros was excused.

Your Committee of the Whole **RECOMMENDS** that Resolution No. _____, attached hereto, entitled "AUTHORIZING ADDITIONAL COMPENSATION OF SPECIAL COUNSEL BRONSTER HOSHIBATA, A LAW CORPORATION, WITH RESPECT TO LEGAL CLAIMS RELATING TO WATER AND WASTEWATER UTILITY SERVICE ON MOLOKAI" be **ADOPTED**.

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This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

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Resolution

No. _____

AUTHORIZING ADDITIONAL COMPENSATION OF
SPECIAL COUNSEL BRONSTER HOSHIBATA, A LAW CORPORATION,
WITH RESPECT TO LEGAL CLAIMS
RELATING TO WATER AND WASTEWATER
UTILITY SERVICE ON MOLOKAI

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch, the largest private landowner on Molokai, unilaterally announced its intention to cease operating its water and wastewater utilities, namely, Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc. (hereafter collectively referred to as "the Utilities") which provide water and wastewater service to residents, businesses, and public facilities in West Molokai; and

WHEREAS, the Public Utilities Commission has made the County a party to a Temporary Rate Relief proceeding, bearing Docket No. 2008-0115; and

WHEREAS, the County has filed a formal complaint against the Utilities with the Public Utilities Commission, bearing Docket No. 2008-0116; and

WHEREAS, the Department of Health initiated enforcement proceedings against the Utilities and Molokai Properties, Ltd., dba Molokai Ranch, bearing Docket Nos. 08-SDW-EO-01 and 08-WW-EO-01, in which the County intervened; and

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WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch appealed from the Department of Health's decisions and orders to the First Circuit Court, bearing Civ. No. 08-1-1877-08 EEH; and

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch has appealed to the Intermediate Court of Appeals from the decision and order of the First Circuit Court, bearing Docket No. 30056; and

WHEREAS, the Department of Health initiated enforcement proceedings against the County, bearing Docket Nos. 08-SDW-EO-02 and 08-WW-EO-02; and

WHEREAS, the County appealed from the Department of Health's decisions and orders to the Second Circuit Court, bearing Civ. Nos. 08-1-0533(1) and 08-1-0534(1); and

WHEREAS, the State has advised that it intends to appeal from the decision and order of the Second Circuit Court; and

WHEREAS, the County has filed a civil suit in the Second Circuit Court entitled COUNTY OF MAUI VS. MOLOKAI PROPERTIES, LTD., FORMERLY KNOWN AS MOLOKAI RANCH, LTD., ET AL., CIVIL NO. 08-1-0493(1), seeking damages for breach of contract and other remedies; and

WHEREAS, the County has intervened as a party in two permanent rate relief proceedings before the Public Utilities Commission, bearing Docket Nos. 2009-0048 and 2009-0049; and

WHEREAS, the existing and potential legal claims encompass a wide range of legal specialities, including environmental law,

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public utility law, administrative law, water law, constitutional law, plaintiff's *qui tam*, international law, and complex litigation; and

WHEREAS, the Council alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of Bronster Hoshibata, A Law Corporation, as special counsel to represent the County of Maui in the above-referenced matters because of the multiplicity of actions and the complexity of the issues; and

WHEREAS, the Council by Resolution No.08-67, authorized the employment of special counsel Bronster Hoshibata, A Law Corporation ("special counsel") for \$100,000; and

WHEREAS, the Council by Resolution No. 08-105 authorized additional compensation for special counsel in the amount of \$200,000; and

WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$200,000 for the prosecution and defense of the above-referenced matters; now therefore,

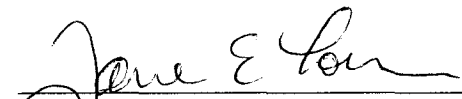
BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby approves and authorizes the increase of compensation for the employment of special counsel by \$200,000; and

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2. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and Bronster Hoshibata, A Law Corporation.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

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