

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 7, 2012

Committee
Report No. _____

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

Chair and Members:

Your Policy Committee, having met on November 26, 2012, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated November 16, 2012, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL BINGHAM MCCUTCHEN, LLP IN HAWAII WILDLIFE FUND ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK". The Department also transmitted a copy of the relevant complaint and a letter dated April 27, 2012, from Colleen P. Doyle, Bingham McCutchen, LLP. The purpose of the proposed resolution is to authorize the employment of Bingham McCutchen, LLP as special counsel in the case, for a total compensation not to exceed a flat fee of \$250,000.

Your Committee notes that the complaint alleges violations of the Federal Clean Water Act arising out of the County's operation of injection wells at the Lahaina Wastewater Reclamation Facility, Lahaina, Maui. The complaint alleges that the County is required to have a National Pollutant Discharge Elimination System ("NPDES") permit in order to operate the wells. Among other things, the plaintiffs ask that civil penalties ranging from \$32,500 to \$37,500 per day be imposed.

A Deputy Corporation Counsel provided a brief overview of the claim and the request for special counsel.

Your Committee notes that Ms. Doyle's letter reflects substantial experience in Clean Water Act permitting and enforcement matters, including experience serving as special counsel assisting municipalities with such matters.

The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

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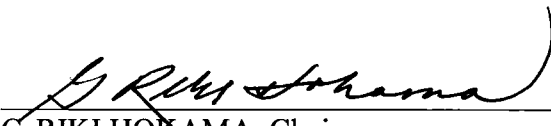
Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 5-0 to recommend adoption of the proposed resolution authorizing the employment of special counsel. Committee Chair Hokama, and members Baisa, Cochran, Mateo, and White voted "aye". Committee Vice-Chair Carroll and members Couch, Pontanilla, and Victorino were excused.

Your Committee notes that resolutions authorizing employment of special counsel must be adopted by a two-thirds vote of the Council, pursuant to Section 3-6.6 of the Revised Charter of the County of Maui (1983), as amended.

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL BINGHAM MCCUTCHEN, LLP IN HAWAII WILDLIFE FUND ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK", be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL BINGHAM MCCUTCHEN, LLP IN HAWAII WILDLIFE FUND ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK

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

WHEREAS, the Council finds that there is a real necessity to retain the firm of Bingham McCutchen, LLP (the firm), as special counsel to represent Defendant County of Maui (Defendant) in Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK, because of the complexity of litigation issues; and

WHEREAS, the firm and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the level of attorneys' fees and costs; and

WHEREAS, the firm's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly situated private litigant; now, therefore,

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

1. That the Council hereby authorizes the employment of the firm Bingham McCutchen, LLP, as special counsel to represent Defendant in the case of Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK; and

2. That the total compensation for the employment of the firm Bingham McCutchen, LLP as special counsel shall not exceed a flat fee of \$250,000; and

3. That Colleen P. Doyle of Bingham McCutchen, LLP shall perform the bulk of the legal services in this matter; and

4. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

5. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshall; (4) fees of the court reporter for necessary transcripts; (5) docket fees; and (6) compensation of court-appointed experts and interpreters; and

6. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel, unless justified by extraordinary or compelling circumstances; (7)

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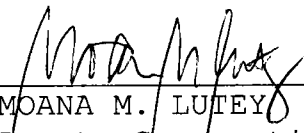
investigative expenses; (8) other costs reasonably considered part of a law firm's overhead; and

7. That in instances of travel, both inter-island and out-of-state travel must be pre-approved by the Corporation Counsel; and

8. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

9. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



MOANA M. LUTEY
Deputy Corporation Counsel
County of Maui