

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

September 4, 2015

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 August 7, 2015, and August 25, 2015, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated July 21, 2015, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK." The purpose of the proposed resolution is to authorize settlement of the case.

Your Committee notes the First Amended Complaint in the case alleges violations of the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. Sections 1311(a) and 1342, and other laws, arising out of the County's operation of injection wells at the Lahaina Wastewater Reclamation Facility, and seeks injunctive relief, penalties, and attorney's fees and costs.

Your Committee further notes Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500. The Council previously authorized settlement of this case by Resolution 15-75.

A Deputy Corporation Counsel noted the trial is currently scheduled for November 2015, but will be removed from the Court calendar if the parties are able to reach a settlement.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 2

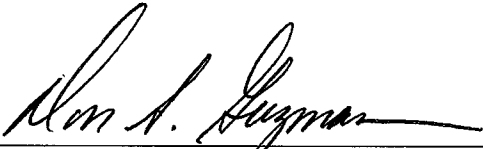
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Report No. _____

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee, 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 9-0 to recommend adoption of the proposed resolution. Committee Chair Guzman, Vice-Chair Crivello, and members Baisa, Carroll, Cochran, Couch, Hokama, Victorino, and White voted "aye."

Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT 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.



DON S. GUZMAN, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V.
COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK

WHEREAS, Plaintiffs Hawaii Wildlife Fund, et al. filed a lawsuit in the United States District Court on April 16, 2012, Civil No. 12-00198 SOM BMK, against the County of Maui, alleging violations under the Federal Water Pollution Control Act, also known as the Clean Water Act; and

WHEREAS, by Resolution 15-75, the Council approved settlement of this case; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this case under the terms set forth in an executive meeting before the Committee of the Whole; and

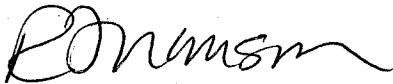
WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

Resolution No. _____

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

1. That it hereby approves settlement of this case under the terms set forth in an executive meeting before the Committee of the Whole; and
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and
3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Environmental Management, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui