

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

January 22, 2016

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 December 11, 2015, and January 12, 2016, makes reference to County Communication 15-6, from Councilmember Mike White, relating to litigation matters.

By correspondence dated December 3, 2015, the Department of the Corporation Counsel transmitted a proposed resolution, entitled "AUTHORIZING THE SETTLEMENT OF PLAINTIFFS' CLAIM FOR ATTORNEYS FEES AND COSTS RELATED TO HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK," and a copy of the "SETTLEMENT AGREEMENT AND ORDER RE: REMEDIES; EXHIBIT A," filed in the case on November 17, 2015. The purpose of the proposed resolution is to authorize settlement of Plaintiffs' claim for attorneys' fees and costs related to 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.

A Deputy Corporation Counsel said that as part of the settlement entered into between the parties, the County is required to pay Plaintiffs' attorneys' fees and costs if the County is unsuccessful on appeal. Plaintiffs have presented the County with their claim to fix the amount of attorneys' fees and costs, which is confidential and can be presented in an executive meeting.

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

Committee
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.

Your Committee deferred a recommendation on the proposed resolution relating to plaintiffs' claim for attorneys' fees and costs, pending further discussion.

By correspondence dated December 23, 2015, the Department transmitted a proposed resolution entitled "AUTHORIZING AN INCREASE IN FUNDING RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, DOCKET NO. 15-17447, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT." The purpose of the proposed resolution is to authorize \$300,000 in additional compensation for special counsel Hunton & Williams LLP for the appeal in this case, for a total compensation not to exceed \$3,050,000.

Your Committee notes Section 3-6(6), Revised Charter of the County of Maui (1983), as amended ("Charter"), authorizes the Council to retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Charter Section 3-6(6) also requires that the compensation, if any, to be paid for the services be specified. The Council previously approved the employment of special counsel by Resolution 12-127, and increased compensation limits by Resolutions 14-52, 14-99, 14-137, 15-35, 15-74, and 15-101.

The Deputy provided a brief update on the status of the case. As noted in the proposed resolution, judgment was entered in Civil 12-00198 SOM BMK on November 17, 2015, and on December 14, 2015, the County

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 3

Committee
Report No. _____

filed a Notice of Appeal in the United States Court of Appeals for the Ninth Circuit. The Deputy noted the County's opening brief is due in March 2016.

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

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, your Committee voted 6-0 to recommend adoption of the proposed special counsel compensation resolution. Committee Chair Guzman and members Baisa, Cochran, Couch, Hokama, and White voted "aye." Committee Vice-Chair Crivello and members Carroll and Victorino were excused.

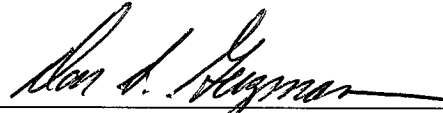
Your Committee of the Whole RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING AN INCREASE IN FUNDING RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, DOCKET NO. 15-17447, UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT," be ADOPTED.

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

Page 4

**Committee
Report No.** _____

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



DON S. GUZMAN, Chair

cow:cr:16001(3)ad:cmn

Resolution

No. _____

AUTHORIZING AN INCREASE IN FUNDING RELATED TO
THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP,
IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI,
DOCKET NO. 15-17447, UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WHEREAS, by Resolution No. 12-127, the Council authorized the employment of special counsel HUNTON & WILLIAMS LLP ("special counsel") to represent the County of Maui in matters relating to Hawaii Wildlife Fund, et al. v. County of Maui; and

WHEREAS, by Resolution Nos. 14-52, 14-99, 14-137, 15-35, 15-74, and 15-101, the Council authorized increases in total compensation for trial preparation, motions, appeal and, if necessary, trial, for a total compensation of \$2,750,000; and

WHEREAS, on November 17, 2015, the United States District Court, District of Hawaii, entered judgment in Civil No. 12-00198 SOM-BMK; and

WHEREAS, on December 14, 2015, the County filed a Notice of Appeal of Hawaii District Court Civil No. 12-00198 SOM-BMK, in the United States Court of Appeals for the Ninth Circuit and was assigned Docket No. 15-17447; and

WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$300,000 for appeal, for a total compensation not exceeding \$3,050,000; now, therefore,

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

1. That the Council hereby approves and authorizes an increase in compensation for the employment of special counsel by \$300,000, for a total compensation not exceeding \$3,050,000; and

2. 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:



RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui