

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY COMMITTEE**

December 19, 2008

**Committee**  
**Report No.**

08-161

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

Chair and Members:

Your Policy Committee, having met on December 2, 2008, makes reference to County Communication No. 07-12, from the Council Chair, regarding requests for authorization of special counsel submitted by the Department of the Corporation Counsel.

By correspondence dated November 13, 2008, 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 \$300,000. Attached to the request are copies of various legal documents pertaining to all legal claims relating to water and wastewater utility service on Molokai.

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

At its meeting, your Committee met with two Deputy Corporation Counsel.

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. She provided your Committee with a document entitled "Molokai Matters In Litigation". The document describes the multiple legal proceedings, the multiple attorneys representing Molokai Properties, Ltd., and the multiple deadlines applicable to each case. She further explained that there is a possibility that issues related to international law may arise during the course of litigation, given that the parent company of Molokai Properties, Ltd., is based in another country.

COUNCIL OF THE COUNTY OF MAUI  
**POLICY COMMITTEE**

December 19, 2008  
Page 2

**Committee**  
**Report No.**     08-161

Your Committee notes that the County is involved in seven separate legal proceedings against Molokai Properties, Ltd., with deadlines for court hearings and filing of legal documents scheduled through September 2009.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the proposed resolution.

Your Policy Committee 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.


Adoption of this report is respectfully requested.

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COUNCIL OF THE COUNTY OF MAUI  
**POLICY COMMITTEE**

December 19, 2008  
Page 3

**Committee**  
**Report No.** 08-161

  
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**DANNYA MATEO** Chair

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**BILL KAUAKEA MEDEIROS** Member

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**G. RIKI HOKAMA** Vice-Chair

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**JOSEPH PONTANILLA** Member

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**GLADYS C. BAISA** Member

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**MICHAEL P. VICTORINO** Member

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**JO ANNE JOHNSON** Member

# 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

**Resolution No. \_\_\_\_\_**

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch has 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, 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 has appealed from the Department of Health's decisions and orders to the Second Circuit Court, bearing Civ. Nos. 08-1-0533(1) and 08-0534(1); 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 existing and potential legal claims encompass a wide range of legal specialities, including environmental law, 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-

**Resolution No. \_\_\_\_\_**

referenced matters because of the multiplicity of actions and the complexity of the issues; and

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

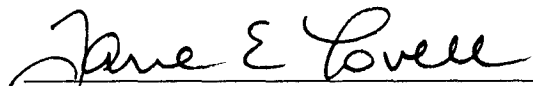
WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$200,000 for the prosecution of the above-referenced matters; now therefore,

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

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:

  
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JANE E. LOVELL  
Deputy Corporation Counsel  
County of Maui