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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

April 15, 2019

Director of Council Services

Maria E. Zielinski  
**RECEIVED**

2019 APR 16 AM 9:57

OFFICE OF THE  
COUNTY CLERK

Mr. Josiah K. Nishita, County Clerk  
Office of the County Clerk  
County of Maui  
Wailuku, Hawaii 96793

Dear Mr. Nishita:

SUBJECT: **SETTLEMENT OFFERS IN HAWAII WILDLIFE  
FUND, ET AL. V. COUNTY OF MAUI,  
RELATING TO THE CLEAN WATER ACT** (PAF  
19-173)

May I request the attached proposed resolution, entitled "REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, RELATING TO THE CLEAN WATER ACT, TO BE TRANSMITTED TO THE COUNCIL FOR APPROVAL OR DISAPPROVAL," be placed on the next Council meeting agenda.

Sincerely,

*Kelly T. King*  
KELLY T. KING  
Council Chair

paf:dmr:19-173b

Attachment

COUNTY COMMUNICATION NO. 19-178

# Resolution

No. \_\_\_\_\_

REQUIRING SETTLEMENT OFFERS IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI,  
RELATING TO THE CLEAN WATER ACT, TO BE  
TRANSMITTED TO THE COUNCIL FOR  
APPROVAL OR DISAPPROVAL

WHEREAS, since being passed by overwhelming majorities in the United States House of Representatives and United States Senate and signed into law by President Richard M. Nixon in 1972, the Clean Water Act has been a powerful means of environmental protection; and

WHEREAS, in a case filed under the Clean Water Act, the United States Court of Appeals for the Ninth Circuit ruled against the County of Maui in Hawaii Wildlife Fund, et al. v. County Maui, 886 F.3d 737 (9<sup>th</sup> Cir. 2018), upholding the Hawaii District Court's judgment in Hawaii Wildlife Fund, et al. v. County Maui, 24 F.Supp.3d 980 (D. Haw. 2014); and

WHEREAS, the courts have thus far concluded the County's injection of treated wastewater into wells without a National Pollution Discharge Elimination System permit violated the Clean Water Act; and

WHEREAS, the County's appeal of the Ninth Circuit's ruling is now pending before the United States Supreme Court as Docket No. 18-260; and

WHEREAS, in a petition to the Supreme Court on August 27, 2018, the County's special counsel argued the Ninth Circuit's opinion constituted a "radical expansion" of the Clean Water Act's applicability; and

WHEREAS, in a brief filed in support of the County on October 1, 2018, the Pacific Legal Foundation, a property rights organization that frequently challenges environmental regulations, urged the Supreme Court to take the case for the purpose of restricting the scope of the Clean Water Act, which it called an "already bloated statute"; and

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

WHEREAS, on January 3, 2019, the Trump Administration filed a brief urging the Supreme Court to hear the County's appeal; and

WHEREAS, on February 19, 2019, the Supreme Court agreed to take the case; and

WHEREAS, in a news article on February 19, 2019, energy and environment trade publication E&E News described the County's appeal as the nation's "biggest environmental case of this year" and a "high-stakes Clean Water Act fight"; and

WHEREAS, under Supreme Court Rule 46(1), a pending appeal will be dismissed if the parties reach a settlement; and

WHEREAS, if the County's appeal proceeds to a hearing and subsequent ruling, the Supreme Court could issue an opinion that restricts the Clean Water Act's protections throughout the nation, which is not a desirable outcome; and

WHEREAS, Ordinance 2786 (1999), codified at Section 3.16.020, Maui County Code, grants the Council the ability to designate cases for which all settlement offers shall be transmitted to the Council for approval or disapproval; and

WHEREAS, because of the case's local and national significance, the Council believes all forthcoming settlement offers in Hawaii Wildlife Fund, et al. v. County of Maui should be transmitted to the Council for approval or disapproval; now, therefore,

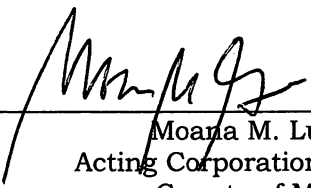
BE IT RESOLVED by the Council of the County of Maui:

1. That, consistent with Section 3.16.020, the Department of the Corporation Counsel and the County's special counsel are directed to transmit all settlement offers in Hawaii Wildlife Fund, et al. v. County of Maui, United States Supreme Court Docket No. 18-260, to the Council for approval or disapproval; and

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

2. That certified copies of this resolution be transmitted to Moana M. Lutey, Esq., Acting Corporation Counsel, County of Maui; Elbert Lin, Esq., Special Counsel to the County of Maui; Honorable Michael P. Victorino, Mayor, County of Maui; and Eric Nakagawa, Acting Director of Environmental Management, County of Maui.

APPROVED AS TO FORM AND LEGALITY

  
\_\_\_\_\_  
Moana M. Lutey  
Acting Corporation Counsel  
County of Maui

paf:dmr:19-173c  
2019-0670