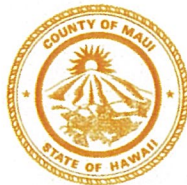


MICHAEL P. VICTORINO
Mayor

SANDY K. BAZ
Managing Director



RECEIVED

2019 AUG 27 PM 3:12

OFFICE OF THE MAYOR
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov

OFFICE OF THE
COUNTY COUNCIL

August 27, 2019

Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Molina:

**SUBJECT: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI
(GET-26)**

We are transmitting the enclosed "Resolution Authorizing Settlement in Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK, U.S. Supreme Court No. 18-260". Please consider that this resolution be heard at committee on September 3, 2019. The proposed revised settlement terms will be presented in executive session.

We appreciate your attention to this matter. Should you have any questions or concerns, please do not hesitate to call me at x5535.

Sincerely,

A handwritten signature in black ink that reads "Michael P. Victorino".

MICHAEL P. VICTORINO
Mayor, County of Maui

Enclosure

Resolution

No. _____

AUTHORIZING SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V.
COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK,
U.S. SUPREME COURT NO. 18-260

WHEREAS, Plaintiffs Hawaii Wildlife Fund, et al. filed a lawsuit in the United States District Court (the “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, on January 23, 2015, and June 25, 2015, the District Court granted Plaintiff’s motions for partial summary judgment; and

WHEREAS, the County Council approved a Settlement Agreement by Resolution 15-75 (“2015 Settlement Agreement”); and

WHEREAS, the 2015 Settlement Agreement was lodged with the District Court on September 24, 2015, and following federal government review pursuant to 40 C.F.R. §135.5, the District Court entered the Settlement Agreement and Order and entered its Judgement on November 17, 2015; and

WHEREAS, pursuant to the terms of the 2015 Settlement Agreement and Order, the Parties agreed that the County reserved the right to appeal the rulings of the District Court to the Ninth Circuit Court of Appeals and on to the U.S. Supreme Court; and

Resolution No. _____

WHEREAS, in reliance upon the 2015 Settlement Agreement, the County of Maui appealed the District Court's decision to the Ninth Circuit Court of Appeals ("Ninth Circuit"), No. 15-17447, and the Ninth Circuit Court of Appeals denied the appeal on February 1, 2018; and

WHEREAS, County of Maui filed a Petition for Writ of Certiorari with the U.S. Supreme Court on August 27, 2018, and on February 19, 2019, the U.S. Supreme Court granted the County of Maui's petition, No. 18-260 and will hold oral arguments on November 6, 2019; and

WHEREAS, the Ninth Circuit's decision impacts not only the County's water reuse and disposal program, but will also affect green infrastructure, municipal operations, and public and private properties throughout Maui County, the State of Hawaii, and the West Coast states within the Ninth Circuit's jurisdiction; and

WHEREAS, the National Association of Counties, National League of Cities, National Association of Clean Water Agencies, WaterReuse Association, the San Francisco Public Utilities Commission, Denver Metro Wastewater Reclamation District, City of New York, the National Conference of State Legislatures, the U.S. Chamber of Commerce, and dozens of other states, agencies, and organizations, have supported Maui County through filing amicus ("friend of the court") briefs with the U.S. Supreme Court; and

Resolution No. _____

WHEREAS, Mayor Michael P. Victorino wishes to present a revised settlement proposal to Council, which includes the County's commitment to significantly expanding water reuse in West Maui, as plaintiffs submitted is their primary concern in their May 20, 2019, presentation to the Governance, Ethics, and Transparency Committee; and

WHEREAS, having reviewed the facts, circumstances, ramifications, and consequences regarding this case and pending appeal before the U.S. Supreme Court, and being advised in the premises, the Council wishes to authorize the Mayor's proposed settlement; now, therefore,

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 the Mayor's proposed settlement; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case; and

3. That it hereby authorizes the Director of Finance to satisfy said settlement of this case; 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
Lit 4996