

COUNCIL OF THE COUNTY OF MAUI

**PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE**

September 8, 2017

**Committee
Report No. _____**

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

Chair and Members:

Your Parks, Recreation, Energy, and Legal Affairs Committee, having met on August 15, 2017, makes reference to County Communication 17-6, from Council Chair Mike White, relating to litigation matters.

By correspondence dated July 27, 2017, the Department of the Corporation Counsel 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 \$150,000 in additional compensation for special counsel Hunton & Williams LLP for the appeal in this case, for a total compensation not to exceed \$3,550,000.

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," 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. The case was designated Civil 12-00198 SOM-BMK before the United States District Court, District of Hawaii.

Your Committee also notes Section 3-6(6), Revised Charter of the County of Maui (1983), as amended, 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.

COUNCIL OF THE COUNTY OF MAUI
PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE

Page 2

Committee
Report No. _____

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, 15-101, 16-3, and 16-69.

Your Committee notes a summary of the case and its procedural history were provided by a Deputy Corporation Counsel and memorialized in Committee Report 16-74, which was considered by a Council at its meeting of May 6, 2016.

A Deputy Corporation Counsel provided an overview of the case. She advised your Committee oral arguments will be heard by the Ninth Circuit Court of Appeals in October 2017.

Your Committee voted 5-0 to recommend adoption of the proposed resolution. Committee Chair Guzman and members Carroll, Crivello, Sugimura, and White voted "aye." Committee Vice-Chair King and members Atay, Cochran, and Hokama were excused.

Your Parks, Recreation, Energy, and Legal Affairs Committee **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
**PARKS, RECREATION, ENERGY, AND
LEGAL AFFAIRS COMMITTEE**

Page 3

**Committee
Report No.** _____

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



DON S. GUZMAN, Chair

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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, 15-101, 16-3, and 16-69, the Council authorized increases in total compensation for trial preparation, motions, appeal and, if necessary, trial, for a total compensation of \$3,400,000; 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 \$150,000 for appeal, for a total compensation not exceeding \$3,550,000; 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 \$150,000, for a total compensation not exceeding \$3,550,000; 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
LIT-4996