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Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

ʻIao Ground Water Management
Area High-Level Source Water
Use Permit Applications and
Petition to Amend Interim
Instream Flow Standards of
Waiheʻe, Waiehu, ʻIao &
Waikapu Streams Contested Case
Hearing

Case No. CCH-MA06-1

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S RESPONSIVE
BRIEF TO HAWAIIAN COMMERCIAL
AND SUGAR COMPANY'S
SUPPLEMENTAL OPENING BRIEF;
CERTIFICATE OF SERVICE

**COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S
RESPONSIVE BRIEF TO HAWAIIAN COMMERCIAL AND
SUGAR COMPANY'S SUPPLEMENTAL OPENING BRIEF**

COMES NOW COUNTY OF MAUI, Department of Water Supply
("DWS"), by and through its attorneys, PATRICK K. WONG,
Corporation Counsel, and JENNIFER M.P.E. OANA, Deputy
Corporation Counsel, and hereby submits this responsive brief to

Hawaiian Commercial and Sugar Company's Supplemental Opening Brief, pursuant to Minute Order No. 29.

I. HAWAIIAN COMMERCIAL AND SUGAR COMPANY NEGLECTS TO STATE HOW MUCH IT COULD CONTRIBUTE TO FUND THEIR PROPOSED PROJECT AND USE OF R-2 RECLAIMED WATER.

Hawaiian Commercial and Sugar Company ("HC&S") concludes that after reviewing the Austin, Tsutsumi & Associates, Inc. Feasibility Report for HC&S Use of Reclaimed Water from Wailuku-Kahului Wastewater Reclamation Facility ("ATA Report"), that its use of the treated effluent "cannot be deemed to be a reasonably practicable alternative to the use of surface water at the current time." HC&S Supplemental Opening Brief ("HC&S Supp. Brief") at 2.

According to the ATA Report, the total construction cost for the proposed upgrades to the Wailuku-Kahului Wastewater Reclamation Facility ("W-K WWRF") and off-site improvements are expected to be approximately \$16.9 million. Exhibit E-R31 at 38. HC&S neglects to state how much of that amount it could contribute to fund their proposed project, only that "[i]f the project could only proceed if the capital improvements were to be funded solely by HC&S, it is not at all clear that it would be practicable." HC&S Supp. Brief at 5. It would be beneficial to all the parties if it was known whether HC&S could fund all or a portion of this project.

II. DISCUSSIONS WITH THE COUNTY OF MAUI HAVE BEEN INCOMPLETE.

Appendix A of HC&S's Supplemental Opening Brief is entitled, "Correspondence with County of Maui Wastewater Reclamation Division." It includes the following:

- 1) Minutes of Meeting, prepared by Ivan K. Nakatsuka of Austin, Tsutsumi & Associates, dated September 19, 2013.
- 2) Letter from Ivan K. Nakatsuka to the County of Maui, Department of Environmental Management, Wastewater Reclamation Division ("WWRD"), dated November 21, 2013.
- 3) Letter from the WWRD to Ivan K. Nakatsuka, dated January 15, 2014.
- 4) Email from Ivan K. Nakatsuka to the WWRD, dated January 17, 2014.

Exhibit E-R21 at Appendix A.

In the Minutes of Meeting, dated September 19, 2013, it states that the "meeting was held for the purpose of ATA obtaining information from WWRD on the quantity and quality of effluent available from the W-K WWRF towards the potential of the effluent being conveyed to Hawaiian Commercial & Sugar Company (HC&S) for seed cane irrigation." Id.

The letter from Nakatsuka to the WWRD, dated November 21, 2013, describes the proposed conceptual plan and design for pumping R-2 water from the W-K WWRF to HC&S's existing

irrigation pond. It asks for further information from the WWRD.
Id.

The WWRD answered Nakatsuka's additional questions by letter on January 15, 2014 and instructed that, "[w]e suggest that you further discuss the information provided with your client. We would appreciate information on the actual probability of this project moving forward so we can begin to formulate an agreement or look more seriously at alternative users for this resource." Id.

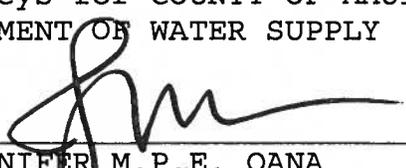
Because there is no other correspondence in Appendix A besides an email clarifying minimum flows, it is assumed that that is all the written correspondence between ATA and the WWRD with regard to HC&S's proposed use of R-2 water.

The WWRD provided data to ATA, as requested, and in the last letter from the WWRD, it welcomed further discussion on this matter, with no response by either ATA or HC&S.

DATED: Wailuku, Maui, Hawaii, February 24, 2014.

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By 

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CERTIFICATE OF SERVICE

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I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following individuals by U.S. mail, postage prepaid, to their last known addresses as follows:

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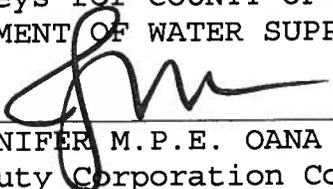
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DATED: Wailuku, Maui, Hawaii, February 24, 2014.

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