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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM  
INSTREAM FLOW STANDARDS FOR  
HONOPOU, HUELO (PUOLUA),  
HANEHOI, WAIKAMOI, ALO,  
WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAAU,  
PALAUHULU, OHIA (WAIANU),  
WAIOKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKAA, WAIQHUE,  
PAAKEA, WAIATAKA, KAPAULA,  
HANAWI, AND MAKAPIPI STREAMS

Case No. CCH-MA13-01

**HAWAIIAN COMMERCIAL & SUGAR  
COMPANY'S AMENDED WITNESS  
LIST IN RE-OPENED EVIDENTIARY  
HEARING; CERTIFICATE OF  
SERVICE**

**HAWAIIAN COMMERCIAL & SUGAR COMPANY'S  
AMENDED WITNESS LIST IN RE-OPENED EVIDENTIARY HEARING**

No.	Name/Organization/Position	To Be Qualified as an Expert in:	Subject Matter	Requested Length of Direct
1.	Garret Hew, East Maui Irrigation Co., Ltd., President		Implementation of restoration of streams; operation of EMI water system	1 hour
2.	Rick W. Volner, Jr., HC&S, General Manager		HC&S' planned use of its lands and current and future water needs	1 hour

3.	Jerrod M. Schreck, A&B, Director of Land Stewardship and Renewal Energy Development		Utilization of A&B's agricultural and conservation landholdings and implementation of Diversified Agricultural Plan	1 hour
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DATED: Honolulu, Hawaii, January 20, 2017.

CADES SCHUTTE LLP



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Case No. CCH-MA13-01

**DECLARATION OF GARRET HEW  
FOR REBUTTAL BRIEF IN REOPENED  
HEARING**

**DECLARATION OF GARRET HEW FOR REBUTTAL  
BRIEF IN REOPENED HEARING**

I, GARRET HEW, hereby declare:

1. I am the President of East Maui Irrigation Co., Ltd. ("*EMI*"). This declaration is submitted in support of HC&S' Rebuttal Brief herein.

**Response to testimony of Lurlyn Scott regarding Honopou Stream**

2. Lurlyn Scott has testified that, in April of 2016, she noticed that flows in Honopou Stream were "much higher than ever before and more than what I would expect to flow naturally under undiverted conditions." She also testified that she was concerned that "water diverted from streams to the East of Honopou is being brought through the ditches and dumped in Honopou Stream so that the water flows are higher in the stream when normally summer flows are lower."

3. Flows in Honopou Stream were unusually high in April of 2016 due to high rainfall. According to data from the USGS gaging station 1658700, which is located above the

EMI ditches, flows spiked at 300 cfs (193.89 mgd) in early April of 2016, and again at 200 cfs (129.26 mgd) during the third week of April, 2016. These flow rates, which are from 50 to 75 times higher than the median flow rate recorded at this station, would naturally cause Honopou Stream to expand well beyond its normal streambed. Exhibit C-160 is a graphical depiction of the flow data from this station for April of 2016 that is available from the USGS website.

4. In addition to high rainfall, in April of 2016, EMI was in the beginning stages of identifying ways to control the ditch flows in the system to reduce deliveries to HC&S. This is not a simple task. The first attempt at controlling deliveries involved adjusting the main control gates located at various points along the system. Due to the location of ditch control points where the ditches cross Honopou Stream, when ditch flows exceeded the control gate settings, flows diverted from further east were redirected into Honopou Stream. This did occur on occasion in the first half of 2016.

5. In the latter half of 2016, EMI further refined its management of ditch flows by not only adjusting ditch control gates, but also reducing the amount of water taken into the system on a stream by stream basis. As previously explained in in my declaration submitted herein on October 17, 2016, this was accomplished by closing the board gates on individual stream diversion intakes, closing radial gates located in the Wailoa Ditch at individual stream diversions, and opening the sluice gates at individual stream diversions. Because these measures all reduce the amount of water taken into the ditch system at each individual stream, the instances of water being redirected from the ditch system into streams, such as Honopou, that are located near ditch control points, is greatly diminished.

#### **Response to the testimony of Lucienne De Naie regarding Hanehoi and Puolua Streams**

6. Lucienne De Naie has testified that the open sluice gates at the Haiku diversions

on Hanehoi and Puolua are an insufficient interim measure to restore flow pending completion of further modifications upon receipt of the permits for which applications are pending. She suggests that the sluice gate openings are small and only on one side of the stream, and that “notching” diversion dams would provide more balanced flow.

7. Ms. De Naie does not appear to understand the practical effect of the opened sluice gates. The sluice gate openings are large enough to pass approximately 30 to 40 mgd, which far exceeds the amount of water that is typically flowing in these two streams. With the sluice gates open, it would not have much effect to also notch the diversion dam since, with the sluice gate open, the flow would not rise up high enough behind the dam to reach the proposed notch under any but the most extreme flow conditions. Under those flow conditions, however, there would be so much water in the stream that there would not seem to be much practical benefit to having a “notch” at the top of the dam.

#### **Response regarding System Losses**

8. Na Moku has argued that HC&S should not rely upon its 2015 estimate of system losses of 22.7% in its forecast of the irrigation requirements of its Diversified Agricultural Plan because presumably a completely new “system” will be used to replace the system that was used by HC&S to irrigate its sugar fields.

9. The 2015 estimate of 22.7% was calculated, however, in order to approximate the seepage and evaporation losses experienced from the HC&S ditches and reservoirs west of Maliko Gulch. This number was backed into by subtracting water used from the gross amount of surface water delivered and groundwater pumped. It was then compared to expected seepage and evaporation rates obtained from the National Engineering Handbook to show that the amount of water not otherwise accounted for fell within a reasonable range of expected losses

from seepage and evaporation.

10. It is anticipated that the same HC&S ditches and reservoirs will be utilized, where appropriate, under the Diversified Agricultural Plan. Since the same parameters would affect seepage and evaporation in the future (reservoir and ditch surface areas and material composition), it is reasonable to continue to use the 22.7% system loss rate as a proxy for future system losses.

I, GARRET HEW, declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

DATED: Maui, Hawaii, January 20, 2017.

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GARRET HEW

COMMISSION ON WATER RESOURCE MANAGEMENT

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Case No. CCH-MA13-01

**DECLARATION OF RICK W. VOLNER,  
JR. FOR REBUTTAL BRIEF IN  
REOPENED HEARING**

**DECLARATION OF RICK W. VOLNER, JR. FOR  
REBUTTAL BRIEF IN REOPENED HEARING**

I, RICK W. VOLNER, JR., hereby declare:

1. I am General Manager of Hawaiian Commercial & Sugar (“**HC&S**”) and submit this declaration in support of HC&S’ Rebuttal Brief herein.

**HC&S is Committed to the Success of the Diversified Agricultural Plan**

2. Petitioners have questioned whether HC&S is “serious” about its Diversified Agricultural Plan and have voiced a number of generalized complaints about the lack of concrete detail and timelines regarding how, when and where specific agricultural activities will be developed and commenced on HC&S’ former sugar lands. Petitioners appear to underestimate the challenges involved in transitioning more than 30,000 acres from more than 100 years of use to cultivate a single crop with a 24 month cycle supported by dedicated infrastructure and specialized equipment, including a sugar mill and a power plant, to an assortment of other uses

with differing crop cycles, agronomic needs, infrastructure requirements, equipment, farming methods and marketing and distribution challenges.

3. HC&S is seriously and in good faith striving to successfully implement the Diversified Agricultural Plan. As explained in the testimony of Jerrod Schreck, A&B's Director of Director of Land Stewardship and Renewable Energy Development, there are a number of projects that are planned for 2017 on some of the former sugarcane lands. In addition, A&B is actively pursuing lessees with the necessary experience and capital to undertake new agricultural ventures to the maximum extent possible.

4. Petitioners fail to appreciate the dilemma that A&B and all of its prospective lessees are in when it comes to planning agricultural uses without assured access to irrigation water from the EMI Ditch system. I have sat in a number of meetings with prospective lessees who have stressed that it would be foolhardy for them to sign long term leases and commit significant capital to the development of new agricultural ventures without a clear idea of what sort of access they will have to irrigation water. It is hard to argue with them on this point so long as the IIFS for the East Maui streams remains in contention.

5. Petitioners' suggestion that the IIFS should be set by the Commission on Water Resource Management ("*CWRM*") at levels that would leave almost all of the water in the streams indefinitely and require prospective lessees to re-petition CWRM to amend the IIFS in the future would effectively scuttle any serious interest on the part of prospective farmers. Water availability is the essential threshold requirement that must be met before a prospective farmer can even begin to address the other challenges involved in establishing a viable, sustainable farming operation. It is well known on Maui and throughout the farming community state-wide that this proceeding has already been pending for more than 15 years without any final



resolution. In order to preserve any realistic opportunity to maintain the agricultural use of the former sugar lands in the central isthmus of Maui, which all parties seem to agree would clearly be in the public interest, the cloud of legal uncertainty generated by this IIFS proceeding regarding reasonable access to surface water from the EMI system to support future agricultural endeavors needs to be removed.

### **Specific Responses to the Declaration of Albert Perez**

6. Mr. Perez cites the sale of equipment used by HC&S for sugar cultivation as evidence that HC&S is not committed to the Diversified Agricultural Plan. The equipment being sold, however, is specific to a large-scale sugar operation and is not suitable for growing, harvesting, processing or transporting the crops that will be produced in the future.

7. Mr. Perez complains that HC&S has not provided maps that depict the areas that can be irrigated only with surface water, and those which can be irrigated with a combination of surface water and brackish well water. This is incorrect. Maps were previously submitted that depict this information. See Exhibits C-35 through C-50. The relevant data regarding the acreage served by surface water and by brackish well water has, moreover, already been appropriately summarized and presented in Exhibit C-156.

8. Mr. Perez suggests that the evapotranspiration data in Exhibit C-157 is inadequate because it relates to only “11 fields.” In fact, the data is drawn from 14 weather stations strategically located throughout the plantation by representative region that have been consistently operated for many years and thus have a high degree of reliability.

9. Regarding the crop co-efficients relied upon in Exhibit C-157, unfortunately the column in the original excel file showing the crop co-efficients was partially obscured when the

file was printed and marked as an exhibit. The crop co-efficients that were used for each use are as follows:

Pasture - Unirrigated	0
Pasture - Irrigated (Surface only)	0.6
Pasture - Irrigated	0.6
Dairy - Irrigated	0.6
Agricultural Park	0.65
Diversified Ag	0.65
Orchard Crops (surface only)	1
Orchard Crops	1
Beverage Crops	1.03
Pongamia	0.8
Grain/Annual Crops	0.75
Bioenergy crops	0.75

A corrected version of Exhibit C-157 is attached hereto.

10. Since a crop co-efficient of “0” was used for unirrigated pasture, Mr. Perez’ concern about this acreage is unfounded. Each respective crop co-efficient was selected by HC&S based upon the review of multiple published sources, discussions with prospective tenants, and consideration of HC&S’ many decades of experience irrigating the fields in question. The determination of these crop co-efficients already assumes that good farming practices will be utilized where feasible to enhance the moisture retention characteristics of the soil.

### **Specific Responses to the Declaration of Robert Pahia**

11. Mr. Pahia suggests that USDA testing of the effect of regenerative farming techniques utilized by Hoaloha Farms on relatively small plots of land demonstrates that published crop co-efficients overstate the irrigation requirements by as much as 30%. No information is provided by Mr. Pahia, however, on the specific parameters tested, the baseline conditions tested against, or how the regenerative techniques used could feasibly and cost effectively be applied on a much larger scale. The crop co-efficients utilized by HC&S in Exhibit C-157, upon consideration of all available information and HC&S' own experience, represent HC&S' best judgment as to how the irrigation requirements of the specified crops in the specified locations should be estimated.

12. Regarding Mr. Pahia's comments about rental rates for the possible lease by him of former sugar lands, we have not received any concrete proposal from or had any recent contact with Mr. Pahia. It is true, however, that the range of lease rents and lease terms that HC&S can offer for lands falling within A&B's Important Agricultural Lands designation is necessarily different from the rents and terms that can be offered for lands whose long term use is less certain.

I, RICK W. VOLNER, JR., declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

DATED: Maui, Hawaii, January 20, 2017.

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RICK W. VOLNER, JR.

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Case No. CCH-MA13-01

**DECLARATION OF JERROD M.  
SCHRECK FOR REOPENED HEARING**

**DECLARATION OF JERROD M. SCHRECK FOR REOPENED HEARING**

I, JERROD M. SCHRECK, hereby declare:

1. I am currently employed by Alexander & Baldwin, LLC (“*A&B*”) as its Director of Land Stewardship and Renewable Energy Development and I have served in that position since August 31, 2015. This declaration is being submitted for the reopened hearing to respond to the concerns raised by the Petitioners regarding the status of A&B’s efforts to transition the lands previously cultivated in sugarcane by Hawaiian Commercial & Sugar (“*HC&S*”) to diversified agriculture (the “*Diversified Agricultural Plan*”).

**Education and Background**

2. I received a Bachelor of Arts degree in Biology from Cornell University in 1995, following which I served as an officer in the United States Navy until 2006. My final assignment in the Navy, while holding the rank of Lieutenant Commander, was to serve as Material Officer for Destroyer Squadron 31, in which position I was the Senior department head

responsible for inspection and evaluation of material readiness in eight Pearl Harbor based warships.

3. Upon resigning my commission as a naval officer, I pursued my interests in land stewardship and renewable energy development in Hawaii, serving from 2007 to 2008 as Strategic Projects Manager for the Nature Conservancy. From 2008 to 2013, I worked for Hoku Corporation, first as Director of Business Development, then Vice President of Business Development and Chief Strategy Officer. From 2011 to 2013 I served as President of Hoku Solar, a subsidiary of Hoku Corporation. In 2013, I also attended the London School of Economics Executive Summer Session of Strategic Decision Making for Management. From 2013 to 2015, I provided strategic advisory and project management services doing business as Ecopelago.

#### **Employment with A&B**

4. On August 31, 2015 I commenced my employment with A&B as its Director of Land Stewardship and Renewable Energy Development. This was a new position that was derived from a previous position of Director, Energy Development at HC&S, the holder of which had retired. In this position, I have been responsible for identifying, evaluating and pursuing opportunities to utilize the Company's agricultural and conservation landholdings to enhance overall financial performance and sustainability while maintaining the Company's role as a responsible steward of its lands.

5. Subsequent to, and in the context of, the decision to discontinue sugar, my duties have specifically included supporting and contributing to the team tasked with overseeing an orderly wind-down of sugar operations, working with HC&S management to assess, preserve and plan for the future use of existing infrastructure assets (key water, energy and land access

systems), identifying and assessing the viability of various agricultural strategies to redeploy former sugar lands to diversified agricultural uses, fielding inbound expressions of interest from individuals and companies seeking to lease land for ag use, including soliciting and reviewing summary business plans and financial projections for their proposed activities, evaluating specific renewable energy initiatives, including biomass-derived technologies, and supporting renewable energy investment and development efforts.

#### **Projects Planned by A&B for 2017**

6. There are a number of projects planned by A&B for 2017 in pursuit of the Diversified Agricultural Plan. These include:

- a. A pasturing agreement with Maui Cattle Co. to populate the 4,000 acres of former sugar lands we are in the process of converting to grazing pasture by fencing, seeding with signal grass, and – in certain areas – installing supplemental irrigation;
- b. Responding to a utility-issued RFI designating lands that are suitable for renewable energy development (solar, wind, bioenergy), and making those lands available in any subsequent RFPs for the siting of renewable generating assets on Maui;
- c. The sale of approximately 850 acres of land to the County for an ag park;
- d. The establishment of approximately 100 acres of oilseed orchards – the first phase of a planned 250 acres; and
- e. The execution of a commercial feedstock agreement for anaerobic digestion crop feedstocks and the associated use of innovative farming techniques to expand our bioenergy and grain crop rotation on up to 500 acres.

## Potential Agricultural Lessees

7. Much of my time has been spent on fielding inquiries from and vetting potential agricultural lessees. This includes the following steps:

- a. Qualifying an inquiry by asking, among other questions, the following:
  - i. How many acres, what crop(s), and what markets are being served?
  - ii. Would the operation be best in an ag park or as a stand-alone farm lease?
  - iii. Does the farmer have pertinent experience?
  - iv. Agronomic needs?
  - v. Production method (conventional, organic, regenerative, agroforestry, etc.)?
  - vi. Long-term land stewardship benefits (soil health, runoff prevention, etc.)?
  - vii. Any comparable operations in Hawaii?
  - viii. Can the farmer provide a high-level business plan, with financials for our review?
- b. If the farmer appears qualified, and the initiative seems feasible based on the preliminary assessment above, we then seek to identify potential, suitable sites based primarily on the following criteria:
  - i. Agronomic suitability (soil, water, elevation)
  - ii. Access, infrastructure requirements
  - iii. Compatibility with planned adjacent activities
  - iv. Any potential nuisance impacts for community?
  - v. Conduct site visit with farmer

- c. If a suitable site is found and mutually agreed-upon, then preliminary business terms are discussed, including:
  - i. Lease term, rent
  - ii. Fees
  - iii. Restrictions, restoration post-lease
  - iv. Compliance with all applicable regulations
- d. Concurrently, we advance due diligence on the prospective tenant, including some or all of the following:
  - i. Credit, legal, background
  - ii. DUNS (if entity)
  - iii. Site visit to the farmer's existing operations, if possible
  - iv. Detailed business plan review, as applicable

8. Of the approximately 250 inquiries we have received since the announcement of the cessation of sugar cultivation, we have directly followed up on approximately 170. Over 60 have been categorized as being "possible," and meriting some further investigation. We are currently in active discussions with approximately fifteen of these "possibles" and have been engaged in the process of conducting site visits and pursuing the negotiation of business terms for potential leases. Of the remaining "possibles," we are awaiting feedback/details from some in order to better understand their experience and intentions, and we have additional follow-up to pursue with others. Those who are looking to farm small plots we are generally considering to be prospective ag park tenants, and therefore expect to follow up with them when there is a clear path on the ag park initiative, which is currently conceived as approximately 850 acres and being separately pursued with the County of Maui. Hypothetically, if all these "possible" leases were



successfully sited on former sugar lands and mutual agreements were reached on lease terms, a rough estimate of the aggregate acreage required would total approximately 19,500 acres. We continue to receive new expressions of interest, so we believe there is some additional market interest in leasing these lands for agricultural use that remains to be explored.

#### **Prospective Lessees Require Assured Access to Water**

9. A&B's discussions with prospective lessees necessarily include confidential financial and other proprietary business information which precludes A&B from being able to disclose their identities and prospective business proposals. Invariably, however, the topic of water for irrigation is raised by virtually every prospective lessee and A&B is pressed for assurances regarding the provision of reliable access to water, and the cost for the same. A&B's current inability to provide assurances regarding whether and how much irrigation water can be made available to lessees from the EMI Ditch System is a major obstacle to procuring commitments from prospective lessees who need such assurance in order to justify committing the necessary capital to develop a new agricultural operation.

#### **Communications with Maui Tomorrow's Albert Perez**

10. As a part of the performance of my responsibilities with A&B, I have reviewed the "Malama Aina" report published by Maui Tomorrow Foundation ("*Maui Tomorrow*"). There are a number of concepts and ideas discussed in the report that are of interest to A&B, but the absence of any business plan or financial analysis limits the ability of A&B to proceed with implementation of any of these ideas. I exchanged a series of emails with Albert Perez between June 2 and July 1, 2016 in which I offered to meet with Maui Tomorrow's consultants, inquired regarding whether Maui Tomorrow knew of any potential operators who might be interested in leasing land from HC&S to pursue regenerative agriculture ventures, and expressed interest in

understanding the business case for the sort of agricultural activities discussed in the report. I received no response to my last email to Mr. Perez, which was dated July 1, 2016.

I, JERROD M. SCHRECK, declare, verify, certify, and state under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, January 20, 2017.

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JERROD M. SCHRECK

COMMISSION ON WATER RESOURCE MANAGEMENT

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Case No. CCH-MA13-01

**CERTIFICATE OF SERVICE**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on this date, a true and correct copy of the foregoing document was duly served on the following parties as stated below:

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DATED: Honolulu, Hawaii, January 20, 2017.

CADES SCHUTTE LLP

  
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