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DEPARTMENT OF WATER SUPPLY

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),  
WAIKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKAA, WAIQHUE,  
PAAKEA, WAIATAKA, KAPAULA,  
HANAWI, and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

COUNTY OF MAUI, DEPARTMENT OF  
WATER SUPPLY'S REOPENING  
OPENING BRIEF; CERTIFICATE OF  
SERVICE

**COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S**  
**REOPENING OPENING BRIEF**

**I. INTRODUCTION**

This opening brief, the Declarations on Reopening of David Taylor, Michele McLean, and Kathleen Ross Aoki, and the attached Exhibit List and Exhibits “B-063” – “B-072” are hereby submitted on behalf of the County of Maui, Department of Water Supply (“MDWS”). MDWS will be represented at this reopening hearing by David Taylor, its Director; and/or other employees of MDWS. All prior filings by MDWS are incorporated herein.

**II. ISSUES ON REOPENING**

A. HC&S/A&B’S CURRENT AND FUTURE USE OF SURFACE WATERS AND THE IMPACT ON THE GROUNDWATER SOURCES FOR ITS CENTRAL MAUI FIELDS OF HC&S’S CESSATION OF SUGAR OPERATIONS

As will be shown in section C, *infra*, the County of Maui is in strong support of keeping the lands currently being used by HC&S/A&B for sugar cultivation in agriculture. Because of this, MDWS defers to HC&S/A&B on the water needs that would be associated with any transition to alternative agricultural uses, and believes that allowing HC&S/A&B a wide degree of flexibility in researching and developing alternative agricultural models that are economically and agronomically feasible, is necessary for the fruition of this goal.

Furthermore, as HC&S/A&B will discuss in their opening brief, their Diversified Agriculture Plan calls for approximately 1,026.9 acres of agricultural parks. Declaration of David Taylor on Reopening, (“Taylor Reopening Dec.”) ¶ 5. As will be discussed in greater detail below, the County of Maui, through the Maui Island Plan/General Plan 2030 (“MIP”), is in strong support

of the development of new agricultural parks.<sup>1</sup> HC&S/A&B have put forward their estimates as to water needs for these parcels for use as an agricultural park. Preliminary talks have been undertaken between the County and HC&S/A&B to have the County eventually take over portions of the land that has been designated for agricultural parks, and accordingly, MDWS strongly supports the estimates put forth by HC&S/A&B regarding those parcels. Taylor Reopening Dec. ¶ 5.

B. THE IMPACT OF HC&S'S CESSATION OF SUGAR OPERATIONS ON MDWS'S USE OF SURFACE WATER

Throughout the IIFS contested case hearing, MDWS actively pursued only water needed for current operations of its upcountry system. MDWS also, however, provided evidence and testimony regarding future demands of water both as a result of projected population growth and the upcountry water meter priority list. MDWS did not actively pursue water to accommodate future needs during the IIFS contested case hearing and subsequent filings of the proposed FOF and COL, because MDWS was cognizant that the needs of HC&S and the instream values pursued by Na Moku and Maui Tomorrow meant there quite simply would not be enough water to meet those demands. Taylor Reopening Dec. ¶ 6. However, in light of the Hearing Officer's conclusion that a return of 18 MGD to the streams is sufficient to promote the instream uses promoted by Na Moku and Maui Tomorrow, and the likely decreased needs of HC&S as they transition to a diversified agriculture model, it now appears there is sufficient water to accommodate MDWS future needs. Taylor Reopening Dec. ¶ 7. MDWS also believes that accommodating those needs now would be administratively efficient for the Commission

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<sup>1</sup> Chapter 7 of the MIP promotes the County to "actively look to acquire land and provide infrastructure to expand the agricultural park and establish new agricultural parks." Exhibit "B-063," p. 7-9

because it would avoid the need to reexamine the IIFS in the near future as MDWS' needs change.

As to the upcountry water meter priority list, MDWS offered evidence that 1,852 applicants were on the priority list, and that processing all of these applications would increase the demand on the MDWS system by 7.5 MGD. See Declaration of David Taylor ¶¶ 20, 21, 22, 23; Exhibit "B-17"; Minute Order 16, Proposed Findings of Fact ("FOF") 471-472. In regards to projected population growth, MDWS provided evidence that population is anticipated to grow in the area serviced by the Upcountry System by about 8,424 people, which would in turn increase demand by approximately 1.65 mgd. See Declaration of Michele McLean ¶ 5; Declaration of David Taylor ¶ 24; Exhibits "B-001"; "B-002" table 5; "B-016," table 3; "B-018"; "B-058"; FOF 473. Therefore, MDWS anticipates a need of an additional 9.15 mgd to be able to meet future demands through 2030. All of this information was presented in the filings of MDWS, as well as in testimony during the contested case hearing. Accordingly, the parties have already had the opportunity to examine this evidence and cross-examine witnesses, and the information can be considered without the need for reopening the evidentiary portion of the hearing.

MDWS also provided evidence of its use of basal aquifer wells to supplement its use of surface water within the Upcountry Service Area. The thrr wells<sup>2</sup> that can be used for regular<sup>3</sup> distribution within the Upcountry Service Area account for approximately 10-20% of the available water supply, and can produce up to 3.4 MGD. Exhibit "B-016," p. 8; FOF 466. Increased use of surface water would allow MDWS to be less reliant upon the use of wells,

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<sup>2</sup> The Haiku Well, the Pookela Well, and the Kaupakalua well. FOF 466.

<sup>3</sup> MDWS can also draw up to 1.5 MGD from the Hamakuapoko wells, but use of that water is only allowed during emergencies pursuant to Maui County Code Section 14.01.050 due to concerns over legacy pesticides from former pineapple production. Declaration of David Taylor ¶ 16; FOF 467.

which, due to the costs associated with pumping, are a more expensive source than surface water. Taylor Reopening Dec. ¶ 8. Should additional stream water become available due to the cessation of HC&S/A&B's sugar operation, MDWS customers would greatly benefit from an increased allocation that would allow limiting expensive well pumping to drought periods and as a back-up source. Taylor Reopening Dec. ¶ 8.

Additionally, MDWS is concerned that, should East Maui Irrigation ("EMI") not continue to deliver large quantities of water for use by HC&S/A&B, the company will no longer be able to continue its operations. Taylor Reopening Dec. ¶ 9. The closure of EMI would have potentially devastating impacts on the ability of MDWS to deliver water to over 35,000 customers within the Upcountry Service Area because MDWS currently lacks the financial capacity or the expertise necessary to take over, maintain, or operate the EMI system should they cease operations. Id. ¶¶ 10, 11. Further, various labor agreements between MDWS and the union for its employees, as well as County employment rules, are not compatible with the operations of EMI's system. Id. ¶ 12. As set forth more fully in its initial opening brief, loss of access to stream water as a result of the closure of EMI would have extreme detrimental effects on the economy of the County of Maui, and replacing stream water delivered by EMI with alternative sources of water would be extremely costly and would take a considerable amount of time to plan for.

C. MAUI COUNTY'S POSITION ON THE FUTURE USE OF THE CENTRAL MAUI FIELDS

The County of Maui, through the current zoning ordinances, the Maui Island Plan/General Plan 2030, the Countywide Policy Plan and various Community Plans, is in strong support of keeping the lands used by HC&S/A&B in agriculture.

## 1. ZONING

The lands utilized by HC&S/A&B for sugar cultivation which rely on surface water from the streams that are the subject of this contested case hearing (“HC&S/A&B Central Fields”) are predominantly zoned as Agricultural District and are situated in the State Agricultural District. Declaration of Michele McLean on Reopening (“McLean Reopening Dec.”) ¶ 4. The regulations relevant to lands that are situated in the State Agricultural District and zoned County Agricultural District are Hawaii Revised Statutes §§ 205-2(d) and 205-4.5 and Maui County Code § 19.30A, respectively. Id. ¶ 5. The use of land designated as Agricultural District is limited to agriculture, land conservation, agricultural parks, animal and livestock raising (including animal feed lots and sales yards), private agricultural parks, minor utility facilities, retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance or solar energy facilities, as set forth by MCC § 19.30A.050(A).

MCC § 19.30A.050(B) does allow for certain accessory uses, but those uses must be “incidental or subordinate to, or customarily used in conjunction with” one of the uses set forth in MCC § 19.30A.050(A). MCC § 19.30A.050(B). Such subordinate uses include:

- Two farm dwellings per lot (one of which must be less than one 1,000 square feet);
- One farm laborer dwelling per five acres of lot area (if the farm meets certain criteria);
- Two commercial agricultural structures, storage, wholesale and distribution structures (if they are of a type typically associated with the principal permitted use or with agriculture in the county);
- Processing of agricultural products;
- Small-scale energy systems;
- Small-scale animal keeping;
- Animal hospitals;
- Animal boarding facilities;
- Riding academies;
- Open land recreation (such as hiking, camping, fishing, hunting, equestrian activities, rodeo arenas, arboretums, greenways, botanical gardens, tours, hang gliding, paragliding, mountain biking and restroom facilities);

- Bed and breakfast homes (subject to certain criteria);
- Short-term rental homes;
- Parks for non-commercial public use (excluding golf courses);
- Family child care homes; and
- Certain commercial agricultural structures that sell products produced on the lot (including stands, farmers markets, agricultural retail, and agricultural food establishments).

MCC §§ 19.30A.050(B), 19.30A.072.

MCC § 19.30A.030 sets forth the standards for property that is zoned Agricultural District. The minimum lot area for property zoned Agricultural district is two acres, with a minimum width of 200 feet. MCC §§ 19.30A.030(A), (B). The size of farm dwellings is limited to 10% of the total lot area, with a maximum height of 30 feet. MCC §§ 19.30A.030(D), (E). While Agricultural lots may be subdivided, subdivision is limited on a sliding scale pursuant to MCC § 19.30A.030(G) as outlined in the chart below:

Area of Lot in acres	Maximum number of permitted lots			
	2-acre min.	15-acre min.	25-acre min.	40 acre min.
At least 2 but less than 31	7			
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus one additional lot for each 15 acres; plus ↑	1		
Over 92	12, plus one additional lot for each 40 acres above 92 acres (not to exceed 14 lots); plus ↑	2, plus one additional lot for each 60 acres above 92 acres; plus ↑	1, plus one additional lot for each 100 acres above 92 acres; plus ↑	One for each 160 acres above 92 acres

## 2. COUNTYWIDE POLICY PLAN

The Countywide Policy Plan (“CPP”) was adopted in 2010 to provide an over-arching values statement and policy framework for development of the Maui Island Plan/General Plan 2030 and the community plans. Declaration of Kathleen Ross Aoki on Reopening (“Aoki Reopening Dec.”) ¶ 5. The CPP sets forth “a series of broad themes and goals, each supported by more specific objectives, policies and implementing actions.” Exhibit “B-064,” p. 43.

Several of the core values of the CPP strongly promote keeping current agricultural lands in agriculture, and increasing diversified agriculture. One such core principal is to “protect the natural environment,” with the objective to “improve the opportunity to experience the natural beauty and native biodiversity of the islands for present and future generations” through policies that “protect and provide ongoing care for important scenic vista, view planes, landscapes and open-space resources.” Exhibit “B-064”, p. 46. Keeping HC&S/A&B’s Central Fields in agriculture would maintain both open space and continue scenic green view planes in Maui’s central isthmus. Aoki Reopening Dec. ¶ 6. Another core principle is to “promote sustainable land use and growth management” with the objective to “improve planning for and management of agricultural land and rural areas” through policies that “protect prime, productive, and potentially productive agricultural lands to maintain the islands’ agricultural and rural identities and economies,” “discourage developing or subdividing agriculturally designated lands when non-agricultural activities would be primary uses,” and “conduct agricultural development planning to facilitate robust and sustainable agricultural activities.” Exhibit “B-064,” p. 75.

HC&S/A&B’s plan to diversify agriculture would also support the CPP’s core principle to “strengthen the local economy.” One objective under this principle is to “diversify and expand sustainable forms of agriculture” through policies that “prioritize the use of agricultural land to



feed the local population and promote the use of agricultural lands for sustainable and diversified agricultural activities,” “assist farmers to help make Maui County more self-sufficient in food production,” “support ordinances, programs and policies that keep agricultural land and water available and affordable to farmers,” and “support cooperatives and other types of nontraditional and communal farming efforts.” Exhibit “B-064,” p. 61.

### 3. MAUI ISLAND PLAN/GENERAL PLAN 2030

Long-term planning for the County of the Maui is controlled by the Maui Island Plan/General Plan 2030 (“MIP”), which was officially adopted in 2012. Aoki Reopening Dec. ¶ 7. The MIP is “a blue print that provides direction for future growth, the economy, and social and environmental decisions on the island through 2030” and which “established a vision, founded on core values that break down into goals, objectives, policies, and actions.” Exhibit “B-065,” p. 1-1.

Two of the core values of the MIP support keeping the HC&S/A&B Central fields in agriculture: “(E) Preserve rural and agricultural lands and encourage sustainable agriculture” and “(G) Support efforts that contribute to a sustainable and diverse economy for Maui.” Exhibit “B-065,” p. 1-16. The MIP recognizes that “preserving agricultural lands is important for the long term sustainability of Maui.” Exhibit “B-063,” p. 7-7. The MIP cites multiple reasons for the importance of maintaining agriculture. For one, the MIP finds that “agriculture creates a diversity of jobs, generates tax revenue, and produces a variety of crops for different local and export markets,” “benefits Maui’s tourism industry by providing green landscapes and enhancing the island’s sense of place,” and “protects land use options for future generations.” Exhibit “B-063,” p. 7-3.

Specifically, the MIP cites as an objective to “significantly reduce the loss of productive agricultural lands” through policies that “strongly discourage the conversion of productive and

important agricultural lands (**such as sugar**, pineapple and other produce lands) to rural or urban use...,” “provide incentives for landowners to preserve and protect agricultural lands from development...,” and “support and promote the viability of Maui’s agricultural businesses...” Exhibit “B-063,” p. 7-8. In addition, the MIP cites an objective to “**maintain or increase** agriculture’s share of the total island economy” through policies “encouraging the continued viability of sugar cane production, or other agricultural crops, in central Maui and all of Maui island.” Exhibit “B-066,” p. 4-20 (emphasis added). Finally, one of the guiding land use principles contained in the Direct Growth Plan of MIP states:

**Protect open space and working agricultural landscapes:** In light of continuing urbanization, the protection of agricultural and open-space resources will depend on a healthy agricultural industry and progressive planning and regulation. Planning should utilize agricultural lands as a tool to define the edges of existing and planned urban communities, apply innovative site design, create buffers along roadways, provide visual relief, and preserve scenic views.

Exhibit “B-067,” p. 8-10 (emphasis added).

Additionally, the MIP also strongly supports the proposed transition of the HC&S/A&B Central Fields to diversified agriculture. The MIP states that “increasing local consumption of Maui agricultural goods is a long-term opportunity for stabilizing and expanding agriculture. Besides economic benefits to farmers, substituting locally-produced food for imports could allow Maui to become more self-sufficient.” Exhibit “B-066,” p. 4-16. One of the goals outlined in the MIP is that “Maui will have a diversified agricultural industry contributing to greater economic, food, and energy security and prosperity,” which will be pursued through policies that “strive to substitute food/agricultural product imports with a reliable supply of locally produced food and agricultural products,” “encourage growing a diverse variety of crops and livestock to ensure the

stewardship of our land while safeguarding consumer safety” and “promote the development of locally-grown and ecologically-sound biofuels, aquaculture and forest products.” Exhibit “B-066,” pp. 4-19, 4-20. The MIP further identifies “HC&S land in Paia and HC&S land in Puunene” as “potential areas...for biomass energy crop production.” Exhibit “B-066,” p. 4-17. Another goal outlined in the MIP is to “reduce the island’s dependence on off-island agricultural products...” through policies that “support an incentive package for productive Agricultural Lands which aims to ensure agricultural viability for small and commercial-scale agricultural producers” and “actively look to acquire land and provide infrastructure to expand the agricultural park and establish new agricultural parks.” Exhibit “B-063,” p. 7-9.

#### 4. COMMUNITY PLANS

Community plans set forth the current and anticipated conditions of the designated region, and advance planning goals, objectives, policies, and implementation considerations to guide decision making for the region that is consistent with the Maui Island Plan/General Plan, while recognizing the unique values and attributes of Maui’s different communities. Aoki Reopening Dec. ¶ 12. The HC&S/A&B Central Fields fall within four Community Plan Districts: Wailuku-Kahului/Central Maui; Kihei-Makena/South Maui; Makawao-Pukalani-Kula/Upcountry Maui; and Paia-Haiku/North Maui. Aoki Reopening Dec. ¶ 13; Exhibit “B-068.” All four of these community plans promote keeping the HC&S/A&B Central Fields in agriculture, as well as transitioning to the use of those lands for diversified agriculture.

##### a. Makawao-Pukalani-Kula/Upcountry Maui

The Makawao-Pukalani-Kula/Upcountry Maui Community Plan (MPKCP) was adopted in 1996, and includes the towns of Makawao, Pukalani, Kula, Ulupalakua, Haliimaile, Waiakoa, Keokea, Waiohuli, Kanaio, Olinda, Omaopio and Pulehu, as well as the Kula Agricultural Park.

Aoki Reopening Dec. ¶ 15. For economic activity, the MPKCP encourages policies that **“provide for the preservation and enhancement of agricultural lands and operations, emphasizing the importance of promoting diversified agriculture** to the region’s economic base and lifestyle,” “protect existing agricultural operations from urban encroachment,” “preserve agriculture by actively promoting locally grown agricultural products,” and “encourage the continuation of sugar, pineapple, cattle ranching, and diversified agriculture as major agricultural activities in the region and at the same time encourage the pursuit of alternative agricultural industries.” Exhibit “B-069,” pp. 18, 19 (emphasis added). In terms of land use, the MPKCP calls for development of policies which “recognize the value of open space, including agricultural lands and view plans to preserve the region’s rural character,” “discourage speculation of agricultural lands,” “encourage land use patterns that will...support the long term viability of agriculture,” “encourage the use of mechanisms such as land trusts and farm trusts to preserve open space and agricultural activity,” “make available agricultural lands for those who wish to farm,” and “explore the development of an additional Ag park.” Exhibit “B-069,” pp. 19, 20, 23. The MPKCP’s environment recommendations encourage policies that would “preserve environmental resources by maintaining important agricultural lands as an integral part of the open space setting in each community,” and “recognize agricultural lands as an essential ingredient to the upcountry atmosphere.” Exhibit “B-069,” p. 26. The MPKCP also promotes policies to “encourage the development of cooperative agricultural development programs between the County and the Department of Hawaiian Home Lands to support diversified agricultural pursuits (i.e., programs, for example, which may identify opportunities for creating efficiencies in scale which will benefit all Upcountry farmers).” Exhibit “B-069,” p. 30).

b. Paia-Haiku/North Maui

The Paia-Haiku/North Maui Community Plan (PHCP) was adopted in 1995, and includes the towns of Spreckelsville, Paia, Haiku, Kuau, Kuiaha and Pauwela. Aoki Reopening Dec. ¶ 17. For land use, the PHCP promotes policies that “ensure that appropriate lands are available to support the region’s current and future agricultural industries, including sugar, pineapple, diversified agriculture and aquaculture,” and “identify prime or productive agricultural lands and develop appropriate regulations for their protection.” Exhibit “B-070,” p. 14. Policies promoted by the PHCP for economic activity include “**Maintain agriculture as the primary economic activity**. Enhance opportunities for the cultivation and processing of local agricultural products and encourage the establishment of agricultural parks and support services (i.e., co-op facilities for distribution, marketing and sales) to enhance diversified agricultural activities,” and “encourage the State Department of Agriculture to draft or propose a master plan to promote diversified agriculture by expanding agricultural programs, identifying the specific uses of those agricultural lands, and locating a site(s) for an agricultural park.” “Exhibit “B-070,” p. 14(emphasis added).

c. Wailuku-Kahului/Central Maui

The Wailuku-Kahului/Central Maui Community Plan (“WKCP”) was adopted in 2002 and includes the communities of Wailuku, Kahului, Waiehu, Waihee, Waikapu, and Puunene. Aoki Reopening Dec. ¶ 19. In terms of economic activity, the WKCP promotes policies that “support agricultural production so agriculture can continue to provide employment and contribute to the region’s economic well-being” and “support the establishment of agricultural parks for truck farming, piggery operations, bee keeping and other diversified agricultural operations within large unsubdivided agricultural parcels and in locations that are compatible with residential uses.”

Exhibit “B-071,” pp. 12, 13. In regards to the environment, the WKCP encourages policies that “preserve agricultural lands as a major element of the open space setting that which borders the various communities within the planning region. The close relationship between open space and developed areas is an important characteristic of community form.” Exhibit “B-071,” p. 14. Finally, in regards to land use, the WKCP encourages policies that will “ensure that adequate lands are available to support the region’s present and future agricultural activities,” “identify prime or productive agricultural lands, and develop appropriate regulations for their protection.” Exhibit “B-071,” p. 26.

d. Kihei-Makena/South Maui

The Kihei-Makena/South Maui Community Plan (KMCP) was adopted in 1998, and includes the towns of Kihei, Wailea, Makena and Maalaea. Aoki Reopening Dec. ¶ 21. In terms of land use, the KMCP promotes policies that would “prevent urbanization of important agricultural lands” and “allow special permits in the State Agricultural Districts to accommodate unusual yet reasonable uses including: (1) limited agriculturally related commercial, public and quasi-public uses serving the immediate community; (2) uses clearly accessory or subordinate to a principal agricultural use on the property; (3) public facility uses such as utility installations or landfills whose location depends on technical considerations; and (4) extractive industries, such as quarrying, where the operation would not adversely affect the environment or surrounding agricultural uses.” Exhibit “B-072,” pp. 18-19. For economic activity, the KMCP promotes policies that “provide for the preservation and enhancement of important agricultural lands for a variety of agricultural uses, including sugar cane, diversified agriculture and aquaculture.” Exhibit “B-072,” pp. 18-19.

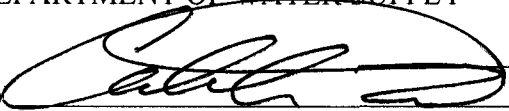
5. HOW EMI IS MANAGING THE DECREASE IN DIVERSIONS, HOW IT WOULD MANAGE THE INTERIM RESTORATIONS, AND ANY ISSUES CONCERNING THE (STRUCTURAL) INTEGRITY OF THE EMI DITCH SYSTEM WITH THE CURRENT AND ANY FUTURE CHANGE IN OFFSTREAM DIVERSIONS

MDWS takes no position on this issue.

DATED: Wailuku, Maui, Hawaii, October 17, 2016.

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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM INSTREAM  
FLOW STANDARDS FOR HONOPOU,  
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ALO, WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAAU,  
PALAUHULU, OHIA (WAIANU),  
WAIKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKEA, WAIHUE,  
PAAKEA, WAIATAKA, KAPAULA, HANAWI,  
and MAKAPIPI

CASE NO. CCH-MA13-01

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served, via email to the following, with hard copies to follow via u.s. mail, pursuant to the Minute Order, upon the following individuals as follows:

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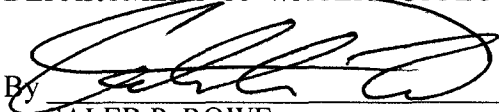
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