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Attorneys for DEPARTMENT OF HEALTH,
STATE OF HAWAI'I; ELIZABETH A. CHAR,
in her official capacity as Department of Health
Director; MARIAN E. TSUJI, in her official
capacity as Department of Health Deputy Director

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

UNITED STATES OF AMERICA,

Appellant,

v.

DEPARTMENT OF HEALTH, STATE OF
HAWAII; ELIZABETH A. CHAR, in her
official capacity as Department of Health
Director; MARIAN E. TSUJI, in her official
capacity as Department of Health Deputy
Director; SIERRA CLUB; BOARD OF
WATER SUPPLY, CITY AND COUNTY
OF HONOLULU,

Appellees.

Civil Case No. 1CCV-22-0000142
(Environmental Court)

Agency Docket/Case No. 21-UST-EA-02

**APPELLEES DEPARTMENT OF
HEALTH, STATE OF HAWAI'I,
ELIZABETH A. CHAR, AND MARIAN E.
TSUJI'S RESPONSE TO APPELLANT
UNITED STATES' MOTION FOR STAY;
CERTIFICATE OF SERVICE**

Hearing Date: April 19, 2022

Hearing Time: 8:30 A.M.

Judge: Hon. Jeffrey P. Crabtree

**APPELLEES DEPARTMENT OF HEALTH, STATE OF HAWAI‘I,
ELIZABETH A. CHAR, AND MARIAN E. TSUJI’S RESPONSE TO APPELLANT
UNITED STATES’ MOTION FOR STAY**

Appellees Department of Health, State of Hawai‘i (“DOH”), Elizabeth A. Char, in her official capacity as DOH Director, and Marian E. Tsuji, in her official capacity as DOH Deputy Director (collectively, the “State”), consent to the United States’ motion to stay the proceedings in this action until June 3, 2022—the same date to which the federal litigation has been stayed. *See* Dkt. 1333; *see also* Dkt. 1334.

Additionally, the State would like to bring to the Court’s attention that DOH is currently in the process of preparing an emergency order in connection with the Red Hill Bulk Fuel Storage Facility that will supersede and replace DOH’s prior December 6, 2021 emergency order (“December 2021 EO”), which the United States challenges in this appeal.¹ Because the December 2021 EO will no longer be in effect following issuance of DOH’s new emergency order, the United States’ present appeal will become moot.² The State believes this development provides an additional basis for a stay of this case to allow the parties to address the impending mootness of this appeal without unnecessary expenditure of additional court and party resources, including through the filing of merits briefing.

¹ The United States here challenges the Final Decision, Order, Findings of Fact, and Conclusions of Law (the “Final Order”) DOH issued on January 3, 2022, which adopted the requirements of the December 2021 EO. *See, e.g.*, Dkt. 1333 (United States’ Motion for Stay) at 2 (¶ 2).

² As with the December 2021 EO, the United States Department of the Navy will have the right to contest the new EO after its issuance at a hearing before a DOH hearings officer, if it so chooses.

DATED: Honolulu, Hawai'i, April 14, 2022.

/s/ John H. Price

JOHN H. PRICE

Attorney for DEPARTMENT OF HEALTH,
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her official capacity as Department of Health
Director; MARIAN E. TSUJI, in her official
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CERTIFICATE OF SERVICE

Judge: Hon. Jeffrey P. Crabtree

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of the foregoing has been served by electronic service through the Judicial Electronic Filing System (JEFS) or by U.S.

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DATED: Honolulu, Hawai'i, April 14, 2022.

/s/ John H. Price

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