

IMPLEMENTING AGREEMENT

for the

**KAUA'I ISLAND UTILITY COOPERATIVE
HABITAT CONSERVATION PLAN**

by and between

**KAUA'I ISLAND UTILITY COOPERATIVE and
UNITED STATES FISH AND WILDLIFE SERVICE**

May 13, 2011

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1.0 PARTIES

This Implementing Agreement is made by and between the Kaua'i Island Utility Cooperative (KIUC) and the United States Fish and Wildlife Service (USFWS).

These entities may be referred to as the "Parties" and individually as a "Party." The USFWS may be referred to as the "Wildlife Agency," and KIUC may be referred to as the "Permittee."

2.0 RECITALS AND PURPOSES

2.1 Recitals. The Parties have entered into this Agreement in consideration of the following facts:

(a) The island of Kaua'i has been determined to provide, or potentially provide, habitat for two seabird species which are listed as threatened or endangered pursuant to the federal Endangered Species Act, 16 U.S.C § 1531 et seq. (ESA). Those species are the Hawaiian Petrel (*Pterodroma sandwichensis*) and the Newell's Shearwater (*Puffinus auricularis newelli*);

(b) The island of Kaua'i has also been determined to provide, or potentially provide, habitat for a third seabird species, the Band-rumped Storm-Petrel (*Oceanodroma castro*), which is a Candidate for listing under the ESA;

(c) All three seabird species identified above are listed as threatened or endangered pursuant to Hawai'i Revised Statutes (HRS) Chapter 195D;

(d) KIUC has developed a series of measures, described in the Habitat Conservation Plan (HCP), that will minimize and mitigate to the maximum extent practicable the effects of Take of Covered Species incidental to KIUC's Covered Activities.

2.2 Purposes. The purposes of this Agreement are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and,

(c) To provide assurances to Permittee that, pursuant to the USFWS "No Surprises" regulations, as long as the terms of the HCP, the Permit, and this Agreement are properly implemented, no additional mitigation will be required of KIUC, with respect to Covered Species, except as provided for in this Agreement or required by law.

3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

3.1 Terms defined in Endangered Species Act. Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA), or in

regulations adopted by the Wildlife Agency under the ESA, have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 “Agreement” means this Implementing Agreement, which incorporates the HCP and Permit by reference.

3.3 “Changed Circumstances” means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed Circumstances and the planned responses to those circumstances are described in section 7.4.2 of the HCP. Changed Circumstances are not Unforeseen Circumstances.

3.4 “Covered Activities” means certain activities carried out by KIUC that may result in incidental Take of Covered Species, and consists of the continued existence, operation and maintenance of all existing KIUC facilities, and the installation, operation and maintenance of certain future KIUC facilities, as described in Chapter 2 of the HCP.

3.5 “Covered Species” means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for the USFWS to issue an Incidental Take Permit under ESA § 10(a)(1)(B): Hawaiian Petrel (*Pterodroma sandwichensis*), Newell’s Shearwater (*Puffinus auricularis newelli*), and Band-rumped Storm-Petrel (*Oceanodroma castro*).

3.6 “HCP” means the Habitat Conservation Plan prepared by the Kaua‘i Island Utility Cooperative.

3.7 “Listed Species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA and/or HRS Chapter 195D.

3.8 “Permit” means the Incidental Take Permit issued by the USFWS to KIUC pursuant to Section 10(a)(1)(B) of the ESA for Take incidental to Covered Activities, as such Permit may be amended from time to time.

3.9 “Permittee” means the Kaua‘i Island Utility Cooperative.

3.10 “Take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.11 “Unforeseen Circumstances” means changes in circumstances affecting a Covered Species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers and the Wildlife Agency at the time of the

HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.12 "Unlisted Species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA or HRS Chapter 195D.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Permittee.

4.1.1 Chapters 5 and 7 and Appendix C of the HCP describe the measures KIUC is obligated to implement in order to avoid, minimize, mitigate and monitor the effects of its Covered Activities on the Covered Species.

4.1.2 Upon issuance of the Permit, KIUC will fully and faithfully perform all obligations assigned to it under this Agreement, the Permit, and the HCP. Notwithstanding any other provision of the HCP, KIUC will implement the minimization and mitigation provisions of the HCP, this Agreement, and the Permit regardless whether the Hawaii Department of Land and Natural Resources (DLNR) has issued a permit to KIUC pursuant to HRS Chapter 195D.

4.2 Obligations of the Wildlife Agency.

4.2.1 Permit Issuance. Upon approval of the HCP by the Wildlife Agency and execution of this Agreement by all Parties, and satisfaction of all other applicable legal requirements, the USFWS will issue KIUC a Permit under Section 10(a)(1)(B) of the ESA authorizing incidental Take by KIUC of each Covered Species resulting from Covered Activities.

4.2.2 Permit coverage. The Permit will identify all Covered Species. The Permit issued by the USFWS will take effect for the Covered Species which are also Listed Species under the ESA [i.e., the Hawaiian Petrel (*Pterodroma sandwichensis*), and Newell's Shearwater (*Puffinus auricularis newelli*)] at the time the Permit is issued. Subject to compliance with all other terms of this Agreement, the Permit issued by the USFWS will take effect for a Covered Species which is an Unlisted Species (i.e., Band-rumped Storm-Petrel (*Oceanodroma castro*)) upon the listing of as threatened or endangered under the ESA.

4.2.3 "No surprises" assurances. Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the Permits, including any provisions for Changed Circumstances, the USFWS can require Permittee to provide mitigation beyond that provided for in the HCP only in accordance with the ESA "No Surprises" regulations at 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5).

4.3 Additional Obligations of Permittee. As described in Chapters 5 and 7 of the HCP, the Parties anticipate that the Hawaii Department of Land and Natural Resources (DLNR) through the Division of Forestry and Wildlife (DOFAW) or another qualified entity approved by the Parties, may implement many of the mitigation measures (including seabird colony management and predator control at the Hono o Na Pali Natural Area Reserve, the two-year auditory survey to locate additional seabird breeding colonies, and underline monitoring program), utilizing funds provided by KIUC. However, KIUC remains responsible for ensuring that such measures, including the underline monitoring program, are implemented either by DLNR or by another qualified entity approved by the Parties. Should DLNR or another implementing entity become unable to implement or complete such measures, KIUC shall notify and consult with the USFWS as soon as possible to identify appropriate substitute entities to implement or complete such measures and KIUC shall then make all necessary arrangements to ensure that such substitute entity or entities completes such measures using the funds provided by KIUC. Notwithstanding any other provision of the HCP, for all mitigation/minimization measures being implemented by DOFAW or another entity approved by the Parties, KIUC will enter into a contract with them within 60 days of the issuance of this Permit to provide for implementation of the specified measure, which shall encompass preparation of a draft study implementation plan, scope of work and detailed budget as necessary.

4.4 Interim obligations upon a finding of Unforeseen Circumstances. If USFWS makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, KIUC will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the HCP shall be interpreted to be complementary to each other. In the event of any contradiction between the terms of the HCP and the terms of the Permit, the terms of the Permit shall control.

6.0 TERM

6.1 Initial Term. This Agreement and the HCP shall become effective as between KIUC and USFWS on the date that USFWS issues the Permit under the ESA. This Agreement, the HCP, and the Permit will remain in effect for a period of five years from the issuance of the original Permit, except as otherwise provided below.

6.2 Long-Term Take Authorization through KSHCP. The Parties intend for the Permit to provide incidental take authorization under the ESA until such time as the Wildlife Agency provides KIUC with long-term incidental take authorization through the island-wide Kaua'i Seabird Habitat Conservation Plan (KSHCP) which DLNR is currently developing. The Wildlife Agency anticipates that the KSHCP will be completed and approved, and that they will each issue long-term incidental take authorization to KIUC, as early as late 2011 or early 2012. Such long-term take

authorization, and the associated portions of the KSHCP pertaining to KIUC, will supersede and replace this HCP and the Permit.

7.0 FUNDING

KIUC warrants that it has, and will expend, the funds identified in Chapter 5 and Section 7.5 of the HCP, as such funds may be necessary to fulfill its obligations under the HCP. KIUC will promptly notify the Wildlife Agency of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing any such notice, KIUC will provide the Wildlife Agency with a copy of its annual report each year of the Permit, or with such other reasonably available financial information that the Parties agree will provide adequate evidence of KIUC's ability to fulfill its obligations.

8.0 MONITORING AND REPORTING

8.1 Planned periodic reports. As described in the Chapter 7 of the HCP, KIUC will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

8.2 Other reports. KIUC will provide, within 30 days of being requested by the Wildlife Agency, any additional information in its possession or control related to implementation of the HCP that is requested by the Wildlife Agency for the purpose of assessing whether the terms and conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.3 Certification of reports. All reports will include the following certification from a responsible KIUC official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 Monitoring by Wildlife Agency. The USFWS may conduct inspections and monitoring in connection with the federal Incidental Take Permit in accordance with the ESA and its implementing regulations (see, e.g., 50 CFR §13.47).

9.0 CHANGED CIRCUMSTANCES

9.1 Permittee-initiated response to Changed Circumstances. Changed Circumstances identified and planned for in the HCP are specifically listed in section 7.4.2 of the HCP. KIUC will give notice to the Wildlife Agency within seven (7) calendar days after learning that any of the Changed Circumstances has occurred. As soon as practicable thereafter, but no later than thirty (30) calendar days after learning of the Changed Circumstance, KIUC shall begin implementing the remedial conservation measures identified in section 7.4.2 for the specific Changed Circumstance to the extent necessary to mitigate the effects of the Changed Circumstance on Covered Species. KIUC will promptly report to the Wildlife Agency on its actions, and KIUC will begin implementing the remedial conservation measures without awaiting notice from the

Wildlife Agency. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

9.2 Wildlife Agency-initiated response to Changed Circumstances. If the Wildlife Agency determines that a Changed Circumstance has occurred and that KIUC has not responded in accordance with section 7.4.2 of the HCP, the Wildlife Agency will so notify Permittee and direct Permittee to make the required changes. Within thirty (30) calendar days after receiving such notice, KIUC will make the required changes and report to the Wildlife Agency on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP.

9.3 Listing of species that are not Covered Species. In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under the ESA, KIUC will implement the “no take/no jeopardy/no adverse modification” measures identified by the Wildlife Agency until the Permit is amended to include such species, or until the Wildlife Agency notifies KIUC that such measures are no longer needed to avoid jeopardy to, Take of, or adverse modification of the critical habitat of, the non-Covered Species.

10.0 ADAPTIVE MANAGEMENT

10.1 Permittee-initiated adaptive management. KIUC will implement the adaptive management provisions in Section 7.3 of the HCP when changes in management practices are necessary to achieve the HCP’s biological objectives or to respond to monitoring results or new scientific information. Permittee will make such changes without awaiting notice from the Wildlife Agency, and will report to the Wildlife Agency on any actions taken pursuant to this section.

10.2 Wildlife Agency-initiated adaptive management. If the Wildlife Agency determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with Section 7.3 of the HCP, the Wildlife Agency will so notify KIUC and direct KIUC to make the required changes. Within thirty (30) calendar days of receiving such notice, KIUC will make the required changes and report to the Wildlife Agency on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

10.3 Reductions in mitigation. KIUC will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the HCP, unless the Wildlife Agency first provides written approval. KIUC may propose any such adaptive management changes by notice to the Wildlife Agency, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the Wildlife Agency will either approve the proposed adaptive management changes, approve them as modified by the Wildlife Agency, or notify KIUC that the proposed changes constitute permit amendments that must be reviewed under Section 11.0 of this Agreement.

10.4 No increase in Take. This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 11.0 of this Agreement.

11.0 MODIFICATIONS AND AMENDMENTS

11.1 Minor Amendments.

(a) Minor Amendments are changes to the HCP provided for under the operating conservation program, including adaptive management changes and responses to Changed Circumstances. They also include revisions which do not significantly modify the scope or nature of activities or actions covered by the incidental take Permits in terms of their affect on the Covered Species. Either Party may propose minor amendments to the HCP or this Agreement by providing notice to the other Party. Such notice shall include a statement of the reason for the proposed amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The other Party shall use its best efforts to respond in writing to the proposal within sixty (60) calendar days of receipt of the request. The response shall either (1) concur with the proposed Amendment; (2) concur with the proposed Amendment with requested changes; (3) identify additional information necessary to enable evaluation of the proposed Amendment, or (4) disapprove the proposed Amendment, stating reasons for the disapproval. Both Parties must agree in writing to any Minor Amendment, including the schedule for implementation, before implementation of such Amendment. Any proposed Minor Amendment which is disapproved by one of the Parties may be resubmitted as a proposed Major Amendment pursuant to Section 11.2 of this Agreement. The Wildlife Agency will not propose or approve a Minor Amendment if the Wildlife Agency determines that such amendment would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional Take not analyzed in connection with the original HCP.

(b) Minor Amendments may include, but are not limited to, the following:

- (1) Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the HCP and/or incidental take permits;
- (2) Modifying existing or establishing new measures to further minimize or avoid take of the Covered Species;
- (3) Modifying reporting protocols for Annual Reports;
- (4) Minor changes to monitoring or reporting protocols;
- (5) Revising breeding colony habitat enhancement and management techniques; and
- (6) Any other modifications to the HCP that are consistent with the biological goals and objectives described in the HCP that will not result in

operations under the HCP that are significantly different from those analyzed in connection with the HCP as approved, adverse impacts on the environment that are new or significantly different from those analyzed in connection with the HCP as approved, or take of Covered Species not analyzed in connection with the HCP as approved, including but not limited to the approval or execution of agreements to facilitate execution and implementation of the HCP, or actions by KIUC to delegate (while retaining full responsibility for compliance with) any of its duties under this HCP to a third party under its direct control.

11.2 Major Amendments.

(a) Major Amendments may include, but are not limited to, the following:

(1) Adding a new species to the list of Covered Species contained in the HCP and/or the incidental take permits;

(2) Changes to the Covered Activities which were not addressed in the HCP as originally adopted, and which otherwise do not meet the criteria for a Minor Amendment as discussed above; and

(3) Extending the term of the incidental take permits.

(b) A Major Amendment requires submittal to the USFWS of a written application and implementation of all permit processing procedures applicable to an original incidental take Permit. The specific documentation required to comply with the ESA and the National Environmental Policy Act may vary based on the nature of the Amendment.

12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

12.1 In general. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permit, and the HCP.

12.2 No monetary damages. No Party shall be liable for damages to the other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

12.3 Injunctive and temporary relief. The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12.4 Enforcement authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States or the State of Hawai'i to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or HRS Chapter 195D or other applicable law.

12.5 Permit Suspension. The USFWS may suspend the federal Permit, in whole or in part, to the extent allowed by the ESA, associated implementing regulations, or other applicable laws and regulations in force at the time of such suspension.

12.6 Informal Dispute Resolution Process. In the event of a dispute between the Parties regarding this Agreement, the Permits or the HCP, the disputing Party may notify the other Party of the dispute in writing. The Parties will then confer within thirty (30) calendar days of the receipt of such notification, and the Parties will use their best efforts and good faith to promptly and cooperatively resolve the dispute within an additional thirty (30) calendar days. If at the end of that period the dispute has not been resolved, the dispute shall be elevated to the President and CEO of KIUC and the Field Supervisor for the USFWS Pacific Islands Fish and Wildlife Office who shall personally meet and confer within the next thirty (30) calendar days and who shall exercise their best efforts and good faith to promptly and cooperatively resolve the dispute. If at any time a Party determines that circumstances so warrant, the Party may avail itself of any legal remedies otherwise available.

13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

Nothing in this Agreement is intended to alter the obligation of a federal agency to consult with the USFWS pursuant to Section 7 of the ESA (16 U.S.C. 1536(a)). To the maximum extent appropriate in any consultation on any Covered Activity with respect to the Covered Species under Section 7(a) of the ESA and regulations issued thereunder, the USFWS shall ensure that the biological opinion issued in formal consultation, or views expressed by the USFWS in informal consultation, in connection with the proposed activity are consistent with the biological opinion prepared on the Permit and HCP, provided that the Covered Activity as proposed in the consultation is consistent, and will be implemented in accordance, with the HCP, this Agreement, and the Permit. Any reasonable and prudent measures and terms and conditions in the biological opinion, or views expressed by the USFWS in informal consultation, on the proposed activity shall, to the maximum extent appropriate, be consistent with and not in excess of the measures included in the HCP, this Agreement, and the Permit.

14.0 MISCELLANEOUS PROVISIONS

14.1 Force Majeure. In the event that Permittee is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Permittee, including, but not limited to, acts of God, labor disputes, sudden actions of the elements not identified as Changed Circumstances, or actions of a non-participating federal agency, state agencies or local jurisdictions ("Force Majeure"), Permittee shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this section shall be deemed to authorize any Party to violate the ESA, and provided further that:

(a) The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

(b) Within fifteen (15) days after the occurrence of the Force Majeure, Permittee shall give the Wildlife Agency written notice describing the particulars of the occurrence;

(c) Permittee shall use its best efforts to remedy its inability to perform (however, this paragraph shall not require the Permittee to incur extraordinary expenses or settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the Permittee is contrary to its interest); and

(d) When Permittee is able to resume performance of its obligations, Permittee shall give the Wildlife Agency written notice to that effect.

14.2 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.3 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally, or by overnight mail, to the persons listed below, or shall be deemed given five (5) business days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Field Supervisor
United States Fish and Wildlife Service
Pacific Islands Fish and Wildlife Office
300 Ala Moana Blvd., Room 3-122
Honolulu, Hawaii 96850
Telephone: 808-792-9400
Facsimile: 808-792-9580

President and CEO
Kaua'i Island Utility Cooperative
4463 Pahe'e Street, Suite 1
Lihue, Hawaii 96766-4300
Telephone: 808-246-4300
Facsimile: 808-246-4389

14.4 Entire agreement. This Agreement, together with the HCP and the Permit, constitutes the entire agreement between the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

14.5 Elected officials not to benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.6 Availability of funds. Implementation of this Agreement and the HCP by the USFWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

14.7 Duplicate originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

14.8 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA, HRS Chapter 195D, or other federal or state law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

14.9 Relationship to the ESA and other authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA, and applicable federal and state law. In particular, nothing in this Agreement is intended to limit the authority of the Wildlife Agency to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Wildlife Agency as an agency of the federal government. Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Permittee under the HCP and this Agreement will be considered in any consultation affecting Permittee or its Covered Activities.

14.10 References to regulations. Any reference in this Agreement, the HCP, or the Permit to any regulation or rule of the Wildlife Agency shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

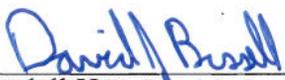
14.11 Applicable laws. All activities undertaken pursuant to this Agreement, the HCP, or the Permit must be in compliance with all applicable state and federal laws and regulations.

14.12 Successors and assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of either of the Permits shall be governed by the Wildlife Agency's regulations in force at the time.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date the Permits are issued.

BY 
Richard Hannan
Deputy Regional Director
United States Fish and Wildlife Service, Region 1
Portland, Oregon

Date 5/13/11

BY 
~~Randal McE~~ David J. Bissell
President and CEO
Kaua'i Island Utility Cooperative
Lihue, Hawaii

Date 5-18-11