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FILE NO: 080116.0000006

January 28, 2019

**Via Hand Delivery**

The Honorable Scott S. Harris  
Clerk of the Court  
Supreme Court of the United States  
1 First Street, N.E.  
Washington, D.C. 20543

Re: *County of Maui v. Hawai'i Wildlife Fund et al.*, No. 18-260

Dear Mr. Harris:

I am writing to advise the Court of two developments relevant to the above-captioned case. The petition for a writ of certiorari in this case was filed on August 27, 2018, and it remains pending. The petition was last considered at the Court's conference on January 18, 2019, after the United States filed its invited brief on January 3, 2019, supporting a grant of certiorari in this case.

In briefing on the petition, the parties have referenced two cases in the courts of appeals in which there have been recent developments. The first case is *Tennessee Clean Water Network v. Tennessee Valley Authority*, 905 F.3d 436 (6th Cir. 2018), which all parties agree is in conflict with the Ninth Circuit decision in this matter. *See, e.g.*, Pet'r's Suppl. Br. 2; Resp'ts' Second Suppl. Br. 1; U.S. Br. 11-12. On January 17, 2019, the Sixth Circuit denied a petition for rehearing en banc by a vote of 10 to 6. *Tenn. Clean Water Network v. Tenn. Valley Auth.*, No. 17-6155, 2019 WL 244730 (6th Cir. Jan. 17, 2019). The second case is *26 Crown Street Associates, LLC v. Greater New Haven Regional Water Pollution Control Authority*, No. 17-2426 (2d Cir. filed Aug. 4, 2017), which Respondents identified as "a pending case ... presenting later opportunities for this Court to consider taking review" of the first question presented in the petition. Br. in Opp. 2. On January 18, 2019, the parties in that case filed a stipulation withdrawing the appeal with prejudice. FRAP 42 Stipulation, *26 Crown St. Assocs. v. Greater New Haven Reg'l Water Pollution Control Auth.*, No. 17-2426 (2d Cir. Jan. 18, 2019), ECF No. 179.

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ANDREWS KURTH**

The Honorable Scott S. Harris  
January 28, 2019  
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Sincerely,

A handwritten signature in black ink that reads "Michael R. Shebelskie". The signature is written in a cursive style with a large, stylized "M" and "S".

Michael R. Shebelskie  
Counsel of Record for Petitioner County of Maui

cc: David L. Henkin, Counsel of Record for Respondents  
Noel J. Francisco, Solicitor General

No. 18-260

COUNTY OF MAUI,

*Petitioner,*

v.

**HAWAI'I WILDLIFE FUND; SIERRA CLUB –  
MAUI GROUP; SURFRIDER FOUNDATION;  
WEST MAUI PRESERVATION ASSOCIATION,**

*Respondents.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2019, one (1) copy of the foregoing letter was served as required by U.S. Supreme Court Rule 29.3, on the following:

David L. Henkin  
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The following e-mail addresses have also been served electronically:

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Michael R. Shebelskie