



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

March 31, 2022

*Ref.: CWRM.5783.6*

**CERTIFIED COPY MAIL IS FORTHCOMING**  
**RETURN RECEIPT REQUESTED**

Glenn Tremble  
Launiupoko Irrigation Company, LLC  
305 East Wakea Ave., Suite 100  
Kahului, HI 96732

Aloha Mr. Tremble:

**NOTICE OF ALLEGED VIOLATION**  
**Interim Instream Flow Standard**  
**Kaua'ula Stream, Lahaina, Maui**

Notice is hereby given by the Commission on Water Resource Management (Commission) that Launiupoko Irrigation Company, LLC (LIC) may be in violation of the following:

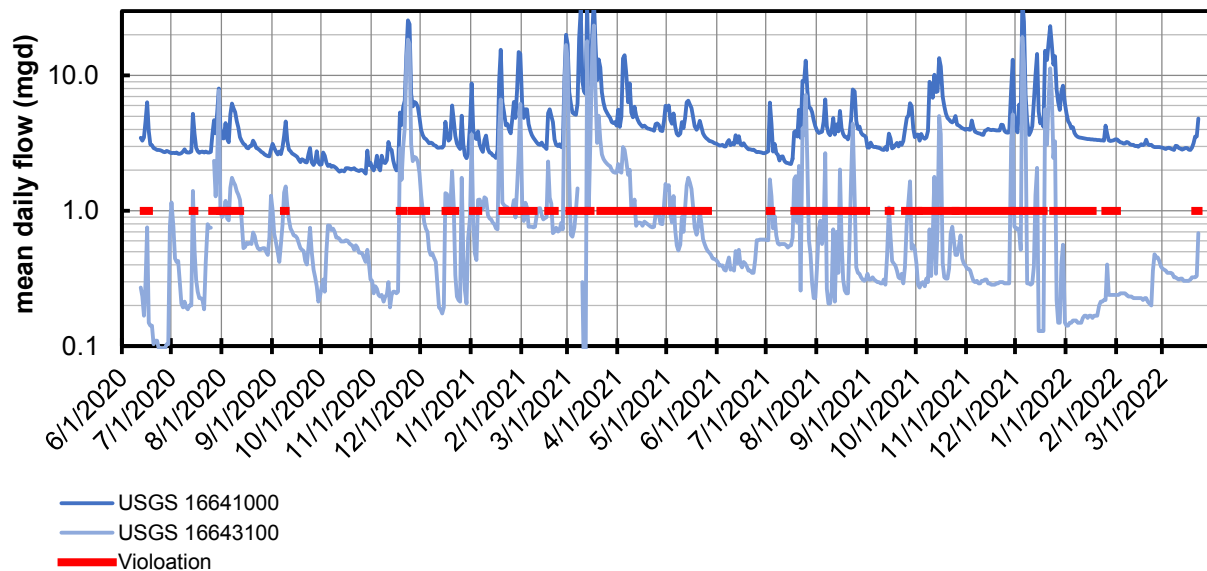
1. The measurable interim instream flow standard for Kaua'ula Stream, below the main diversion (REG.957.6) near an altitude of 1,540 feet, established by the Commission on March 20, 2018, in the amount of 5.2 cubic feet per second (3.36 million gallons per day) based on U.S. Geological Survey (USGS) estimates of total flow  $Q_{90}$ .
2. The measurable interim instream flow standard for Kaua'ula Stream, below the kuleana users near an altitude of 270 feet, established by the Commission on March 20, 2018, in the amount of 6.35 cubic feet per second (4.1 million gallons per day) based on USGS estimates of total flow  $Q_{70}$  and seepage losses.

Hawaii Revised Statutes §174C-71(2) and Hawaii Administrative Rules §13-169-30(b) directs the Commission to establish instream flow standards on a stream-by-stream basis whenever necessary to protect the public interest in waters of the State. The staff of the Commission monitors and regulates these established instream flow standards to ensure the protection of instream uses and adequate sharing of this limited resource for non-instream purposes.

According to HRS §174C-15, HAR §13-168-3, and Administrative and Civil Penalty Guideline (G14-01), any person who violates any provision of this chapter, or any rule adopted pursuant to this chapter, may be subject to a fine imposed by the Commission. Such fine shall not exceed \$5,000 per violation. For a continuing offense, each day's continuance is a separate violation.

Our records indicate that from June 12, 2020 to March 23, 2022 (650 days), Kaua‘ula Stream had a mean daily flow of 4.55 mgd and that only below Diversion 957. There were 315 days (48.5%) where the mean daily flow at USGS 16643100 below Diversion 957 violated the interim IFS while there was sufficient flow above Diversion 957 at USGS 16641000. On days when there was insufficient flow above Diversion 957 at USGS 16641000 to meet the interim IFS, an average of 2.33 mgd continued to be diverted. For the period from June 12, 2020 to March 23, 2022, an average of 3.46 mgd (interquartile range: 2.44 – 3.66 mgd) was diverted from Kaua‘ula Stream at Diversion 957.

**Figure 1.** Mean daily flow (million gallons per day, mgd) above diversion 957 at USGS 16641000 and below diversion 957 at USGS 16643100 with dates where flow at USGS 16643100 was below the interim IFS of 3.36 mgd and the flow at USGS 16641000 was above the interim IFS.



On September 28, 2021, Commission staff contacted LIC via letter (*CWRM.5783.6*) and reminded LIC of its obligation to comply with the interim IFS, requested LIC to submit a proposal of the stream diversion modification within 30 days the date of the letter, requested LIC to begin reporting the amount of water distributed to Ku‘ia Estate Chocolate (KEC), the Kaua‘ula valley homes, Kaua‘ula Reservoir, and returned to the stream at the siphon immediately, and requested LIC to install appropriate measuring devices (e.g., rated flume, weir with staff plate) to monitor the amount of water flowing to Kaua‘ula Reservoir above the siphon within 90 days.

On October 28, 2021, LIC responded via letter stating LIC will submit conceptual plans for the stream diversion modification within 30 days and commencement of these modifications LIC conditions on the receipt of a temporary rate increase by the Public Utilities Commission (PUC). LIC also submitted data on the amount of water distributed to KEC, the Kaua‘ula valley homes, Kaua‘ula Reservoir, and returned to the stream at the siphon and stated that LIC will provide a recommendation to the Commission within 60 days for the installation of a measuring device to monitor streamflow into Kaua‘ula reservoir.

On November 29, 2021, LIC submitted conceptual plans for the stream diversion modification and repeated LIC's condition on a revised temporary rate increase. LIC also stated that "[u]sing USGS data over a 473 day period between June 2020 and Sept. 2021, streams flows were at or below the IIFS of 5.2 cfs for 245 days during the 15 month period."

Based on data submitted by LIC, in letter dated October 28, 2021, and recreated in Table 1, there is a substantial amount of diverted flow that continues to be used by LIC, even during drought periods. Follow up site visits to the LIC service area have documented the continued use of water for landscape irrigation, particularly the watering of lawns during the mid-day with full sun. Such usage of water while violating the interim IFS constitutes clear waste of limited water resources.

**Table 1.** Daily mean diverted flow (gallons) at Diversion 957, metered usage by KEC, valley homes, Kapu homestead, return flow from Kapu homestead (80%), and release from the siphon back to Kaua'ula Stream.

Month	Diverted Flow	Maui Kuia Estate Chocolate Farm	Valley Homes	Kapu homestead	Kapu return (80%)	Siphon release	Balance
March 2021	6,999,846	65,787	50,374	99,215	79,372	1,583,204	5,280,637
April 2021	4,282,599	59,083	50,374	32,133	25,707	1,753,133	2,413,582
May 2021	3,505,865	85,735	50,374	32,137	25,709	1,861,774	1,501,553
June 2021	2,561,071	108,660	50,374	112,204	89,763	1,826,900	552,696
July 2021	3,077,639	93,616	50,374	50,269	40,215	1,477,742	1,445,853
August 2021	3,579,043	76,732	50,374	58,397	46,718	1,333,548	2,106,708
September 2021	2,973,195	102,523	50,374	64,035	51,228	1,407,000	1,400,491
October 2021	4,892,908	59,381	50,374	38,564	30,851	1,481,484	3,293,956

Based on the information and analysis above, we expect LIC to immediately comply with the IIFS on Kaua'ula Stream. The Commission staff is of the opinion that the PUC's order granting LIC's temporary rate relief request, Order No. 37872 in PUC Docket No. 2020-0089, is sufficient for LIC to implement the requested stream diversion modifications and installation of a measuring device at Kaua'ula reservoir.

We welcome LIC to provide a response within thirty (30) days of the date of this letter, as we intend to schedule this case before the Commission for final disposition. You will be notified at that time concerning the meeting time and place.

We appreciate your attention to this matter. Should you have any questions, please contact Dr. Ayrton Strauch of the Commission staff at (808) 587-0265, or via email at [ayron.m.strauch@hawaii.gov](mailto:ayron.m.strauch@hawaii.gov).

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director