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

April 12, 2022

*Ref.: CWRM.5882.6*

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

Peter Martin  
Olowalu Water Company, LLC  
305 East Wakea Ave., Suite 100  
Kahului, HI 96732

Aloha Mr. Martin:

**NOTICE OF ALLEGED VIOLATION**  
**Interim Instream Flow Standard**  
**Olowalu Stream, Lahaina, Maui**

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

1. The measurable interim instream flow standard (interim IFS) for Olowalu Stream, below the lower diversion (REG.961.6) near an altitude of 130 feet, established by the Commission on March 20, 2018, in the amount of 3.6 cubic feet per second (2.33 million gallons per day) based on U.S. Geological Survey (USGS) estimates of total flow  $Q_{60}$ .

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.

According to Commission gaging records (Gage 6-121), the data indicates that from January 1, 2019 to March 29, 2022 (1184 days), there were at least 548 days (46.3%) where the mean daily flow on Olowalu Stream, measured below the Lower Olowalu Ditch intake (Diversion 961), violated the interim IFS while Olowalu Water Company continued to divert water for non-public

trust uses. Commission gage 6-121 is a continuous stream gaging station and is located below Diversion 961. For the period from September 1, 2019 to March 29, 2022, OWC reported that a monthly average of 0.263 mgd was diverted from Olowalu Stream at Diversion 961. Staff measurements at Commission gage 6-143 on Lower Olowalu Ditch indicate that more flow is frequently diverted (Table 1).

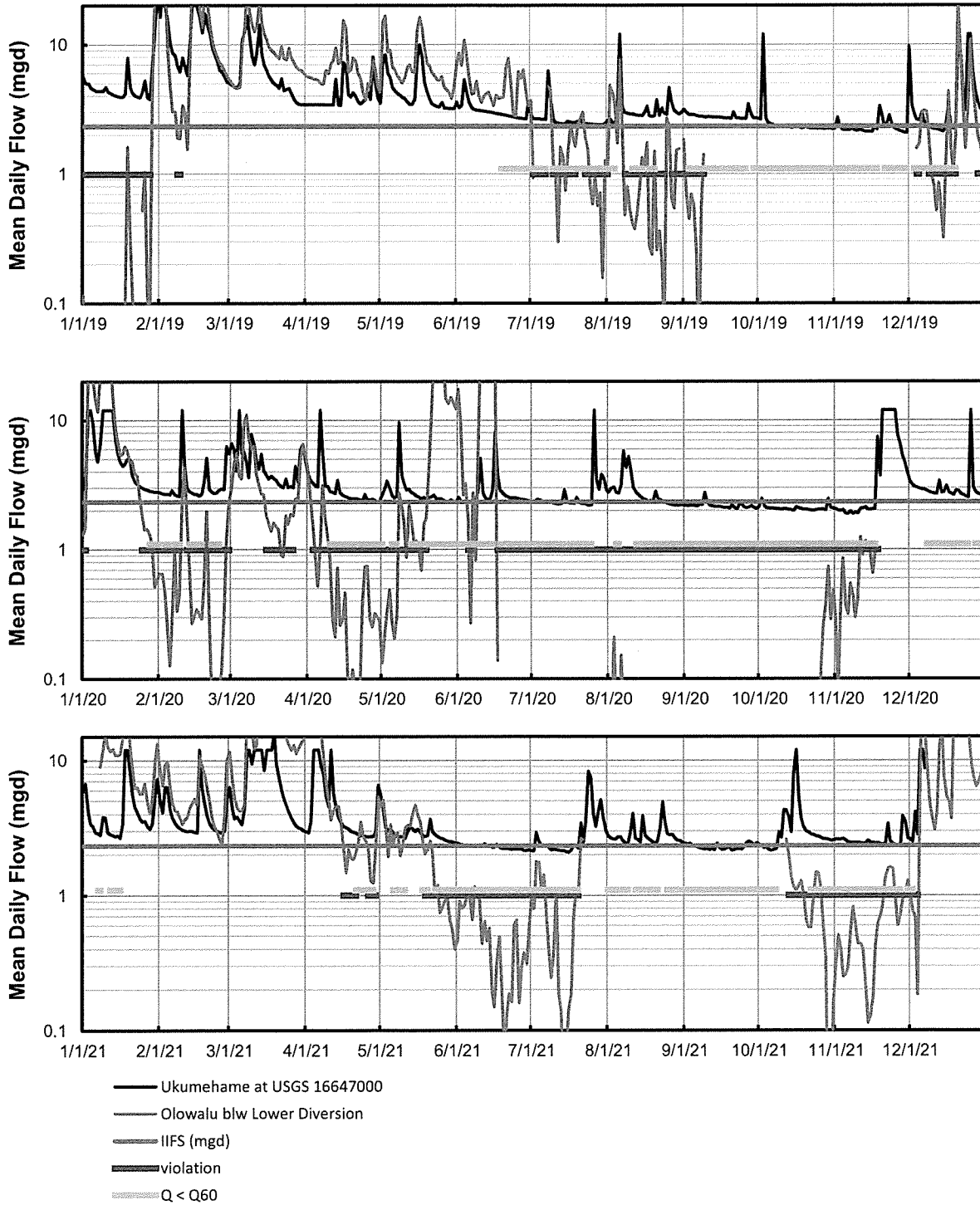
From June 2019 to March 2022, staff made 14 flow measurements in Olowalu Stream below Diversion 961 and only five of the measurements met the interim IFS, while water continued to be diverted at Diversion 961. Following the installation of a separate pipeline and meter for Maui Cultural Lands, the flow distributed to Maui Cultural Lands has averaged 0.057 mgd during site visits while the flow pumped up from the Lower Olowalu Ditch to the upper Olowalu Reservoir has averaged 0.143 mgd.

**Table 1.** Measured Olowalu streamflow above Lower Olowalu Ditch Diversion (lower diversion), Olowalu streamflow below lower diversion flow at Diversion 961, Lower Olowalu Ditch flow, metered flow to Maui Cultural Lands, and pumped flow from Olowalu Ditch to Upper Olowalu Reservoir during various site visits from 2019 to 2022. [All values are in million gallons per day (MGD)]

date	Olowalu Stream abv Lower Diversion	Olowalu Stream blw Lower Diversion 961	Diverted at Lower Olowalu Ditch	Maui Cultural Lands meter	Olowalu Ditch Pump to Upper Reservoir
6/4/2019	5.02	3.36			
9/9/2019	1.25	0.32	0.78		0.16
3/2/2020	8.71	8.53			
6/22/2020	2.80	0.58			
10/26/2020	1.47	0.23			0.144
1/8/2021	1.99	1.61	0.38	0.072	0.166
3/19/2021		26			
7/22/2021	2.26	1.40	0.50	0.072	0.144
11/2/2021	1.35	0.56	0.50	0.042	0.158
11/15/2021	1.18	0.44	0.45	0.043	0.161
12/8/2021	7.78	6.81	0.68	0.042	0.158
1/31/2022	2.50	1.63	0.55	0.071	0.174
3/22/2022	3.80	2.83	0.66	0.063	0
3/29/2022	1.37	0.36	0.71	0.049	0.164

On days when mean daily flow above Diversion 961 drops below the Q<sub>60</sub> flow, OWC must reduce the intake of stream water at Diversion 961 (Figure 1, orange line). As a traditional and customary practice protected by the State Constitution, Maui Cultural Lands is entitled to the continued use of water for instream purposes.

**Figure 1.** Mean daily flow (million gallons per day, mgd) on Olowalu Stream below Lower diversion (diversion 961) and at the index station USGS 16647000, Ukumehame Gulch nr Olowalu, Maui, HI, with the interim IFS and dates where flow was below the interim IFS of 2.33 mgd.



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Based on the information and analysis above, we expect OWC to immediately comply with the interim IFS on Olowalu Stream. We welcome OWC 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. Ayron 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