



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:

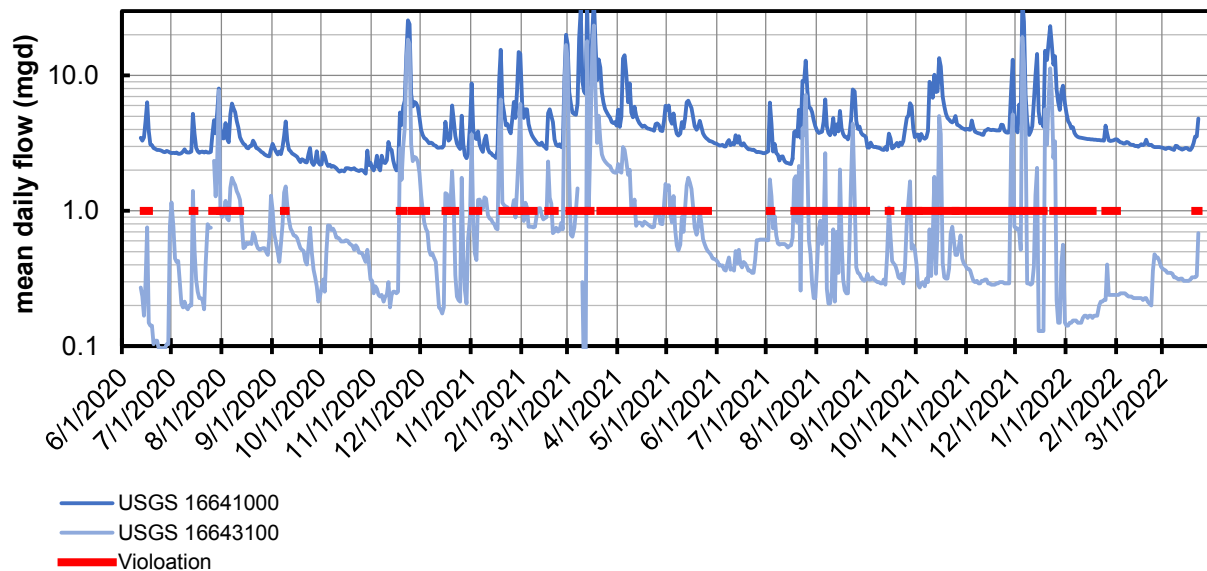
1. The measurable interim instream flow standard for Kaua'ula Stream, below the main diversion (REG.957.6) near an altitude of 1,540 feet, established by the Commission on March 20, 2018, in the amount of 5.2 cubic feet per second (3.36 million gallons per day) based on U.S. Geological Survey (USGS) estimates of total flow Q<sub>90</sub>.
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<sub>70</sub> 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

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
MICHAEL G. BUCK  
ELIZABETH A. CHAR, M.D.  
NEIL J. HANNAHS  
AURORA KAGAWA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER  
M. KALEO MANUEL  
DEPUTY DIRECTOR

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).

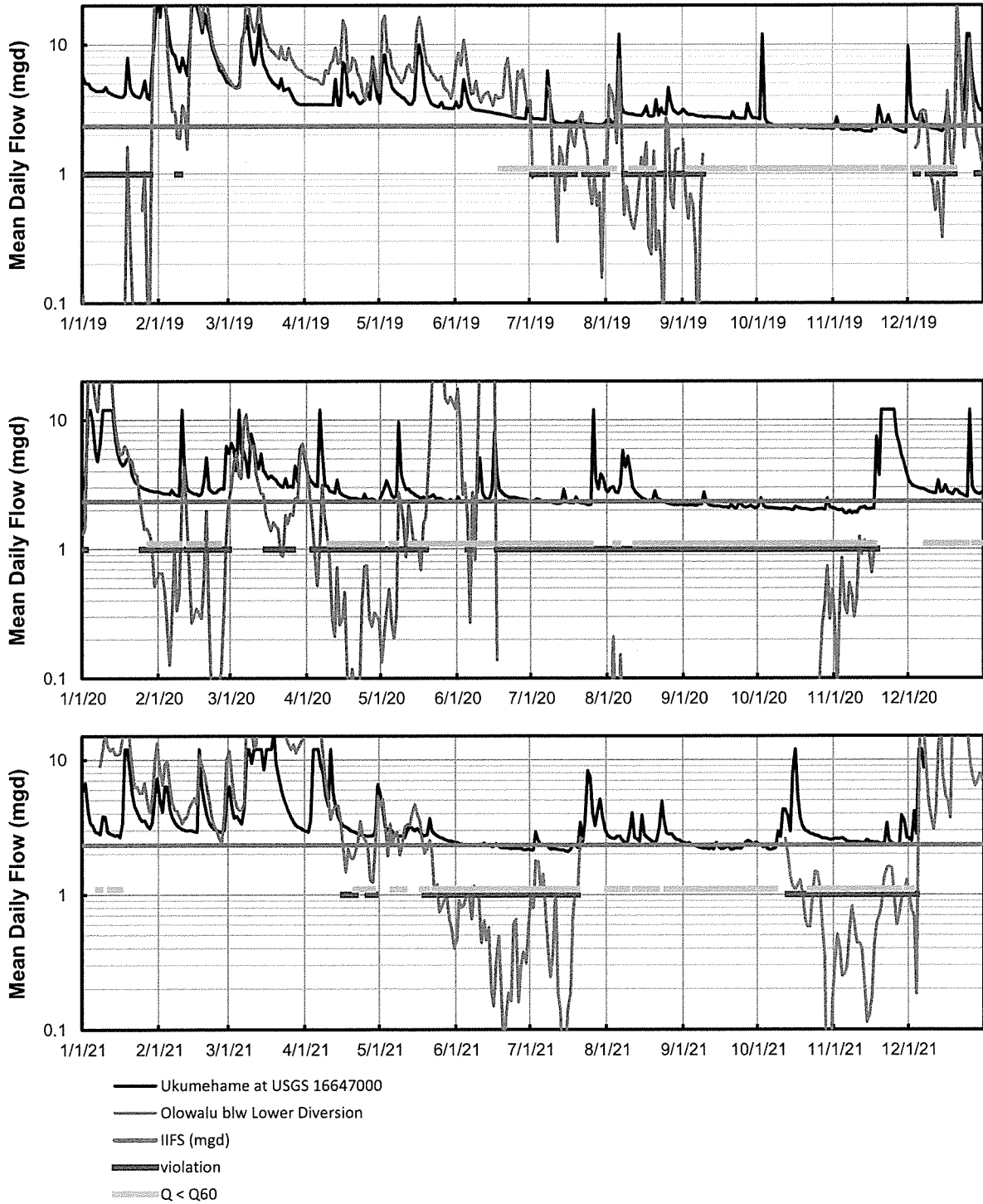
From June 2019 to March 2022, staff made 14 flow measurements in Olowalu Stream below Diversion 961 and only five of the measurements met the interim IFS, while water continued to be diverted at Diversion 961. Following the installation of a separate pipeline and meter for Maui Cultural Lands, the flow 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.



Mr. Peter Martin  
April 12, 2022  
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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



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

May 25, 2022

*Ref.: CWRM.5018.6*

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

Helene Kau, Director  
Maui Department of Water Supply  
200 S. High Street, 5<sup>th</sup> Floor  
Wailuku, HI 96793

Aloha Director Kau:

**NOTICE OF ALLEGED VIOLATION**  
**Interim Instream Flow Standard**  
**Kanahā Stream, Kahoma Surface Water Hydrologic Unit, Lahaina, Maui**

Notice is hereby given by the Commission on Water Resource Management (Commission) that the County of Maui, Department of Water Supply (Maui DWS) may be in violation of the following:

1. At its November 20, 2018 meeting, the Commission amended staff's interim instream flow standard (interim IFS) recommendation to immediately restore 0.55 mgd to Kanahā Stream below Maui DWS' diversion 954, to provide for continual mauka to makai flow in addition to the projected consumptive demand of 3.34 acres of lo'i kalo. An additional 0.12 mgd would be released each subsequent year, until year 5 when there must be an increase to the full 1.55 mgd as proposed by staff. This interim IFS is expected to continue to meet the noninstream water needs of H. Michel (0.03 mgd), Lahainaluna High School (0.10 mgd), and Maui DWS (1.65 mgd) approximately 90 percent of the time. When streamflow drops below the estimated 90<sup>th</sup> percentile flow of 2.65 mgd, some non-public trust uses may be restricted. The expanded timeline was expected to provide Maui DWS sufficient time to increase groundwater well production by 1.5 mgd.
2. At this time, and in accordance with the Commission's November 20, 2018 decision, Maui DWS should be releasing 0.79 mgd at its Kanahā Stream diversion.

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



Director Helene Kau, Maui Department of Water Supply

May 25, 2022

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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.

We understand that Maui DWS entered into a Joint Funding Agreement with the U.S. Geological Survey (USGS) in 2019 to install and manage two (2) streamflow gaging stations on Kanahā Stream; one (1) located just below the Maui DWS diversion 954; and one (1) located in Kanahā Ditch which feeds the Maui DWS pipeline. However, neither of these gaging stations have been installed. Based on a recent meeting between Maui DWS, USGS, and Commission staff, it seems that access issues have been resolved and exact gaging station locations are being identified by USGS. The Commission also understands that no modifications have been made to the Maui DWS intake or diversion as ordered by the Commission. Therefore, Maui DWS has not been in compliance with the interim IFS and the modification orders of the Commission since November 20, 2018.

We welcome Maui DWS 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.

The Commission appreciates 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