



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA
COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

December 16, 2025
Honolulu, Hawai'i

Find that Maui Land & Pineapple Co. (MLP), Owner of Diversion 770, Violated the Interim Instream Flow Standard for Honokōhau Stream on 28 Days from January 1, 2025 to August 14, 2025, and Impose Fines in Accordance with HRS § 174C-15 and HAR § 13-169-3, Honokōhau Surface Water Hydrologic Unit (6014), Honokōhau, Maui; TMK: (2) 4-1-010-017

I. SUMMARY OF REQUEST

Staff requests that the Commission:

1. Find that MLP, owner of Diversion 770, violated the interim instream flow standard (IIFS) for Honokōhau Stream on 28 days from January 1, 2025 to August 14, 2025;
2. Impose fines totaling \$126,500 in accordance with HRS § 174C-15, HAR § 13-169-3, and the Commission's Administrative and Civil Penalty Guideline (G14-01); and
3. Receive and consider a proposal submitted by MLP and, at the Commission's discretion, take action on the proposed settlement.

LOCATION: Honokōhau Stream, Maui. See Figure 1.

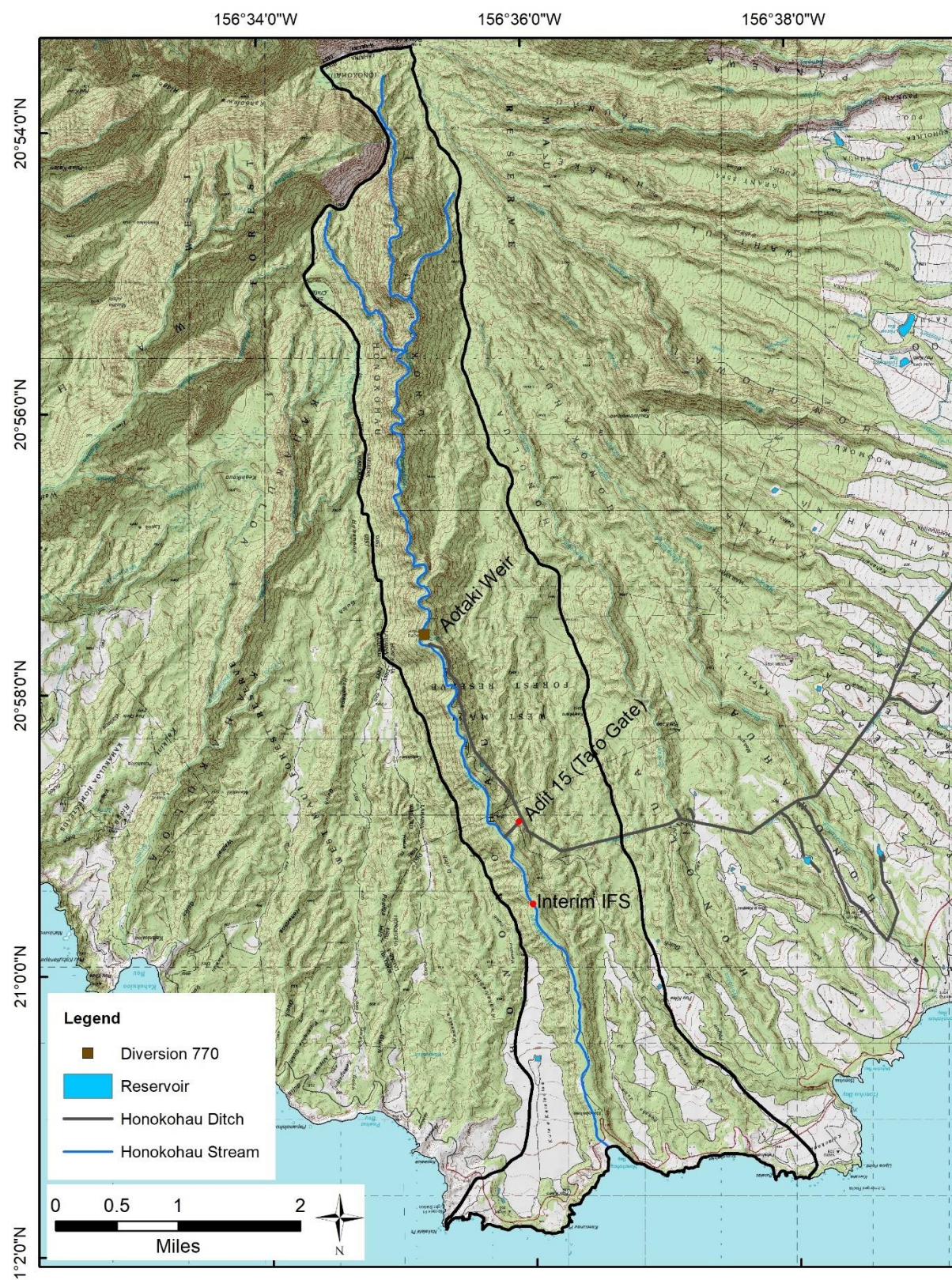


Figure 1. Honokōhau Stream and Honokōhau Ditch with Aotaki Weir, Adit 15 (Taro Gate), and the IIFS at MacDonald's Dam locations identified.

II. BACKGROUND

Honokōhau Stream is diverted into the Honokōhau Ditch at Diversion 770, also known as Aotaki Weir. Water entering the ditch at Diversion 770 can be returned to the stream at Adit 15, also known as Taro Gate. The Commission's real-time monitoring station at MacDonald's Dam (340 ft elevation) is located downstream of these features and is the designated compliance point for the IIFS.

MLP owns Honokōhau Ditch and Diversion 770. In 2021, MLP sold its subsidiary, Kapalua Water Company, to Hawai'i Water Service (HWS), which subsequently assumed operational control of the Honokōhau Ditch System on behalf of MLP. MLP remains the owner and responsible party under Commission orders, while HWS oversees daily operations of Diversion 770 and Honokōhau Ditch.

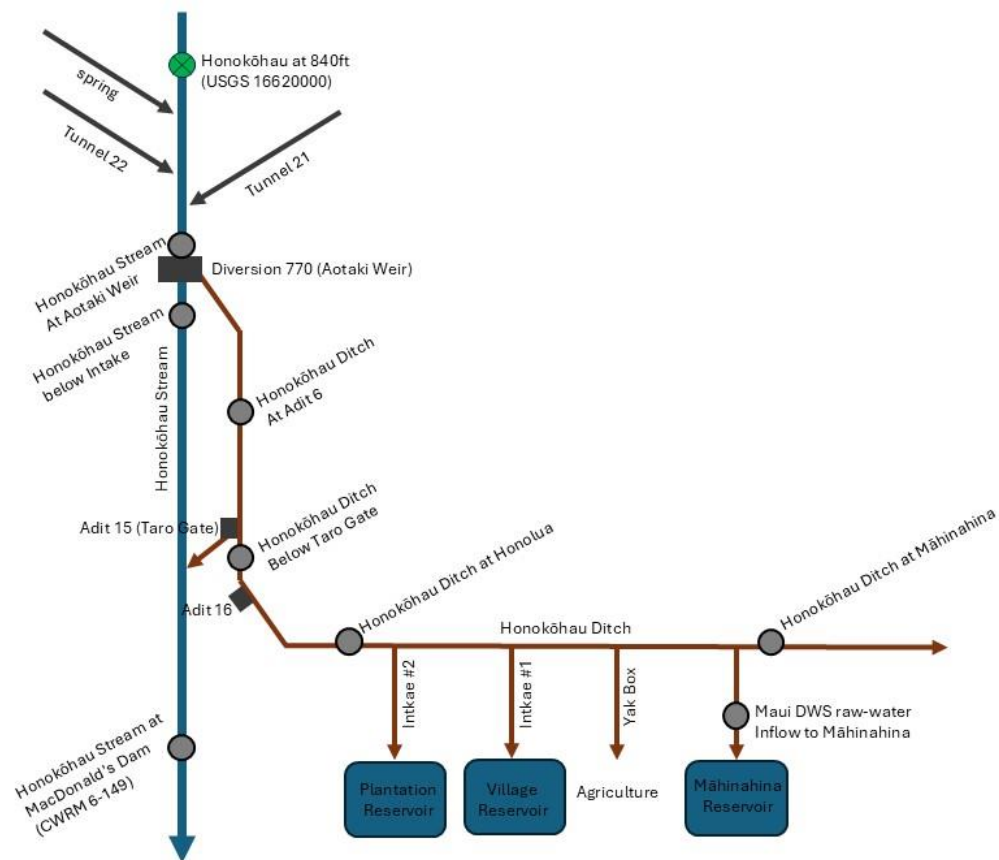


Figure 2. Schematic diagram of Honokōhau Stream and Honokōhau Ditch with various measurement locations.

May 2021 Order and Amendment to IIFS

Water in Honokōhau Stream supports a range of protected public trust uses, including traditional and customary Native Hawaiian practices, restored lo'i kalo, habitat for native biota, and domestic water supply for the Honokōhau Valley community. On May 18, 2021, the Commission adopted an IIFS of **13.3 cubic feet per second (cfs) at MacDonald's Dam** at 340 feet in elevation to provide continuous upstream to downstream flow and protect public trust uses. Exhibits 1 and 2. Because the stream gains water between Diversion 770 (Aotaki Weir) and MacDonald's Dam, the IIFS value (13.3 cfs) is higher than the expected flow immediately at the diversion.

Specifically, the Commission amended the IIFS on Honokōhau Stream¹ as follows:

The interim IFS on Honokōhau Stream at McDonald's Dam (at the 340 foot elevation), shall be a flow of 8.6 mgd. The interim IFS represents the restoration of 64% of median base flow (BFQ₅₀) as estimated at USGS 16620000 (7.4 mgd), plus the additional 2.3 mgd of groundwater gains between USGS 16620000 and Aotaki Weir and 1.4 mgd of groundwater gains between Aotaki Weir and McDonald's Dam minus 2.5 mgd for the Maui DWS. The interim IFS is expected to be in excess of the water needs to support the existing needs of lo'i kalo as well as future acreage while protecting aquatic biota, recreation, and domestic uses at all elevations, and ensuring sufficient water to meet traditional and customary practices 100% of the time in Honokōhau Valley. MLP is required to meet the interim IFS 100% of the time. There should also be adequate ditch flow to meet Maui DWS needs of 2.5 mgd at the Māhinahina WTF 100% of the time. It is understood that during extreme drought ($< Q_{90}$; < 11.0 mgd at Aotaki Weir), 100% of the off-stream needs of non-public trust uses may not be met.

On June 4, 2021, Commission staff transmitted a Notice of Commission Action notifying MLP of various actions taken by the Commission, including the amendment to the IIFS for Honokōhau Stream. Exhibit 3, at 2-3.

On April 15, 2025, HWS installed a stoplog downstream of Adit 15 to increase the flow of water returned to Honokōhau Stream. On June 14, 2025, HWS installed a remotely operated gate at Adit 15 (Taro Gate) to control the return of water back to Honokōhau Stream (Figure 3b).

¹ The Commission amended the "status quo" IIFS originally set in 1988, HAR § 13-169-48.



Figure 3a. Picture of Adit 15 (Taro Gate) return flow from Honokōhau Ditch to Honokōhau Stream.



Figure 3b. Remotely operable board installed downstream of Adit 15 in Honokōhau Ditch to increase returned flow, June 14, 2025.

Consequences of the 2025 Drought

In Water Year 2025, substantially less rain fell in West Maui during the wet season. This persistent lack of rainfall continued into the dry season, with a 12-month cumulative total rainfall of 46% the annual average in Honokōhau (Figure 4). This resulted in an almost 40% reduction in median streamflow in Water Year 2025 compared to the 1995-2024 period of record.

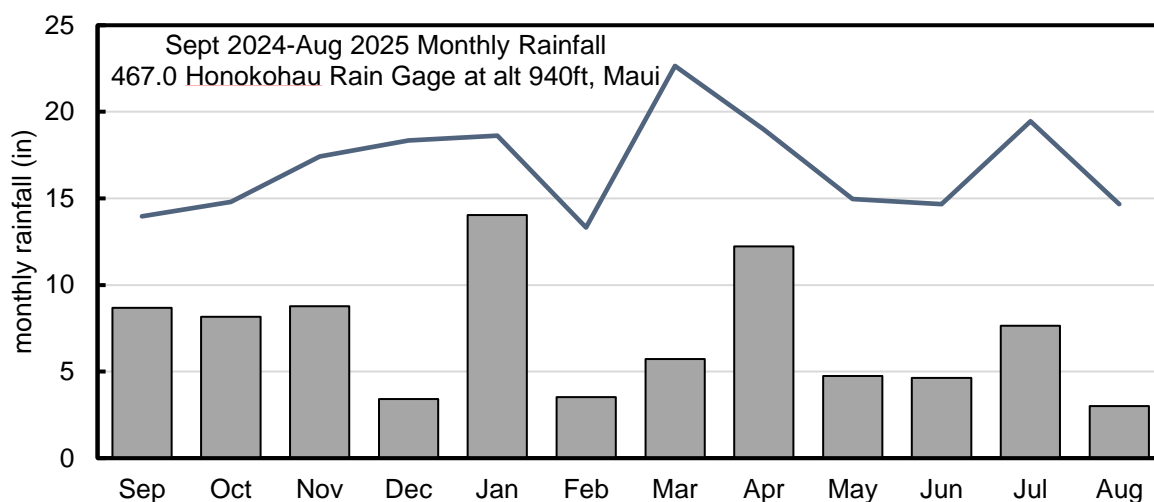


Figure 4. Monthly mean rainfall from 1984-2013 (blue line) and measured rainfall (gray bars) at Honokōhau Stream.

III. DETERMINATION OF NON-COMPLIANCE WITH IIFS

Under the May 2021 Order, the IIFS is monitored with a gaging station maintained by Commission staff (CWRM station 6-149). A violation occurs when mean daily flow at MacDonald's Dam falls below 13.3 cfs for (a) three or more consecutive days, or (b) four days out of any seven-day period.

Staff reviewed data from the MacDonald's Dam gaging station (6-149) and USGS station 16620000 at Diversion 770 and identified 28 days between January 1, 2025 and August 14, 2025, on which mean daily flow fell below 13.3 cfs for three consecutive days or four out of seven days.

On October 8, 2025, Commission staff issued a Notice of Alleged Violation to MLP ("Notice"), Exhibit 4. The Notice stated that MLP may be in violation of:

1. The measurable interim instream flow standard on Honokōhau Stream at MacDonald's Dam near an altitude of 340 feet, established by the May 2021 Commission Order, in the amount of 13.3 cubic feet per second (8.6 million gallons per day).

2. The November 2019 Commission Order, as amended in October 2021, requiring the installation of a remotely operable valve and associated power source and communications to return flow from Honokōhau Ditch at Adit 16.

MLP submitted its initial response on November 10, 2025 (“Response”), Exhibit 5, and a supplemental response on November 24, 2025 (“Supplemental Response”), Exhibit 6.

Initial Findings and Analysis

In addition to the continuous-record real-time stream gaging station maintained by the Commission at MacDonald’s Dam (CWRM gaging station 6-149) and the USGS continuous-record real-time stream gaging station (USGS 16620000) above Aotaki Weir, HWS operates a continuous-record gaging station on Honokōhau Ditch below Taro Gate that monitors diverted flow not returned to the stream. CWRM also maintains a gaging station on Honokōhau Ditch at Honolua (CWRM 6-141), with point measurements made from January to August 2025.

Gaging records at CWRM 6-149 from January 1, 2025 to August 14, 2025 (225 days) indicate that on 36 days (16.0%) the mean daily flow on Honokōhau Stream, measured at MacDonald’s Dam, was below the IIFS, mostly from April through August. Those dates are identified in Table 1, with the mean daily flow measured at USGS station 16620000 on Honokōhau Stream, the mean daily flow at Aotaki Weir on Honokōhau Stream, and the mean daily diverted flow in Honokōhau Ditch below Taro Gate.

Based on measured streamflow values, there is sufficient water to meet the IIFS if the USGS 16620000 station reads at least 9.9 cfs (6.4 mgd) and no water is diverted out of Honokōhau Stream due to the groundwater gains in streamflow between USGS 16620000 and Aotaki Weir and the groundwater gains between Aotaki Weir and MacDonald’s Dam. On the date of each violation, USGS station 16620000 recorded flows greater than 10.2 cfs, meaning that there was sufficient water in Honokōhau Stream above Aotaki Weir to meet the IIFS (Table 1).

Commission staff communicated with the ditch operator on May 28, 2025, July 8, 2025, July 23, 2025, and July 27, 2025 regarding non-compliance with the IIFS.

Additionally, Commission staff measured diverted flow in Honokōhau Ditch at Honolua when the IIFS was not being met on July 8 and July 24, 2025 (Table 2).

Table 1. Dates when daily flow at CWRM station 6-149 Honokōhau Stream at MacDonald's Dam fell below the IIFS (13.3 cfs) compared to daily flow at USGS 16620000, daily flow at Honokōhau Stream at Aotaki Weir, daily flow in Honokōhau Ditch below Taro Gate, and the daily flow delivered to Maui DWS at Māhinahina Reservoir (provided by Maui DWS). [Note: Colored rows indicate when the violation occurred on three consecutive days or four out of seven days.]

	Honokōhau Stream at USGS 16620000 (natural flow)	Honokōhau Stream at Aotaki Weir (natural flow)	Honokōhau Stream at MacDonald's Dam (IIFS)	Honokōhau Ditch flow below Taro Gate (diverted flow)	Maui DWS raw-water inflow to Māhinahina Reservoir
Date	cfs	cfs	cfs	cfs	cfs
04/14/2025	11.6	16.0	9.70	1.47	2.45
04/15/2025	11.1	15.0	11.8	0.25	2.45
04/24/2025	12.2	17.1	12.3	no data	2.16
04/25/2025	11.2	15.2	12.5	no data	2.07
04/26/2025	10.8	14.5	12.8	no data	0.00
04/27/2025	10.6	14.1	12.3	no data	0.29
05/02/2025	10.6	14.1	12.4	no data	0.14
05/03/2025	11.3	15.4	13.1	no data	0.02
05/04/2025	11.2	15.2	12.9	no data	0.11
05/10/2025	10.8	14.5	12.7	no data	0.00
05/11/2025	10.7	14.3	12.2	no data	0.00
05/15/2025	11.9	16.5	12.1	no data	2.90
05/23/2025	12.1	16.9	12.9	0.64	0.00
05/25/2025	12	16.7	13.3	1.38	0.00
05/26/2025	10.9	14.7	12.0	no data	0.01
05/27/2025	10.4	13.8	11.5	no data	0.00
05/28/2025	10.2	13.5	10.8	no data	0.00
05/29/2025	10.3	13.6	10.6	no data	0.00
05/30/2025	12.8	18.4	12.1	no data	0.00
06/02/2025	11.5	15.8	10.5	no data	0.00
06/03/2025	12.4	17.5	10.1	no data	0.00
06/04/2025	10.7	14.3	8.6	no data	0.00
06/24/2025	11.0	14.9	12.7	2.97	1.87
07/07/2025	10.8	14.5	13.0	2.34	0.47
07/22/2025	12.8	18.4	10.6	3.65	2.47
07/23/2025	11.7	16.2	10.7	3.34	2.32
07/24/2025	11	14.9	13.1	2.39	0.24
07/25/2025	10.8	14.5	12.8	2.45	0.24
07/26/2025	10.7	14.3	12.6	2.39	0.18
07/27/2025	11	14.9	12.6	2.41	0.18
07/31/2025	10.8	14.5	13.0	0.81	0.00

08/01/2025	10.8	14.5	13.0	1.76	0.00
08/05/2025	10.2	13.5	12.4	1.71	0.01
08/06/2025	11.1	15.0	12.7	0.77	0.00
08/07/2025	11	14.9	13.2	0.99	0.22

Table 2. Total streamflow in Honokōhau Stream at MacDonald’s Dam, which is the sum of measured streamflow in Honokōhau Ditch at Honolulu and measured streamflow at MacDonald’s Dam, with streamflow at USGS 16620000 approximately 90 minutes prior to measurement for reference.

	Honokōhau Stream at MacDonald’s Dam	Honokōhau Ditch at Honolulu	Total Streamflow at MacDonald’s Dam	Streamflow at USGS 16620000
date	cfs	cfs	cfs	cfs
02/06/2025	13.4	3.72	17.1	11.7
04/01/2025	13.4	1.24	14.6	9.0
07/08/2025	12.8	5.19	18.0	13.1
07/24/2025	12.9	0.78	13.7	11.1
08/14/2025	14.6	0.064	14.7	10.7
09/15/2025	13.5	0.10	13.6	10.0

MLP’s Responses

In its Supplemental Response, MLP acknowledged that real-time data from the Commission’s gage at MacDonald’s Dam (CWRM station 6-149) “provides the relevant measurements to determine whether the IIFS was met[.]” MLP asserted that eight of the 28 violation days identified by staff should be excluded (April 26, May 3, May 25, May 27, May 28, May 29, June 4, and August 6). According to MLP, the ditch operator had fully opened the Adit 15 gate to release water from the ditch and no end users on the Honokōhau Ditch received water on those dates.

The Supplemental Response provided dates when Taro Gate at Adit 15 was fully open to return water from Honokōhau Ditch to Honokōhau Stream, when the inflow gates to Plantation and Village reservoirs were open from Honokōhau Ditch for use in Kapalua, and when the County of Maui Department of Water Supply was receiving water from Honokōhau Ditch based on HWS’s metering (Table 3).

Table 3. Dates when daily flow at CWRM station 6-149 Honokōhau Stream at MacDonald’s Dam fell below the IIFS (13.3 cfs) compared to MLP’s metered flow in Honokōhau Ditch below Taro Gate, MLP ditch operations, and the flow delivered to Maui DWS at Māhinahina Reservoir, as metered by Maui DWS. [Note: Colored rows indicate when the violation occurred on three consecutive days or four out of seven days.]

Date	CWRM	Violation #	MLP operations/meter				Maui DWS
	IIFS		MLP Diverted Flow Past Adit 15	MLP “Return Flow” at Adit 15	Intake #2 to Plantation Reservoir	Intake #1 to Village Reservoir	Distribution to Mahinahina Reservoir
	cfs		cfs	Setting	Setting	Setting	mgd
04/14/2025	9.70		1.47				2.45
04/15/2025	11.8		0.25				2.45
04/24/2025	12.3	1	no data	Fully open	Closed	Closed	2.16
04/25/2025	12.5	2	no data	Partial	Closed	Closed	2.07
04/26/2025	12.8	3	no data	Fully open	Closed	Closed	0.00
04/27/2025	12.3	4	no data	Fully open	Closed	Open	0.29
05/02/2025	12.4	5	no data	Fully open	Open	Closed	0.14
05/03/2025	13.1	6	no data	Fully open	Closed	Closed	0.02
05/04/2025	12.9	7	no data	Fully open	Closed	Open	0.11
05/10/2025	12.7		no data	Fully open			0.00
05/11/2025	12.2		no data	Fully open			0.00
05/15/2025	12.1		no data	Fully open			2.90
05/23/2025	12.9	8	0.64	Fully open	Closed	Open	0.00
05/25/2025	13.3	9	1.38	Fully open	Closed	Closed	0.00
05/26/2025	12.0	10	no data	Fully open	Open	Open	0.01
05/27/2025	11.5	11	no data	Fully open	Closed	Closed	0.00
05/28/2025	10.8	12	no data	Fully open	Closed	Closed	0.00
05/29/2025	10.6	13	no data	Fully open	Closed	Closed	0.00
05/30/2025	12.1	14	no data	Fully open	Closed	Open	0.00
06/02/2025	10.5	15	no data	Fully open	Open	Closed	0.00
06/03/2025	10.1	16	no data	Fully open	Closed	Closed	0.00
06/04/2025	8.6	17	no data	Fully open	Closed	Closed	0.00
06/24/2025	12.7		2.97	Fully open	Closed	Closed	1.87
07/07/2025	13.0		2.34	Fully open	Closed	Closed	0.47
07/22/2025	10.6	18	3.65	Partial	Closed	Closed	2.47
07/23/2025	10.7	19	3.34	Partial	Closed	Closed	2.32
07/24/2025	13.1	20	2.39	Fully open	Closed	Closed	0.24
07/25/2025	12.8	21	2.45	Fully open	Closed	Closed	0.24
07/26/2025	12.6	22	2.39	Fully open	Closed	Open	0.18
07/27/2025	12.6	23	2.41	Fully open	Closed	Open	0.18
07/31/2025	13.0	24	0.81	Fully open	Closed	Open	0.00
08/01/2025	13.0	25	1.76	Fully open	Closed	Open	0.00

08/05/2025	12.4	26	1.71	Fully open	Closed	Open	0.01
08/06/2025	12.7	27	0.77	Fully open	Closed	Closed	0.00
08/07/2025	13.2	28	0.99	Fully open	Closed	Open	0.22

Staff Response

Staff have evaluated the claims raised in MLP's Supplemental Response and conclude that the eight dates MLP identified should not be removed from the violation count for several reasons.

First, the amount of water flowing in the stream should be the focus of IIFS compliance and enforcement actions. Data from the ditch operator regarding how much water was in the ditch, how much flow was returned, and how much water was delivered to off-stream end users are helpful for understanding system operations, but cannot determine compliance with the IIFS.

Second, fully opening the Adit 15 release does not guarantee the return of all diverted water from the ditch. Taro Gate at Adit 15 returns water to Honokōhau Stream, but the dimensions of the opening do not permit the entirety of diverted flow to be returned if ditch flow exceeds the threshold flow of the gate when fully open. Under those circumstances, water can continue to bypass Adit 15. HWS attempted to address this issue in April 2025 by installing a short stoplog downstream of Adit 15 to increase the head of water in the ditch at Taro Gate and return more water, but the stoplog does not fully prevent water from traveling down the ditch (Figure 5b). This means that water could be intercepted by the ditch and delivered past Taro Gate to end users, even when MLP and HWS believed it was being returned.

Further, to operate the gate at Adit 15, the system "wakes up" three times per day during daylight hours and adjusts the return flow by opening or closing the gate. If insufficient energy is available to adjust the gate, or if discharge dynamics are changing rapidly, the system is regularly unable to maintain return flow sufficient to ensure compliance with the IIFS.

Third, the information that MLP provided regarding ditch system operations—including the position of the gates and intakes at Taro Gate and various distribution points—does not establish whether MLP met the IIFS. Not all end uses on the Honokōhau Ditch are metered. Where meters do exist, they are installed, maintained, and controlled by the ditch operator, not Commission staff or a neutral third party. Staff does not maintain, calibrate, or QA/QC these meters or the ditch operator's data systems. Because HWS's data is not verified by Commission staff or a neutral third party like USGS, and HWS's equipment and supporting communications systems are not maintained, controlled, or calibrated by Commission staff, information provided by MLP and HWS cannot disprove findings of violations based on the Commission's own gage at MacDonald's Dam.

Figure 5a. Upstream view of Honokōhau Ditch with Adit 15 opening on lefthand side on December 13, 2024



Figure 5b. Downstream view of stoplog board installed downstream of Adit 15 in Honokōhau Ditch to increase the returned flow through Adit 15 on April 15, 2025



As mentioned above, Commission staff have measured flow in Honokōhau Ditch at Honolulu on two dates in 2025 when the IIFS was not being met, despite the Adit 15 gate being in the “Full Return” position.

Under the May 2021 Order, the IIFS is measured at one location: MacDonald’s Dam. Compliance does not depend on the operational details of the ditch system; it is based on the quantity of flow at MacDonald’s Dam necessary to sustain public trust uses.

Further, and finally, HWS’s own data shows that there was water flowing in the ditch on dates when MLP claimed there was not. After receiving MLP’s Supplemental Response, Commission staff accessed HWS’s data portal to see if HWS’s data corroborated the claims in MLP’s Supplemental Response that end users of Honokōhau Ditch did not receive any water on 8 out of the 28 days listed in the Notice. Staff found that HWS’s data show that there was flow in the ditch on 18 days when the IIFS was being violated, including 2 days that MLP’s Supplemental Response claimed there was not: May 25 and August 6, 2025 (Table 3).

On 18 other dates, no data are available from the HWS portal (Table 3). The lack of ditch metering for these dates does not indicate that no water was being diverted.

IV. ASSESSMENT OF FINES AND PROPOSED ALTERNATIVE SETTLEMENT

Administrative and Civil Penalty Guideline (G14-01)

The Commission’s Administrative and Civil Penalty Guideline (G14-01), approved on October 1, 2014, provides a logical and consistent means to assess penalties and guide settlements. See Exhibit 7. The Guideline is non-binding and includes Initial Minimum, Gravity, Mitigative, and Duration Components. Gravity and Duration Components can increase the initial minimum penalty while Mitigative Components can decrease the initial minimum penalty. The purpose of the Guideline is to:

- a) Deter violations;
- b) Remove the economic benefit of violations;
- c) Provide fair treatment of the regulated community; and
- d) Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

Per the Guideline, an administrative fee of \$500 shall be assessed with the issuance of a written Notice of Alleged Violation. The flat fee incorporates staff time to investigate a potential violation, travel costs, and other administrative matters.

No staff recommendation shall exceed the maximum amount allowable in HRS § 174C-15, which is currently set at \$5,000 per violation.

Fine Calculation

Number of Violations:

Commission staff have determined that there were 28 violations of the IIFS from January 1, 2025, to August 14, 2025 under HRS § 174C-15 and HAR § 13-169-3, when the amount of water diverted caused stream flow to fall below the IIFS at MacDonald's Dam.

Administrative Fee:

An administrative fee of \$500 shall be assessed with the issuance of a written notice of violation.

Minimum Components:

The Commission's penalty policy establishes a minimum fine component of \$250 per violation. The initial minimum components include the following:

<i>Component 1:</i>	Finding of violation = \$250 per day/incident
<i>Component 2:</i>	Occurring in Water Management Area = \$250 per day/incident

On August 6, 2022, the Lahaina Aquifer Sector Area, which includes the Honokōhau hydrologic unit, was designated as a surface and ground-water management area. All 28 of the violations occurred after the effective date of designation.

<i>Component 1:</i>	$\$250 \times 28 =$	\$ 7,000
<i>Component 2:</i>	$\$250 \times 28 =$	\$ 7,000

Therefore, staff recommends a minimum penalty of **\$14,000**.

Gravity Component:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. The gravity component can increase the minimum component up to a cap of \$5,000 per violation and initiate daily fines.

Gravity factors include but are not limited to:

- G1 – Significant risk to the resource
- G2 – Actual damage or harm to resource
- G3 – Multiple or repeat violations of the code or regulations
- G4 – Evidence that the violator should have known about the violation
- G5 – Refusal to correct the violation once noticed
- G6 – Failure to meet deadlines as set by the Commission or its staff

"Instream flow standards serve as the primary mechanism by which the Commission is to discharge its duty to protect and promote the entire range of public trust purposes dependent upon instream flows." *In re Water Use Permit Applications ("Waiāhole I")*, 94 Hawai'i 97, 148, 9 P.3d 409, 460 (2000).

The Commission established the IIFS for Honokōhau Stream at MacDonald's Dam to fulfill its affirmative duty under the public trust to restore stream flow for traditional and customary Native Hawaiian practices; maintain connectivity critical for aquatic species survival, recruitment, and reproduction; and provide for the recreational use and domestic needs of Honokōhau Valley residents.

At the Commission's regular meeting on September 16, 2025, multiple residents of Honokōhau Valley testified that low stream flows caused significant damage or harm to their traditional and customary practices, recreational uses, and domestic water supply.² While the October 2025 Notice was the first formal notice of alleged violation issued to MLP, MLP was aware of the violations as evidenced by repeated communications from the community and Commission staff. MLP's failure to meet deadlines set by the Commission for upgrades to Honokōhau Ditch infrastructure in November 2019 and October 2021 likely contributed to violation of the IIFS.

In consideration of the above, and especially given the damage caused to cultural and natural resources, staff recommends that gravity factors be considered and a fine of \$5,000 per day/incident, as a maximum.

<i>Component G2</i>	$\$5,000 \times 28 =$	<i>\$140,000</i>
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Therefore, staff recommends a maximum penalty of no more than **\$140,000**.

Mitigation Component:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. The presence of one or more mitigative factors can reduce or eliminate the minimum penalty component fine or alternative penalty recommendation.

Mitigative factors include but are not limited to:

- M1* – Insignificant impact on the resource
- M2* – Attempt to remedy the violation without notice
- M3* – Good faith effort to remedy violation once noticed
- M4* – Self reporting in a timely manner
- M5* – Diligent and speedy effort to remedy the violation once noticed

Applicability to violations:

Staff did not identify mitigative factors applicable to these violations. The IIFS was violated on 28 days, which represents a significant impact to instream flow available to protected public trust uses. Because MLP had notice of the Commission's IIFS requirements and prior orders, factors M1, M2, and M4 do not apply.

² See testimony from Commission on Water Resource Management Meeting on September 16, 2025, Agenda Item C-1, <https://vimeo.com/1119583147>.

With respect to M3 (good faith effort to remedy violation once noticed) and M5 (diligent and speedy effort to remedy the violation once noticed), staff notes that MLP completed upgrades to Adit 15 (Taro Gate) on June 14, 2025, and Diversion 770 (Aotaki Weir) on October 18, 2025. However, these upgrades occurred nearly six years after the initial November 2019 Commission Order and four years after the October 2021 Order requiring modifications to be made at Adit 16 rather than Diversion 770. Given the extended period between notice and completion, staff does not consider these efforts to constitute “diligent and speedy” remediation within the meaning of the guideline.

As such, no mitigative factors are included in staff’s assessment.

Penalty Total

Administrative Fee	\$500/violation	1 x \$500	= \$ 500
Component 1	\$1,000/day (28 days)	28 x \$1,000	= \$ 28,000
Component 2	\$1,000/day (28 days)	28 x \$1,000	= \$ 28,000
Component G2	\$2,500/day (28 days)	28 x \$2,500	= \$ 70,000
			Total = \$126,500

Although the maximum administrative penalty for 28 violations is \$140,000, staff recommends a total penalty of **\$126,500**. This recommendation is based on the following factors:

Staff applies a daily penalty (Component 1) of \$1,000 per day, which is deemed sufficient to deter future noncompliance. The additional amount of \$1,000 per day under Component 2 reflects the designation of the Lahaina Aquifer Sector as a surface and ground water management area, underscoring the seriousness with which the Commission views water use and streamflow protection in the region.

Regarding Component G2, gravity factors for impact to public trust resources, Honokōhau Stream supports significant traditional and customary Native Hawaiian practices, domestic water supply, restored lo’i kalo, and native stream biota. On this basis, staff applies a gravity component of \$2,500 per day. Although the impact of IIFS violations is substantial, staff does not apply the maximum gravity factor because drought conditions and reduced rainfall contributed to low-flow conditions during the violation period.

Further, once formally notified, MLP and the ditch operator were responsive to Commission staff and took steps to improve operations and monitoring. While system performance has been inconsistent, staff does not believe the violations were committed maliciously. For this reason, staff does not apply the maximum gravity factor.

Taken together, the recommended penalty of \$126,500 balances the seriousness of the violations, the need for a meaningful deterrent, and other context during the violation period.

Alternative Penalty Settlement

The penalty guideline allows that in lieu of the total monetary fines, the violator may be offered an alternative sanction. Considerations that guide staff in offering such an alternative are:

- A1 – A minimum \$500 fine in addition to the alternative offered.
- A2 – The alternative must not be something the violator was required to do anyway because of legal or other obligations.
- A3 – The alternative must result in new information, education, or other benefit to the water resources of the state.
- A4 – The alternative must be completed within a specified timeframe and failure to do so will result in reinstitution of total recommended fines.

MLP's Proposal

On December 9, 2025, MLP's counsel submitted the following proposed settlement. MLP's proposal includes the following items, with estimated values provided by MLP:

- **Valley.** Remove County bridge debris above MacDonald's Dam.
 - Est. Value = \$25,000
- **Additional Transparency: Data Share.** Create and operate an online dashboard of data that will be accessible to the public.
 - Est. Value = \$5,000
- **Additional Transparency: Site Visits.** Quarterly visits with selected representatives of the Honokōhau Valley Residents to various locations in the Ditch System.
 - Est. Value = \$20,000 annually (to be continued for 5 years)
- **Reduce Water Passing County Treatment Facility.** Install boards in ditch just beyond the County's intake in Māhinahina to reduce the water that passes the County's facility.
 - Est. Value = \$5,000

TOTAL ESTIMATED VALUE [by MLP] = \$135,000

MLP also noted, separate and apart from the settlement proposal and not offered in lieu of fines, that it intends to install ten additional gaging stations in the Stream and at various distributions points in the Ditch System (\$300,000 estimated value) and storage tank(s) for MLP's agricultural tenants (\$50,000 estimated value). These voluntary measures were not presented as components of the settlement.

Staff Analysis

Staff does not make a recommendation regarding acceptance of the proposed settlement or imposition of fines. However, because the Commission may wish to evaluate the proposal under the alternative-sanction considerations listed in the Guideline, staff provides the following neutral assessment based solely on the record.

A1 – Minimum \$500 Fine

The Guideline states that any alternative sanction must include at least a \$500 monetary fine. MLP's proposal does not include a direct monetary fine component.

A2 – Not Already Required

Removal of County bridge debris above MacDonald's Dam is not currently required by any Commission order. Quarterly site visits and a public-facing dashboard are not required under existing permits or orders. The proposal to install boards downstream of Maui County's Māhinahina intake relates to operational practices that have been the subject of past concerns (see following section for brief discussion of 2019 waste complaint); however, staff has not determined, and makes no representation here, if this work is required under existing obligations or falls within responsibilities shared by MLP and the County.

MLP's stated intention to install additional gaging stations and storage for agricultural tenants was expressly excluded from the proposed settlement and is not evaluated under this criterion.³

A3 – Provides New Information, Education, or Other Benefit

Debris removal above MacDonald's Dam may improve upstream channel conditions and will address community concerns regarding safety. Development of a public dashboard would increase transparency of diversion and ditch operations. Quarterly site

³ HAR § 13-168-7 provides as follows:

(a) The owner or operator of any well or stream diversion works from which water is being used *shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage or a monthly (calendar or work schedule) basis*. If a well or stream diversion works is one of a battery of interconnected water sources, a centralized measuring device or facility may be approved by the commission.

(b) The owner or operator of any well or stream diversion works or battery of such water sources *shall file a report of total water usage on a regular monthly (calendar or work schedule) basis to the commission on forms provided by the commission on or before the end of the month following the month for which water usage is to be reported*. The reports may include other use-related information such as type of use, salinity, and water level, as may be deemed appropriate and reasonable by the commission. (Emphasis added.)

visits could provide community members with additional information about the ditch system and its operations. Installing boards downstream of the County intake may reduce the amount of water passing the County's Māhinahina facility and address concerns previously raised regarding waste.

A4 – Completion Within a Specified Timeframe

MLP's proposal includes a five-year duration for quarterly site visits, but no timeline for completion of the other items. If the Commission elects to approve any portion of the settlement proposal, staff recommends that the Commission set a specific date for MLP to return and update the Commission on the status of implementing the approved items. Placing the reporting obligation directly on MLP ensures accountability and avoids placing ongoing monitoring burdens on Commission staff. Reinstatement of fines upon non-compliance is standard and can be incorporated into any decision made by the Commission on this action item.

Other Notes

The estimated value for Item 3 of MLP's proposal (\$20,000 annually for 5 years to conduct quarterly site visits with Honokōhau Valley residents) is reported as provided by MLP. Because this item spans multiple years, the present value of this item may be lower than the stated total.

System Modifications at Diversion 770 and Taro Gate

On April 23, 2019, Ka Malu o Kahalawai and West Maui Preservation Association filed a formal complaint with the Commission regarding water diverted from Honokōhau Stream and wasted in areas extending south to the Wahikuli hydrologic unit. The waste complaint was tied to MLP's inability to control the flow diverted by Diversion 770. On November 20, 2019, the Commission ordered MLP to upgrade the intake on Diversion 770 with a remotely operated control gate to regulate the amount of flow so that only the volume of water needed by MLP, the Department of Hawaiian Home Lands, Maui Department of Water Supply, and other end users would be diverted from Honokōhau Stream. Exhibits 8 and 9.

In subsequent discussions with MLP, Kapalua Water, and their consultant, Akinaka & Associates, Ltd., it was deemed impractical to supply the energy and communications necessary to operate the upgrades as ordered by the Commission. Adit 16 was instead identified as a more easily accessible location for the installation and maintenance of complex power and communications systems.

On October 19, 2021, the Commission approved a modification to the 2019 Order to require the following:

1. Related to Aotaki Weir and Adit 16:

- a) MLP will install a restrictor plate on the new intake grates to keep the lowest flows in Honokōhau Stream from flowing into Honokōhau Ditch.
- b) MLP will install a restrictor plate on the new intake grates to keep the high flows in Honokōhau Stream from flowing into Honokōhau Ditch
- c) MLP will install a remotely operable valve and associated power source and communications system to return flow from Honokōhau Ditch back to Honokōhau Stream at Adit 16.

2. Within 30 days, MLP and HWS will install the high and low-flow restrictor plates to serve as temporary mitigation measures.

[3.] Within 90 days, MLP will submit final engineering plans for all plans for approval by staff and modifications to be completed within 6 months.

All other orders from November 20, 2019 not explicitly modified by recommendation 1 remained in full effect. Exhibits 10 and 11.

Commission staff noted that “[t]his modification to the Order will align with the intentions of the original Order (e.g., keep more water in the stream at the source) and provide for improved management (e.g., remotely operable return flow), while being more practicable in implementation. Installation of complex power, communications, and associated electrical systems and having access to service such systems is more feasible at Adit 16, which can be accessed via a short hike from a jeep road, versus Aotaki Weir, which requires helicopter access.”

On October 19, 2021, Commission staff transmitted a Notice of Commission Action to MLP reflecting the amendments to the Commission’s 2019 Order. Exhibit 12. On October 26, 2021, MLP submitted a request for determination to install low-flow and high-flow restrictor plates on the intake grating at Diversion 770, and install a remotely-operated control gate on Adit 16. Within six months, restrictor plates had been installed on the Honokōhau Ditch intake at Aotaki Weir, but no work had been done to improve Adit 16.

Figure 6a. Temporary low-flow restrictor at Aotaki Weir intake.

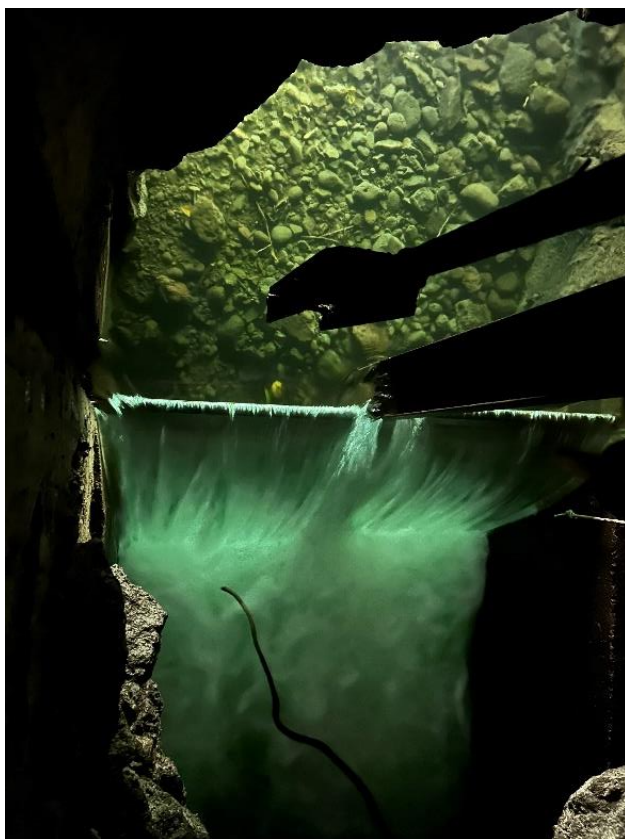


Figure 6b. Temporary high-flow restrictor at Aotaki Weir intake.



From 2021 to 2024, Commission staff met with representatives of MLP, HWS, and Akinaka & Associates on a number of occasions, but due to the sale of Kapalua Water, there was little progress in implementing unfulfilled portions of the Commission's 2019 and 2021 Orders.

In its Response, MLP notified Commission staff that the improvements to Diversion 770 (Aotaki Weir) originally ordered in November 2019 were completed on October 18, 2025. Specifically, HWS installed a power source, communications, and intake gate at Diversion 770, which allows for remote operation of the flow diverted from Honokōhau Stream (Figure 7). In conjunction with the return gate at Adit 15, the quantity of surface water diverted from and returned to the stream can be better coordinated among gate operations to meet the IIFS.

Staff believe that the planned improvements at Diversion 770 meet the intent of the Commission's prior, 2019 directive, and consider the conditions of the order to be satisfied. The modifications to Diversion 770 will better ensure compliance with the IIFS, as they will enable water to stay in the stream rather than being returned after initial diversion into Honokōhau Ditch. If the gate functions as intended, it will better protect public trust uses dependent on stream flows than improvements to Adit 15 (Taro Gate) and Adit 16. Commission staff will work with MLP and HWS to ensure that the improvements are functioning as intended, will recommend further improvements as necessary to ensure that the IIFS is met, and that water is not wasted during extreme high flows.

Figure 7. Newly replaced automated gate at Aotaki Weir intake installed on October 18, 2025.



These improvements to Diversion 770 are expected to support greater compliance with the IIFS in future; however, staff will recommend further action by the Commission if compliance with the IIFS does not continue to improve.

V. RECOMMENDATION

Staff recommend that the Commission:

1. Find that MLP, owner of Diversion 770, violated the interim instream flow standard (IIFS) for Honokōhau Stream on 28 days from January 1, 2025 to August 14, 2025;
2. Impose fines totaling \$126,500 in accordance with HRS § 174C-15, HAR § 13-169-3, and the Commission's Administrative and Civil Penalty Guideline (G14-01); and
3. Receive and consider a proposal submitted by MLP and, at the Commission's discretion, take action on the proposed settlement.

Ola i ka wai,



CIARA W.K. KAHAHANE
Deputy Director

EXHIBITS

Note: Exhibits 1-2 and 7-11 are available from the Commission website and are incorporated by reference. Links are provided below.

1. May 18, 2021 Submittal B2
<https://files.hawaii.gov/dlnr/cwrmm/submittal/2021/sb20210518B2.pdf>
2. May 18, 2021 Minutes
<https://files.hawaii.gov/dlnr/cwrmm/minute/2021/mn20210518.pdf>
3. June 4, 2021 Notice of Commission Action to MLP
4. October 8, 2025 Notice of Alleged Violation to MLP
5. November 10, 2025 MLP Response to Notice of Alleged Violation
6. Supplemental Response to Notice of Alleged Violation; Enclosure
7. Administrative and Civil Penalty Guidelines (G14-01)
<https://files.hawaii.gov/dlnr/cwrmm/submittal/2014/sb201410D1.pdf>
8. Nov. 20, 2019 Submittal
<https://files.hawaii.gov/dlnr/cwrmm/submittal/2019/sb20191120C2.pdf>

9. Nov. 20, 2019 Minutes
<https://files.hawaii.gov/dlnr/cwrmin/minute/2019/mn20191120.pdf>
10. Oct. 19, 2021 Submittal
<https://files.hawaii.gov/dlnr/cwrmin/submittal/2021/sb20211019B1.pdf>
11. Oct. 19, 2021 Minutes
<https://files.hawaii.gov/dlnr/cwrmin/minute/2021/mn20211019.pdf>
12. October 19, 2021 Notice of Commission Action to MLP

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to be 'Dawn N.S. Chang', written over a horizontal line.

DAWN N.S. CHANG
Chairperson