



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**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

April 21, 2026  
Honolulu, Hawai'i

(a) Amend the October 19, 2021 Commission Order Requiring Modifications to Honokōhau Ditch and Diversion 770 by Maui Land & Pineapple Co. (MLP), Owner of Diversion 770, to Restore the Requirements Originally Ordered by the Commission on November 20, 2019; Honokōhau Stream, Honokōhau Surface Water Hydrologic Unit (6014), Honokōhau, Maui; TMK: (2) 4-1-010-017;

(b) Find that MLP has Completed the Necessary Improvements to the Intake of Diversion 770 Providing for Remote Operation of the Control Gates to Regulate the Amount of Flow Diverted from the Stream, as Ordered by the Commission on November 20, 2019; Honokōhau Surface Water Hydrologic Unit (6014), Honokōhau, Maui; TMK: (2) 4-1-010-017;

and

(c) Deny as Moot the Petition Requesting a Public Hearing to Adjudicate the Violations Contained in the October 8, 2025, Notice of Alleged Violation, Interim Instream Flow Standard and Failure to Follow Through with Commission Order from November 20, 2019, Honokōhau Stream, Honokōhau, Maui, Ref.: CDR.5095.6, Issued to Maui Land & Pineapple Co. filed by Larrick Kapule Eubank, Cooper Pitts, Gary W. Grube, and TY Management Corporation, a Hawai'i Corporation

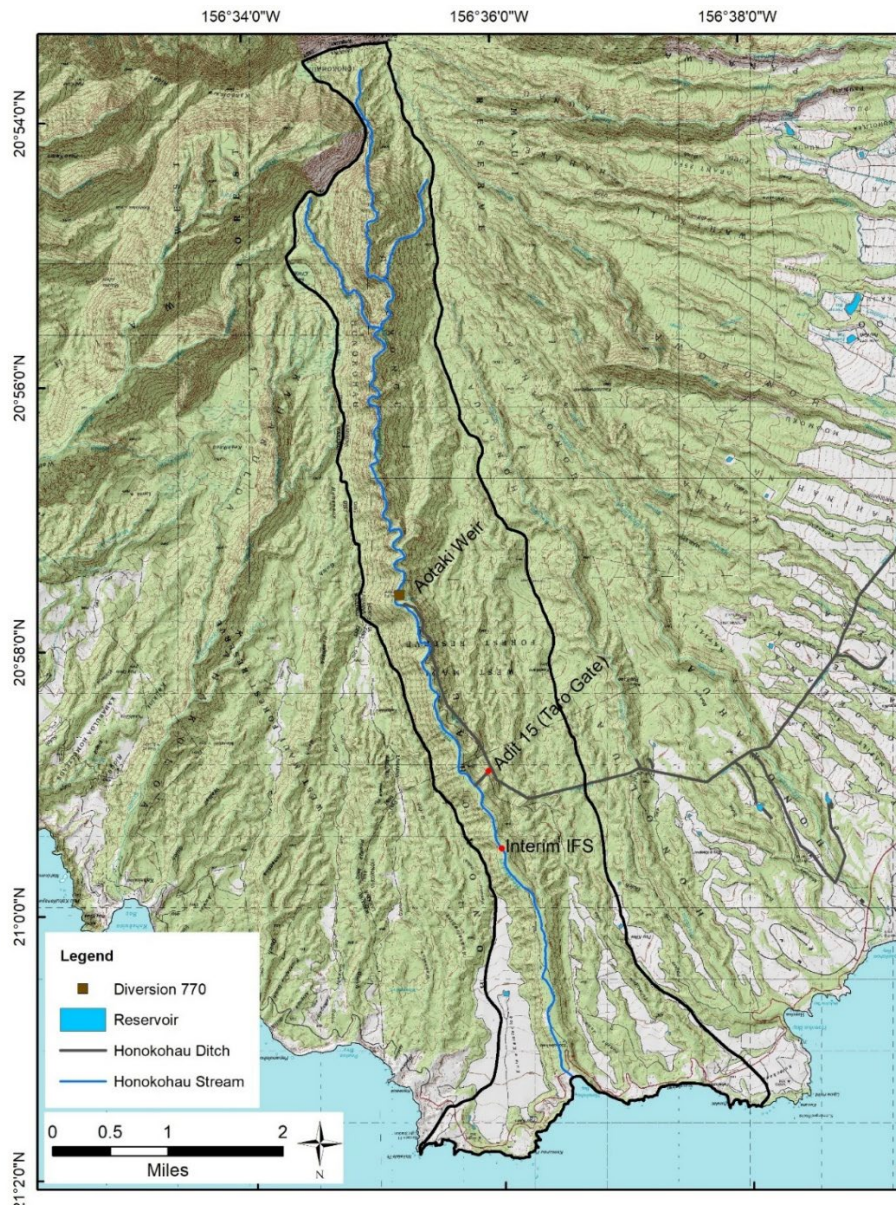
I. SUMMARY OF REQUEST

Staff requests that the Commission:

1. Amend the Commission's October 19, 2021 Order to remove the amendments adopted at that time and restore the requirements of the Commission's original, November 20, 2019 Order, based on staff's determination that the improvements completed at Diversion 770 accomplish the purpose of the Commission's original order;

2. Find that MLP has completed the necessary improvements to the intake of Diversion 770 providing for remote operation of the control gates to regulate the amount of flow diverted from the stream, as ordered by the Commission in November 2019; and
3. Deny as moot the Petition filed by TY Management Corporation et al. concerning the Notice of Alleged Violation issued to MLP, because the diversion improvements required by the Commission's 2019 Order have now been completed and a separate hearing is unnecessary.

LOCATION: Honokōhau Stream, Maui. See Figure 1.



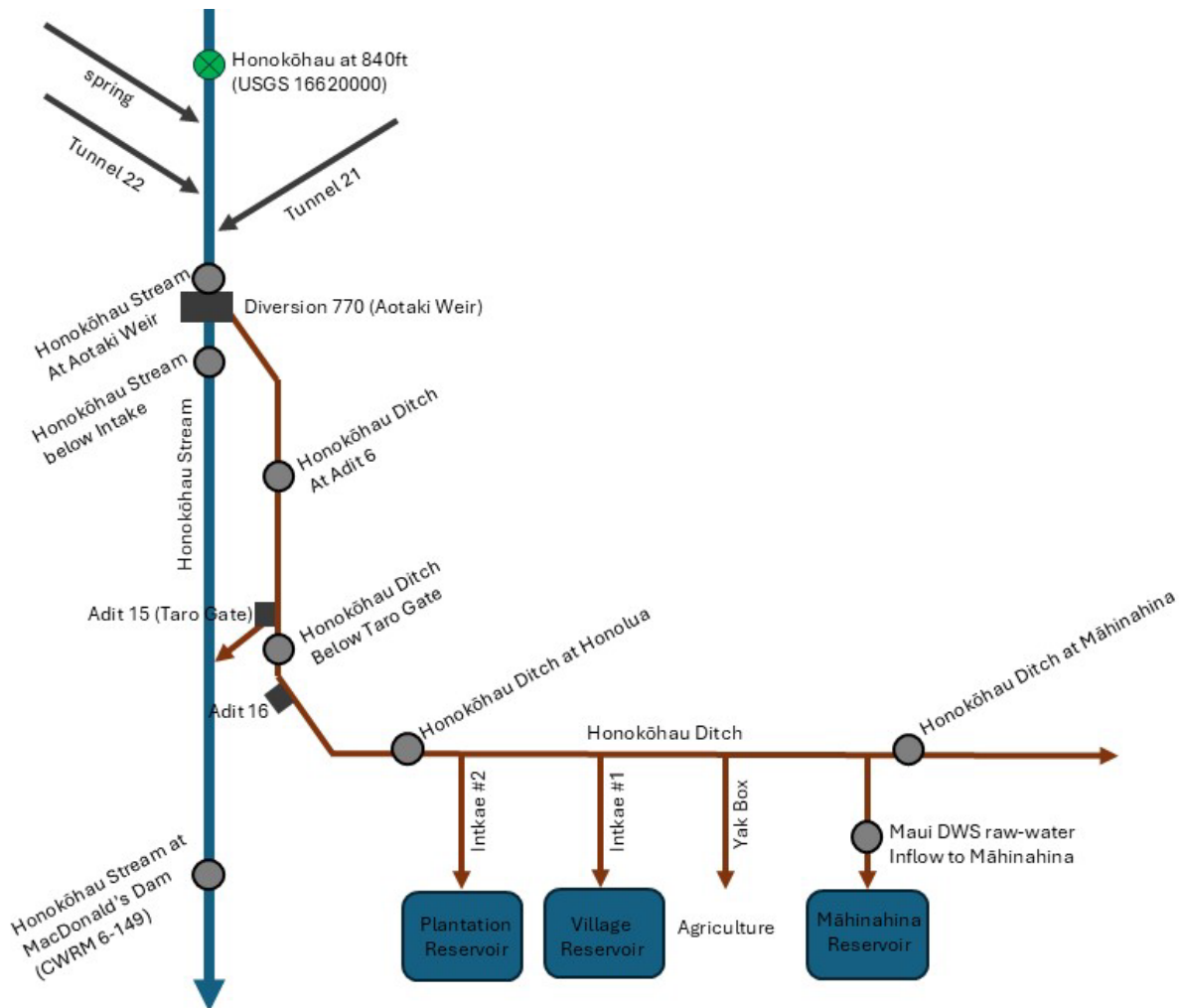
**Figure 1.** Honokōhau Stream and Honokōhau Ditch with Aotaki Weir, Adit 15 (Taro Gate), and the interim IFS at MacDonal’s Dam locations identified.

## II. BACKGROUND

### A. **System Overview**

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 interim instream flow standard (IFS).

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.

**B. November 2019 Order Requiring Modifications to Diversion Works**

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 1 and 2.

**C. Amended Interim Instream Flow Standard**

On May 18, 2021, the Commission amended the interim IFS on Honokōhau Stream<sup>1</sup> and approved a surface water reservation of 2.00 million gallons per day for the Department of Hawaiian Home Lands. Two phases of the interim IFS were contemplated, with Phase Two to take effect upon implementation of DHHL’s Honokōwai Regional Plan. Phase One of the amended interim IFS is a flow of 8.6 million gallons per day (13.3 cubic feet per second) at MacDonald’s Dam, located at an elevation of 340 ft in Honokōhau Stream. Exhibits 3 and 4.

**D. October 2021 Order**

*1. Basis for October 2021 Modification*

In subsequent discussions with MLP, Kapalua Water Company, and their consultant, Akinaka & Associates, Ltd., it was represented that supplying the energy and communications necessary to operate the upgrades at Diversion 770 was impractical. Based on those constraints, Commission staff recommended an alternative approach that avoided those logistical challenges: installation of low-flow and high-flow restrictor plates at Diversion 770 (Aotaki Weir) and a remotely operated control gate at Adit 16, which was identified as a more accessible location for the required infrastructure.

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.

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<sup>1</sup> The Commission amended the “status quo” IIFS originally set in 1988, HAR § 13-169-48.

- 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 5-7.

The October 2021 modification was intended to balance two objectives: (1) keeping more water in the stream at the point of diversion and (2) implementing a system at a location where more complex power, communications, and control infrastructure would be easier to install and maintain.<sup>2</sup>

Notably, while the restrictor plates installed at Diversion 770 would keep a certain amount of water from ever leaving the stream, the 2021 Order's relocation of the remotely operated gate to Adit 16 meant the system would operate as a "take and return" system—removing water at the intake and returning it downstream—and therefore would not provide the same level of stream protection as a remotely operated gate at Diversion 770. Returning water after diversion is inherently less effective for meeting the interim IFS and protecting instream uses than preventing diversion in the first instance, in part because physical and operational constraints may limit the ability to fully return all diverted flows under all conditions.

On October 19, 2021, Commission staff transmitted a Notice of Commission Action to MLP reflecting the amendments to the Commission's 2019 Order. Exhibit 7.

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<sup>2</sup> Staff's explanation at the time was as follows:

"This 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."

## 2. *Implementation*

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, plywood restrictor plates had been installed on the Honokōhau Ditch intake at Diversion 770.

From 2021 to 2024, Commission staff met with representatives of MLP, HWS, and Akinaka & Associates on several occasions; however, progress in implementing the Commission's 2019 and 2021 orders slowed during the transition associated with the sale of Kapalua Water.

While the Commission's 2021 Order contemplated installation of remotely operated return flow controls at Adit 16, MLP instead implemented those controls at Adit 15 (Taro Gate), an upstream location that enables return of water to the stream at an earlier point and provides comparable or improved instream benefit.

HWS installed a stoplog downstream of Adit 15 (Taro Gate) on April 15, 2025, to increase the flow of water returned to Honokōhau Stream, and later installed a remotely operated gate on June 14, 2025, to control the return of water to the stream. Figures 3 and 4.



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



**Figure 4.** Remotely operable gate installed downstream of Adit 15 in Honokōhau Ditch to increase returned flow, June 14, 2025.

#### **E. Notice of Alleged Violation**

On October 8, 2025, Commission staff issued a Notice of Alleged Violation to MLP (Notice), Exhibit 8. 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.

On October 31, 2025, MLP provided Commission staff with engineering plans and a construction schedule for installation of a remotely operated control gate and associated communications and power infrastructure at Diversion 770. MLP represented that the project would be completed in two stages, with substantial work already completed or underway.

On November 10, 2025, MLP submitted its initial response, notifying Commission staff that the improvements to Diversion 770 (Aotaki Weir) originally ordered in November

2019 were completed on October 18, 2025. Exhibit 9. Commission staff subsequently conducted a site visit, as discussed further below, to verify the installation.

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 5.** Newly replaced automated gate at Aotaki Weir intake installed on October 18, 2025.

The violations of the interim IFS identified in the Notice were addressed through a finding of violations and \$140,000 penalty adopted by the Commission on December 16, 2025 and settlement approved by the Commission on February 24, 2026.

## **F. Current Status**

On February 5, 2026, Commission staff conducted a site visit with MLP and HWS to view and document the improvements made to Diversion 770.

Photographs taken on this site visit, depicting Diversion 770 (Aotaki Weir) with trash rack and intake along the left bank of Honokōhau Stream along with the intake control gates, are provided below.

Staff believe that completion of these improvements to Diversion 770 addresses the infrastructure concerns identified in the Notice and improves the ability to regulate diversion in a manner consistent with the interim IFS. In conjunction with the return gate at Adit 15, the system allows the quantity of surface water diverted from and returned to the stream to be better coordinated to meet the interim IFS.

Compared to the configuration contemplated in the 2021 Order, which relied on returning water after diversion, the current system provides greater control at the point of diversion and allows more water to remain in the stream.

With respect to the installation of permanent low-flow and high-flow restrictor plates, the 2021 Order contemplated replacement of temporary plates with permanent installations following submission and approval of final engineering plans. However, the current plywood restrictor plates are functioning as intended to limit diversion and maintain stream flow. In addition, staff anticipate that further system adjustments may be necessary, including for future phases of the interim IFS. Replacement of the plywood restrictor plates is therefore not considered necessary at this time.

Commission staff will work with MLP and HWS to ensure that the improvements are functioning as intended and will recommend further improvements as necessary to ensure compliance with the interim IFS.



**Figure 6.** Aerial view of Diversion 770 with intake located on left bank (taken February 5, 2026).



**Figure 7.** Close up view of trash rack on left bank at Diversion 770 (taken February 5, 2026).



**Figure 8.** Upstream view of Diversion 770 intake at Aotaki Weir in Honokōhau Ditch (taken February 5, 2026).



**Figure 9.** Water level upstream (on stream side) of intake gate at Diversion 770 (taken February 5, 2026).



**Figure 10.** Aotaki Weir at Honokōhau Stream (taken February 5, 2026).



**Figure 11.** Honokōhau Stream below Aotaki Weir (taken February 5, 2026).

**G. Petition by TY Management Corporation, et al.**

On January 20, 2026, Larrick Kapule Eubank, Cooper Pitts, Gary W. Grube, and TY Management Corporation filed a Petition Requesting a Public Hearing to Adjudicate the Violations Contained in the October 8, 2025 Notice of Alleged Violation (Petition), Exhibit 10. Although the Petition references the Notice of Alleged Violation issued to MLP more broadly, the relief requested is limited to a public hearing regarding alleged noncompliance with the Commission’s 2019 and 2021 Orders relating to diversion infrastructure.

Without addressing whether the Petition is procedurally proper or whether the petitioners have standing to request a public hearing in this context, staff do not recommend the requested action. As discussed above, staff have actively addressed MLP’s noncompliance through enforcement of the interim IFS, and MLP has implemented improvements at both Diversion 770 and Adit 15 that provide greater instream protection than the improvements ordered in October 2021. The relief sought by TY would not advance the Commission’s resource protection objectives and is not necessary in light of the current status of improvements.

TY requests that the Commission hold a “public hearing” under Hawai‘i Administrative Rules (HAR) § 13-167-22. Granting TY’s request would require a contested case-type proceeding in accordance with chapter 91, Hawai‘i Revised Statutes. This would entail additional procedural steps, including conduct of the hearing on the island where the affected resource is located, as well as associated scheduling constraints, administrative costs, and considerable staff time and preparation. Staff do not believe that these additional procedures are necessary to achieve the goal of resource protection, particularly where staff have already taken enforcement action and secured implementation of improvements to achieve compliance with the interim IFS.

The improvements to Diversion 770 ordered by the Commission in November 2019 have now been completed and staff have recommended that the Commission amend the 2021 Order to reinstate the original requirements of the 2019 Order. Staff therefore believe that a separate public hearing is unnecessary and recommend that the Petition be denied as moot.

### III. RECOMMENDATION

Staff recommend that the Commission:

1. Amend the Commission’s 2021 Order to remove the amendments adopted at that time and restore the requirements of the Commission’s original, 2019 Order, based on staff’s determination that the improvements completed at Diversion 770 accomplish the purpose of the Commission’s original order;
2. Find that MLP has completed the necessary improvements to the intake of Diversion 770 providing for remote operation of the control gates to regulate the amount of flow diverted from the stream, as ordered by the Commission in November 2019; and
3. Deny as moot the Petition filed by TY Management Corporation et al. concerning the Notice of Alleged Violation issued to MLP because the diversion improvements required by the Commission’s 2019 Order have now been completed and a separate hearing is unnecessary.

Ola i ka wai,



CIARA W.K. KAHAHANE  
Deputy Director

EXHIBITS

Note: Exhibits 1-6 are available from the Commission website and are incorporated by reference. Links are provided below.

1. November 20, 2019 Submittal  
<https://files.hawaii.gov/dlnr/cwrmsubmittal/2019/sb20191120C2.pdf>
2. November 20, 2019 Minutes  
<https://files.hawaii.gov/dlnr/cwrmin/2019/mn20191120.pdf>
3. May 18, 2021 Submittal B2  
<https://files.hawaii.gov/dlnr/cwrmsubmittal/2021/sb20210518B2.pdf>
4. May 18, 2021 Minutes  
<https://files.hawaii.gov/dlnr/cwrmin/2021/mn20210518.pdf>
5. October 19, 2021 Submittal  
<https://files.hawaii.gov/dlnr/cwrmsubmittal/2021/sb20211019B1.pdf>
6. October 19, 2021 Minutes  
<https://files.hawaii.gov/dlnr/cwrmin/2021/mn20211019.pdf>
7. October 19, 2021 Notice of Commission Action to MLP
8. October 8, 2025 Notice of Alleged Violation to MLP
9. November 10, 2025 MLP Response to Notice of Alleged Violation
10. Petition Requesting a Public Hearing to Adjudicate the Violations Contained in the October 8, 2025, Notice of Alleged Violation, filed by Larrick Kapule Eubank, Cooper Pitts, Gary W. Grube, and TY Management Corporation, a Hawai'i Corporation

APPROVED FOR SUBMITTAL:



RYAN K.P. KANAKA'OLE  
Acting Chairperson

# EXHIBIT 7



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

October 19, 2021

*Ref.: CDR.5095.6; PAIFS.1792.6*

Paul Subrata  
Maui Land & Pineapple Company, Inc.  
200 Village Road  
Lahaina, HI 96761

Aloha Mr. Subrata:

**NOTICE OF COMMISSION ACTION**

Approve Amendment to Commission Order to Maui Land & Pineapple  
For Modification to Diversion 770 on Honokōhau Stream (Honokōhau Ditch Intake #1)  
Originally Approved on November 20, 2019 in Order to Meet the Instream Flow Standard for  
Honokōhau Stream, Surface Water Hydrologic Unit of Honokōhau (6014), Honokōhau, Maui

This letter serves as your notice of action taken by the Commission on Water Resource Management (Commission) on the subject amendment to the Commission Order originally approved on November 20, 2019. On October 19, 2021, by a vote of 6-to-1, the Commission approved the following actions:

- 1) Approve the modification to the original order from November 20, 2019 to now require the following 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, coordinated by Hawaii Water Service, will install high and low plywood restrictor plates to serve as temporary mitigation measures to keep lowest and high flows in Honokōhau Stream until permanent restrictor plates can be installed; as well as to inform optimal placement of the permanent restrictor plates.

- 3) All other orders from November 20, 2019 not explicitly modified by recommendation 1 above remain in full effect.
- 4) Within 90 days, MLP will submit final engineering plans for all plans for approval by staff and modifications to be completed within 6 months.

The Commission appreciates your prompt attention to the implementation of modifications to Diversion 770 on Honokōhau Stream to ensure that the interim IFS on Honokōhau Stream is met. We encourage Maui Land and Pineapple to continue engaging with the community to provide transparency and build trust moving forward together.

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director

- c. Gilbert Keith-Agaran, Takitani Agaran Jorgensen & Wildman, LLLP  
Ken Kawahara, Akinaka & Associates, Ltd.  
Lance D. Collins, on behalf of Ka Malu o Kahalawai and West Maui Preservation Association  
Anthony Carrasco, Hawaii Water Service  
Karyn Kanekoa, Pūnana Leo o Lahaina

# EXHIBIT 8



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**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

October 8, 2025

Ref.: CDR.5095.6

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

Mr. Race Randle  
Maui Land & Pineapple Co.  
500 Office Road  
Lahaina, HI 96761  
Via email: [REDACTED]

Aloha Mr. Randle:

**NOTICE OF ALLEGED VIOLATION**  
Interim Instream Flow Standard and Failure to Follow Through  
With Commission Order from November 20, 2019  
Honokōhau Stream, Honokōhau, Maui

Notice is hereby given by the Commission on Water Resource Management (Commission) that Maui Land & Pineapple Co. (MLP) may be in violation of the following:

1. The measurable interim instream flow standard (interim IFS) for Honokōhau Stream, at the MacDonald's Dam near an altitude of 340 feet, established by the Commission on May 18, 2021, in the amount of 13.3 cubic feet per second (8.6 million gallons per day).
2. The Commission's November 20, 2019 order, as amended on October 19, 2021, requiring installation of restrictor plates at Diversion 770 (Aotaki Weir) and installation of a remotely operable valve and associated power source and communications system to return flow from Honokōhau Ditch at Adit 16.

Hawai'i Revised Statutes §174C-71(2) and Hawai'i Administrative Rules §13-169-30(b) direct 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.

Under HRS §174C-15, HAR §13-168-3, and the Commission's 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.

## BACKGROUND

On November 20, 2019, the Commission approved a request from staff to modify the Honokōhau Ditch intake at Diversion 770 (Aotaki Weir) to provide improved control over the quantity of water diverted and monitoring of diverted flow to ensure compliance by:

- Replacing the existing damaged intake with one that can be remotely operated; and
- Providing real-time metering of each distribution point from the Honokōhau Ditch and providing the real-time data to CWRM.

The Commission approved and ordered the implementation of these modifications, which included:

- Within 180 days of Commission action, MLP will submit engineering plans and a stream diversion works permit (SDWP) to upgrade Diversion 770 on Honokōhau Stream to provide for remote operation of the diverted flow.
- Within 120 days of SDWP approval, MLP will commence construction of approved upgrades to Diversion 770.

On May 18, 2021, the Commission approved an amendment to the interim instream flow standard (IFS) of 8.6 mgd (13.3 cfs) on Honokōhau Stream at McDonald's Dam (at an elevation of 340 feet). In doing this, the Commission approved the staff recommendation that a violation of the interim IFS be defined as when the mean daily flow measured or monitored in Honokōhau Stream at MacDonal'd's Dam (at an elevation of 340 feet) does not meet the interim IFS for *three or more consecutive days or four days out of seven in any consecutive period.*" (Emphasis added.)

In subsequent discussions between Commission staff, MLP, the system operator, and their consultant, it was deemed impractical to supply the energy and communications necessary to operate the required upgrade to the intake at Aotaki Weir. Adit 16 was identified as a more easily accessible location for the installation and maintenance of complex power and communications systems. Accordingly, on October 19, 2021, the Commission approved an amendment to its November 20, 2019 order to allow certain modifications to be made at Adit 16 rather than Aotaki Weir. The Commission's amended order required MLP to:

- a. Install a restrictor plate on the new intake grates [at Aotaki Weir] to keep the lowest flows in Honokōhau Stream from flowing into Honokōhau Ditch;

- b. Install a restrictor plate on the new intake grates [at Aotaki Weir] to keep the highest flows in Honokōhau Stream from flowing into Honokōhau Ditch; and
- c. 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.

Final engineering plans for this work were to be submitted within 90 days and work was to be completed within six months.

On October 26, 2021, the Commission received a request for determination (*RFD.5797.6*) from MLP to: 1) modify Diversion 770 to install low-flow and high-flow restrictor plates on the intake grating; and 2) install a remotely-operated control gate on Adit 16.

On December 2, 2021, Commission staff responded to the RFD approving the requested modifications to the ditch and intake. Within six months, temporary plywood restrictor plates had been installed on the Honokōhau Ditch intake at Aotaki Weir, but no permanent restrictor plates had been installed, and no work had commenced to improve Adit 16.

In June 14, 2025, Hawai'i Water Service, on behalf of MLP, installed a remotely operated gate at Adit 15 (also known as "Taro Gate") to control the return of water back to Honokōhau Stream. This gate returns water to Honokōhau Stream but cannot return the entirety of diverted flow if ditch flow exceeds the threshold flow of the gate when fully open. To operate the gate, 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 out of compliance with the interim IFS.

On September 16, 2025, MLP and Hawai'i Water Service appeared at the Commission's regular meeting and presented an update on the status of modifications to the system, including the intakes and return gates. The plans presented by MLP and Hawai'i Water Service appeared to contemplate installation of a remotely operated gate at Diversion 770 (Aotaki Weir) rather than Adit 16.

#### DETERMINATION OF NON-COMPLIANCE WITH INTERIM INSTREAM FLOW STANDARD

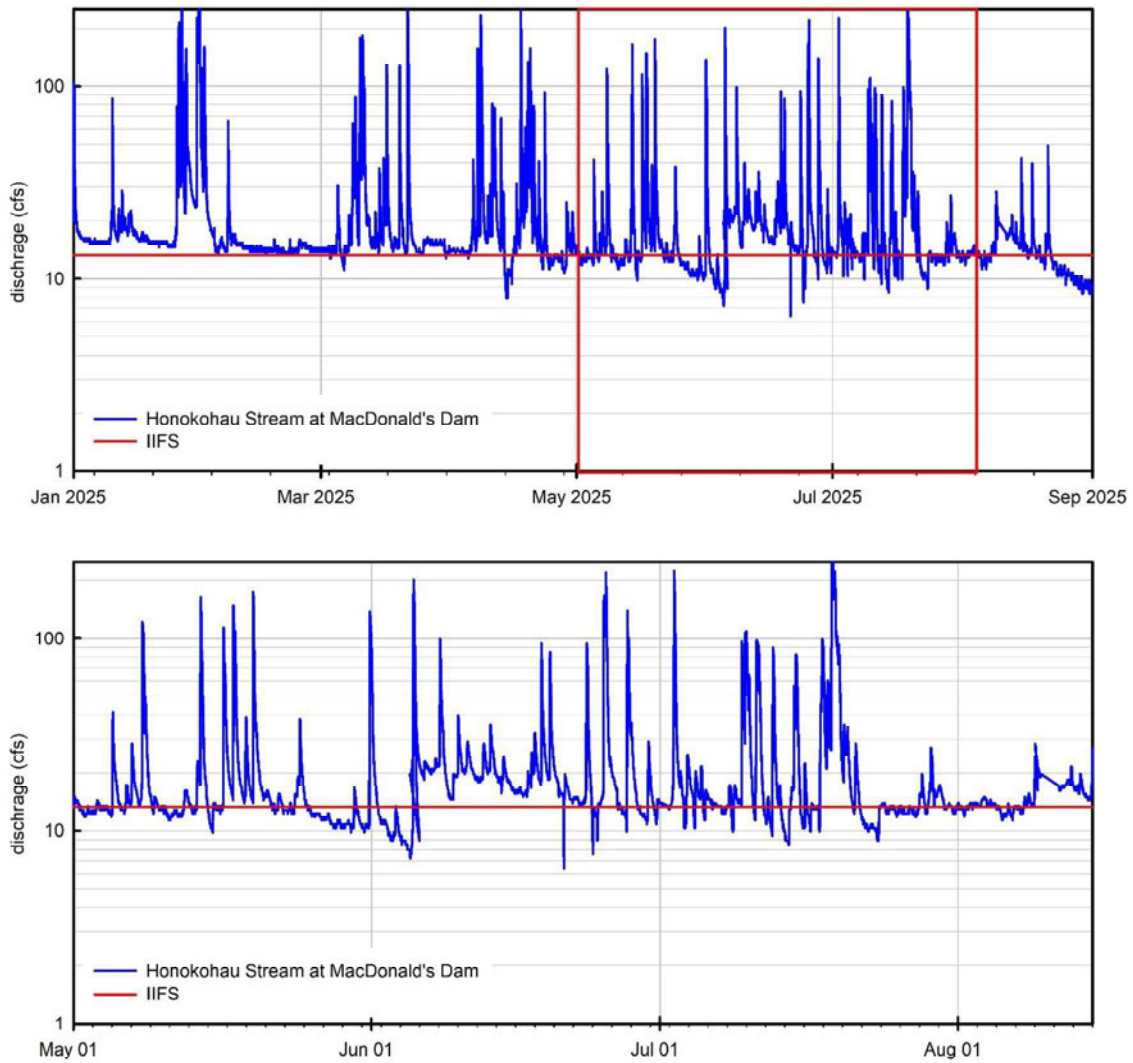
The Commission maintains a real-time continuous record gaging station at MacDonald's Dam (station 6-149) to monitor the interim IFS. The station measures stage approximately every 30 minutes and transmits the value to a cloud-based database for processing. Streamflow from this station is made available to the public in near real-time and verified by discharge measurements made in the field. Site visit measurements are used to ensure the accuracy of the rating model used to convert stage (water level) into streamflow (discharge). From August 2024 to September 2025, staff made 16 flow measurements in Honokōhau Stream at MacDonald's Dam (Table 1). On three site visits in the last 14 months, discharge measurements indicated that the interim IFS was not being met while staff were on site: September 9, 2024, July 8, 2025, and July 24, 2025.

**Table 1.** Measured flow in Honokōhau Stream a MacDonald's Dam, Honokōhau Stream at Aotaki Weir approximately 75 min prior, and streamflow at USGS 16620000 approximately 90 minutes prior.

Date	Time	Honokōhau Streamflow at MacDonald's Dam		Streamflow at USGS 16620000		Honokōhau Streamflow at Aotaki Weir	
		cfs	mgd	cfs	mgd	cfs	mgd
08/02/2024	15:45	14.8	9.57	14.4	9.31	21.5	13.90
09/09/2024	12:11	13.0	8.40	13.9	8.98	20.9	13.51
01/28/2025	10:03	39.2	25.3	31.5	20.4	38.6	24.95
02/06/2025	12:09	13.4	8.66	11.4	7.37	15.6	10.07
04/01/2025	14:31	13.4	8.66	9.33	6.03	13.0	8.38
04/28/2025	16:33	25.2	16.3	18.1	11.7	25.2	16.29
06/23/2025	10:01	74.8	48.3	85.7	55.4	92.8	59.98
07/08/2025	16:16	12.8	8.27	16.8	10.9	23.9	15.45
07/15/2025	14:50	16.5	10.7	16.8	10.9	23.9	15.45
07/24/2025	11:51	12.9	8.34	11.1	7.17	15.0	9.71
08/14/2025	12:00	14.6	9.44	10.7	6.92	14.3	9.25

According to Commission gaging records at station 6-149, from January 1, 2025 to August 14, 2025 (225 days), there were 36 days (16.0%) where the mean daily flow on Honokōhau Stream, measured at MacDonald's Dam, was below the interim IFS (Figure 1). Those dates are identified in Table 2, with the mean daily flow measured at U.S. Geological Survey station 16620000 on Honokōhau Stream and at Aotaki Weir on Honokōhau Stream.

Based on measured streamflow values, there is sufficient water to meet the interim IFS 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 (Table 3) and the groundwater gains between Aotaki Weir and MacDonald's Dam (Table 4). On the date of each violation, there was sufficient water in Honokōhau Stream above Aotaki Weir to meet the interim IFS (Table 2). 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 interim IFS.



**Figure 1.** Continuous streamflow record for CWRM 6-149 Honokōhau Stream at MacDonald's Dam (blue) from January 1, 2025 to September 1, 2025 with the interim instream flow standard (red) identified (top graph). Zoomed in portion of top graph (red box) for May 1, 2025 to August 14, 2025 (bottom graph).

**Table 2.** Dates when mean daily flow at CWRM 6-149 fell below the interim IFS, mean daily flow at USGS 16620000, and mean daily flow at Aotaki Weir. Colored rows indicate when the violation occurred on three consecutive days or four out of seven days.

Date	Mean Daily Flow Honokōhau Stream at MacDonald's Dam		Mean Daily Flow Honokōhau Stream at USGS 16620000		Mean Daily Flow Honokōhau Streamflow at Aotaki Weir	
	cfs	mgd	cfs	mgd	cfs	mgd
03/06/2025	13.1	8.46	9.64	6.23	12.5	8.11
04/14/2025	9.70	6.26	11.6	7.50	16.0	10.31
04/15/2025	11.8	7.60	11.1	7.17	15.0	9.71
04/24/2025	12.3	7.97	12.2	7.88	17.1	11.07
04/25/2025	12.5	8.09	11.2	7.24	15.2	9.83
04/26/2025	12.8	8.28	10.8	6.98	14.5	9.37
04/27/2025	12.3	7.95	10.6	6.85	14.1	9.14
05/02/2025	12.4	8.02	10.6	6.85	14.1	9.14
05/03/2025	13.1	8.47	11.3	7.30	15.4	9.95
05/04/2025	12.9	8.35	11.2	7.24	15.2	9.83
05/10/2025	12.7	8.18	10.8	6.98	14.5	9.37
05/11/2025	12.2	7.88	10.7	6.92	14.3	9.25
05/15/2025	12.1	7.83	11.9	7.69	16.5	10.69
05/23/2025	12.9	8.36	12.1	7.82	16.9	10.94
05/25/2025	13.3	8.57	12	7.76	16.7	10.81
05/26/2025	12.0	7.75	10.9	7.04	14.7	9.48
05/27/2025	11.5	7.41	10.4	6.72	13.8	8.92
05/28/2025	10.8	6.96	10.2	6.59	13.5	8.70
05/29/2025	10.6	6.85	10.3	6.66	13.6	8.81
05/30/2025	12.1	7.84	12.8	8.27	18.4	11.88
06/02/2025	10.5	6.77	11.5	7.43	15.8	10.19
06/03/2025	10.1	6.55	12.4	8.01	17.5	11.33
06/04/2025	8.6	5.57	10.7	6.92	14.3	9.25
06/24/2025	12.7	8.24	11.0	7.11	14.9	9.63
07/07/2025	13.0	8.37	10.8	6.98	14.5	9.37
07/22/2025	10.6	6.86	12.8	8.27	18.4	11.88
07/23/2025	10.7	6.91	11.7	7.56	16.2	10.44
07/24/2025	13.1	8.47	11	7.11	14.9	9.60
07/25/2025	12.8	8.29	10.8	6.98	14.5	9.37
07/26/2025	12.6	8.17	10.7	6.92	14.3	9.25
07/27/2025	12.6	8.14	11	7.11	14.9	9.60
07/31/2025	13.0	8.41	10.8	6.98	14.5	9.37
08/01/2025	13.0	8.39	10.8	6.98	14.5	9.37
08/05/2025	12.4	8.03	10.2	6.59	13.5	8.70
08/06/2025	12.7	8.22	11.1	7.17	15.0	9.71
08/07/2025	13.2	8.51	11	7.11	14.9	9.60

**Table 3.** Total streamflow in Honokōhau Stream immediately below Aotaki Weir, which is the sum of measured streamflow in Honokōhau Ditch at Adit 6 and measured streamflow immediately below Aotaki Weir, with streamflow at USGS 16620000 approximately 15 minutes prior to measurement for reference.

Date	Streamflow at USGS 16620000		Honokōhau Stream immediately below Aotaki Weir		Honokōhau Ditch at Adit 6		Total Streamflow at Aotaki Weir	
	cfs	mgd	cfs	mgd	cfs	mgd	cfs	mgd
11/02/2021	12.1	7.82	10.7	6.92	7.26	4.69	18.0	11.6
08/25/2022	12.6	8.14	7.5	4.85	9.37	6.06	16.9	10.9
07/10/2023	13.1	8.47	10.3	6.66	8.67	5.60	19.0	12.3
10/10/2023	11.4	7.37	11.3	7.30	4.19	2.71	15.5	10.0
12/04/2023	11.1	7.17	10.8	6.98	5.02	3.24	15.8	10.2
08/13/2024	12.6	8.14	10.3	6.66	8.98	5.80	19.3	12.5
02/26/2025	11.7	7.56	11.0	7.11	4.61	2.98	15.6	10.1
07/10/2025	35.8	23.1	29.8	19.3	9.67	6.25	39.5	25.5

**Table 4.** 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.

Date	Time	Honokōhau Stream at MacDonald's Dam		Honokōhau Ditch at Honolulu		Total Streamflow at MacDonald's Dam		Streamflow at USGS 16620000	
		cfs	mgd	cfs	mgd	cfs	mgd	cfs	mgd
11/08/2023	15:45	10.3	6.66	4.12	2.66	14.42	9.32	12.2	7.88
02/06/2025	11:28	13.4	8.66	3.72	2.40	17.12	11.06	11.7	7.56
04/01/2025	15:30	13.4	8.66	1.24	0.80	14.64	9.46	9.0	5.82
07/08/2025	16:16	12.8	8.27	5.19	3.35	17.99	11.62	13.1	8.47
07/24/2025	14:00	12.9	8.34	0.78	0.50	13.68	8.84	11.1	7.17
08/14/2025	12:00	14.6	9.44	0.064	0.04	14.67	9.48	10.7	6.92
09/15/2025	10:30	13.5	8.72	0.10	0.06	13.6	8.79	10.0	6.65

Mr. Race Randle  
October 8, 2025  
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Regarding the first alleged violation, we expect MLP to take immediate steps to ensure compliance with the interim IFS on Honokōhau Stream.

Regarding the second alleged violation, MLP remains out of compliance with both the Commission's November 20, 2019 order and its October 19, 2021 amendment. The 2019 order required MLP to install a remotely operated control gate at Diversion 770 (Aotaki Weir). The 2021 amended order instead required installation of a remotely operated valve at Adit 16.

To date, MLP has not completed the modifications required under either order. While MLP and Hawai'i Water Service have begun work consistent with the 2019 directive—specifically, to install a remotely operated gate at Aotaki Weir—no such work has been completed at Adit 16 as required by the Commission's 2021 amended order.

If MLP intends to implement upgrades at Aotaki Weir rather than Adit 16, that approach must be confirmed by Commission action to ensure it satisfies the intent of the 2021 order. In the meantime, staff expects MLP to submit its final engineering plans, construction schedules, and supporting materials for review as soon as possible.

We welcome MLP 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. If you have any questions, please contact Dr. Ayrton Strauch of the Commission staff at (808) 587-██████, or via email at ██████████.

Ola i ka wai,



CIARA W.K. KAHANE  
Deputy Director

# EXHIBIT 9

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November 10, 2025

**VIA E-MAIL**

Ciara Kahahane  
Deputy Director  
Commission on Water Resource Management  
1151 Punchbowl Street, Suite 227  
Honolulu, Hawai'i 96813

Re: CDR.5095.6

Dear Deputy Director Kahahane:

On behalf of Maui Land & Pineapple Company, Inc. (“MLP”), I write in response to the Notice of Alleged Violation (the “NOAV”) of the interim instream flow standard for Honokohau Stream (the “IIFS”) and regarding certain improvements required under the Commission on Water Resource Management’s (“CWRM”) order of November 20, 2019 (the “Original Order”), as amended on October 19, 2021 (the “Amended Order”). We appreciate the opportunity to respond to the NOAV and look forward to working with CWRM.

The NOAV alleges that MLP violated the IIFS on 28 days between January 1 and August 14, 2025. As explained below, because the USGS station readings were higher than the minimal read of 9.9 cfs on each of the 28 days of alleged violation and Taro Gate was fully open to return all water to Honokohau Stream on 26 of the 28 days of alleged violation, MLP believes it did not violate the IIFS.

The NOAV also alleges that MLP is out of compliance with the Original Order and the Amended Order because MLP did not install permanent low and high flow restrictor plates at Diversion 770 or a remotely operable valve and associated power source and communications system at Adit 16. These alternative improvements were intended to ensure compliance with the IIFS by leaving more water in the Stream or returning more water to the Stream. The low restrictor plate was installed in 2024. MLP acknowledges that the other two improvements have not been completed. However, in June and October 2025, in coordination with CWRM staff, MLP installed upgrades to the system that will provide more complete and responsible management of the system than the improvements required in the Orders. Accordingly, MLP will request that the Commission amend the Amended Order by formally accepting the upgrades as the required improvements.

**Alleged Non-Compliance with the IIFS.** Pursuant to the Amended Order, “a violation of the interim IIFS [is] defined as when the mean daily flow measured or monitored in Honokohau Stream at MacDonald’s Dam (at an elevation of 340 feet) does not meet the interim IIFS for **three or more consecutive days or four days out of seven in any consecutive period.**” NOAV at 2 (citing the Amended Order) (emphasis in original). As the NOAV explains, the IIFS will be met when (1) “the USGS 16620000 station [(located mauka of Diversion 770)] reads at least 9.9 cfs (6.4 mgd)” and (2) “no water is diverted out of Honokohau Stream[.]” NOAV at 4. Under this standard, MLP believes that it complied with the IIFS.

According to the NOAV, on each of the 28 days of alleged violation, the USGS station read at least 10.2 cfs, which means some amount of water could have been diverted from Honokohau Stream and not returned at Taro Gate without violating the IIFS. NOAV at 6, Table 2. Nevertheless, MLP’s system operator confirmed that Taro Gate was fully open to return all water to the Stream on 26 of the 28 days of alleged violation. On the two remaining days (July 22 and 23), Taro Gate had malfunctioned and, as a result, stopped in a partial open position. The Taro Gate was promptly repaired. Because the USGS station readings were higher than the minimal reading of 9.9 cfs on each of the 28 days of alleged violation and Taro Gate was fully open to return all water to Honokohau Stream on 26 of the 28 days of alleged violation, MLP believes that it complied with the IIFS.

To the extent that the NOAV relies on identified MacDonald’s Dam streamflow in Table 2 of the NOAV, MLP respectfully requests an opportunity to discuss the data with CWRM. There appear to be multiple data sets on streamflow. For example, the NOAV explains:

The Commission maintains a real-time continuous record gaging station at MacDonald’s Dam (station 6-149) to monitor the [I]IFS. The station measures stage approximately every 30 minutes and transmits the value to a cloud-based database for processing. Streamflow from this station is made available to the public in near real-time and verified by discharge measurements made in the field.

NOAV at 3.

MLP understands that the near real-time streamflow data from station 6-149 is “verified by discharge measurements made in the field” and published (usually) monthly at CWRM’s Data Portal site (the “**Verified Data**”). NOAV at 3. At various times, the near real-time streamflow data is also recalibrated on CWRM’s addVantage site (the “**Recalibrated Data**”). It appears that the flows at MacDonald’s Dam that are identified in Table 2 of the NOAV use the Recalibrated Data.

Although the Recalibrated Data shows stream flows lower than the IIFS (13.3 cfs) on each of the 28 days, it does not appear that MLP violated the IIFS.

First, as explained above, the reading at the USGS station was at least 10.2 cfs on each of the 28 days identified in the NOAV and the Taro Gate was fully open on 26 of those 28 days. While a malfunction caused the Taro Gate to be only partially open on two days, at no point were there three consecutive days of diversion past Taro Gate. Thus, even if the Recalibrated Data is the correct measure for purposes of determining whether there was enough streamflow to divert water on a particular day, an operator could only violate the IIFS if it actually diverted water when there was insufficient streamflow on three consecutive days or for any four days over a consecutive seven-day period. Since flows were shown to be adequate at the USGS station on each of the 28 days identified in the NOAV and MLP returned all water on 26 of those 28 days, MLP could not have violated the IIFS even though the Recalibrated Data from the gaging station at MacDonald’s Dam showed streamflow below the IIFS.

Second, the Verified Data for the 28 days identified in the NOAV shows that MLP did not violate the IIFS. The table to the right reports the Verified Data taken from CWRM’s Data Portal site, which identifies flows in amounts above the IIFS (13.3 cfs) on 26 of the 28 days of alleged violation. At no point were there three consecutive days or any four days over a consecutive seven-day period where streamflow fell below the IIFS (13.3 cfs).

To ensure compliance going forward and avoid any misunderstanding, we request the opportunity to discuss the various data sets, and to understand how the Verified Data and Recalibrated Data is calculated and how MLP can comply in real time with

Date	Flow @ USGS station per NOAV (cfs)	Flow @ MacDonalds per CWRM Data Portal (cfs)
4/24/2025	12.2	26.4
4/25/2025	11.2	26.7
4/26/2025	10.8	27.3
4/27/2025	10.6	26.4
5/2/2025	10.6	20.9
5/3/2025	11.3	22.1
5/4/2025	11.2	21.9
5/23/2025	12.1	22.2
5/25/2025	12.0	22.5
5/26/2025	10.9	20.7
5/27/2025	10.4	20.2
5/28/2025	10.2	19.4
5/29/2025	10.3	19.2
5/30/2025	12.8	21.1
6/2/2025	11.5	19.1
6/3/2025	12.4	18.8
6/4/2025	10.7	16.8
7/22/2025	12.8	11.6
7/23/2025	11.7	11.8
7/24/2025	11.0	14.9
7/25/2025	10.8	15.1
7/26/2025	10.7	15.0
7/27/2025	11.0	14.9
7/31/2025	10.8	15.4
8/1/2025	10.8	15.4
8/5/2025	10.2	14.8
8/6/2025	11.1	15.2
8/7/2025	11.0	15.7

measurements that are not determined until they have been recalibrated.<sup>1</sup>

MLP closes this section by noting that it will install additional gaging stations in the Stream and at various distributions points in the Ditch System. The equipment for the distribution points has been delivered. The stations will be installed within six months. MLP will coordinate with CWRM staff on the best locations for the gaging stations and will share all data with CWRM staff and the public.

**Improvements.** The Original Order directed MLP to install a remotely operated gate at Diversion 770 to control the intake of water into the Ditch. Based on the advice of Akinaka & Associates Ltd., MLP understood that it was impractical to supply the energy and communications necessary to operate the upgrade to the intake at the Diversion. Instead, Akinaka identified Adit 16 as a better location for the installation of complex power and communications systems.

Relying on this guidance, the Commission's Amended Order allowed the installation of a remotely operated valve and associated power source and communications system at Adit 16 to return water to the Stream in lieu of the remotely operated intake control gate at Diversion 770. To address the Original Order's intent to control the intake of water into the Ditch so that more water remains in the Stream, the Commission relied on the advice of Akinaka and directed MLP to install low flow and high flow restrictor plates on the bar screens at Diversion 770.

After receiving Commission approval for the work, MLP installed low and high flow temporary restrictor plates on the bar screens at Diversion 770 in April 2022. However, over time, it became apparent that this design allowed water to enter the Ditch at levels that could exceed the ability to capture and return the water to the Stream at Adit 16 during low streamflow. Among other things, Adit 16 has a relatively small diameter return flow pipe. Adit 16 also suffered from power and communications challenges, similar to CWRM's real-time ditch flow sensor communication system at Adit 6, which went offline in 2022 and was abandoned.

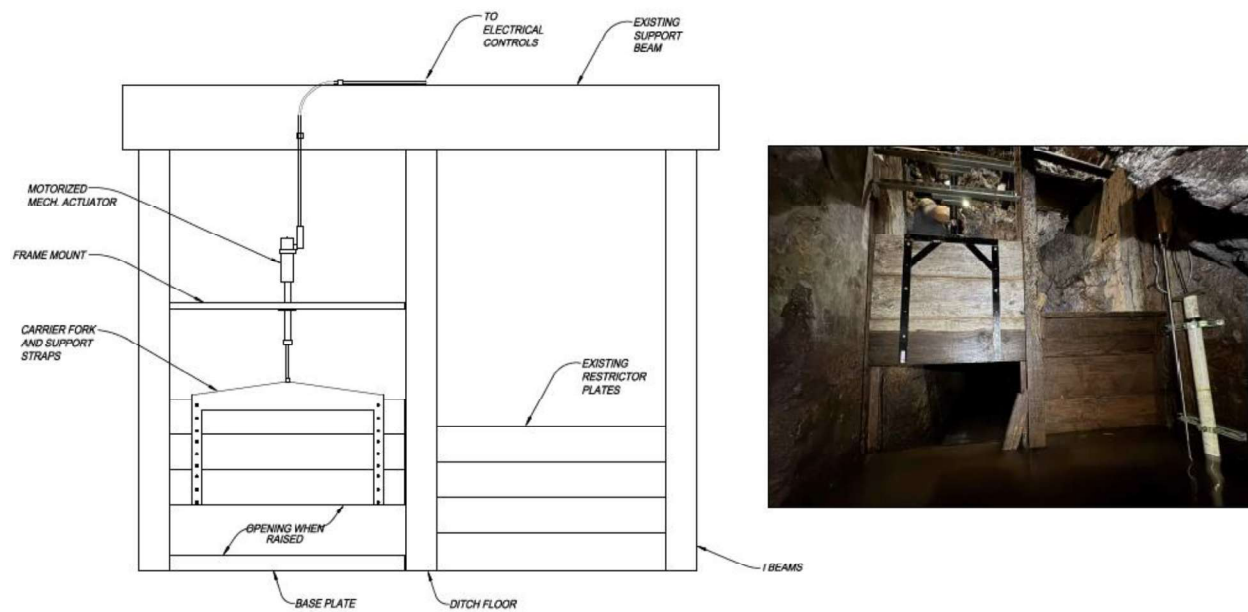
In 2024, MLP installed an improved low flow restrictor plate at Diversion 770 at the location of the flow control gates, in addition to the restrictor plates installed on the bar screen. The installation of the improved low flow restrictor plate met the intent of the Amended Order and ensured that more water remained in the Stream during low flow conditions and reduced the amount of water to be returned to the Stream.

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<sup>1</sup> Table 2 of the NOAV also identifies streamflow at Diversion 770. It is unclear how the flow at Diversion 770 is calculated.

With the assistance of a new consultant and technological advancements, remote operation of the control of water into the Ditch at Diversion 770 (the Original Order) and the return of water via the Taro Gate (instead of Adit 16 under the Amended Order) became possible.

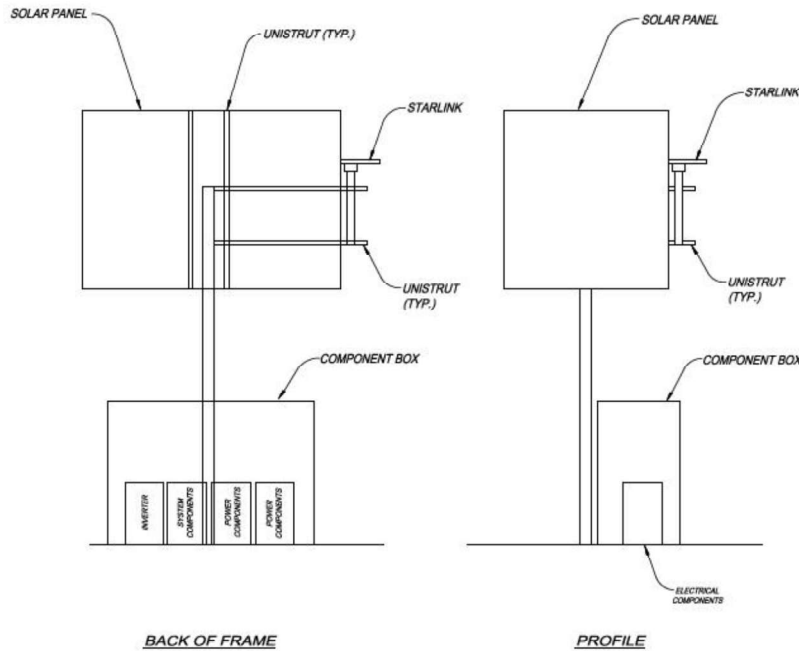
Although no longer required by the Amended Order, in October 2025, and in coordination with CWRM staff, the remotely operated gate at Diversion 770 was installed.<sup>2</sup> The gate controls the quantity of water that enters the Ditch,<sup>3</sup> thereby significantly reducing the volume of water entering the Ditch during low flows and keeping more water flowing the full length of the Stream. MLP believes that remote operation and monitoring will allow faster response times and more nuanced adjustments in response to low streamflow to maintain the IIFS.



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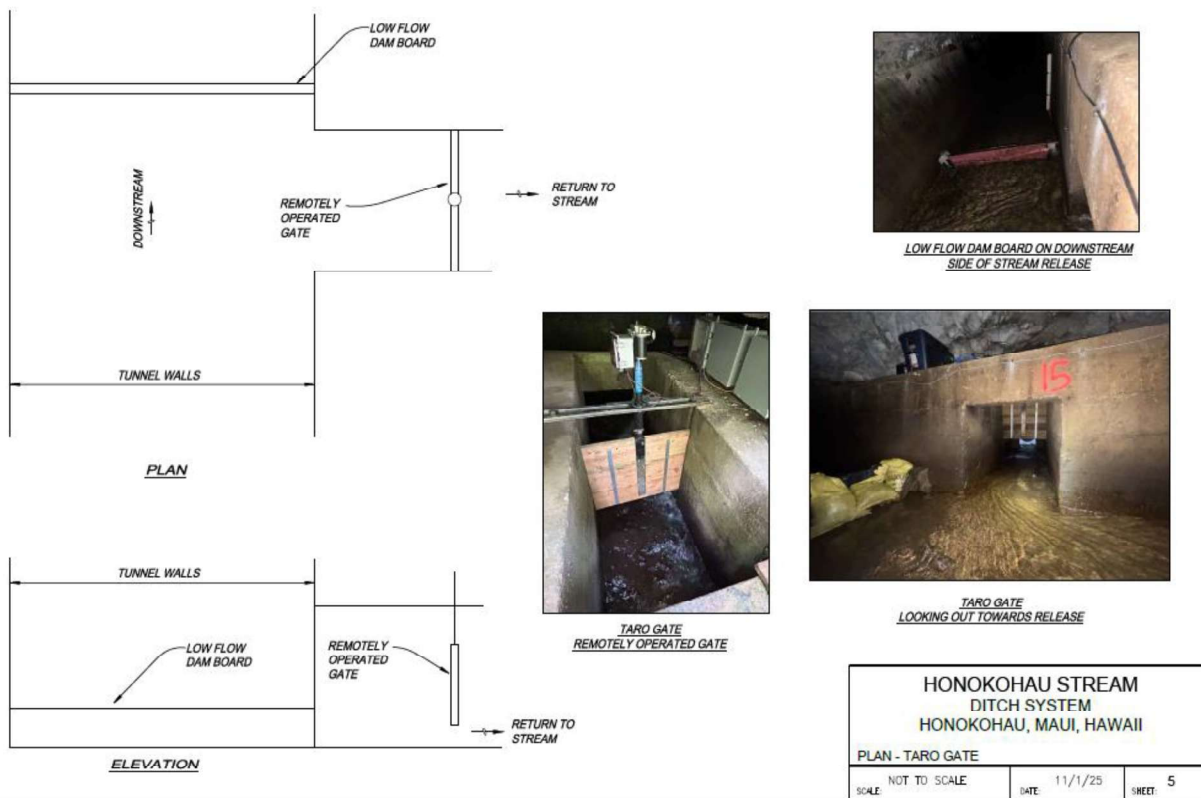
<sup>2</sup> On July 11, 2025, MLP met with CWRM staff to discuss the remotely operated gate at Diversion 770. The same day, MLP received confirmation from staff to proceed with the installation. The final engineering plans, equipment specs and construction schedule for Diversion 770 was submitted to CWRM staff on October 31, 2025.

<sup>3</sup> As designed, the remotely operated gate at Diversion 770 eliminates the need for low and high flow restrictor plates to meet the IIFS. MLP intends, however, to keep the restrictor plates to further assist with reducing debris in the Ditch.



<b>HONOKOHAU STREAM          DITCH SYSTEM          HONOKOHAU, MAUI, HAWAII</b>		
<b>PLAN - DIVERSION 770 ELECTRONIC SYSTEM</b>		
SCALE NOT TO SCALE	DATE 11/1/25	SHEET 3

In April 2025, an internal dam downstream of Taro Gate was installed in the Ditch to minimize flow of water past the gate and aid in the ability to return water to the stream. In June 2025, in coordination with CWRM staff, the remotely operated Taro Gate was installed. In October 2025, the power storage at Taro Gate was upgraded to move toward 24/7 operation. As discussed above, the Gate controls the return of water to the Stream based on streamflow. In this way, Taro Gate acts as a backup control to the automated gate at Diversion 770 by ensuring that water that may have entered the Ditch is returned to the Stream if flows are low.



MLP believes the result of these improvements is a superior system. The intent of the Orders was to restrict water from entering the Ditch (Original Order) or return water to the Stream (Amended Order). The improvements under the Orders were not intended to allow more water to be diverted during low flow periods. The improvements under the Amended Order, as recommended by Akinaka, would have made it both harder to meet the IIFS (small diameter return flow at Adit 16) and harder to capture water during intermittent high flows (fixed barriers at Diversion 770). The completed upgrades accomplish remote operation to keep water in and return water to the Stream and remote operation to capture higher flows of water. MLP will respectfully request that the Commission amend the Amended Order by accepting the foregoing upgrades that satisfy the Orders.

MLP is committed to responsible stewardship of this valuable resource. To this end, MLP will continue to work with CWRM staff and the community, including sharing data and reviewing operational concepts, to protect the resource for the benefit of the community.

Thank you for the opportunity to respond. Please call me at (808) 521-9220 if I can provide additional information.

Deputy Director Kahahane  
November 10, 2025  
Page 8

Very truly yours,

A handwritten signature in black ink, appearing to read "Calvert G. Chipchase". The signature is fluid and cursive, with a long horizontal stroke at the end.

Calvert G. Chipchase  
for  
CADES SCHUTTE  
A Limited Liability Law Partnership

cc: client

# EXHIBIT 10

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Attorneys for Petitioner

TY MANAGEMENT CORPORATION,

a Hawai'i corporation

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

OF THE STATE OF HAWAI'I

In the Matter of:

) PETITION REQUESTING A PUBLIC  
) HEARING TO ADJUDICATE THE  
) VIOLATIONS CONTAINED IN THE

PETITION REQUESTING A PUBLIC HEARING TO ADJUDICATE THE VIOLATIONS CONTAINED IN THE OCTOBER 8, 2025, NOTICE OF ALLEGED VIOLATION, INTERIM INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO.

) OCTOBER 8, 2025, NOTICE OF ALLEGED VIOLATION, INTERIM INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO.; MEMORANDUM IN SUPPORT OF PETITION; EXHIBITS “A” – “T”.

PETITION REQUESTING A PUBLIC HEARING TO ADJUDICATE THE VIOLATIONS CONTAINED IN THE OCTOBER 8, 2025, NOTICE OF ALLEGED VIOLATION, INTERIM INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO.

MEMORANDUM IN SUPPORT OF PETITION

AND

EXHIBITS “A” – “T”

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Attorneys for Petitioner

TY MANAGEMENT CORPORATION

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

OF THE STATE OF HAWAI'I

In the Matter of:

PETITION REQUESTING A PUBLIC

HEARING TO ADJUDICATE THE

VIOLATIONS CONTAINED IN THE

) PETITION REQUESTING A PUBLIC  
) HEARING TO ADJUDICATE THE  
) VIOLATIONS CONTAINED IN THE  
) OCTOBER 8, 2025, NOTICE OF  
) ALLEGED VIOLATION, INTERIM

OCTOBER 8, 2025, NOTICE OF ALLEGED VIOLATION, INTERIM INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO. ) INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO.; MEMORANDUM IN SUPPORT OF PETITION; EXHIBITS “A” – “T”.

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PETITION REQUESTING A PUBLIC HEARING TO ADJUDICATE THE VIOLATIONS CONTAINED IN THE OCTOBER 8, 2025, NOTICE OF ALLEGED VIOLATION, INTERIM INSTREAM FLOW STANDARD AND FAILURE TO FOLLOW THROUGH WITH COMMISSION ORDER FROM NOVEMBER 20, 2019, HONOKŌHAU STREAM, HONOKŌHAU, MAUI, REF.: CDR.5095.6, ISSUED TO MAUI LAND & PINEAPPLE CO.

Petitioners LARRICK KAPULE EUBANK, *pro se* (“Eubank”), COOPER PITTS, *pro se* (“Pitts”), and GARY W. GRUBE, *pro se* (“Grube”), and TY MANAGEMENT CORPORATION, a Hawai‘i corporation, by and through its counsel Ashford & Wriston, LLP (“TY”) (together the “Petitioners”) respectfully submit this Petition to the Commission on Water Resource Management, State of Hawai‘i (“Commission”), requesting relief in the form of a public hearing to adjudicate the October 8, 2025, Notice of Alleged Violation, Interim Instream Flow Standard and Failure to Follow Through With Commission Order from November 20, 2019, Honokōhau Stream, Honokōhau, Maui, Ref.: CDR.5095.6, (“NOAV”) issued to Maui Land & Pineapple Company (“MLP”) as to the violation of the Commission’s November 20, 2019 order and October 19, 2021 amended order.

This Petition is brought pursuant to Hawai‘i Constitution Article XI, section 7; Hawai‘i Revised Statute (“HRS”) Chapter 174C et seq. (“State Water Code”); and Hawai‘i

Administrative Rule (“HAR”) § 13-167-22, and is supported by the attached memorandum in support of Petition and exhibits, and any arguments that Petitioners or its counsel may make at a hearing on the Petition.

Request is further made for a public hearing on this Petition and that the Commission direct all communications related to this Petition to each Petitioner or its counsel at the addresses or e-mails above stated.

DATED: Wailuku, Maui, Hawai‘i; January 20, 2026.

/s/ Larrick Kapule Eubank  
LARRICK KAPULE EUBANK  
Petitioner *Pro Se*

/s/ Cooper Pitts  
COOPER PITTS  
Petitioner *Pro Se*

/s/ Gary W. Grube  
GARY W. GRUBE  
Petitioner *Pro Se*

DATED: Honolulu, Hawai‘i; January 20, 2026.

/s/ Benjamin A. Kudo  
BENJAMIN A. KUDO  
RYAN M. TOYOMURA  
Attorneys for Petitioner  
TY Management Corporation

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Exhibit A	November 20, 2019 Commission Minutes
Exhibit B	October 19, 2021 Notice of Action
Exhibit C	October 8, 2025 Notice of Alleged Violation
Exhibit D	Photo – Plantation Golf Course
Exhibit E	Photo – Bay Golf Course
Exhibit F	November 20, 2019 Staff Submittal
Exhibit G	May 12, 2020 <b>MAUI NEWS: ML&amp;P: Honokohau Stream ditch system repaired</b>
Exhibit H	August 20, 2020 Letter from MLP to CWRM
Exhibit I	April 3, 2021 Letter from Gilbert Keith-Aragan to CWRM
Exhibit J	February-March 2021 Emails Re: Site visit to Adit 16 and Adit 6 on Honokōhau Ditch
Exhibit K	May 18, 2021 IIFS Staff Submittal
Exhibit L	October 19, 2021 Staff Submittal
Exhibit M	October 16, 2023 CWRM Staff Emails
Exhibit N	August 21, 2024 Letter from Maui Land & Pineapple to TY Management Corporation
Exhibit O	August 18, 2025 Circuit Court Complaint Case No. 2CCV-25-0003632
Exhibit P	September 16, 2025 MLP Hearing Presentation
Exhibit Q	October 2025 Emails from CWRM to MLP
Exhibit R	December 16, 2025 Unofficial Transcript of Testimony of Ms. Ladera Dapitan at CWRM Meeting
Exhibit S	December 16, 2025 Unofficial Transcript of Testimony of Petitioner Larrick Kapule Eubank
Exhibit T	December 16, 2025 Unofficial Transcript of Testimony of TY Management Corporation’s General Manager, Mr. Kenji Yui
Exhibit U	Emails between CWRM and MLP

## MEMORANDUM IN SUPPORT OF PETITION

Petitioners LARRICK KAPULE EUBANK, *pro se* (“Eubank”), COOPER PITTS, *pro se* (“Pitts”), and GARY W. GRUBE, *pro se* (“Grube”), and TY MANAGEMENT CORPORATION, a Hawai‘i corporation, by and through its counsel Ashford & Wriston, LLP (“TY”), (together the “Petitioners”) respectfully submit this memorandum in support of their Petition.

### **I. INTRODUCTION**

The voices of the Honokōhau Valley and West Maui community have been clear and consistent for years—that Maui Land & Pineapple Company (“MLP”) has, for too long, shirked its responsibilities as a purveyor and steward of a public trust resource by failing to maintain the Honokōhau Ditch System (“Ditch System”). The damage caused by MLP’s negligence and mismanagement of the Ditch System has resulted in violations of the Interim Instream Flow Standards (“IIFS”) and water curtailments that have harmed taro farmers, property, businesses, and the Maui Nui economy.

MLP’s mismanagement of the Ditch System and its blatant disregard for the Commission’s November 20, 2019 order (“2019 Order”), which was subsequently amended by its October 19, 2021 amended order (“2021 Amended Order”) <sup>1</sup> (collectively referred to herein as the “Orders”) comes at a time when its revenue and stock prices have surged resulting in MLP being identified as one of Hawai‘i’s fastest growing companies by revenue in 2024. MLP’s revenue rose an astounding 24 percent from \$9,290,000.00 to \$11,570,000.00 in 2024. MLP also obtained insurance proceeds in or around 2019 to make repairs to the storm-damaged Ditch

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<sup>1</sup> The 2019 Order is comprised of the Commission Minutes dated November 20, 2019, (“11/20/2019 Minutes”) and the 2021 Amended Order is contained in the Notice of Commission Action, Ref.: CDR. 5095.6; PAIFS.1792.6, dated October 19, 2021 (“Notice of Action”). The foregoing documents are attached and incorporated hereto as Exhibit “A” and “B” respectively.

System. However, there is no evidence that the insurance money was used to make repairs or that significant capital investments were made to the Ditch System. It is unjust that MLP benefits from record revenues, high stock prices, and insurance proceeds while the community continues to suffer from MLP's neglect, mismanagement, and empty promises.

The Orders required MLP to fix and make improvements to the Ditch System which it did not fully comply with. On October 8, 2025, nearly six years after the 2019 Order, the Commission issued a Notice of Alleged Violation ("NOAV") to MLP alleging, amongst other things, that MLP failed to comply with the Orders to make needed improvements to the Ditch System.<sup>2</sup> These allegations were supported, in part, by MLP's own representations to the Commission in September 2025 that evidenced the improvements were not timely completed.

While the Commission addressed MLP's violation of the IIFS, it did not agendaize or adjudicate the violation of the Orders at the December 16, 2025, hearing. In fact, Chair Dawn Chang and Deputy Attorney General Young clearly stated to TY's counsel that the violation of the Orders was not part of the agenda and therefore not being considered by the Commission. In short, MLP's violations of the Orders remain unaddressed, and they must be held accountable.

It is unsurprising that MLP would ignore the Orders, given their disregard for kuleana and their role as stewards of a public trust asset. MLP's indifference to the condition of the Ditch System was put on full display at the December 16, 2025 hearing during which Commissioner Miike asked whether MLP would remove debris from the Ditch System, even if it were not part of a Commission order. Without hesitation, MLP stated that it was not its responsibility.

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<sup>2</sup> Notice of Alleged Violation, Interim Instream Flow Standard and Failure to Follow Through With Commission Order (Nov. 20, 2019), Honokōhau Stream, Honokōhau, Maui, Ref.: CDR.5095.6 ("NOAV") (a copy of which is incorporated and attached hereto as Exhibit "C")

Therefore, this Petition respectfully requests that the Commission hold a public hearing to accept public testimony and adjudicate the NOAV with respect to the violation of the Orders. Adjudicating the violation of the Orders is one of the Commission’s fundamental duties and obligations under the Hawai‘i State Constitution and the State Water Code to protect and preserve water resources.

## **II. BACKGROUND OF PETITIONERS**

*Pro se* Petitioner Eubank has been a Honokōhau Valley resident and taro farmer for nearly 10 years and has experienced firsthand MLP’s widespread mismanagement of the Ditch System. Petitioner Eubank’s lo‘i were negatively impacted by MLP’s mismanagement of the Ditch System, which resulted in damage to crops that help feed the Honokōhau Valley community. His property was also damaged by stream flooding, exacerbated by MLP’s failure to clear fallen trees, debris, and a damaged bridge on its property that crossed the stream.

*Pro se* Petitioner Pitts is the owner of Taverna Restaurant located at the Kapalua Bay Golf Course. The restaurant employs Maui residents and services locals and golfers alike. The closure of the Kapalua Bay Course and Plantation Course (“Golf Courses”) and the loss of the PGA Sentry golf tournament due to MLP’s water curtailment have and will continue to negatively impact his business.

*Pro se* Petitioner Grube is the owner of Hua Momona Farms located in Kapalua. The farm employs local workers, grows fresh local produce, and donates food to Maui’s food-insecure communities. The Ditch System provides the farm’s sole source of irrigation water. The farm has suffered significant harm due to the water curtailments.

Petitioner TY is the owner of the Golf Courses located in Kapalua. Due to water curtailments caused by the disrepair and mismanagement of the Ditch System, the Golf Courses were forced to close in 2025. As a result of the closure of the Plantation Course, the 2026 PGA

Sentry golf tournament was cancelled. While the Plantation Course has since reopened, the Bay Course remains shuttered which resulted in revenue and job loss.

### III. LEGAL BASIS FOR PETITION

The Commission's rules provide that,

**[t]he commission may on its own motion or on petition or application of any interested person or persons or an agency of the state or county government hold proceedings as necessary from time to time for the purpose of: . . . carrying out its duties and responsibilities including the designation of water management areas, the permitting of water uses, and the enforcement of rules, orders and legal standards and obligations.**

HAR § 13-167-22(b) (emphasis added).

Petitioners Eubank, Grube, Pitts, and TY are each an “interested person” under the rules because they have an interest in the maintenance and condition of the Ditch System that is the sole source of non-potable water for their properties.

Petitioner Eubank is an “interested person” because he has a property interest as a taro farmer who relies on stream water affected by the Ditch System. MLP's mismanagement of the Ditch System negatively impacted stream flows leading to damage to his taro crops that help feed the Honokōhau Valley community.

Petitioner Grube is an “interested person” because his sole source of irrigation water for his farm is from the Ditch System. The water curtailments significantly impacted his crop yield, resulting in approximately \$25,000 in monthly gross revenue loss and reducing the number of food boxes he donates to food-insecure families on Maui by 25 percent.

Petitioner Pitts is also an “interested person” because the closure of the Golf Courses directly impacts his business and cancellation of the PGA Sentry golf tournament due to water curtailments caused by the mismanagement of the Ditch System negatively impacted his restaurant's business. Unless the Ditch System is properly repaired and maintained, the lack of a

reliable water source for the Golf Courses casts doubt on whether The Sentry tournament will return to Maui.

MLP's failure to make improvements to the Ditch System, as required by the Orders, has significantly undercut Petitioner TY's ability to source sufficient non-potable water to irrigate its properties.<sup>3</sup> The water curtailments caused by the mismanaged Ditch System resulted in the closure of Petitioner TY's Golf Courses in Kapalua. The closure and uncertainty about the future of the Plantation Course forced the PGA Tour to cancel the 2026 Sentry golf tournament.<sup>4</sup> Petitioner TY's property interest therefore qualifies it as an "interested person".

Therefore, Petitioners certainly qualify as "interested parties" that may bring this Petition to request the Commission to hold proceedings to enforce its "rules, [the 2019 and 2021 Amended] [O]rders and legal standards and obligations" pursuant to the Hawai'i State Constitution and State Water Code.<sup>5</sup>

#### **IV. RELEVANT BACKGROUND**

CWRM and the County of Maui have long recognized MLP's neglect of its Ditch System. In its Water Use and Development Plan approved in 2022, the County of Maui estimated

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<sup>3</sup> In fact, TY has alleged in a pending lawsuit against MLP that its failure to maintain the Ditch System caused damage to its two golf courses located in Kapalua. Attached as Exhibits "D" and "E" are pictures of TY's Plantation Golf Course and Bay Golf Course which sustained significant damage from the MLP-induced water curtailment.

<sup>4</sup> See *PGA TOUR Announces The Sentry will not be Contested in 2026* (Oct. 22, 2025), <https://www.pgatour.com/article/news/latest/2025/10/22/pgatour-announces-the-sentry-will-not-be-contested-in-2026-kapalua-hawaii> (last visited Jan. 20, 2026).

<sup>5</sup> Cf. *Asato v. Procurement Pol'y Bd.*, 132 Haw. 333, 343-44 322 P.3d 228, 238-39 (2014) (noting that the "any interested person" standard is a less stringent standing requirement and holding that in the context of HRS Chapter 91 an "interested person" need not show an injury in fact but merely requires the person show he is affected or involved with the validity of an agency rule); HAR § 13-167-22(b).

that the Ditch System was losing around 3.9 million gallons per day between 2014 and 2019.<sup>6</sup> The Ditch System’s state of disrepair was compounded by storm events in 2018 that triggered flooding in West Maui and further damaged the Ditch System’s already compromised intake gates and other infrastructure.<sup>7</sup>

On or about April 23, 2019, Ka Malu O Kahalawai and West Maui Preservation Association (“Complainants”) filed a waste complaint (“Waste Complaint”) alleging that water diverted from the Honokōhau Stream was wasted and being released into gulches, roads, and ditches.<sup>8</sup>

On or about November 20, 2019, the Commission held a hearing on the Waste Complaint. The Complainants testified to a 30-year history, predating the Waste Complaint, of community frustration with MLP’s mismanagement of the Ditch System, which negatively impacted taro farmers and valley residents.<sup>9</sup>

MLP’s counsel testified that MLP obtained insurance proceeds to restore the Taro Gate to its pre-flood condition:<sup>10</sup>

*Ms. Yvonne Izu, Council for MLP – MLP has already obtained the insurance proceeds due to the flood damage. The insurance proceeds are to restore the gate to pre-flood damages and will be doing that as an interim measure and intend to pursue the automatic gate. As an interim measure, there’ll be some control as the gate will be fixed to pre-flood condition. The status now is that MLP has already done the assessment of the ditch to see what the damage is and is currently working on specs to fix the gate diversion and when that is done, will go out to bid on the actual construction.*

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<sup>6</sup> A Bill for an Ordinance Adopting an Update to the Water Use and Development Plan for the Island of Maui, Ordinance No. 5335, Bill No. 14 (2022), <https://waterresources.mauicounty.gov/DocumentCenter/View/608/Ord-5335> at 34 (PDF at 63).

<sup>7</sup> See Staff Submittal dated November 20, 2019 (“11/20/2019 Staff Submittal”) at 25-26 (a copy of which is attached and incorporated hereto as Exhibit “F”).

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> See Ex. A (11/20/2019 Minutes) at 35-36. MLP’s representative Mr. Tim Esaki and counsel Ms. Yvonne Izu attended the hearing.

<sup>10</sup> *Id.* at 39.

Mr. Esaki of MLP also informed the Commission that MLP could restore Taro Gate to operability if it were included in an order.<sup>11</sup> At the hearing, the Commission unanimously voted to require MLP to, *inter alia*:

1. Upgrade Diversion 770 to provide for remote operation of the diverted flow.<sup>12</sup>
2. Commence construction of upgrades within 120 days of approval of a stream diversion work permit.<sup>13</sup>
3. Provide real-time metering for each distribution point from the Ditch System and transmit the data to the Commission.<sup>14</sup>
4. Update Taro Gate to ensure proper function and water delivery in the system to pre-flood conditions.<sup>15</sup>

On or about May 12, 2020, MLP announced to the media that it completed repairs to the Ditch System following the 2019 Order that resulted in a “renewed ditch system.”<sup>16</sup> MLP further boasted that the repairs reduced susceptibility to leaks, increased accessibility, and that the Ditch System now provides “consistent water availability to all of the users.”<sup>17</sup> These pronouncements were simply false and yet another example of why there is so much community mistrust of MLP.

Indeed, MLP’s August 2020 correspondence with the Commission on the status of the ordered Ditch System improvements noted that it was still in the process of evaluating the

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<sup>11</sup> Id.

<sup>12</sup> See Ex. F (11/20/2019 Staff Submittal) at 28.

<sup>13</sup> See id.

<sup>14</sup> See id.

<sup>15</sup> See Ex. A (11/20/2019 Minutes) at 39.

<sup>16</sup> See *ML&P: Honokōhau Stream ditch system repaired*, MAUI NEWS (May 12, 2020), <https://www.mauinews.com/news/local-news/2020/05/mlp-honokohau-stream-ditch-system-repaired/> (a copy of which is attached and incorporated hereto as Exhibit “G”).

<sup>17</sup> Id.

installation of a remotely operated gate at Diversion 770 and installing new flow monitoring devices.<sup>18</sup> MLP's April 2021 follow-up letter noted that its consultants had deemed the remotely operated gate "not feasible" and that portions of other action items were still in progress.<sup>19</sup> Correspondence between MLP and the Commission from early 2021 indicates that MLP denied Commission staff access to Adit 16 to evaluate an alternative to the Commission order, citing dangerous trail conditions.<sup>20</sup> When asked whether there were any scheduled helicopter trips for routine maintenance that Commission staff could join to conduct a site visit, MLP's contractor replied that it did not have any "scheduled helicopter trips into the Honokōhau Valley any time soon."<sup>21</sup>

In or around May 2021, the Commission adopted the IIFS for the Honokōhau Stream. The Staff Submittal for that proceeding indicated that MLP had not made upgrades to the gate at Diversion 770 as required by the November 2019 order two years prior.<sup>22</sup>

On or about October 19, 2021, the Commission held a hearing to amend the 2019 Order due to MLP's claims that it was impractical to make the improvements to Division 770 as required by the 2019 Order.<sup>23</sup> The Commission amended the 2019 Order to require MLP to do as follows:

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<sup>18</sup> See Letter from MLP to CWRM (August 20, 2020) (a copy of which is attached and incorporated hereto as Exhibit "H").

<sup>19</sup> See Letter from Gilbert Keith-Aragan to CWRM (Apr. 3, 2021) (a copy of which is attached and incorporated hereto as Exhibit "I").

<sup>20</sup> See Emails Re: Site visit to Adit 16 and Adit 6 on Honokōhau Ditch (Feb.–Mar. 2021) (a copy of which is attached and incorporated hereto as Exhibit "J").

<sup>21</sup> Id.

<sup>22</sup> See Staff Submittal dated May 18, 2021 at 3 (a copy of which is attached and incorporated hereto as Exhibit "K").

<sup>23</sup> See Staff Submittal (Oct. 19, 2021) at 2 (a copy of which is attached and incorporated hereto as Exhibit "L").

- 1) Approve the modification to the original order from November 20, 2019 to now require the following 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, coordinated by Hawaii Water Service, will install high and low plywood restrictor plates to serve as temporary mitigation measures to keep lowest and high flows in Honokōhau Stream until permanent restrictor plates can be installed; as well as to inform optimal placement of the permanent restrictor plates.
- 3) All other orders from November 20, 2019 not explicitly modified by recommendation 1 above remain in full effect.
- 4) Within 90 days, MLP will submit final engineering plans for all plans for approval by staff and modifications to be completed within 6 months.

See Ex. B (Notice of Action) at 1-2.

In or around October 2023, Commission staff contacted MLP’s CEO Race Randle to request a meeting with MLP to discuss the status of MLP’s compliance with the 2019 Order. On October 16, 2023, CWRM staff Mr. Ayrton Strauch noted that MLP had not complied with the 2019 Order. MLP was fully aware that it was not in compliance with the 2019 Order.<sup>24</sup>

**From:** Strauch, Ayrton M <[ayron.m.strauch@hawaii.gov](mailto:ayron.m.strauch@hawaii.gov)>  
**Sent:** Monday, October 16, 2023 8:37 AM  
**To:** Alakai, Rebecca R <[Rebecca.R.Alakai@hawaii.gov](mailto:Rebecca.R.Alakai@hawaii.gov)>; Ken Kawahara <[kck@akinaka.com](mailto:kck@akinaka.com)>; Kadowaki, John (Kani) <[jkadowaki@calwater.com](mailto:jkadowaki@calwater.com)>  
**Cc:** Uyeno, Dean D <[dean.d.uyeno@hawaii.gov](mailto:dean.d.uyeno@hawaii.gov)>; Manuel, Kaleo L <[kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov)>; Ching, Cody L <[cody.l.ching@hawaii.gov](mailto:cody.l.ching@hawaii.gov)>; Kaaa, Iwalani HR <[iwalani.hr.kaaa@hawaii.gov](mailto:iwalani.hr.kaaa@hawaii.gov)>  
**Subject:** Re: Continued conversation about modifications to Honokohau Ditch intake  
 This would be independent of any SWUPA. This is an order of the Commission that hasn't been followed through yet.  
 Ayrton

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<sup>24</sup> A copy of the emails are attached and incorporated hereto as Exhibit “M”.

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**From:** Strauch, Ayron M <[ayron.m.strauch@hawaii.gov](mailto:ayron.m.strauch@hawaii.gov)>  
**Sent:** Saturday, October 14, 2023 9:04 AM  
**To:** Ken Kawahara <[kck@akinaka.com](mailto:kck@akinaka.com)>; Kadowaki, John (Kani) <[jkadowaki@calwater.com](mailto:jkadowaki@calwater.com)>  
**Cc:** Uyeno, Dean D <[dean.d.uyeno@hawaii.gov](mailto:dean.d.uyeno@hawaii.gov)>; Manuel, Kaleo L <[kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov)>; Ching, Cody L <[cody.l.ching@hawaii.gov](mailto:cody.l.ching@hawaii.gov)>; Alakai, Rebecca R <[Rebecca.R.Alakai@hawaii.gov](mailto:Rebecca.R.Alakai@hawaii.gov)>; Kaaa, Iwalani HR <[iwalani.hr.kaaa@hawaii.gov](mailto:iwalani.hr.kaaa@hawaii.gov)>  
**Subject:** Continued conversation about modifications to Honokohau Ditch intake  
Aloha Ken and John,  
Commission staff have been wrapped up in other issues for the last year or so and I apologize for not getting back to this subject.  
However, with the drought conditions persisting, and the increased importance to ensure water delivered to Maui County's Mahinahina WTF, can we return to the conversation regarding the proposed modifications to the Diversion 770 intake (Honokohau Ditch) and associated infrastructure either at Taro gate (Adit 15) or Adit 16?  
These (modifications to the intake and metering) are orders of the Commission from the November 2019 Commission meeting that MLP agreed to and independent of any water use permit.  
Can we bring in MLP's new leadership to the conversation?  
Do any of the following date/times work for everyone?  
Monday Oct 23 11:00-4:00  
Thursday Oct 26 12:00-4:00  
Friday Oct 27 9:00-11:00  
Tuesday Oct 31 12:00-4:00  
Thanks,

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Ayron M. Strauch, Ph. D.  
Hydrologist, Commission on Water Resource Management  
Department of Land and Natural Resources  
State of Hawaii

In or around August and September of 2024, MLP notified TY about a reduction in non-potable water availability and increased rates, citing damage to the Ditch System from storms **six (6) years earlier in 2018** as justification (notably from the same Ditch System MLP previously boasted in 2019 to media as capable of providing “consistent water availability to all of the users”).<sup>25</sup> The water restrictions affecting TY, all of the Kapalua community, and the County of Maui’s Mahinahina water treatment facility, serviced by the Ditch System, have been ongoing for most of 2025 and led to the cancellation of the PGA Tour’s Sentry Tournament.<sup>26</sup>

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<sup>25</sup> See Letter from MLP to TY (Aug. 21, 2024) (a copy of which is attached and incorporated hereto as Exhibit “N”).

<sup>26</sup> See n.4, *supra*.

A May 2025 site visit to Diversion 770 by MLP, Petitioner TY, and County officials revealed that MLP had installed only a temporary plywood restrictor plate, and that a permanent restrictor plate had not been installed almost 4 years after the amended order.<sup>27</sup>



Figure 1: A photo from May 23, 2025, of the supposedly “temporary” plywood restrictor plate at Diversion 770 that CWRM allowed MLP to install in lieu of a remotely operated gate in 2021. This gate is allegedly being replaced by a remotely operated gate—a fix that MLP previously claimed was “impractical.”

In August 2025, several homeowners’ associations in Kapalua, Hua Momona Farms LLC, and Petitioner TY filed a complaint in circuit court against MLP (the “TY Complaint”), alleging that MLP allowed the Ditch System to fall into disrepair, which caused the water restrictions in Kapalua, Maui.<sup>28</sup>

At the hearing on September 16, 2025, MLP did not provide any evidence that it complied with the Orders. However, MLP’s PowerPoint presentation highlighted improvements to the Ditch System that were apparently, at least in part, completed due to the TY Complaint.<sup>29</sup>

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<sup>27</sup> See Figure 1.

<sup>28</sup> A copy of the Complaint in Case No. 2CCV-25-0003632 is attached and incorporated hereto as Exhibit “O”.

<sup>29</sup> A copy of MLP’s slide presentation is attached as Exhibit “P”



See Recording of *Hybrid Meeting* at 53:53.<sup>30</sup>

The pink highlights above demonstrate MLP’s failures to comply with the Orders in a timely fashion. First, the internal low-flow restrictor plates were installed at Diversion 770 in 2024, approximately two (2) years after the March 2022 deadline required by the 2021 Amended Order. Second, improvements to the Taro Gate (Adit 15) were made in 2025, approximately six (6) years after it was ordered by the Commission in 2019. Third, real-time flow sensors were installed in 2025, approximately six (6) years after real-time metering of each distribution point from the Ditch System was required by the 2019 Order. Additionally, the 2021 Amended Order required MLP to install a remotely operable valve at Adit 16; however, it does not appear that MLP has complied with that order.

On October 8, 2025, the Commission issued the NOAV to MLP. It alleged a violation of (1) the IIFS, and (2) the 2019 Order and 2021 Amended Order requiring the installation of the

<sup>30</sup> *Commission on Water Resource Management Hybrid Meeting* (Sept. 16, 2025), <https://vimeo.com/1119583147> (last updated Sept. 17, 2025).

restrictor plates at Aotaki Weir (Diversion 770) and installation of a remotely operable valve at Adit 16.<sup>31</sup> In response, MLP claimed that it was making progress with some of the repairs, including installation of a remotely operated gate at Diversion 770. Surprisingly, nearly six (6) years later, the supposed impracticality due to power and communications infrastructure challenges was somehow swiftly “overcome” under increased pressure.<sup>32</sup> It is unclear whether MLP has made any of these repairs to date.

On December 16, 2025, the Commission held a hearing on the NOAV, *only as to the violation of the IIFS*. During the hearing, the Commission imposed a maximum fine of \$140,000.00, which may be offset by physical improvements to the Ditch System.<sup>33</sup> To date, however, the Commission has not scheduled a public hearing on the NOAV as it relates to MLP’s violation of the Orders.

Napili Maui resident and co-owner of Kapalua’s Taverna Restaurant, Ms. Punahele Ladera Dapitan, testified that today the trails in the valley are overgrown, showing years of little to no maintenance.<sup>34</sup> As a small business owner who significantly benefitted from the cancelled PGA Sentry golf tournament, Ms. Ladera Dapitan testified that news of the cancellation was “gut-wrenching” as the tournament was important for their business and the Maui economy.<sup>35</sup> She further testified that the cancellation was directly tied to long-standing neglect of the Ditch System, and if MLP were not held accountable, nothing would change.<sup>36</sup>

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<sup>31</sup> Ex. C.

<sup>32</sup> See October 2025 Emails from CWRM to MLP (a copy of which is attached and incorporated hereto as Exhibit “Q”).

<sup>33</sup> *Commission on Water Resource Management Hybrid Meeting* (Dec. 16, 2025) (“12/16/25 Hearing Video”), <https://vimeo.com/1147518425> (last updated Dec. 17, 2025) at 3:46:00.

<sup>34</sup> *Id.* at 1:40:20 – 1:41:10. An unofficial transcript of Ms. Ladera Dapitan’s testimony is attached as Exhibit “R”.

<sup>35</sup> *Id.* at 1:41:50 – 1:41:57.

<sup>36</sup> *Id.* at 1:41:57 – 1:42:10.

Petitioner Eubank testified that he regularly monitors the stream and knows when its flow is healthy.<sup>37</sup> He testified that proper maintenance of the Ditch System infrastructure is just as important as compliance with the IIFS.<sup>38</sup> Petitioner Eubank also urged the Commission to prioritize the removal of a long-neglected collapsed bridge situated on MLP property that poses a significant flood risk during a heavy rain event.<sup>39</sup>

Petitioner Grube testified that his farm's sole source of irrigation water is provided through the Ditch System.<sup>40</sup> With the severe water curtailments, Grube was forced to limit the irrigation of his farm, resulting in an estimated loss of \$25,000.00 per month of gross revenue and approximately 25 percent reduction in farm boxes available to be donated to Maui locals suffering from food insecurity.<sup>41</sup>

At the December 16 hearing, TY's counsel requested a contested case hearing to allow a full investigation of the problems with the Ditch System, identify ways to improve it, and determine whether additional remedies and improvements should be included in any subsequent order or amendments to existing orders issued to MLP.<sup>42</sup> TY's counsel subsequently offered to withdraw the request provided that the Commission agendaize a hearing on MLP's violation of the Orders.<sup>43</sup> Chair Chang and Deputy Attorney General Young stated that Petitioner TY's counsel's offer to withdraw the contested case request in lieu of scheduling a hearing on the violation of the Orders was improper because the violations of the Orders were not on the

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<sup>37</sup> Id. at 1:49:43. An unofficial transcript of Petitioner Eubank's testimony is attached as Exhibit "S".

<sup>38</sup> Id. at 1:50:45.

<sup>39</sup> Id. at 1:51:05.

<sup>40</sup> Id. at 2:19:35.

<sup>41</sup> Id. at 2:19:57 – 2:20:23.

<sup>42</sup> Id. at 2:30:45.

<sup>43</sup> Id. at 3:23:00.

agenda.<sup>44</sup> Deputy Attorney General Young stated that Petitioner TY’s counsel’s offer with respect to the violation of the Orders was “beyond the scope of the item [on the agenda] before the Commission.”<sup>45</sup>

**Having confirmed that MLP’s violation of the Orders contained in the NOAV was not part of the agenda and therefore not being adjudicated by the Commission,** Chair Chang stated that Petitioner TY could bring a separate petition to request a hearing on the NOAV to adjudicate MLP’s violation of the Orders.<sup>46</sup> As of the date of this Petition, the violation of the Orders remains unaddressed by the Commission.

## V. DISCUSSION

The Commission is constitutionally obligated, and duty bound to adjudicate the NOAV as it relates to the Orders. To do nothing would set a dangerous precedent. The maximum fine the Commission could impose on MLP for violating the Orders pales in comparison to the damage sustained by taro farmers, the Kapalua community, Petitioner TY’s properties, and the Maui Nui economy. The economic and social impacts to Maui Nui from the MLP-induced water curtailments are disturbing considering the surge in MLP’s stock prices and revenue since 2019.

Petitioner Eubank’s taro farming activities, which rely on stream water, are impacted by the mismanaged Ditch System. Petitioner Eubank’s lo’i were negatively impacted by MLP’s mismanagement of the Ditch System, which resulted in damage to crops that help feed the Honokōhau Valley community. His property was also damaged by stream flooding, exacerbated by MLP’s failure to clear fallen trees, debris, and a damaged bridge on its property that crossed the stream.

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<sup>44</sup> Id. at 3:25:34 – 3:26:10.

<sup>45</sup> Id. at 3:26:00 – 3:26:10.

<sup>46</sup> Id. at 3:26:10 and 3:28:24.

Petitioner Grube's farm is known for supplying fresh produce to Maui families and local restaurants. The water curtailments significantly impacted his crop yield, resulting in approximately \$25,000 in monthly gross revenue loss. More importantly, the reduced yield resulted in a 25 percent decrease in the amount of food boxes donated to families on Maui living with food insecurity.

Petitioner Pitts' Taverna restaurant has always been dependent on a steady stream of golfers who played or visited the Golf Courses. The restaurant is situated at the Kapalua Bay Course clubhouse and has experienced loss revenue since the course's closure due to water curtailments in 2025. The restaurant also relied heavily on increased sales during The PGA Sentry golf tournament.

James Tokioka, director of the State Department of Business, Economic Development and Tourism, noted that The Sentry tournament generates approximately \$48 - \$50 million in economic activity on Maui.<sup>47</sup> The cancellation of the tournament due to the closure of Petitioner TY's Plantation Golf Course harms local businesses, families, and non-profits. This estimate does not include the economic impact of the continued closure of the Bay Course.

By granting this Petition, the Commission will meet its obligation as protector of Hawai'i's water resources and bring justice to the Kapalua and West Maui community, who for decades have suffered under MLP's malfeasance and indifference to the impacts of a poorly managed Ditch System. The community has paid the price for too long; it is now MLP's turn.

***a. The Commission is empowered and duty-bound to adjudicate MLP's violation of its Orders.***

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<sup>47</sup> See Daryl Huff, *State Hopes Change in Course will Salvage Sentry Golf Tournament on Maui*, HAWAII NEWS NOW, (Sept. 17, 2025), <https://www.hawaiinewsnow.com/2025/09/18/state-hopes-change-course-will-salvage-sentry-golf-tournament-maui/>.

The public interest and protection of water resources are advanced when alleged violations of the Commission’s orders are fully adjudicated in a transparent and meaningful way.

“All public natural resources are held in trust by the State for the benefit of the people.”<sup>48</sup> As a public trust resource, the Hawai‘i State Constitution requires the State to “protect, control and regulate the use of Hawaii’s water resources . . . .”<sup>49</sup> Based on this constitutional mandate, the Hawai‘i State Legislature enacted the State Water Code to be administered by the Commission for the purpose of preventing “any further harm by protecting, controlling, and regulating the use of Hawaii’s water resources for the benefit of its people.”<sup>50</sup>

The constitution designates the Commission “as the primary guardian of public rights under the trust.”<sup>51</sup> In recognizing the Commission’s paramount duty in protecting and preserving a public trust resource, the Hawai‘i Supreme Court stated that **“the Commission must not relegate itself to the role of a mere ‘umpire passively calling balls and strikes for adversaries appearing before it,’ but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process.”**<sup>52</sup>

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<sup>48</sup> Haw. Const. art. XI, § 1.

<sup>49</sup> Id. at § 7; Robinson v. Ariyoshi, 65 Haw. 641, 674, 658 P.2d 287, 310 (1982) (stating that a public trust was imposed upon all waters of the Hawaiian kingdom).

<sup>50</sup> 1987 Haw. Sess. Laws Act 45 § 1 at 75.

<sup>51</sup> In re Water Use Permit Applications, 94 Haw. 97, 143, 9 P.3d 409, 455 (2000) (“Waiahole”); HRS § 174C-5.

<sup>52</sup> Waiahole, 94 Haw. at 143, 9 P.3d at 455 (citations omitted and emphasis added). The public trust, after all, comprises a sovereign right **and responsibility**. See Robinson, 65 Haw. at 674, 658 P.2d at 310 (“we find the public interest in the waters of the kingdom was understood to necessitate a retention of authority **and the imposition of a concomitant duty to maintain the purity and flow of our waters for future generations** and to assure that the waters of our land are put to reasonable and beneficial uses.” (emphasis added)); cf. Ko’olau Agric. Co. v. Comm’n on Water Res. Mgmt., 83 Haw. 484, 493, 927 P.2d 1367, 1376 (1996) (“The Commission, by virtue of its agency expertise, is certainly in a better position than the courts to evaluate

The Commission is empowered under the State Water Code to “enforce its rules and orders . . . .”<sup>53</sup> A violation of the State Water Code, rules, permit conditions, or any person “**who negligently or willfully fails to or refuses to comply with any final order of the commission[,]**” may be subject to fines imposed by the Commission of up to \$5,000 per violation.<sup>54</sup> For continuing violations (which may be the case with the six-year-old Orders), “each day during which the offense is committed is a separate violation.”<sup>55</sup>

Therefore, when the Commission is faced with alleged violations, abuses, and negligence by stewards and purveyors of a water resource, the Commission must act decisively to protect that public trust resource.<sup>56</sup> Commission action is required when the violator, such as MLP, exercises sole control over a water system, profits from the sale of water and disregards its ethical and legal obligations as a steward and purveyor of a public trust resource. This Petition humbly seeks no more than what is required of the Commission under this constitutional imperative—to advance the public interest and protect the public trust resource.<sup>57</sup>

***b. Does MLP care more about profits than it does the community or the preservation of a public trust asset?***

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‘scientific investigations and research’ to determine whether a water resource ‘may be threatened by existing or proposed withdrawals and diversions of water.’”).

<sup>53</sup> HRS § 174C-15; HAR § 13-167-10.

<sup>54</sup> HAR § 13-167-10(b) (emphasis added).

<sup>55</sup> *Id.*

<sup>56</sup> HRS § 174C-5; see *Waiahole*, 94 Haw. at 143, 9 P.3d at 455; see also *Surface Water Use Permit Applications, Integration of Appurtenant Rts. & Amends. to Interim Instream Flow Standards*, 154 Haw. 309, 340, 550 P.3d 1167, 1198 (2024) (“The Commission consists of seven members with ‘exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise provided’ in chapter 174C.”); *Ko’olau*, 83 Haw. at 494, 927 P.2d at 1377 n.8 (1996) (noting that when the Commission breaches its constitutional and statutory duties and no appeal is available, a writ of mandamus may be justified.)

<sup>57</sup> See *Waiahole*, 94 Haw. at 143, 9 P.3d at 455.

While the community suffered from MLP’s malfeasance, its shareholders benefited from a windfall. MLP’s stock prices and revenue have surged since 2019.<sup>58</sup> In 2024 MLP’s revenue surged 24 percent from \$9,290,000.00 to \$11,570,000.00, which made MLP Hawai‘i’s fastest growing company by revenue in 2024.<sup>59</sup> Yet even with all this revenue growth and soaring stock prices, MLP failed to make the necessary repairs and capital improvements to the Ditch System required by the Orders.

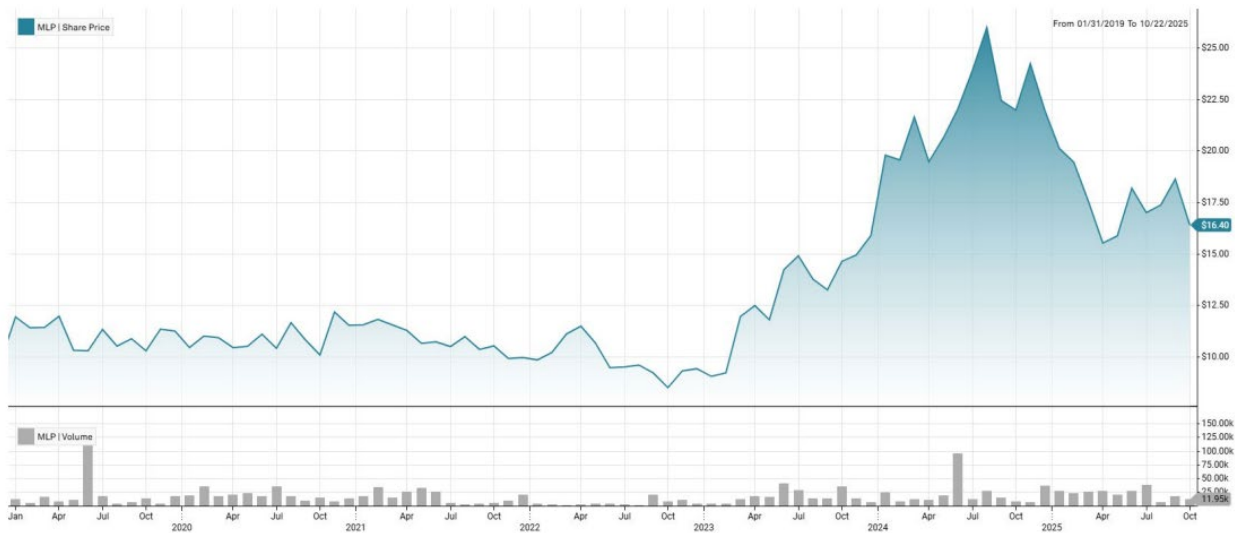


Figure 2: MLP’s stock prices from approximately January 2019 to October 2025.

***c. MLP continues to violate the Commission’s Orders.***

For nearly six years, MLP has demonstrated a palpable disregard for the Commission’s Orders requiring it to maintain and improve the Ditch System, all to the significant and costly detriment of the Petitioners and the Kapalua community.

<sup>58</sup> See Figure 2, *infra*.

<sup>59</sup> Alexander Lugo, *Maui Land & Pineapple’s strategic shift drives 24.5% revenue increase*, PACIFIC BUSINESS NEWS (updated July 9, 2025), <https://www.bizjournals.com/pacific/news/2025/07/08/maui-land-pineapple-revenue-bump.html>. This article also notes that in 2024, “Randle’s reported total compensation also saw the highest increase of any CEO pay of a publicly traded company in Hawaii after he was awarded some stock in the company.”

The NOAV found the following violations relating to the Orders:<sup>60</sup>

Regarding the second alleged violation, MLP remains out of compliance with both the Commission's November 20, 2019 order and its October 19, 2021 amendment. The 2019 order required MLP to install a remotely operated control gate at Diversion 770 (Aotaki Weir). The 2021 amended order instead required installation of a remotely operated valve at Adit 16.

To date, MLP has not completed the modifications required under either order. While MLP and Hawai'i Water Service have begun work consistent with the 2019 directive—specifically, to install a remotely operated gate at Aotaki Weir—no such work has been completed at Adit 16 as required by the Commission's 2021 amended order.

If MLP intends to implement upgrades at Aotaki Weir rather than Adit 16, that approach must be confirmed by Commission action to ensure it satisfies the intent of the 2021 order. In the meantime, staff expects MLP to submit its final engineering plans, construction schedules, and supporting materials for review as soon as possible.

In short, the NOAV stated that MLP has failed to comply with the 2019 Order for approximately six (6) years, requiring the installation of a remote gate at Diversion 770 (Aotaki Weir), and for nearly four (4) years with the 2021 Amended Order requiring the installation of a remotely operated valve at Adit 16.<sup>61</sup>

In May 2025, approximately six years after the 2019 Order, Petitioner TY's General Manager, Mr. Kenji Yui, conducted a site visit of Diversion 770 with representatives of MLP and the County of Maui. Mr. Yui was shocked to see no evidence of repairs or maintenance.<sup>62</sup> A bridge used to access Diversion 770 and other areas of the Ditch System were broken and impassable.<sup>63</sup>

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<sup>60</sup> Ex. C (NOAV) at 8.

<sup>61</sup> See id.

<sup>62</sup> See 12/16/25 Hearing Video at 1:45:00 – 1:45:50. An unofficial transcript of Mr. Yui's testimony is attached as Exhibit "T".

<sup>63</sup> Id.; see Figure 3.



Figure 3: Images from the September 16, 2025, CWRM presentation shows disrepair of MLP’s Ditch System: Broken bridge used to access the Ditch System (left); Erosion on the trail used to access the Ditch System for maintenance (right).<sup>64</sup>

The temporary plywood water restrictor plate that was ordered as a short-term measure was still in place, and damaged infrastructure was observed throughout.<sup>65</sup> Lastly, Mr. Yui observed that Aotaki Weir was filled with large amounts of rocks and sediment that had accumulated behind the dam, increasing the potential for sediment and rocks to enter and clog the ditch.<sup>66</sup>

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<sup>64</sup> CWRM, Informational Briefing: Current Drought Conditions, Instream Flow Standards in Honokōhau, and Water Use in West Maui (Sept. 16, 2025), <https://files.hawaii.gov/dlnr/cwrn/submittal/2025/sb20250916C1.pdf>.

<sup>65</sup> 12/16/25 Hearing Video at 1:45:45 – 1:46:00; see Ex. B (2021 Amended Order) at 1.

<sup>66</sup> 12/16/25 Hearing Video at 1:46:16; see Figure 4.



Figure 4: Picture of the dam at Aotaki Weir taken during a site visit in or around May 2025.

At the hearing on September 16, 2025, MLP failed to produce evidence of compliance with the Orders. MLP’s PowerPoint detailing the improvements and modifications made post-2019 did not include the installation of a remote gate at Diversion 770 nor a remotely operated valve at Adit 16. These ongoing failures to comply with the Orders are sufficient grounds for the Commission to hold a hearing on the NOAV.<sup>67</sup> While MLP has stated that it is “proceeding with the installation of a remotely operated control gate at Diversion 770,” it remains to be seen if these improvements have been made.<sup>68</sup> However, even if MLP covered its tracks by installing the gate, MLP must still be held accountable for the years of neglect and failure to comply with the Orders.

As for the improvements MLP did make, they were made in an untimely manner. For example, MLP’s counsel represented to the Commission in 2019 that it acquired insurance proceeds for and was ready to make improvements to the Taro Gate.<sup>69</sup> Improvements to Taro

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<sup>67</sup> See HRS § 174C-15; HAR § 13-167-10.

<sup>68</sup> See Ex. Q (emails between MLP & CWRM).

<sup>69</sup> See Ex. F at 28 (11/20/2019 Staff Submittal) & Ex. A at 39 (11/20/2019 Minutes).

Gate were required to start within 120 days of the 2019 Order.<sup>70</sup> However, it took MLP six (6) years, which appears to have been motivated, in part, by the litigation brought by Petitioner TY, to make those improvements. The Commission is well within its authority to penalize MLP for such blatant disregard of its directives. Failing to do so would be an injustice to the Petitioners and the community who have suffered for years and set a dangerous precedent.

***d. The West Maui community and public interest are served by holding a hearing on the NOAV relating to MLP's violation of the Orders.***

MLP's failure to comply with the Orders is unsurprising, given the testimony of Petitioners, and the Honokōhau Valley and Maui Nui residents over the years. Many of those testifiers spoke about MLP's history of neglect, failure to maintain the Ditch System, and desire to hold MLP accountable.

Petitioners were frustrated, but not surprised, to hear MLP's exchange with Commissioner Miike at the December 16, 2025, hearing, as they have experienced firsthand MLP's callous disregard for the needs of the Kapalua community, which is entirely dependent on MLP as its sole source of non-potable water. Commissioner Miike asked MLP about whether they would have to make physical improvements to the Ditch System to increase efficiency and clear debris from the Ditch System:<sup>71</sup>

**MLP's Counsel**: The removal of the debris, that's not within the scope of any order or our responsibility.

**Commissioner Miike**: Wouldn't you do that anyway?

**MLP's Counsel**: No Commissioner. We haven't done that and we don't have an obligation to do that.

**Commissioner Miike**: I'm not talking about an obligation. I'm talking about whether your system runs as [efficiently].

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<sup>70</sup> See Id.

<sup>71</sup> See 12/16/25 Hearing Video at 58:10 – 58:45.

**MLP’s Counsel**: So that doesn’t interfere with the operation of the system. The debris. This exchange demonstrates MLP’s ignorance (or even its blatant disregard) of the significant impacts of its mismanagement of the Ditch System and the disregard of its kuleana as a steward of a public trust resource. Sadly, this is just one example of MLP’s disregard of its obligations.

At the hearing on November 20, 2019, counsel for the Waste Complaint complainants, Ka Malu O Kahalawai and West Maui Preservation Association, testified to a 30-year history of complaints against MLP, including issues with the dam and Taro Gate.<sup>72</sup> Counsel further stressed that “regular clean-up is needed, or it will push the water back into the [Diversion 770] intake . . . .”<sup>73</sup>

In 2019, Ms. Gretchen Asano, a former resident of Honokōhau valley, testified that “[t]here’s been an extreme negligence on behalf of this [MLP] company.”<sup>74</sup> She testified that a bridge across the Honokōhau Stream collapsed after a storm in February or March of 2018, creating a dam.<sup>75</sup> The obstruction lasted for six months until a hurricane caused the bridge to swing open, releasing a wall of water down the valley, flooding homes throughout.<sup>76</sup> Ms. Asano testified that no one from MLP showed up to kokua the community after the flood.<sup>77</sup> Mr. Kapili Keahi testified that “MLP does not have a good track record especially with the people from the ohana from Honokōhau.”<sup>78</sup>

To date, nothing has changed. At the hearing on December 16, 2025, Honokōhau Valley resident Mr. Wili Wood urged the Commission to ensure that any fines imposed on MLP (as to

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<sup>72</sup> See Ex. A (11/20/2019 Minutes) at 36.

<sup>73</sup> Id.

<sup>74</sup> See id. at 33-34.

<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> Id. at 35.

the IIFS violation) are “worthy of the time we have spent trying hold MLP accountable.”<sup>79</sup>

Community leader Mr. Junya Nakoa testified that during his father’s time working for MLP, they used to have a crew that would clean and fix the Ditch System, and that we need to get back to doing that kind of work.<sup>80</sup>

Napili Maui resident and co-owner of Kapalua’s Taverna Restaurant, Ms. Punahale Ladera Dapitan, testified about her childhood memories and time spent in the verdant Honokōhau Valley and Honokōhau Stream.<sup>81</sup> However, Ms. Ladera Dapitan testified that today, the trails in the valley are overgrown, showing years of little to no maintenance, and that she is deeply concerned that the condition of the Ditch System was not being addressed at the hearing.<sup>82</sup> As a small business owner who is dependent on the cancelled PGA Sentry golf tournament, Ms. Ladera Dapitan testified that news of the cancellation was “gut-wrenching” as the tournament was important for their business and the Maui economy.<sup>83</sup> She further testified that the cancellation was directly tied to long-standing neglect of the Ditch System, and if MLP were not held accountable, nothing would change.<sup>84</sup>

Honokōhau Valley resident and taro farmer Petitioner Eubank testified that “the lack of proper maintenance on the Honokōhau Ditch System is a major part of [the] problem.”<sup>85</sup> Petitioner Eubank also testified to his concerns about an existing damaged bridge (ostensibly the

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<sup>79</sup> 12/16/25 Hearing Video at 2:04:00 – 2:04:08.

<sup>80</sup> See id. at 2:09:57.

<sup>81</sup> Id. at 1:40:00.

<sup>82</sup> Id. at 1:40:20 – 1:41:10.

<sup>83</sup> Id. at 1:41:50 – 1:41:57.

<sup>84</sup> Id. at 1:41:57 – 1:42:10.

<sup>85</sup> Id. at 1:50:48 – 1:51:00.

same bridge that Ms. Asano referred to six years earlier in 2019 and located on MLP property), posing a significant flood risk to valley homes.<sup>86</sup>



Figure 5: Image of the damaged bridge taken by Petitioner Eubank.

Petitioner Eubank implored the Commission to “hold Maui Land & Pineapple accountable not on paper but through real measurable action[.]”<sup>87</sup>

Over the years, residents directly affected by MLP’s malfeasance have sent a clear, consistent message to the Commission: please hold MLP accountable for its malfeasance. We therefore humbly ask the Commission to affirmatively respond to the decades of grievances against MLP, advance the public interest, and satisfy the constitutional mandate to protect water resources by scheduling a hearing to adjudicate the NOAV regarding MLP’s violation of the Orders.<sup>88</sup>

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<sup>86</sup> See *id.* at 1:51:00 – 1:51:35; See Figure 5.

<sup>87</sup> See 12/16/25 Hearing Video at 1:51:39 – 1:51:49.

<sup>88</sup> See *Waiahole*, 94 Haw. at 143, 9 P.3d at 455.

**VI. RELIEF REQUESTED**

Based upon the foregoing discussion and the exhibits attached hereto and any arguments that Petitioners or its counsel may make at a hearing on this Petition, Petitioners respectfully request relief in the form of a public hearing to adjudicate MLP’s violation of its Orders as more fully stated in the NOAV. Petitioners further request a public hearing on this Petition.

DATED: Wailuku, Maui, Hawai‘i; January 20, 2026.

/s/ Larrick Kapule Eubank  
LARRICK KAPULE EUBANK  
Petitioner *Pro Se*

/s/ Cooper Pitts  
COOPER PITTS  
Petitioner *Pro Se*

/s/ Gary W. Grube  
GARY W. GRUBE  
Petitioner *Pro Se*

DATED: Honolulu, Hawai‘i; January 20, 2026.

/s/ Benjamin A. Kudo  
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Attorneys for Petitioner  
TY Management Corporation