Table of Exhibits to Exhibit 10, Item B.1

(Petition by TY Management Corp. et al.)

The exhibits are provided as submitted by the applicant and may not be fully accessible. Individuals requiring an accessible version of any exhibit may request one by contacting the Commission on Water Resource Management at dlnr.cwrm@hawaii.gov or (808) 587-0214.

Exhibit	Description	PDF page range
Exhibit A	November 20, 2019 Commission Minutes	3-48
Exhibit B	October 19, 2021 Notice of Commission Action	49-50
Exhibit C	October 8, 2025 Notice of Alleged Violation	51-58
Exhibit D	Photo – Plantation Golf Course	59
Exhibit E	Photo – Bay Golf Course	60
Exhibit F	November 20, 2019 CWRM Staff Submittal	61-109
Exhibit G	May 12, 2020 **MAUI NEWS**: *ML&P: Honokohau Stream ditch system repaired*	110-112
Exhibit H	August 20, 2020 Letter from MLP to CWRM	113-114
Exhibit I	April 3, 2021 Letter from Gilbert Keith-Aragan to CWRM	115-117
Exhibit J	February-March 2021 Emails Re: Site visit to Adit 16 and Adit 6 on Honokōhau Ditch	118-121
Exhibit K	May 18, 2021 CWRM Staff Submittal regarding Amended Interim Instream Flow Standard	122-150
Exhibit L	October 19, 2021 CWRM Staff Submittal	151-167
Exhibit M	CWRM Staff Emails (Oct. 14-Oct. 18, 2023)	168-171
Exhibit N	August 21, 2024 Letter from Maui Land & Pineapple Co. to TY Management Corporation	172-174
Exhibit O	August 18, 2025 Circuit Court Complaint Case No. 2CCV-25- 0003632	175-234
Exhibit P	September 16, 2025 MLP Presentation to Commission	235-240
Exhibit Q	October 2025 Emails from CWRM staff to MLP	241-243

Exhibit R	December 16, 2025 Unofficial Transcript of Testimony of Ms. Ladera Dapitan at CWRM Meeting	244-247
Exhibit S	December 16, 2025 Unofficial Transcript of Testimony of Petitioner Larrick Kapule Eubank	248-251
Exhibit T	December 16, 2025 Unofficial Transcript of Testimony of TY Management Corporation's General Manager, Mr. Kenji Yui	252-256
Exhibit U	Emails between CWRM and MLP	(No exhibit provided)

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE:	November 20, 2019
TIME:	9:00 am
PLACE:	Waiola Church – Keopuolani Hall DLNR Board Room 132 535 Waineʻe Street Lahaina, Hawaiʻi 96761

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:07 a.m.

MEMBERS:	Ms. Suzanne Case, Dr. Bruce Anderson, Dr. Kamana Beamer, Mr. Michael Buck, Mr. Neil Hannahs, Mr. Wayne Katayama, Mr. Paul Meyer
STAFF:	Deputy M. Kaleo Manuel, Dean Uyeno, Rebecca Alakai, Dr. Ayron Strauch
COUNSEL:	Ms. Linda Chow
OTHERS: (listed as those who "signed" in)	Keʻeaumoku Kapu; Amanda Stone, Matt Rosener, Kaʻapuni Aiwohi, Hokuao Pellegrino, Paul Subrata, Tim Esaki , Jen Mather, Marti Buckner, Sean O'Keefe, Michael Gropemeyer, Jeff Pearson, Karyn Kanekoa, David Schulmeister, Ann William, Lahela Aiwohi, Fay McFarlane, Geoff Fricker, Lucienne deNae

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

Chair Case – read the contested case disclaimer

A. APPROVAL OF MINUTES

October 15, 2019

MOTION: (BEAMER/HANNAHS)
To approve the minutes as submitted
UNANIMOUSLY APPROVED

B. FOR INFORMATION ONLY

1. Groundwater Recharge for Projected Future Climate and Stakeholder Defined Land-Cover Scenarios for the Island of Maui

PRESENTATION GIVEN BY: Dr. Alan Mair, Pacific Islands Water Resource Center; Dr. Delwyn Oki, U.S. Geological Survey (USGS)

Dr. Oki – summarized what Dr. Mair would be presenting and how projected future climate and land-cover might affect groundwater recharge on the island of Maui. USGS compiled and assembled all the information to see how that would impact recharge. One of the benefits is that USGS is already working with CWRM on recharge studies statewide.

Dr. Mair – provided a power point presentation and detailed each slide and how it relates to the groundwater recharge study. A summary of a water-budget model scenario was explained, and end-of-century rainfall projections were presented from a "dry climate" (statistical approach) -13% (decrease) in rainfall and "wet climate" projection (dynamical approach) +10% (increase) in rainfall. In the wet climate projection and 2017 land cover scenario, the island-wide recharge estimates a +12% increase or +144 mgd to (17) of its 25 Aquifer systems. In the dry climate projection and future 1 (conservation) land cover estimates, there were substantial recharge increases for Central Maui in: Launiupoko, Olowalu, Ukumehame and ʻĪao areas, and are mainly driven by substantial increases in irrigation rates associated with the expansion of diversified agriculture and taro. Tables and maps are included in the presentation to show recharge estimate examples of a plus or minus scenario.

QUESTIONS / DISCUSSION

Commissioner Buck – what does that look like, development and balanced?

Dr. Mair – these were scenarios developed by Pacific Water Science Center, their dialogue with stakeholders here on Maui

Commissioner Buck – but does it mean more houses or hotels?

Dr. Mair – for example on the map (page 13) it shows the land cover keys which identifies "red" as diversified agriculture, lime green as taro, and the native forest and alien forest with fog versus no-fog and the grays and black is urbanization - development

Commissioner Beamer – in the consultations with stakeholders, is the development scenario based off of actual land plans and is it projected to happen or is it more conceptual?

Dr. Mair – they were considered and did have dialogue with the (Maui) Planning Department, but I can't speak on specifics

Commissioner Katayama – the ET rates are a plus or minus?

Dr. Mair – the added value represents an increase in total ET so it's a positive

Commissioner Katayama – so more water is used that's evaporated; and irrigation same – surface water is used

Dr. Mair – yes, but we did not make a distinction on where's the source of the water, so whether is ground or surface water

Commissioner Katayama – and what's the horizon – is it today's number or a 20-year number and how far out is that?

Dr. Mair – for this scenario using a dry climate projection which is an end of century projection and because it represents a wide range of conditions, I can't put an exact date of determination.

Commissioner Katayama – our challenge is that people are making decisions whether how fast to put in the development and what the sustainable yields are and what we're looking at is if our water systems can support that increase, is that the off-date of this analysis? I would think the business as usual would have evidence in that

Dr. Mair – for your first question on time frame, I can say more information is forthcoming in the publication; but it's our intention to use this information on how, recharge and pumping rates, how that might affect the proposed sustainable fall rates on groundwater wells

Commissioner Beamer – I understand in the conservation setting there is increase in evapotranspiration in the forests, irrigation theoretically you're getting recharge and even the fog interception is a plus, even the dry scenarios; if you can offer feedback?

Dr. Mair – for business as usual, the increase in aquaculture which requires a lot of irrigation that has a net positive impact on recharge which is a change from a non-irrigated condition and the low intensity development scenarios areas has a positive increase in irrigation because it's assumed there's landscaping which can have a positive impact on recharge

Commissioner Beamer – and with the scale of aquifers you'll see significant conditions of loss in certain areas and you'll get some positives in relatively small pockets; so in any case the business as usual is the best option for recharge of our aquifers of what these studies are suggesting

Dr. Mair – there is a large uncertainty in range of impacts that will require adaptive management strategies

Chair Case – what is the range of expectation for the dry versus the wet climate scenario and what percentage chance it will be a dry or wet climate scenario?

Dr. Mair – at the time we developed the study there were (4) climate projections using the systematical and (1) from the dynamical models, so what you're seeing now is the extremes between 4 of the 5 island-wide rainfall

Commissioner Hannahs – what's the difference of the statistical and dynamic approach and do you rely on one more than the other?

Dr. Mair – we do not; until we receive more information, we'd treat them as the representative of the ranges for climate projections. The statistical approach looks at large scale patterns and relates that to a single point, for example Lahaina. The dynamic approach uses a regional climate model then downscales it to a kilometer resolution using physics in the model

Commissioner Meyer – what is the long-term implications and can you draw any long-term comparisons or analogies to the other neighbor-islands, for instance translate it to O'ahu or Kaua'i?

Dr. Mair – we are planning on conducting additional studies on the neighbor islands using the same approach. Maui is somewhat different, and the reason that Maui went first is because when they did the downscale resolution of the entire state, they found there weren't representing the rainfall and extremes very well in the topography on Maui and O'ahu so they chose Maui as a pilot case, and down-scaled to a kilometer in resolution. There's now a new set of dynamical down-scaled climate projections which brought it down to 800 meters, so we considered using that on Maui and the other islands.

Commissioner Beamer – has there been any work comparing statistical and dynamical approach as time has passed and which has been more accurate in predicting actual precipitation?

Dr. Mair – I haven't seen it published, but there is a dialogue going with the PIWSC to see if they can get their projections to converge and see the differences in the areas, but I haven't seen the responses for that yet.

Commissioner Beamer – and were projecting so far out that it's hard to track the last 10 years which model would be more accurate and that's part of the conundrum.

Commissioner Katayama – do you have a sense of which model is more impactful for the final recharge rates and the key elements?

Dr. Mair – the study I was most recently involved with looked at climate as a whole and conducted a sensitivity analysis, and clearly what has the largest effect on recharge is rainfall; other parameters such as evapo rates can affect recharge with the combined amount of rainfall will also have a slight impact on recharge. All these are summarized in a report my colleague Howard Johnson (and I) did.

Commissioner Anderson – has (USGS) gone back to see what model is best for tracking with respectively the rainfall patterns and to see what the differences are, has that been done? The difference in the models is extreme.

Dr. Oki – the developers of those projections have used historical data to calibrate their models and there are some differences in their abilities to represent historical conditions. The wet and dry are based on different assumptions not only in terms of the method but in

terms of what are the drivers for the future climate. Right now, there is a bit of apples and oranges mixed in terms of statistical and dynamical down-scaling with not only the method but what's driving the future climate. As we move forward, that uncertainty will narrow over time

Commissioner Hannahs – I'm surprised we don't know more on non-native versus native forests, what do you know?

Dr. Mair – we have information for a limited number of species; there's been a fair amount of work with strawberry-guava but there are a lot of species. We've been engaged in a state-wide study to look at the impact of non-native species on fresh water availability, in that process we went through a series of different workshops to identify high priority non-native species; from that list we noted big gaps in data; there's a lot of species we don't have much information on, there's few high priority such as strawberry-guava where there's a fair amount of work and those studies are done only in select environments; the studies are done collaboratively with UH and other agencies. We are working to get more information to answer that question fairly; we have that information, but it's limited to special environments and cases for a few select species

Chair Case – so you're hoping in the future to compare in different types of environments like the strawberry-guava, Eucalyptus forest or Christmas berry forest; and saying those different alien species may be a basic forest and a native forest would be a 'ohia / koa mix but in a non-native forest it could be those different species and could have a significant evapotranspiration rates?

Dr. Mair – yes, they could; but it's difficult to identify these ideal sites. Tom is developing a new modified approach to allow us to estimate a statistical relationship, transpiration characteristics of different plants in different environments to allow that kind of distinction to be made

Commissioner Beamer – I appreciate the work and the search for real scientific certainty and as a trustee and manager of the water, we can't have that same level of certainty because we have to make decisions now. Even though these models differ greatly, we probably should take a more pre-cautionary measure to ensure we have water resources; it's not just plant specific it's what is in the forests itself that helps the recharge

Dr. Mair – yes, absolutely; right now we're just getting pieces of information; I mentioned infiltration rates but I didn't talk about fog interception which will make a difference

Chair Case – some of it is going to specifics to estimate water availability for the future; obviously the more data collected the better the model however this kind of data is hugely helpful for general directions for water planning

Commissioner Hannahs – where does animal control fit into this? One of the most devastating things to the forests, are ungulates uncontrolled that gobble up the understory and throw off the recharge; how do you factor that into these scenarios?

Chair Case – that will factor into it when you consider the run-off rates; I think the animals grazing does effect that quite a bit

Dr. Mair – one of our partners at Pacific Island Eco Research Center did the infiltration study here on the island of Maui, Hawai‘i and Kaua‘i and saw an effect of ungulate and infiltration rate, that information is forthcoming in an upcoming report.

Chair Case – the 30 by 30 forest management control is being managed for ungulate impacts, so if that parcel managed is considered protected status as oppose to not protected, the species in it is protected

Dr. Mair – (acknowledged collaborators on project)

Commissioner Buck – the climate models differ by 25%, but agree that West and Central Maui will have reduced rainfall and in your model it shows that rainfall is the number one factor in recharge; so now the take home is the decisions that are made in West Maui, Na Wai ‘Ehā, we have to consider we’ll have reduced rainfall recharge in the future. The East Maui forests will sustain more rainfall so protection of that forest for irrigation or recharge is a must.

Commissioner Beamer – Mahalo Alan for the important work, one big question is how the model deals with the intensity of rainfall; what we’re seeing is 39 inches of rain in a 36-hr period and not a lot of that is going back into the aquifer and it seems like that trend is across all the islands where we’re getting monsoon like conditions, how does the model deal with that – the intensity of rainfall over a small duration period?

Dr. Mair – we use a round ratio to estimate run-off and that’s based on aggregation over a period of time like winter season; episodic extremes are not captured in our approach; the other graphs captures the rainfall frequency that’s concentrated over shorter or longer period of days, but episodic events is not addressed currently.

Dr. Oki – this approach used for this study we used a regional simplified approach, but we do have other models that will show the differences in rainfall. For example, on the island of Kaua‘i we developed a model for a particular watershed and is able to simulate an hourly timeframe. We are in the works with our national office, looking at these watershed models on an island-wide scale which will give us better capability to represent these processes

Commissioner Hannahs – I encourage us to collaborate and involve critical stakeholders and see what kind of decisions can be made to help make improvements for a better water future for us; and also to reflect on the next steps and how we can improve and narrow down uncertainties for instance with the feral ungulates and alien forests

Dr. Oki – part of that collaborative effort with Pacific WRISA did involve the stakeholders outreach and developed those RAM covered future scenarios we incorporated. We recognize there are some limitations in what we’re doing and it reflects in where we are today in terms of our knowing and we have room for improvement in collecting additional data and narrowing down the uncertainty and looking at how run-off is affected by feral ungulates and other factors. We will be working on ways of improving

Chair Case – thank you so much, really appreciate this, it was a very interesting report – thank you for your hard-work.

PUBLIC TESTIMONY

Lucienne deNae, (Conservation Chair, Sierra Club Maui) – we were consulted when a lot of the research was being done on the scope of the in-depth climate change studies done a few years back, some of which is incorporated here. We concluded some of the same things we heard the CWRM say, that the people part of this is really important and the large landowners have a huge role to play and the communities that are surrounded; you got to involve the communities in caring for the land, it's where they live. Right now, there is no structure for that. The watershed partnerships deal with the upper elevation and they do not include the people that live in East Maui, there's no official way for people to participate. Folks at Keʻanae and Wailuanui are writing grants so they can hire people within their community to get to the watershed and take care some of these areas. These are sobering predictions and we really need the people part, thank you.

2. Landowner Bock Family Revocable Trust Altering a Stream Without a Permit Required in HRS §174C-71 and HAR §13-169-50; East Kuiaha Stream, Haʻikū, Maui, TMK: (2) 2-7-012:254

PRESENTATION GIVEN BY: Mr. Dean Uyeno, Stream Protection and Management (SPAM) Manager

Mr. Uyeno – provided update on the informational briefing item and noted that it came before the CWRM on 3/20/18, 5/15/18 and 2/19/19 in which CWRM deferred approving a remediation plan in regards to the flood issues, thus asked the CWRM that the remediation plan be reviewed and approved by the Federal, State and County agencies. Two culverts relating to structures constructed in the stream channel as well as grading, grubbing, filling, channelization, and construction of a retaining wall are included in submittal. CWRM received (2) emails from (Stacy) Otomo Engineering; recently on June 27, 2019, regarding a status update that notified CWRM of the meeting that took place with the County Planning Department to coordinate the required permits and flood permits that were submitted to the Planning Department on May 22, 2019, and at that time had not received any comments. Mr. Otomo stated that a permit from the Army Corps of Engineers is required and is currently being worked on and has not received any response yet from the Department of Health (DOH). Other permits and reports are pending and should be received shortly. Maui County Planning Department (MCPD) had given (Mr. Otomo) verbal approval for the flood permits and are awaiting the Department of Public Works, Engineering Division to approve the drainage report. In a letter, the MCPD requested that the flood permits be approved after approval of the remediation plan, which is what Mr. Otomo has requested. The reason being is that if CWRM and staff request revisions, they will need to submit an amended flood development permit and they're (MCPD) trying to avoid that; they would seek approval once it's (the remediation plan) approved by the Commission.

Mr. Stacy Otomo, (Engineer) – the flood development permit has been issued and approved and has also submitted an application to U.S. Army Corps of Engineers (USACE) and is working with DOH and an archaeologist (State Historic Preservation Division, SHPD) awaiting review and comments. Once we get the report and approval of the flood development permit, we'll apply for the grading permit. We anticipate getting back to CWRM with a full stream channel alteration permit and all approvals of the agencies sometime in the first quarter of 2020.

TESTIMONIES

Mr. Ryan Bock, (Landowner) – to date, I have never testified on the matter and I wanted to state my case but first to apologize for grading without a permit and showed evidence (photos from 2008 and 2010) of grading prior to owning the property in 2012. The incident happened due to climate change and the flooding that occurred because of it (also provided video of Hurricane Lane flood). Neighbors and I cleared the stream area of heavy debris after the flood and was told that a permit was needed and questioned that. I live in a 'ohana type community where we all help one another in need and didn't think we're doing anything wrong by clearing the stream due to the flooding. I interfered with one bank of the stream because there were large trees toppled over and laid in the stream bank. On one instance when Rebecca and staff came to my property there wasn't a drop of water in the stream. (Mr. Bock showed photo slides of other neighboring properties and explained how one property effects the others downstream and also provided written testimony on other upstream neighbors with regards to their flooding issues – Mr. Bock testified that he is in financial debt due to the permits and work that needs to be done for remediation) I've requested to meet Ms. Maguelly at her property so we (Mr. Otomo) could understand the flow of water from the stream, and she refused and instead asked Mr. Wayne Arakaki (Engineer) to look at her property and the stream flow to see if the flooding issue can be resolved. Mr. Arakaki stated to Ms. Maguelly that nothing can be done because of the right degree angle the water is flowing down from. I apologize for my emotions and thank the Commission for hearing my testimony.

QUESTIONS

Commissioner Hannahs – thank you for providing context to your actions. Some of the actions required permits, which you did not have and now have the guidance. Mr. Otomo are you satisfied with the actions necessary and are in the process for obtaining all the permits needed and is it necessary to restore and that the community is able to see this process and provide their input?

Mr. Otomo – yes, the flood development permit was signed (approved) on 10/31/19 and I could not get a copy as the person in charge was on vacation

Commissioner Hannahs – so the take away from your testimony and what is decided at the end of the day is that you are addressing the situation and in the process of obtaining all permits necessary and that those involved whether it's the community and those further upstream had an opportunity to see what's going on and is a transparent process?

Mr. Otomo – yes and if you recall our last meeting, the permit path we're taking required certain things. The USACE, DOH, there's a requirement to contact SHPD, and get the flood development permit and I believe you folks were relying on their (DOH) expertise; we have gone through that and it was the long list item and we're proceeding in getting all the permits right now.

Mr. Bock – after this very day, I have spent $194,000 to get permits; and when you needed a better explanation for the remediation process, that costed me $7,000. It ruined me financially and I'm a $100,000 in debt and I couldn't start on my house even when I had the permit. Before this whole thing started in 2016 before the ʻĪao Valley flood, Mrs. Maguelly asked me for help with a tree that had fallen into her stream bed and I kokua and cut the tree up and removed it. After the ʻĪao Valley flood, Mrs. Maguelly stated she is getting flooded and I was at fault. She stated she is getting her culvert evaluated and it would cost $25,000 and I should be responsible. Then she started a crusade with the Engineers and Planning Department not because she wanted to find a solution, but it was vengeance.

TESTIMONY

Mrs. Audrey Maguelly – I presented a lot of information to Rebecca regarding each issue that he (Mr. Bock) was talking about including the permit I have from Army Corps to do the work I need to in my stream. The point I wanted to make here is that I've spent 20+ years on my property and I did not have any problems before the work was done upstream. Even the people further upstream from Mr. Bock were having flooding as seen in the picture. I didn't experience that on my property because the distance (7-1/2 acres); there was so much retention area in that gulf, it never made it down to my property. Mr. Bock has made a lot of assumptions on how the stream could be managed, I would continue to say I need help with this issue and support and very much appreciate you speaking of this matter and I do believe it is a matter of the law which is the real issue here, and my downstream property is being flooded, that's about it, thank you.

3. Fish Ladder Pilot Project, Wailuku River, Maui

PRESENTATION GIVEN BY: Mr. Dean Uyeno, SPAM Manager; M. Kaleo Manuel, Deputy Director

Mr. Uyeno – gave a power point presentation and photos to provide a chronological timeline of the project and provided background information; and also explained the events that occurred from commencing the project (installation) until completion. In 2010, as part of the Nā Wai ʻEhā D&O, CWRM staff also confered with the Division of Aquatic Resources (DAR), Maui County and other parties to address fish passages on a portion of ʻĪao Stream; (ʻĪao Stream has since been renamed Wailuku River) In 2015, CWRM staff sought a grant from the U.S. Fish & Wildlife Service (USFWS) for a fish passage project and entered into a joint funding agreement with USFWS contributing $25k and CWRM contributed $15k and $10k of in-kind services. This pilot project was to ensure connectivity and enable fish passage within the stream. In June 2018, CWRM staff and USFWS met with USACE whom noted no permit was needed due to the small-scale impact of the fish ladder to the

face of the concrete wall as part of the flood control project. CWRM staff also met with DAR and Hui O Nā Wai ʻEhā on a few occasions to discuss the project. On September 17, 2019, CWRM delegated to the Chair the authority to temporarily suspend the interim instream flow standard (IIFS) for the project installation. On October 8, 2019, due to concerns raised by Earthjustice and Office of Hawaiian Affairs (OHA), CWRM staff teleconferenced with Wailuku Water Company, Mahi Pono and Earthjustice to discuss diversion of water during project installation. It was noted that Wailuku Water Company (WWC) would not be able to divert all the water. The intent was the remaining water Mahi Pono would take some of it at Spreckels Ditch, route it around and put it back downstream near the project area. (showed maps and photos of the various intakes and diversions leading to the project area and just below it) October 29, 2019, was the projection installation and October 30, 2019, Deputy Manuel received various reports of the ʻoʻopu fish kill. October 31, 2019, an internal memo was sent to Mahi Pono and WWC regarding the IIFS reestablishment. On November 4, 2019, CWRM staff met with various entities to assess the situation. Discussed with USGS to provide better public outreach and improve community awareness and stream gaging. Next steps: installing signage at the fish ladder and more community engagement as well with other entities.

I want to say that there were a lot of issues and steps that we could've done better and wish we could've prevented this; unfortunately it was a perfect storm – with the conditions of the stream flow and lack of water, and apologize for the events that occurred after.

QUESTIONS / DISCUSSION

Commissioner Buck – to confirm the reason for suspending the IIFS is for the health and safety for the workers?

Mr. Uyeno – that was the idea; and knowing that WWC could not take it all, so for continuity of the flow from the Wailuku intake down to the flood control project.

Commissioner Buck – what was the estimated time (of suspension) for the installation?

Mr. Uyeno – 3-5 days max with the hopes of completion in 3 days

Commissioner Beamer – did you say the community was going to do weekly checks?

Mr. Uyeno – it's USGS – Monday's they'll measure stream flow and the gage properly

Commissioner Hannahs – Dean, thank you for that formal apology; I'm looking forward to the next steps and actions. When we think of our role with this precious resource, it's not just about gallons, but the life that the gallons support and we should feel at the loss and sadness of these treasured species, this ʻohana. I hope we have expressed this loss and sense of regret for any way we contributed as it was unintended. Have we made that expression to the stakeholders in this matter in the meetings that come up? What have we learned from this experience and how are we incorporating those lessons into changes in our protocol and practices so that we avoid or reduce this from happening again?

Deputy Manuel – Mahalo Commissioner Hannahs; to answer your first question, we met with a subset of the community on the November 12th (I unfortunately had the flu), however Dean came and I was off-island at the time of the event; to those community members that we had a chance to sit down and talk with, I did share a sincere leo mihi to that community, and that I understand the kaumaha and pain that the community is dealing with and that it is part of this legacy and history which was referenced through Nā Wai ʻEhā. Having the experience working with the Department of Hawaiian Home Lands and knowing the historic trauma and baggage that comes with an agency and being one of the newest staff at the Commission, moving forward and keeping projects going, I apologize; and to those in the community I haven't had a chance to personally apologize to, I am sorry. Better oversight and management of projects like this is key and how we interact with stream systems is not just going through a process and checking boxes, we need to work closely with community to do that, and so I am committed to this community (Maui) and Nā Wai ʻEhā to engage with them more frequently, find ways to communicate and build that into our full process and include them in some of the decision making, designing and dreaming of what a better future looks like for our stream systems; and now moving forward, how do we become better stewards of our stream systems. Other things we learned from this is going through the environmental process – streams are very sensitive and some of the normal or simple procedures may have large implications that we need to think through more holistically, communicate with all stakeholders in the process and pause for a moment instead of sprinting to get a project done even though we anticipated communication that it would be a good project to help with some of these man-made impediments to fish passage.

Commissioner Hannahs – thank you for what you've done and for your comments. Normally we're seen as a heartless bureaucracy, but I don't feel that way at the Water Commission and with yours and Suzanne's leadership and with the attitudes we have of something that's so precious it's more a family business than bureaucracy, so I think when you say oversight – what it means is that you don't abandon your loved ones when they're in crisis or at a pivotal point, you stay there on-site, on island whomever responsible from our team to make sure it gets done. That's what will separate us from being a bureaucracy to really having a vested interest in the outcome. I know you (and the team) feel in your hearts so I think translating it into protocols and systems will help.

Commissioner Beamer – Mahalo Kaleo and Dean; first of all for agendizing this; it's such a kaumaha, a travesty and mistake on our part as a Commission and I appreciate Dean's formal apology and Chair issued a written apology; and to those in the room I want to say as an individual Commissioner, I deeply apologize to the communities of Maui and Nā Wai ʻEhā for the nameless ʻoʻopu (our kūpuna). It was disturbing. We talked at length with our attorneys on Oʻahu and talked how sensitive the installation would be, how it needed to be done efficiently and quickly and the key was how long the water is going to be diverted and IIFS would not be met. Unfortunately, we end with this result and I apologize for that. We need to make sure this never happens again and be sure that our communications and processes don't allow it and have the Commission get caught in this kind of conundrum. *(referred to the chronological order slide)* we were successful and found ways to remove the water and was sure the work will be done as quickly as possible, to me it's a success; but I'm wondering about "how the diverters were notified to restore the flow (after), I think you said they were (notified) text, to me that is a lesson we can learn. The message needs to be made very clear to the diverters that the IIFS needed to be rectified and water needs to be

moved immediately. Had that been done, that may have accomplished avoiding this. A formal notification is needed; what I don't see on there is when water was returned – 2 days later?

Mr. Uyeno – to my understanding, Mahi Pono went in Wednesday morning and removed sandbags and essentially water flowed past Spreckels intake; Wailuku Water Company went Thursday and returned flow back into the stream

Commissioner Beamer – in this complex process and for transparency for those in the community can see the conflicts, as you have diverters potentially making money off the water and the need for IIFS, so as managers we need to be upfront with communicating urgency and as a role in the Commission to balance reasonable and beneficial uses, instream flow of public trust uses is our kuleana. I want to echo Commissioner Hannahs' comments that I do believe we try our best with limited staff and as voluntary Commissioners. We can do a better job in upholding the public trust and we have to treat diverters and everyone equally.

Commissioner Katayama – an important factor is lessons learned, how will you judge the sensitivity or importance of stream flow and the sense of urgency to react? What would be reasonable or who would you look to, to help make this kind of assessment?

Mr. Uyeno – in general, every stream channel and situation is different, some are more stable. In this case, the stream was in a lower region and we need to look at that on a case-by-case basis. Moving forward looking at this situation and for future projects whether it's for stream channel or fish passage permits primarily, I would recommend that the water not be turned off – that it be bypassed through some means whether it's a coffer damn or via a pipe that's sandbagged and installed in the channel to route the water around the project area.

Commissioner Katayama – do you think this was from oxygen deprivation because the water was not flowing?

Mr. Uyeno – I think it was a matter that the water dropped so quickly there was no flow in the lower regions

Deputy Manuel – I want to add that in the learning of the processes, sequencing and designing of projects, it's not just the planning and implementation, it boils down to better pre, during and post monitoring; and the timeline or horizon of a project doesn't end when the job is done on-site; there needs to be more thoughtful and thorough analysis about immediate and potential long-term impacts, which is part of the EA process. Part of that evaluation comes in-house in areas of streams with high sensitivity or where we know water is scarce or a sensitive environment; how do we build in the best management practices? – is with the community; pre, during and post and engaging the media, everyone else and Commissioners and in that process collectively is something we can build into this. CWRM is administratively attached to DLNR and there are divisions with expertise in the department like DAR, working closely with staff on island, similarly with the Division of Conservation and Resources Enforcement and our enforcement team; making sure that things that are happening in the stream are legal and we're upholding the law, including

holding ourselves accountable; those are lessons learned. It's changing the culture of our agency. Again, this is a pilot project and the Commission hasn't done this, we need to think through how we operate and function as staff, as well as the Commission.

Commissioner Hannahs – I'm glad to hear that. What I wouldn't want to hear is that we are not going to take these kinds of risks because we do need to do it, but proceed smarter and it sounds like the ideas you have shared will enable us to proceed next time with greater confidence.

Commissioner Anderson – moving forward, how is it working and is it working the way it should? And by the way, Skippy Hau, he's probably the expert on this and has valuable knowledge to contribute with aquatic resources in regards to monitoring.

Deputy Manuel – that's still to be determined; I haven't been back to the site specifically or in the stream; it's coordinating with DAR, our stream team, going to the site and how are we going to monitor; there is the need to find a way to determine whether it is or isn't working, if there's increased ʻoʻopu or aquatic species presence on the ladder itself. We do need to circle back around in-house and coordinate with community on how to monitor this. If the challenge here is USACE with the flood channel, it's being able to communicate with all the relevant parties, how often we'll be there; obviously during low-flow periods is when we need to figure out if this is actually functioning; we don't know, that's the short answer. We have to design that monitoring program, we were focused on the implementation and that wasn't necessarily the best approach. With pre-installation we should've have had these identified and communicated to all parties.

Chair Case – Thank you Dean and Kaleo. I want to say live that I also apologize to the community for this fish kill. It was really rough to see it and not what was intended. I did say in the paper right away that it was ironic we had this result. This is our first fish ladder, we're not used to doing this kind of project ourselves, we're used to monitoring other people doing it and obviously we have a lot of learning to do. One thing that's exciting about this time is we're seeing so clearly the direct connection between water in the stream and fish life; we're seeing fish come back (in East Maui) and also seen the flip-side of it. It's a very rich time to restore the connections of visual, emotional and technical. An indirect technical thing is climate change: drought, heat, daytime vs nighttime; tides (high and lows), are all things that have a direct impact on what the water table is. I spent that morning trying to watch all the videos to understand, and seeing there was water coming down the stream; (at first I thought it was all diverted) then seeing it was not (all diverted) there had to be something going on between the private area and the stream mouth is a rich example of the impact of a losing reach in a dry time. Internally it's exciting to see the building of a relationship between CWRM and DAR. Skippy was there however we did not monitor what was going on down stream; that's a big learning lesson. Over the last few years he informed us (CWRM) a lot of the life cycle of ʻoʻopu and aquatic resources in the stream. We need to monitor what's happening up and down stream and it's a great time to look at streams holistically and the purposes of what we're regulating it for, not just looking at the regulatory process, so let's pay attention on accomplishing those goals. Another thing of importance is both community and staff knowledge of what happens to these streams during different kinds of flows and incorporating that into our project planning; and how quickly

we officially notify diverters to turn the water back on. These are my assessment and am hoping to hear from community members for best possible processes.

Commissioner Anderson – I remember seeing a culvert at Pearl Harbor and the Engineers there designed a channel into a sub-drain; it's a matter of seeing what would make a project work; it's creating ways and different approaches; certainly the fish ladder can be done again in another stream and approach it of how we can make it better and prevent something like this happening again, I think is the take away and lesson.

PUBLIC TESTIMONY

Hōkūʻao Pellegrino, President, Hui O Nā Wai ʻEhā – On behalf of myself and the Hui, I'd like to acknowledge your sincere apologies and appreciate the sentiments you (all) shared and would like to Mahalo Dean and Kaleo. I think they did a very good job presenting the facts and timeline as for myself and the organization we share similar perspectives and want to give more details in between the timeline what was shared and want to make it clear that none of this is meant to be negative towards anyone within CWRM. We appreciate the staff coming out to meet with us about 1-1/2 week after the issue. I think its important from a community perspective how it started, where it came from, what occurred and the next steps we all collectively can improve on. Knowing there are issues within Wailuku River in many areas such as sections that are open between the upper channelized portion and lower channel and there was discussion in Decisions & Orders (D&O) in the past about fish passage, the Hui has known for a decade about these challenges, and we also didn't know if a fish ladder would or wouldn't work. We should've listened to Uncle Skippy from the beginning… "put the water back in the stream and all would be great". If we learned anything from this, is to look at the population that was in that stream and how much it increased since 2014.

For me personally, I was astonished to see what was actually in that stream at the time. Formally it began in June 2015 with communication from Rebecca Alakai to the Hui about the approval of a $50,000 grant from USFWS. Moving forward to 2018, 95% of our communication has been with Rebecca. We discussed if the Hui knows a contractor and our response was that we don't have the expertise with it. I want to make clear that there were no discussions on whether we (Hui) support this but more so the idea of this happening. June 17, 2019, the Hui asked to work on communication with the community and the response from Rebecca was that in August there's potentially a community meeting, while we supported that, on record, it was made clear by Commission staff there will be an attempt to have a larger community meeting. It was made clear in our communication that although the Hui has membership of over 1,000, we don't speak for the entire community at large; a community meeting initiated by CWRM would've been the appropriate thing to do and it didn't happen.

For our own short-coming, in August 28th there was a site visit (at the fish passage installation) and unfortunately, we missed it. It was clear in communication before and after with staff that there should be further consultation beyond the Hui and especially with kuleana landowners and residents of ʻĪao Valley who had benefitted greatly since 2014 of the IIFS; and kuleana in the lower region near the muliwai to those who's gathering (in the lower regions) ʻoʻopu, hīhīwai and ʻōpae. They were the front line when this issue came

about; taking their coolers and scooping them; the surfers were coming to shore and helped to collect whatever they can and taking it above the diversion, that was not the efforts of the Hui but the community which rallied around and the Hui supported that later. Another issue that came about in early discussions with Department of Water Supply (DWS)Maui was that since the IIFS was going to be suspended, the water had to go somewhere? Water going to ʻĪao will go towards Wailuku Country Estates and DWS will take an increased amount. The earlier discussions specified that DWS will max out their system because they just had the treatment facility online and wanted to see if they had the capacity to manage the numbers.

In August an email was sent to us asking (the CWRM staff writing a quote for the Hui and Maui Tomorrow – without having acknowledgment from us first) are you okay with this: "Hōkūao Pellegrino, Hui O Nā Wai ʻEhā supports this project. We hope the knowledge we gained from this project can be used to develop future fish passage." This was written by CWRM staff. The response was immediate: "I want to make sure that everything is good and that there is communication with the greater community prior to any type of approval and support from the Hui." After, things went silent from that point to early September.

In September, there were discussions on the suspension of the IIFS and it became a serious issue for us, while philosophically we supported the idea of the fish ladder, we didn't support the suspension of the IIFS because we know how sensitive Wailuku River was. With discussion with OHA and Earthjustice, we agreed that if the IIFS is suspended, it needs to go back online asap. The first day it occurred, a couple board members and I went and saw there were some water flowing in the stream, and knew it was likely there were going to be issues in the lower regions. It wasn't until the last day of the project (I arrived an hour before completion) and I asked the staff there directly "who's going to be communicating with Wailuku Water Company to be sure the stream is put back on?" It was made clear that as soon as it was done, the contractors were going to contact WWC; our assumption when we left that Tuesday (10/29), was that it was going to be taken care of. An email was sent stating the project was completed early. We know two of the diverters (WWC/Mahi Pono) were notified because the following day Mahi Pono sent an email on Wednesday (which we appreciate) that said - we immediately took out the sandbags and stopped diverting. They got it, they didn't want to deal with issues and for that, I mahalo them, they took care of what was needed.

Why was there no restoration of stream flow by WWC? I don't want to dive into assumptions, but that is the heart of one of the major concerns here – is that water was not put back on. It wasn't released - knowing that we are in some of the lowest flows the last three decades. That to me was the biggest missteps in this whole issue that we could've minimized or had no fish kill. When we went down to the muliwai on Wednesday, the community started contacting us and saying the fish were dying and we're trying to collect them. We took thermometers in the stream to the ponds where there were hundreds of ʻoʻopu and it was upwards of 90 degrees, that area is channelized so the temperature is increased heavily, the ponds can't stay cool because of the concrete channel, it's just open area for the fish to skirmish in. I brought pictures and videos but I realize that it's not appropriate anymore.

We contacted CWRM on day three and Kaleo specifically asked why is the water not going back on? We got replies from CWRM staff but nothing to do with the inquiries brought forth which was putting the water back in the stream. There were other emails, but it seemed like it brushed our concerns on the side which made us angry that it was not heard by CWRM staff. I appreciate the apologies, but when theses emergencies were happening, there were no response at all. Water returned on Thursday, but in our opinion it did not meet the IIFS. A week after the issue took place when Ayron came and measured the stream flow it was reported the stream is flowing at an extremely low flow at 8 mgd. On Friday we got a disturbing call that treated water from the Mokuhau Rock was being dumped into Wailuku River by DWS. Our board member spoke to DWS Director about it and there were concerns about tests done in the area and the holding pond could only hold so much water and a lot of (treated) water poured into Wailuku River. With the lack of water had then treated water dumped into the river was detrimental to the native species. Kaleo said it right, it was a perfect storm with all kinds of issues happening that week. We understand in the early communications it specified the IIFS would be suspended for five days; the project was done in two and the water should've been back. After communicating with Deputy Director Kaleo and staff, it was made clear that text messages are not considered a "formal" way of communication between CWRM and parties, but there has to be an internal memo set, I believe Dean has shared and it went out on Thursday. Why was the memo not drafted early and ready to go so that when Tuesday came along it would've been ready to turn the water back on? It took an actual memo in addition to a text for Wailuku Water Company to put some water back in the stream. I want to make clear (because there were communication from WWC) that there were issues with water not going into the stream appropriately, and that there was not enough water for the river to meet the IIFS, and at the same time you have in your hands a formal complaint that WWC was dumping Wailuku water in Waikapu and Pale'a'ahu gulch at the same time they said they couldn't put water back into the stream to meet the needs of the native aquatic species. That's an important concern to look at.

What should've happened was that community meeting should've taken place prior. We need to have better communication with the 'Īao Valley kuleana residents, the Hui and the greater community at large. Environmental review (needed) knowing the sensitivity of the stream and internal monitoring during installation of the ladder and post. I think everyone was surprised not only about the fish kill, but the sheer number of native species that was in the stream. Another thing this posed was a health issue. When the water came back on, it pushed the rotted carcasses down into the ocean where people live, gather and surf in that area; to me there should've been involvement from DOH to monitor that. When I went on Friday, you could smell it everywhere, you didn't have to go close to the stream.

Moving forward, the Hui and community made it very clear that even though we did not support the suspension of the IIFS, we would not support or allow that to ever happen again. We have countless research projects we looked at where all over the world where they're doing things in streams and massive rivers, they don't have the capability to shut "off" the stream, they work around it, whether it's sandbagging or other 21st century technology used. For future projects, I hope that CWRM staff would consider those things. To reiterate, if there is a formal memo that needs to be in place for communication, it should be drafted ahead of time so it goes out immediately.

I believe Dean and Kaleo covered a lot of it which I appreciate. Monitoring enforcement in these situations is critical. I don't think anyone besides community knew it was low flow. We didn't have gages in place and if we did and it were running and streaming live, there could've been a better time for this to be done. I want to put on record that the open channel area has been of contention for the Hui. It's a losing section; the Hui does not support any efforts to channelize that section of the stream. We want to make sure that stream stays open. That was probably one of the major issues. Streams naturally have loss and we want to make sure there's sufficient stream flow to ensure passage beyond those areas.

On behalf of the Hui, I'd just want to Mahalo you folks and I hope that we all learned something here and a big piece is just simply – communication and hope we can have further collaborative opportunities with the Commission as we've always shared over the last decade or so; we just ask for better communication and meeting with the community. We're open to dialogue and working with you folks as always, Mahalo.

Commissioner Hannahs – Mahalo for sharing here today and working through that and to offer concrete, helpful productive suggestions into how we proceed forward.

Commissioner Buck – thank you for your testimony; for me it reminds me of the huge responsibility we have. I'm a Commissioner from O'ahu, we approved this project and seemed like a no brainer and realize how naïve I was in not considering all the potential impacts. It's a reminder to this Commissioner the huge impacts we have and to be sure we are very thoughtful; thank you.

PUBLIC TESTIMONY CONT'D

Ms. Lucienne de Naie, Maui Tomorrow – we work closely with the Hui o Nā Wai 'Ehā on all aspects of the case and we got the very, very sad text and Facebook postings and our Executive Director, Albert went down to check things out. Like the Hui, we've been consulted early on about this project, and like the Commissioners it sounded like a great idea to figure out a way that these man-made structures could be adapted after-the-fact to allow more native stream life to have a fuller habitat area. I never recalling or mentioning (unless it's buried in the fine print) about absolutely turning-off the flow of the river for five days; that would've been a red-flag for me.

We're experiencing this in East Maui and very much hope that some lessons learned here could be applied there because we had our stream in Hanehoi turned off for 1-1/2 days and turned back on with no one notified. Either way, no one was notified of it turning off or on and hundreds of people live below the stream, some were nearly swept away by a wall of water that came down when it opened-up again; this is serious stuff. Once again it's the process…the intent is good. The process we need to get right and do need to involve the people that live around the area. I attended the meeting at the Old Nature Center, there was a lot of heartfelt sharing there. We want to treat our streams as more than a plumbing system, it's a very sad state of affair; because if you need to call some guy to turn a wheel, and that's what brings water and life back to a stream, and that's the only way we can have beneficial uses of the stream for our community, we need to start rethinking that and figure out if there's more natural ways of diverting.

On behalf of Maui Tomorrow, we're very appreciative of the response by the Commission, of taking responsibility, trying to learn from this experience and move forward. Please think about this granting of permits for East Maui, many involve exactly the same thing, with no process in consulting the community. You have a chance to put that in conditions. I was involved with negotiations on the settlement because I'm also on the Hui o Nā Wai 'Ehā board. We absolutely needed to see that regular monitoring, access and communication with the community as part of the settlement and had to be enforceable. We need that for every stream and a standard that needs to be met, thank you so much.

Ms. Malia Kaupe, 'Īao Valley – We live on the river and our property is about ½ mile from the Kepaniwai Bridge. First of all, I want to Mahalo you (CWRM) for putting this on the agenda so there's public discussion about it. I appreciate the staff and the Hui for putting together our community meeting at the Nature Center that we hash out a lot of the details. I feel I have more questions. 1) the grant that was given for the fish ladder – what were the stipulations of the grant? We know when you receive a grant there's a lot of reporting that's needed and boxes to check-off to fulfill the needs of the grant. I'm curious to know what that was and how it worked out moving forward. 2) I think Hōkū'ao is spot on in that there needs to be more biological studies. The fact was we didn't know there were that many 'o'opu in our river; 3) The fish ladder was good intention but it may be beneficial in rivers that have fish that can't climb; as you seen with the water flowing from mauka to makai, our fish did just fine; so it's sad we're taking this step back because of something that was meant to be helpful for them.

So now, I don't know if there were biological studies that was done in that river prior to the fish ladder so we don't have a gage to see how big of a change that was with the amount of dead species. It was hard to see the photos and videos shared by community members and it was emotional knowing it was indigenous and endemic species of our stream, seeing it in the thousands. There were overwhelming sense of urgency of community members headed down there with their coolers, scooping them up and taking them ('o'opu) up to cooler running water. There were a lot of short-comings with this project and I think we're all aware of that and happy to hear that people realize it. I'm curious also to know why was it timed at this part of the year when it was spawning season? Given they're endemic and an indigenous species there should be a lot more recognition of the sensitivity of the river, especially a time when we're going through drought, its spawning season for the species and the plain fact we're able to "turn-off" our river, that shouldn't be the case.

We talked about the USGS stream gages and not knowing it was a low-flow period. We (the community) have a good gage on how much the flow is, so with knowing all of that and not being talked to prior to this getting implemented, was gut wrenching; knowing it was happening in our backyard and we didn't have an opportunity to say our piece. I'm disappointed it was Wailuku River that was chosen as a pilot project with no research done prior to. Moving forward, is there going to be any studies done to know how detrimental this project was if there's going to be water quality testing or recount of stream diversity. I would like to see the basis of what we need to start doing for how long it takes to get back to that. It didn't take long once we got the IIFS set to have that many species, but I'm worried that there were many large adults, it would take time to get those populations back.

Is there any way we can hear or get information about the grant and what those needs were to receive it? There were many unknowns and first times, and we didn't know anything except for what happened and now, we have lots of good ideas moving forward.

I feel that when Dean and Kaleo was first explaining the whole situation, it seemed as if you folks were not in the talks of this project. Did you all sit at the table and talk about this and give the okay or was it a staff meeting project?

Chair Case – the quick answer is that the Commission used the submittals from the staff and did do a site visit in August before the project was implemented; then it came back to the Commission in September for approval.

Ms. Kaupe – I guess it was a learning thing and we're trying to make a community connection but a lot of it gets passed on when we're making suggestions were we have to take it to the Commission and always this passing of responsibilities; for us as a community we're unsure who ultimately makes those decisions and want to make sure there's communication directly with you guys.

Chair Case – that's why we have public testimony at Commission meetings so we can get input in addition to what staff has.

Ms. Kaupe – I think anytime there's a project there be a meeting that the Commission comes to also (attend), not just the staff, that would be my suggestion, thank you.

RECESS: 12:30 PM

RESUME: 1:08 PM

C. ACTION ITEMS

2. Request to Address the Waste Complaint Filed by Ka Malu O Kahalawai and West Maui Preservation Association Against Maui Land and Pineapple Company Alleging Water Diverted from Honokōhau Stream Overflows the Honokōhau Ditch, Pursuant to Hawai'i Revised Statutes §174C-13, and to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honolua (6013) and Honokōhau (6014), West Maui

PRESENTATION GIVEN BY: Dr. Ayron Strauch, Hydrologist
M. Kaleo Manuel, Deputy Director

Deputy Manuel – commented that staff is recommending deferral of recommendations relating to setting IIFS in Honokōhau - Honolua Hydrologic Units and only focusing on the waste complaint recommendations and waste complaint received by Ka Malu O Kahalawai, staff analysis of the complaint, and recommended actions staff is recommending, in terms of system improvements, intakes, gaging and monitoring that would help address the complaint.

Dr. Strauch – thanked those who worked along in the field on the project such as Maui County, Department of Water Supply, Maui Land & Pine (MLP) and all the community groups who've been very helpful in working collaboratively towards a solution that addresses both the need for IIFS and the formal waste complaint.

(gave a power point presentation which highlighted the timeline of the complaint and the fieldwork that CWRM staff has done to address complaint) – The complaint is focused on water being diverted from Honokōhau Stream through the Honolua ditch in the two hydrologic units. Water is diverted in excess of actual needs and the instream uses are being affected. On April 23, 2019 a formal complaint was received. From May to September 2019, numerous discussions were held between CWRM staff, MLP, community group, and Ka'anapali Land; site visits were also conducted to gather more information and install more monitoring in the system. In July 2019 a monitoring gage was installed at Mahinahina which is important as the (Maui) County treatment facility is located at Mahinahina; just pass the Honokōwai gulch, basically where the Honolua ditch stops operating in a tunnel. There's a monitoring station that's been re-established at Mahinahina; essentially this is the point in the system where MLP does not control the land, therefore does not control the ditch. We want to know how much water is exiting the system at that point, which is not being used and considered "waste", so it's really important to monitor that point.

Due to the August and September 2018 Hurricanes and other severe storms in 2019, there were heavy debris build-up and damage to the ditch itself; the ability to release water back into the valley was compromised by the floods temporarily. The control gate that regulates the amount of water that goes into the ditch has been non-functional for some time.

From 2005-2016 MLP began releasing about 1.2mgd at Aotaki Weir or the main intake, which provides a wetted path for the valley residents.

DWS Maui operates the Mahinahina treatment supply and (DWS) is the single largest user of non-potable water from Honokōhau ditch. The treatment facility's max capacity is 2.5mgd, the last few years there average +/- flow delivered to them is 1.7mgd.

DISCUSSION

Commissioner Hannahs – is this a case where this company who's managed this system now can't support this kind of operation, so we're left with infrastructure and duties to fulfill allocations without bodies on site to help support?

Dr. Strauch – I'm not going to speak of MLP capabilities but will say they've been struggling just as much with the issue as we have on the flip side with understanding the issue.

Commissioner Beamer – the ditch we're looking at, is that post diversion?

Dr. Strauch – the Honolua tunnel is running left to right (from underground), and this is an access point to the tunnel and the other side of the concrete is the ditch; this is a way to release water from the ditch back into the valley.

Chair Case – what is the difference between wetted path and connectivity?

Dr. Strauch – In this situation, water released through Aotaki Gate does not support connectivity because if you were an ʻoʻopu in the stream, you can't get "over" the concrete.

Chair Case – not through the tunnel?

Dr. Strauch – no because at the bottom is high pressure; but during some flood events water does over top the dam and as shown in previous surveys, restoration in combination with flood events, provides sufficient water downstream for recruitment to occur upstream. Before damage to the infrastructure, water was still released down the stream; but because of the damage, it's stuck in place.

Commissioner Buck – the water that's not being used, where does it go?

Dr. Strauch – it ends up either in Honokōwai Gulch or the ditch as it passes through parts of state-owned land which is in disrepair and in some areas, like Hahakea or Wahikuli, it's flowing into the gulches.

Commissioner Beamer – are the flows peaking at night?

Dr. Strauch – just the last few days we had a lot of rain. For Mahinahina it takes about 6 to 10 hours for water from the stream to make it to Mahinahina. From the USGS gage on Honokōhau, you can see it peaked just before midnight.

Chair Case – how far is that?

Dr. Strauch – Eight miles.

Commissioner Meyer – with the diversion works, there's a massive cleanout gate that's not Aotaki which is not operable; if that is in operation, that presumably would somewhat help the waste situation.

Dr. Strauch – our recommendation, step one at this stream is formal abandonment of the stream diversion works at Honolua and removal of any debris that ended up downstream, within a few thousand feet of the intake.

Chair Case – does it change any flows?

Dr. Strauch – no, it's gone now; for Honolua Stream.

Commissioner Beamer – the Aotaki Weir, what diversion number is that?

Dr. Strauch – 770, the main intake it supplies most of the water.

Commissioner Buck – approximately, how much mgd will be put back into the stream?

Dr. Strauch – their total end use even with system losses, is probably no more than 5 or 6 mgd; last night they took upwards of 40 mgd; there's a lot more water that should be in the stream.

Commissioner Buck – is Mahinahina taking anything from Honokōhau?

Dr. Strauch – it gets water from Honokōhau ditch, but their max capacity is 2.5 mgd and average processing over the last few years has been 1.7 mgd

Commissioner Meyer – does elevation compromise the current diversion woks?

Dr. Strauch – not at the moment.

Deputy Manuel – now is a good time to go through the staff recommendations; on page 26 under recommendations; under Honolua Hydrologic Unit, the first and second bullet point, we're recommending deferral. The second bullet under implementation, that's the first recommendation. Amendment is to cross out (the word) "the" <and add>…diversion "769 at Honolua Stream". It's a recommended action related to Honolua Stream. We recommend the Monitoring bullet point. Under Honokōhau Hydrologic Unit, under Kaluanui Stream, we're recommend deferring the first bullet but recommending action and amendment to the second bullet under "implementation" to read …"abandon the diversion 768 at Kaluanui Stream".

Under Honokōhau Stream, recommend deferral of first bullet point under Phase One and Two; under proposed action system modifications, number one and two is recommended for action. Moving to implementation, recommend deferral of first bullet; recommend approval of bullet point two and three <read aloud bullets two and three>; recommending deferral of bullets four and five; and staff recommends approval of bullet points six through nine <read aloud six through nine>. Under "Monitoring" staff is recommending approval; but recommending deferral on bullet items under "Enforcement, Evaluation and related to the Formal Complaint" language because we feel that the recommended action items address portions of the formal complaint related to Honolua and Honokōhau.

QUESTIONS

Commissioner Beamer – thank you for the presentation and the deferrals; are we deferring the waste complaint as well?

Deputy Manuel –under the formal waste complaint, there's three bullet points that relate to the IIFS, and we're deferring IIFS matters. Our recommendations in the staff approval are addressing the waste complaint issues in making system improvements to avoid waste.

Commissioner Hannahs – so they can take what they need?

Deputy Manuel – no, the recommendation for approval is specific to the diversion works that we issue and regulate, and we're recommending the Commission to make improvements to the diversion works to manage water within the system. We're not

establishing IIFS or anything of that nature and we're not allocating water off-stream. We're focusing on the improvements to the SDWP

Commissioner Hannahs – so when improvements are made, we'll consider addressing the IIFS.

Deputy Manuel – establishment of the IIFS will be addressed at a later CWRM meeting, and at this time to address the waste complaint and be sure there is water in the stream and it's not being taken out and being wasted, these are the recommendations of staff to deal with that via system modifications.

Commissioner Buck – can you give a roadmap and timeline of when we will come back and talk about IIFS?

Deputy Manuel – one of the hydrologic units that's not in this submittal is Honokōwai, which was part of this regional assessment; as part of the outreach and data collection, we received additional information and that's why it's not presented here and we're looking at moving forward on Honokōwai, within three to six months. At that time, we are in legislative session so any off-island CWRM meeting is challenging, so the earliest if we wanted to take action on island which is appropriate, is April.

Commissioner Beamer – will staff be meeting with the communities and other parties involved?

Deputy Manuel – working with Ayron (with the stream flow team) as well as Rebecca to coordinate with all parties that are affected in this region and those streams Honokōwai, Honolua and Honokōhau, and moving forward coming up with recommendations for the commissioners on future instream flows. Additional data is coming in daily and want to make sure we do our due diligence and analysis in proposing a recommended IIFS.

Commissioner Meyer – thank you very much; I think your recommendations and approach is clear. I have a question regarding the modifications to 770 to replace the damage intake and make it remotely operated.

Dr. Strauch – we don't want to force one type of solution; I know MLP is working with consultants to address the situation with the right possibilities of what will last long-term and is practicable; they're working on specifics of the actual design and are working on it already.

Commissioner Katayama – modification of 770 will provide remote control to ensure water is kept in the stream, correct?

Dr. Strauch – so that only the amount of water needed is removed from the stream.

Commissioner Meyer – one condition I think should be placed immediately is to fix the clean-out gate and clean the basin so that it could operate effectively and provide clean water.

Dr. Strauch – yes, we are also in a situation like Wailuku Stream where these recent flood events have mobilized material upstream via landslides at unprecedented levels. There's an amount of material moving down stream that has never been dealt with before; I don't see them removing material unless there's a dedicated crew going up weekly, especially now that we're moving into the wet season.

Commissioner Beamer – if the Commission does move forward with these recommendations, I see for instance on some timelines it says the Commission to take action within 120 days, it appears from the presentation that the system has not been actively managed from 2004, I want your assessment on the likelihood of these changes being accomplished?

Dr. Strauch – it's only about a year it has been very hands-off, they had a manager in September of last year. In 2004-05, a lot of changes havd been happening. The decision was made to stop the diversion of water at Honolua and Kaluanui streams. Those diversion works were basically left to fall apart without saying that they stopped using it. Part of the recommendation is to remove whatever infrastructure that is still in place to clean up the stream as much as possible and diversions. MLP can speak to their present day operation, I know they've worked with other contractors that know the system, but on an as need basis.

Commissioner Hannahs – water from the gulch, is there a capture benefit from there?

Dr. Strauch – at the moment, it's below the kuleana users in the gulch unless they put in temporary piping to get it up stream.

Commissioner Anderson – when we were there and saw limited flows into the ditch and with the diversion, is there going to be connectivity or a problem for the aquatic species?

Dr. Strauch – at the moment connectivity is of less concern because there's a bypass channel and the stability is yet to be determined.

Commissioner Anderson – we need to make sure that happens, and figure how to quickly maintain that region of water especially with periods of low-flow and water stopping from going downstream.

Dr. Strauch – even in the dry, low-flow periods there is about 10-11 mgd; it's the hope that they're only taking what they need, and there's still water in the stream.

Deputy Manuel – within the recommended action of the submittal for the SDWP, as part of the review process we can work with them to see what potential improvements would be made to that diversion to help ensure fish passage. Having heard some of the matters with infrastructure issues, this is something that will have to come before the Commission for action.

Commissioner Beamer – to build off that, knowing that we can move on this recommendation and for future submittal discussions on connectivity would be really important for the Commission, knowing that the public trust principles and conditions guide us to protect water; we want to see more connectivity if we can, Mahalo.

Commissioner Meyer – with respect to the siphon in Honokahua, is there any thought to determine size of piping or infrastructure?

Dr. Strauch – based on a similarly aged infrastructure on Kaua'i, slip-lining the siphon may be the best solution. The original size I believe is thirty inches and clearly they don't need a thirty inch size siphon. Slip-lining with an 18 inch pipeline might be the best solution.

PUBLIC TESTIMONY

Yvonne Izu, Council for Maui Land & Pine (MLP) and Tim Esaki, Chief Financial Officer, MLP

MLP has no objections to the staff recommendations and as Ayron pointed out, we already started working on most of the fixes to the gates. We're here to answer any questions you may have

Commissioner Buck – I want to commend MLP with their partnership program to preserve their mauka forests and including the watershed, thank you for that. We've been learning a lot of the economics of the water systems and demands it takes to maintain a delivery system, can you talk about current economics of what you charge or receive from any of the public trust water you're using now?

Mr. Esaki – I'm not prepared for that kind of detail, but we can provide that information to staff.

Commissioner Buck – the resources it takes to convert a hundred-year old water system is something to be managed without using the water you have now; and these are public trust waters you're utilizing, this commissioner would appreciate some level of determining what you are charging for your use and who's receiving water? That helps us determine sustainability for the water delivery system now, and in the future.

Ms. Izu – as Tim said, we can provide that information and note that Kapalua Water Company (KWC) is regulated by the Hawai'i PUC, so a lot of the water that is used by MLP is for KWC. There are other uses that MLP provides water to, not through the water company, but its own entity.

Commissioner Katayama – the complaint is based on the lack of control of the water that's diverted to your system and seems like the primary fix for that is the upgrade and improvement of 770 diversion, yet timeline and weather makes it not an ideal time to do it now, so whether you touch it today or a year from now, it's not going to affect the diversion of the water or control or the water issue existing. Is the nature of the timing based on weather or engineering?

Ms. Izu – MLP did not come up with the timeline, it was from CWRM staff. We are not opposed to the timeline. As far as the abandonment permits and fixes to 770, my take on this is the permits will be done mostly by someone like me, whereas the actual fixes are

done by engineers. I don't see a conflict if we do the abandonment permits at the same time the fixes are done to 770, one should not delay the other.

Commissioner Katayama – the CWRM staff is asking to remove some of the material

Mr. Esaki – you may be referring to the abandonment of Honolua and those can happen simultaneously; we are working with (CWRM) staff to address the first issue, which we all agree is the priority, which is to somehow automate the gate.

Commissioner Katayama – is that 180 day start a reasonable prioritization addressing the complaint?

Mr. Esaki – I can't say off-hand as we just got these now, I will discuss this with our engineers and inform them time is of the essence and see if they can meet the 180 days.

Ms. Izu – I want to add and repeat that MLP has already engaged engineers to look at how to do an automated gate, so as Tim pointed out, maybe it's just lighting a fire under them regarding 180-day timeline from CWRM.

Commissioner Beamer – who are the users of the water right now?

Mr. Esaki – Ayron provided a slide; there's a number of different customers within Kapalua Resort as well as the County and some farmers and residents.

Commissioner Beamer – and you're (MLP) not using all the water that's being diverted now?

Mr. Esaki – yes

Commissioner Beamer – for future sake, we do understand that water is part of the public trust and can't be "owned" by any entity and the story connected in the stream is super important and one of the mandates of this Commission. With these recommendations you can accomplish the abandonments of these diversions and fixes and the issue of an operator; are you folks going to hire anyone?

Mr. Esaki – the manager that Ayron was referring to was Steven Nakaido whom passed away suddenly, there was a lot of institutional knowledge that he had and we have consultants that's going through that door as we speak.

Chair Case - <*disclosed that cousin Steve Case is a majority owner of MLP and Chair Case receives no economic benefit from that; MLP has also setup a conservation easement with the Nature Conservancy to protect 8,000 acres at Pu'u Kukui and has invested their own monies on watershed management matched by state funds and is continuing the very important investment in watershed management*>

Commissioner Meyer – with urgency on implementation conditions and consistency, we can move those that are 120 days to 180 days, will that be acceptable with intent to move forward and will it be acceptable to staff?

Mr. Esaki – fair enough

Dr. Strauch – the deadlines are for the application for two (2) diversion works permit; it still has to be approved by Commission and it's a two-year window once granted approval. We put a stipulation that once the approvals process occurs, the construction commences in 120 days after that; there's no deadline for completing it other than the two-year permit deadline.

Commissioner Hannahs – your work with Pu'u Kukui is extraordinary and makes you think of the water forecast (recharge) and with the rains will be critical. One thing you may want to think of is how does this community work? MLP does not have the system it once had and scope of the landscape; but you're a big and leading player. How do you start to work with this community with regards to how long the balance will sway? If you're not going to respond to that now you need to know this is a new era of agriculture and the economy and have some balanced use of resource and learning from it and stimulate your thinking on this too; you can react to us but at the end of the day may not get it right. You can be a part of the community and sit down with others, which is really vital, and a shared commitment to this and update the infrastructure and keep it operable. I commend what you're doing and encourage you to do more, thank you.

Commissioner Katayama – my other point is showing the right priorities throughout the community, something that's passive versus something active.

Ms. Izu – I hear what you're saying and understand that any other work should not be a big expense in delaying with fixing of the gate, it's a priority and I think it is; with the engineers. They already got the insurance proceeds to begin some of the work.

Commissioner Beamer – I appreciate that comment by Commissioner Katayama, there is a real sense of urgency especially we agree that part of the water is not being used and wasted. We should be able to mitigate and remediate a reasonable beneficial use along with public trust principles and purposes; we can move on the timeline and the comfort to take action on conditions to restore stream flow and move quickly and to work with the community truthfully.

Commissioner Anderson – if you can make adjustments in a timely way that manually operate the gate, would probably be better with hands on, people there and checking things and not second guessing and getting it going right away your comments would be helpful on that.

Mr. Esaki – I believe the automation recommendation by the staff is based on the fact the gate is in a remote area and not easily accessible. To manually go up and adjust the gate is very time consuming and rigorous process. Ultimately, the goal would be to remotely adjust the gate.

Ms. Izu – my understanding is at present, they're fixing the gate to what it was before so that there's some control; but because it's a manual control unit, it's hard to get there; you set the controls at a certain place. Once that "old-fashioned" control gate is fixed, we'll see some improvement on the (water) waste. You can't control it as timely as you would like to, so

they're looking at what would be the higher needs for the diverted water; and secondly won't have users complaining they don't have water. When they put in the remote gate, it will be more timely.

Commissioner Anderson – going in and checking the intake and looking at other things to be sure there working properly, has some value in going in regularly to do that. If you're comfortable with having this provision be automatically operated, then leaving it that way, but to make adjustments in a timely manner.

Commissioner Meyer – regarding IIFS being 8.6 mgd, will that be adequate in your estimation to provide for other uses

Chair Case – we're not talking on IIFS, all IIFS is deferred.

PUBLIC TESTIMONY CONT'D

Lance Collins/Linda Nai, Attorneys for Ka Malu O Kahalawai & West Maui Preservation Association – I would like to request since we have members of our organization here, if they can come up and give their testimony first and we can answer any questions you may have.

Chair Case – (announced will take public testimony from Ka Malu O Kahalawai & WMPA

Kekai Keahi (Ka Malu O Kahalawai) – we filed a complaint in April of 2018, but when I was a kid water was already being wasted; I'm 47 years old. I remember at Hanakaʻoʻo Beach and they dumping water into Hahakea (stream) and prior to that was coming into Crater Village, which was taken to Commission. It did not happen two years ago; it was because of the storm and has been happening since I was a kid. It's ironic that you're praisingMaui Land for the watershed when the fact is, they deforested the area and pulled out the water from the valleys and at the same time we're praising them for damages they had done.

As far as Aotaki goes (not sure if you been there), it's a hike. With Aotaki gate, that's what puts water back in the river past the diversion. You can crack the gate on the bottom, water flows through. A watering event, it's blocked up. We used to call Steven and would be 1-2 weeks before he can get to the back, by then our taro patches are gone. It's not like he able to come tomorrow, he has to prepare to get up there; it's not an easy walk. If you walked back there you'll see how hard it is. It's grueling, I had to bend down for miles walking through the tunnels, it's not easy; and with one rain event Aotaki is plugged.

The volatility of Honokōhau is almost every other day, you can ask the residents. It's a long valley, almost nine (9) miles long; it's about six miles to the intake. The issue is not maintaining the intake. If we never push the issue, MLP would leave it as is, as it's been for years. It's not necessarily they're trying to do the right thing, we had to force your hand to force theirs to make improvements. It somewhat pisses me off to praise them after what they did. Look at who owns almost all the land at Honokōhau? There are over 4,000 taro patches (there) and almost all is owned by MLP, how? By de-watering the valley, moving

the people out and coming in and acquiring the land; by praising them is like pointing a finger to us.

I don't know if you have a say (Chair) when it comes down to what they put back into the stream, but maybe you should remove yourself from the vote or what decisions we're going to make because you implied that even though you don't benefit, you pushed the issue that it was such a good company. People on the West-Side, we know Maui Land and what they did. It's coming from us guys, the "real" people of West Maui and not a corporation who invented this 100-year old diversion. In the end, who's the people that suffered for 100 years? The people that's in the valley. It's like having a bank robber robbing the bank and returning the money, like you're a good person for returning the money, BS, that guy still robbed the bank.

Hanakaʻoʻo Beach Park is 10-12 miles away from Honokōhau and is not uncommon to see (not talking about a storm event) Hahakea Stream (which only runs during a good storm event) flood. (In the summer) it flooded so high, it damaged the Hyatt parking lot. If you touched the water, it was warm; not the cold water coming straight from the mountains, but warm water that's been in the ditch going through the pass 10-12 miles, emptying out at Hahakea. Since they shut down Crater Village, (MLP) has been dumping this water for years.

Commissioner Buck – thank you and appreciate your comments. I've lived in Hawaiʻi for forty plus years and I appreciate hearing from those that have gone through a much longer history of issues in Hawaiʻi.

Kekai Keahi – same story every valley, every place.

Commissioner Beamer – Mahalo Kekai for your testimony. You're right, I meant to say that earlier. This wouldn't have initiated if you folks haven't filed the petition earlier and we are seeing more issues like this and it's something that the Commission needs to recognize with a greater level of urgency, mahalo.

Kekai Keahi – it's not uncommon for me to get a call letting me know somethings happening (in the river), case and point when we lost all the water coming down from Kahoma. People are watching; MLP got away with it because there's no oversight or enforcement; at least we're moving.

Karen Kānekoa, Honokōhau Valley resident and member of Nā Mamo Honokōhau – As Kumu Kai said, plantation days are over yet at Honokōhau nothing changed for MLP when it comes to the water. And the fact they had to push families out of Honokōhau and not being able to farm because they've taken almost all of the water, and it continues today, which is a really big concern for us.

Why do they (MLP) need so much water when they have three wells and don't use them to their full capacity and those wells come from a different aquifer? If the water is a public trust, how come they are not required to exhaust all other options?

We recommend for the new intake design that it should be flipped; where they monitor how much they are allowed to take out and that's all that is being taken out; the rest goes back into the stream. Right now, they can shut our water off coming down to the stream and they're ensuring they're getting their water and all the extra. It's not fair they can take all that extra water when it can be put back into the stream. If it's going to be a remote operated ditch system and they're allotted 4.6 mgd, that's all that's going underneath the tunnels and pipes. If not, what's the point in making an IIFS, it doesn't make sense.

It seems very mismanaged and needs more oversight. They need to get community involved; I live there and haven't talked or saw anyone from MLP, that's concerning. There needs to be more consequences and be held accountable because it directly affects us instream users and we're just as important as the off-stream users, so that's why I'm here today, mahalo.

Mr. Keaumoku Kapu, Kaua'ula Resident – My (taro) patches been dry for four months. When the IIFS was set for the first four valleys, there's been a drastic change of what's happening versus what's going into the surface, down the river and what's going into the beach. I've listened to the last testifier, Karen; apparently its' the ditch we're talking about and what they're allowed to take from it. How come the Commission can't say put all the water back in the river and all you folks have to re-apply for the water, so you can get the exact percentage amount of water each user can claim rightfully. It's unfair that MLP has the right to draw 100% of the water from the river; they want the ditch they can have it.

There are times when the water is shut-off and homes are restricted. How long have me and my 'ohana struggled with the politics of the PUC. The PUC versus the inability of the CWRM that can only address surface water, where, as our 'ohana, because of the changes within our kuleana, have been subject to a ditch or a pipe to get our water.

Chair Case – what stream?

Mr. Kapu – Kaua'ula Stream; I'm going to lump sum this and get possible resolutions on how we can fix the problem because the community is always ousted when it comes to of how your guys foresee where we fit into the equation as kuleana land owners.

With the changes of the kuleana, I've been subject over the years as to who I need to go through with my complaints. You can only address surface and ground water but if I'm not getting the resources from them, I'm getting it from a ditch; who I got to see? Bottom line is who do we go to address our concerns? Kuleana is very different because it's supposed to be protected under the Mahoe state constitution law under section 7, along with the right to access with the purpose of my gathering rights (especially when it comes to water); HRS 7-1.

West-side has no management area; different from the East-side - Nā Wai 'Ehā has one. Our lives have been dictated and determined by a PUC or private sectors. All the valleys are privately controlled; every time I run out of water, who do I call, the PUC which they say to take my complaints to you (CWRM) because you have set the IIFS. Because they are forced to put the 1.8 mgd back in the river, my problem is not theirs, but yours; and that's why I'm here.

As this Commission continues to go west to implementing the IIFS for the remaining valleys of West Maui, I ask this Commission: what is the possibility of forming the formation of a water management committee made up of kuleana? How did they establish a water management committee on the east-side where the state has some jurisdiction? We don't have the same privy because all these valleys are controlled privately. So where do we fit in where I know my rights are being protected by the Hawai'i State Constitution and your fiduciary duty to protect that right for me, so I can live my life as a kuleana knowing that the health, welfare of my 'ohana; and I stress this because I get sixteen (16) grandchildren and sometimes some can't bathe, all because of how the system is managed – so I come to you, how are you going to help me to make sure my life will be healthy in that valley.

I ask again, what is the possibility of forming a water management committee made up of kuleana, as well as the community and other stakeholders? Having an advisory setup, you (CWRM) can get updated information of the health and welfare of the water and kanaka that depend on the resources; or every time you come to Maui, you'll have a line of people coming to testify, griping and troubling about how come life is unfair that we have to come in front of a body and don't know if that body can help our situation.

I mahalo you for your time; is there an application I need to fill-out or a complaint to get the ball rolling in the right direction? Up in my valley there's seven (7) kuleana land owners. Kahoma and Kanaha there's more. Every valley you implement IIFS, there's no oversight, enforcement or monitoring; with the kuleana that live there, at least you can get some information of what's happening. Mahalo for allowing me this opportunity to speak.

Commissioner Beamer – to give you some context and the difference between Nā Wai 'Ehā and the process; right now, Nā Wai 'Ehā is the only surface water management area (WMA) this Commission has designated. My understanding is that they have legal representation and filed a petition to the Commission for a surface WMA. That's a big difference between the interaction of this Commission and West Maui. The other issue is that often times, kuleana land owners that had kalo to be cultivated at time of the Māhele, in that process had priority rights to water or appurtenant rights. In Nā Wai 'Ehā, the Commission is having to distinguish/determine who has appurtenant rights, which also gets allocations to water. It isn't a perfect system and to be truthful, this is the first appurtenant rights that has been addressed by the Commission, we only been given this since 2010. Those are some of the differences and distinctions.

Mr. Kapu – what will be the triggers to change that dynamic of the possibility of forming an advisory body on this side, knowing that the state doesn't have a WMA, but the state still has jurisdiction of surface water?

Commissioner Beamer – yes, it does. It does have jurisdiction over water in the stream, but in surface WMA there's higher level of management and hands-on. In this process, as Kaleo is meeting with stakeholders regarding IIFS, he can have this conversation with your side as well.

Mr. Kapu – I just feel that we can help in this situation. We've been taking notes and preparing ourselves for when you folks show up but, it feels like I'm not getting anywhere on how this can work for me, because the lack of oversight and enforcement on this side. We bring in different dynamics, with Nā Wai 'Ehā they have a case because they're part of a WMA. I'm trying to figure out our kuleana within the fabric of justifying our cause, if this is not the body that I can bring it forward, where is that? Do I have to go through civic clubs so they can enact some kind of resolution so we can change laws on legislation? There has to be a simpler way to address the issue for the kuleana that is on-going and suffering on the west-side; mahalo.

Commissioner Hannahs – Mahalo Keaumoku for being here today, your testimony and being vigilant; you're always here. Mahalo for what you're trying to do for your 'ohana and this community and the resources. I understand your frustration and the fight you are doing. I don't think you need the government to form an advisory committee for you, your hui. I sense you have the leadership ability and your collective voice will and matter even more; look at the examples of organizations like Nā Wai 'Ehā and others. You're right, the plantation era is gone and we need a new era. The opportunity is there to all work together.

Mr. Kapu – Mahalo for your encouragement. We tried every different angle especially with the 'Aha Moku council system that was setup, and that's a different animal because with that dynamics, you have to include the whole community and there's some things that are not meant for the general community like kuleana rights. Mahalo for the encouragement and I will look into it to form a kuleana management within the families that exists in the valley and see if we can spin the wheels in the right direction.

Mr. Anthony Loy – it's bad that the diversions are losing water. I'm confused that we had to point that out and our remedy is giving more time to figure it out. This is years of waste and not an accident. This condition created that culture. Even today, we have Wailuku Water Company that is proud to tell CWRM that they release water.

I whole-hearted support staff recommendations and the diversions and what the diversion look like should be part of the community and how we can work together, it can't be a take all system that we're used to and worrying if the gate is open and how much degrees it is. If we can avoid that as much as possible, by only allowing to take what's needed, would help remedy complaints like this. We take water very seriously, and those that have the very least, take it (matter) most seriously, not the people who have the millions of dollars and taking it from our valley; and I don't think these issues would happen if our valleys still had all those people in it. When the diversions was put in, it was a take all system and all those people below had to move away and then they had taro gates; there's a few families still trying to hold out and do what is needed to do.

As for future use, who is telling you we need to compare our future use to what it currently looks like? Why is it a status quo that we need to move forward, that's not going to take us into the next century. Look at who was most affected or all the families that had to move away because there's no water (in the taro patches).

We need the government to speak to us; our water deserves that justice since the early 1900s, when all of that was taken out, and our communities still hasn't recovered, mahalo.

Ms. Katie, Honokohau Valley Resident – I'm not Hawaiian and don't claim to be, I'm from Texas. My parents dropped me off at a country club in the summer; I never went without water and a/c. I married a Hawaiian guy that I met at a gas station and now we live off-grid, it's a shock. Growing up we had water and my parents told me turn off the water while brushing your teeth, not because we worried about running out, but because it's the right thing to do.

We have a company who's acting similar to other government entities. When you get this much (water) and you don't use it, you lose it; so we're going to use it anyway we can; whether it's dumping it in the ditch we got to do it because we'd lose it. When I see a new road put in, I'm asking why is there a new road? It's for the budget or we'll lose it next year. I'm shaking being on the other side of this. There's six (6) children sleeping in those rooms now that all live in Honokohau Valley, those are just the pre-schoolers and I live out there and they don't have a water meter, well let's get one. I called and they said it's $20,000; okay what's the process? I found they're not issuing them. They're putting in a new pipe, but no meters. There were six (6) trucks in from of my house and the next day someone from the water company came by and said to stop making phone calls.

This is a serious issue. I don't waste water because I'm a conservationist, it's because we have to go to town and fill-up giant barrels with a water hose and drive it back home, then my husband takes a hose and puts it in another barrel with a pump that's connected to a battery. I can't spend a night at my house alone, and I've lived there for eight (8) years; because I don't know how to work that system if it breaks.

Everything about MLP taking this water, the Water Department, KWC, whoever; I don't come from a third-world country; I know this isn't the normal. My husband's been there for ten (10) generations as far back as they can go, they're used to it, I am not. Maybe it takes you guys hearing from an outsider to hear what's really going on instead of the same six (6) people who sit here all day; we got here at 8:30 am and we're just getting to talk. I wasn't going to talk but I've been here all day. These people need to be heard, thanks.

Ms. Gretchen Asano, former resident of Honokōhau - I wanted to speak a little about what Kekai was saying because I think context is really important when we're talking about this. You received the presentation about the flooding lands of Honokōhau due to the effect of Hurricane Olivia. Prior to Olivia I was a resident of Honokōhau. My 'ohana lost our home in that flood. Our home flooded downriver and my daughter's house ended up in the ocean. The long-standing structure was hit with a sixteen (16) foot wall of water and the reason it happened because it was more water than we've ever seen in a short amount of time.

There hasn't been a formal complaint filed yet in regards to this, but it's important you know this and why it happened. There was a bridge with 5-6, six-inch black pipes, tied to the bridge that ran across Honokōhau Stream, taking water out of the Stream. In Feb-March of 2018, there was a flood and that bridge collapsed on top of the river and made a dam. It sat there across the river and all the Water Department and the Hui Watershed guys seeing this across the river for over six (6) months. When the hurricane came, the

water built up and that bridge swung open and that's when the wall of water came down. If my 'ohana had been home, we would've lost keiki and people in our family; luckily we weren't home. Every other family in the valley was home when that happened. You're talking about giving MLP credit, it's important to know that after the flood happened and people's homes been destroyed in there, we didn't see a single person from MLP or the Hui Watershed; they did not come to the valley. There was a massive mobilization of our community that came every day for a month, and we didn't see anyone from MLP. Nobody came up to our house that was totally destroyed.

The context is really important. There is an agreement (I don't know the details) between MLP and the DWS that utilized that bridge and those types; it's not the resident kuleana to take care of that situation but we were the ones that suffered and we didn't receive any help from MLP as a result of that; so I think it's important you know that moving forward and giving all this time to make fixes. There's been an extreme negligence on behalf of this company. Unfortunately, I'm sad to say they own the majority of the land in Honokōhau Valley. Why is there an extreme negligence from a major land owner and such a disconnect between the land owner and people who live at Honokōhau, I don't know. You're encouraging them to talk to our community and there's plenty of opportunity for that to happen. We appreciate the Hui Watershed and their restoration projects; we have a good relationship with them; but there was a very obvious ploy after the flood and we didn't see anybody, thank you for your time.

Ms. Lani Arcagad, Wailuku Resident – The same watershed that feeds us, feeds this side to. I wanted to testify regarding my reaction to the staff's recommendation regarding this waste complaint. This really hasn't inspired confidence that the waste complaint filed against Wailuku Water Company would be taken seriously and enforced appropriately. I think asking the system owner to maintain and upgrade their system to work properly is their burden, and to raise their standards and expectations, that's their burden because that's what they should be doing already.

For the past 150 years, this community, watershed and the people who live along these rivers have watched the abuse of our rivers being diverted and our lifestyles altered and our health suffering as well as culturally and environmentally, and we are ready to recover and had enough. The first step in recovery is to acknowledge the fact the abuse is occurring. If the abuser does not acknowledge the fact of the abuse, you cannot expect the behavior to change. There needs to be a plan of action to make it better and make it right, I have yet to see it happen.

We've lodged several complaints on IIFS and waste and not one of them has been handled in a timely and appropriate way or enforced.

Last week, I appreciate Kaleo and Dean guys that came up and talked with the Wailuku community about the fish ladder and we also had a waste complaint to. The Wailuku and ʻĪao community asked: what does it take to enforce the law? We're given a bureaucratic answer; that it takes evidence, data and time. In the same conversation we asked if WWC file a complaint about what we're doing in the river? The answer was "yes, informally". But they had already received the consideration of the Attorney General; and so, felt that our

voices don't matter as much as these corporations, not in practice. You can say that they do and there's a fair process, but in practice it's not fair and needs to be better and made right.

If these corporations who have profited and benefitted from our suffering at the hand of their abuse and not hold themselves accountable, we need you to do more to do it for them, mahalo.

Ms. Karen Kanekoa, Secretary of West Maui Preservation Assn., Honokōhau Valley Resident – MLP needs less than 4.6 mgd; I was home last night when the water came up, it was about 11:15 pm when I heard the river. They got 40 mgd, it blows my mind. You are the body that protects this public trust and it should be concerning; thank you.

Mr. Kapali Keahi, Lahaina Resident – MLP does not have a good track record especially with the people from the ʻohana from Honokōhau. As far as I can remember, there was an agreement with the taro raising families of Honokōhau and MLP; trying to find some balance so they can continue to farm taro in that place the way it always has been for generations. MLP agreed to release 9 mgd in the valley which never did materialize. MLP went as far as to send a representative to talk with families to try and convince them to farm "dry land" taro because no water was needed for that. I have no reason to lie about it, our families have been dealing with it for a long time. It's part of the generational trauma and enduring that kind of pressure, sent everybody outside of the valley; and contending with outside of their normal means trying to put food on their table.

I wish the Commission could do more and provide adequate measures in seeing that these traditional type of (kalo) farming is accommodated because that is our economy and not the plantations economy. We are still burdened by the plantation even though we don't have sugar or pineapple, they are Mahi Pono. This is still a foreign entity because we depend on them but didn't need to if the Commission could accommodate water being released in the valleys, our people returning home to farm their food. They control the land and the water but really, it's of no control. Our ancestors properly managed our resources and no plantations can rival the ʻahupuaʻa land management systems we had in place for centuries.

I have keiki and I want to make our place a better place for them to live. Talking and chanting Hawaiian is no good if we can't live here anymore. I think Honokōhau has a huge dormant potential for our people to take care ourselves. Whatever you need to do, hopefully it positively effects our children, mahalo.

Ms. Bianca Isaki, Lance Collins, and Linda Nae for Ka Malu O Kahalawai and West Maui Preservation Association

We support staff recommendation on deferral and approval and want to pick up on Kapali's point on MLP's track record. There's a three (3) decade history in time since this Ka Malu 2019 complaint, and a list of concerns compliant similar to those that Commissioner Beamer advocated whether MLP will make these changes happen.

In 1991, the West Maui Taro farmers Association with this Commission against MLP saying the taro farmers in Honokōhau Valley were having difficulty farming citing the

shortage of water in Honokōhau Stream from MLP due to the dam constructed by MLP many years ago and water being released by MLP.

In 1994 another complaint filed by a taro farmer, in 1997, MLP replied to Kimo Lindsey's complaint that he couldn't farm taro and that was that proposal to restore 1 mgd through the taro gate.

Today, the ʻauwai next to Wili Woods, Honokōhau Resident, next to a loʻi is running slow and has a slow drip. The ʻoʻopu are dying in the stream next to him. He was here early but had to go back (home).

In light of this history, the complainants are anxious for the IIFSs to come back as soon as possible and want to suggest that along with the recommendations, to stress that regular clean-up is needed, or it will push the water back into the intake and could be done prior to the construction. I want to clarify that an automated intake system is not special engineering. What was installed at Kahoma was done so apparently quickly as Commissioner Hannahs has pointed out.

Mr. Collins - what are the costs of repairing and maintaining the system? Have the staff considered that these costs are passed on to rate payers of this PUC regulated private water system and are not county rate payers. Most who are serviced by this system are wealthy, MLP isn't going to take any of these costs. There are some that live on Maui but most of the people (in the spreadsheet) are investors and visitors. Also, what is MLP's and the PUC's subsidiaries alternatives including using the wells that are not being used and the cost of that, so the Commission has all of the costs and significance of them? All the additional information may be helpful for the final conclusion of the waste complaint and IIFS; as oppose to just looking at the engineering practical costs of repairing or maintaining the system.

Ms. Nae – not sure which Commissioner brought it up, the idea this could take a long time, it could by the time MLP gets all the permits from the corps and everyone else could take a while which means the water will be continued to be wasted. I heard MLP talk about plans to fix or return the taro gate to the condition it was in, prior to Hurricane Olivia and provide a ditch rider for the interim so the taro gate can be monitored and adjusted prior to the time it's going to take for build out and do a remote system.

Bianca mentioned we do need someone to pay attention to the cleanup to periodically take place. I know Ayron said it will be a never ending task, but at this point since MLP has turned a corner in terms of its responsibility to the community and willingness to work together, that they're willing to come to the table with the valley residents, to talk about a plan on how the cleanup can occur and work cooperatively, because there's a lot of valley residents who will be willing to help with that and looking to the future, this would be a great start.

Commissioner Buck – checking to see if there are no specific changes in the recommendations that's in front of us now?

Mr. Collins - the ones that are not being deferred; we support the full restoration of Honolua and Kaluanui Stream and upgrade to 770

Commissioner Buck – we're not here as much, but MLP is right there and I think they heard a lot and I encourage you to start that interaction. Any request for us for them to work better with you is one thing but I encourage the face to face with them.

Commissioner Anderson – I also support that recommendation because we need action to clear out the debris that's blocking the intake there

Ms. Isaki – it's something we want to put on record that would be a good faith kind of thing. As Commissioner Buck said we should repair it again until MLP decides.

Commissioner Beamer – the addition was to repair the taro gate?

Ms. Isaki – I just want to point out there's a history of non-compliance and doing a regular cleanup is important, and just putting it out there but not necessarily amend the staff recommendation and perhaps offer MLP's leadership too.

Commissioner Beamer – I wonder how hard will that be to have that as a recommendation to restore the taro gate?

Mr. Lopaka Wilson, Honokōhau Valley Resident (w/toddler son 'Eha Wilson) – This is my son, who is the great-grandson of 'Aimoku Pali, who filed a complaint in 1991; he passed away last year. This is who the water is for, these keiki around here. We are here and not going anywhere, we're still in the valley. My son told me earlier, "tell them give back the water".

Lucienne deNae, East Maui Resident – I've hiked a lot at Honokōhau over the years, I'm a Sierra Club hike leader since '95; and we've lost our privileges there because I testified at a County Council hearing that they should give back more water. At that time 28 million gallons a day was being diverted on an average from Honokōhau Valley and the taro gate gave back 1.5 mgd every day. We've hiked and heard the plights of the families there, including 'Aimoku who's a wonderful man and full of Aloha. When came the opportunity to speak of the conditions we've seen at the stream, we spoke out.

It's a tragedy; people there have no public water supply, the County needs to truck in a tank there; meanwhile the stream is being bled dry and people are left to fend for themselves. This is a matter of justice. There has been waste for a long time, the system is busted up.

Pioneer Mill went out of business in '98-'99 and they've used most of the water from Honokōhau; wasn't MLP that used it, the golf course uses it. The real irony is that Kapalua Land Company, which is no longer owned by Maui Land and Pine, which is a PUC regulated system, has three (3) good wells, that barely use the capacity of one well; and here just a few miles away, their neighbors have no clean water supply.

So often is the case on Maui; many of you probably live at Honolulu and you don't realize how much of Maui has no public water supply. The people in Waihe'e have no

water supply. Even though their aquifers are tapped, the city water of South Maui it's really not their system at this point. Even adding a water management area for the surface water like we do at Nā Wai ʻEhā, this is something I personally worked hard on with the Tavares administration, the Hui, Maui Tomorrow and other organizations; and everyone was on the same page and the water designation was setup in one (1) year from start to finish because everyone supported it to have a Surface Water Management Area, the first and only in the State, for Nā Wai ʻEhā. We don't have that for East Maui, we have no management, we have no aquifers designated, it's a free for all as in West Maui.

Even if it's more work for the Commission, maybe they should consider creating SWMA in other places and have a handle on some of the big diverters so justice can be restored. Thank you for your recommendation, and I, like everybody else, would like to see things happen in a timely manner, thank you.

Mr. Michael Gropemeyer – I have delivered testimony on behalf of the Plantation Estates Lot Owners Association (PELOA). Our community is very supportive of the Commission's overall intent to restore stream flows. Specifically, we're supportive of the phase 1 IIFS and would like to see those asap however, we understand there's a lot of work to be done by MLP and be sure they have the opportunity to get it done; also with the health and welfare of everyone in the community.

Commissioner Buck – who delivers your water?

Mr. Gropemeyer – we get potable water from Kapalua Water Company and irrigation water from them.

Commissioner Buck – and what do they charge?

Mr. Gropemeyer – there's a pretty big base charge for the meter and there's tiered charges for the potable and I believe (don't quote me) $2.20 per thousand gallons for the irrigation water; and my understanding is they're going to have a rate increase because these rates are at least ten (10) years old and they're not recovering their costs. They also put in new meter which allows us to (over the internet) detect leaks and usage and the notice should go in effect by the end of the year. It will be a big plus because if you have a leak, you'll know right away.

Commissioner Buck – is there a concern among the owners that if subsequently we increase the IIFS and put more water back in the stream, your rates will go up and you may not have the quantity of water you're used to?

Mr. Gropemeyer – we expect it to go up somewhat but don't know how much. We also expect to be using well water during periods of drought to supplement. Right now, we only use about 0.15 mgd on average which is 1% of the Q-50 flow rate. We expect that will be fine unless it's an extreme drought and expect to use well water during those periods.

Chair Case – called a recess at 3:43 pm

RECONVENE: 3:58 pm

Deputy Manuel – just to bring back MLP to answer the question that was raised prior to the recess about what are the interim measures that can be taken?

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.

Commissioner Beamer – how hard will it be to update the system or the taro gate, to make sure it's operable and water is received

Mr. Tim Esaki – it's part of the assessment that our engineers have done; we've not seen the report yet, but that was included because it was a pre-storm issue.

Commissioner Beamer – if we amend the staff submission to make it more clear, the restoration of the taro gate to make it operable, you guys will take care of that?

Mr. Tim Esaki – yes

Chair Case – to clarify, and thank you for those amendments; for time wise, you don't have to wait for this paperwork, is that correct?

Ms. Izu – yes, it's on-going

Commissioner Anderson – do you need any permits to do that work?

Mr. Esaki – not at the moment, no

Chair Case – anymore questions or comments?

Commissioner Buck – look forward next time to hearing about improvements on the outreach.

Chair Case – asked for a motion

Commissioner Beamer – I would like to amend the motion

Chair Case – your motion is to amend the submittal to reflect the changes that Kaleo (Deputy Manuel) discussed

Commissioner Beamer – yes, to reflect staff changes and make an additional amendment to page 28 and include an update to the taro gate to ensure proper functioning and water delivery in the system to pre-flood conditions

<Chair Case asked if there are any further discussion>

Commissioner Beamer – I want to thank the Maui community for their testimony and being here for a very long day; and echo the comments of the Commissioners, we know that water is a public trust, know the conditions where you identified waste, and water needs to return into the streams; and look forward to coming back and making decisions on those requirements of the Commission; and even in the midst of difficult situations in the communities, we found that groups will come together as a whole, mahalo.

MOTION: (BEAMER/ANDERSON)
To approve C-2 as amended
UNANIMOUSLY APPROVED

C. ACTION ITEMS

1. Approval of an After-the-Fact Stream Diversion Works Permit Application (SDWP.4951.6) by East Maui Irrigation Company to Remove and Abandon 29 Diversions (Category 4) on Waiokamilo and Wailuanui Streams, and Find that SDWP.4951.6 is Exempt from Hawaii Revised Statutes, Chapter 343, East Maui Irrigation System, East Maui, Hawai'i; TMK: Various

PRESENTATION GIVEN BY: Mr. Dean Uyeno, SPAM Manager
M. Kaleo Manuel, Deputy Director

Mr. Uyeno – read the summary of request, provided background information and gave a power point presentation explaining the twenty-eight (28) ditch intake diversions at Waiokamilo Stream and one (1) at Wailuanui Stream. These streams are referred to as Kalo and Community Streams with the goal to return free flowing water with no upstream diversions to all streams, which have historically supported significant kalo cultivation. In reference to the table on page 1, those diversion that has an "alpha" at the end is considered "minor" diversions by East Maui Irrigation (EMI) Co., which captures water from springs and those with only numbers, are diversions occurring on streams.

Commissioner Buck – has all this work been done already, these are all after-the-fact?

Mr. Uyeno – yes, the work that was done previously, it was done in response to the Board of Land and Natural Resources decision/ruling. We are set to go back and do a recon of what was done back then. We haven't visited the site since 2009, so at this point we want to go back and assess what was done previously what's still out in the field, then make recommendations to EMI of what should be done further.

Do you (Commissioners) want me to go through all this?

Commissioner Beamer – maybe general questions first and I appreciate all the pictures. In the D&O you had provisions and we wanted to review it on a case-by-case basis. Are you asking if we approve these after-the facts? I'm expecting to see things cleaned up; I'm not

expecting to see mosquito ponds, old pipes and cement littered across the streams. I'm not going to approve something that allows that status quo.

Mr. Uyeno – to be clear, for minor diversions, the ones with the alpha at the end, tend to be off-stream. They are catchment seeps and drains along the service road. Some we may not be able to locate because they're located above the service road and a pipe had brought it down to the level of the ditch to carry water into it.

Commissioner Beamer – I see Division of Forestry and Wildlife's (DOFAW) comments, they're asking for things to be cleaned up.

Mr. Uyeno – right, and that's the primary objective for us initially going in, that's clean up as best as possible, especially with the pvc pipes out there and whatever metal pipes.

Commissioner Buck – to be clear, you're not recommending any work to be done, this is just to approve work that was done previously as well as do a recon of all the ones to get to, and see if any work needs to be done?

Mr. Uyeno – no this won't include work; that's why the permit. It's not considered after-the-fact and part of the permit we're going to do a reconnaissance with EMI. The recommendation calls for representatives from Na Moku 'Aupuni O Ko'olau; and working with EMI with recommendations on what needs to be done to clean up everything further than the diversions itself.

Commissioner Beamer – doesn't it say in the recommendation, approve after-the-fact Stream Works Permit?

Mr. Uyeno – my apology, initially that was; and when we initially drafted the submittal it was treated as after-the-fact. At this point now, we're going back to do work. We can remove that as an amendment to the recommendation. The point is to do work and further properly abandon these diversions. As an example, on page 55, number 25 (on the table), back in 2007 when BLNR ordered to put back 6 mgd, EMI's goal was to get the water in the stream as soon as possible. In this case you see the low dam wall along the "spray", they cut that pipe which was delivering water to the main ditch. In some cases, it may have put it into the ditch on the side of the service road that then carried the water to the stream, where it would be picked up in the main diversion.

It was an extremely efficient system that captured all the seeps and springs that was occurring along the service road, adjacent to the streams. The objective is to go back out, look at what's still there. In this case there's still a pipe that's running about 10-feet below the wall, and make sure it's removed.

Commissioner Beamer – would you be removing or cutting the pipe back?

Mr. Uyeno – as best as possible. In some instances when we went back in 2008-09, back then, it was difficult to locate some of these because they're so small. It might just be a little concrete berm that's constructed around a seep coming out of the ground. A lot of these are very small diversions that we want to go back and clean it up as best possible.

Commissioner Anderson – so your standard is to remove the pipes and any other obstruction associated with the diversions?

Mr. Uyeno – correct

Commissioner Anderson – and your goal is to find remaining obstructions to restore flow and get rid of the pipes and everything else obstructing the stream?

Mr. Uyeno – some concrete work will need to be done; it's been years since I've been out there and we will be looking at every diversion.

Commissioner Hannahs – on page 55, not only the pipe but you may determine that the concrete wall may be removed as well?

Mr. Uyeno – yes

Commissioner Hannahs – and if that's not made, you'll make those decisions and determine with EMI as well as Na Moku. On page 81-82, recommendation from Sierra Club, (referring to the picture) what's happening there? I see a little pipe, but the pipe is catching it out of the basin, what's our remediation there?

Mr. Uyeno – these are category 1 diversions that have yet to come before you. These, we allowed EMI to go for quick modifications to enable immediate continuation of flow downstream. If you look on page 81, that gate is on the left bank of stream next to this wall (page 82 – showing illustration); they opened the gate so any water in the stream can continue to flow downstream, this has yet to come before you.

Commissioner Hannahs – so you're not seeking approval for that?

Mr. Uyeno – no

Commissioner Buck – these streams are called kalo streams so the Commission's decision and order to restore flow and that would be your criteria in coming back to us

Mr. Uyeno – correct, we can come back

Chair Case – to clarify on this case-by-case review by staff and the Commission, you said that some of these clearly should be taken out and some may not be necessary or worthwhile; but opportunity for safety, stream flow and fish passage.

Deputy Manuel –as part of the recommendations and to make it clear, on page 67, #1 – staff is recommending to take out "after-the-fact" and recommend to approve SDWP; #2 – is add reconnaissance survey with staff inclusive of EMI, staff also included DOFAW and DAR staff (those that commented/participated on this); and on the last sentence of "a site inspection report shall be submitted to the Commission for review"…and what I heard was review and approval? Is that something I'm hearing in the conversation and context of what the concerns and questions are? And whether or not they needed a conditional approval

subject to the Commission's "seeing" the site-by-site or is it something you want staff to work with EMI on and then come back with a report, when work is completed, that's the question?

Commissioner Buck – I think it's important this decision have some finality; I would have no problem with review and approval; especially when you have community and staff out there. I would recommend that any future actions I would add "to achieve a full un-diverted stream flow as practical", is the criteria we'd look at. I think it's important for the community and everyone to have finality on this.

Commissioner Anderson – there may be issues with some of the pipes there; need to ensure the water quality and safety when removing them

Commissioner Beamer – I think having the community and DAR there and paying attention to everyone's comments and with DAR doing the studies on the streams, guided our decisions. I think DAR's recommendations are very important, so is DOFAW's. Certainly, we take these recommendations and site expertise, so having finality and adding our approval so we can come back and see what you saw and what's presented. We should take into account what we've learned from the fish ladder experience, to be mindful in what's being done; I think adding an approval will be helpful.

Chair Case – thank you Kamana; basically, I've delegated to you with these guidelines that final approval. My comment is that DOFAW's comments are all the same for each one, you just need to decide which are important for each site and which are not.

Commissioner Hannahs – it's a toss-up because the community is part of this, but it says the Commission staff with DAR and DOFAW as well and EMI; would there be any community involvement?

Deputy Manuel – yes, the first line (it reads) Na Moku ʻAupuni O Koʻolau; on page 67; based on comments received, we've included that group especially because were the party in the original contested case hearing with EMI. As in practice and learning from experiences with cases on this island, before work is done in the community, going out to community and having conversation to inform them that these are the things we're looking at and doing, so if you see people in the field or stream, just as FYI that's something I'll coordinate with EMI, to make sure we're being fully transparent and giving people a heads up before anything happens in the community so they can advise us maybe it's a dry time and not a good time to go, or maybe there was a flood and that's not a good place to go. It's a good way to coordinate / communicate with local community; it's not in the recommendation but something that's on record, on the staff side.

Commissioner Beamer – for clarity, I think the delegation is for off-site visit, we recommend to meet with community; but I want to add at the end of #2, "report shall be submitted to the Commission for review and final approval"

<side conversations between Commissioners Case, Beamer and Anderson>

Deputy Manuel – I can propose recommended language to address both concerns having heard what's being said. So again, under #1 would be "Approve the SDWP" (take out after-the-fact); #2, Direct Commission staff to reconnaissance survey all the way to….for review…add "utilizing criteria to achieve full stream restoration, full un-diverted stream flow and to ensure there is no future unauthorized use, and the Commission reserves the right, based on the inspection report submission to request additional work be completed, if unsatisfied with report finding. - To sum it up; the Commission reserves the right to request further actions, based on the inspection report submission.

Chair Case – I want to add DOFAW criteria here; full un-diverted stream flow, fish passage, safety, no derelict accessory structures, erosion protection, and minimizing stagnant waters to make it comparable to the rest of the stream. I'm reiterating those criteria.

Commissioner Anderson – the bars there are associated with seeps and springs which aren't streams and I know you're looking at removing all those as well; it's not just for stream flow but restoring natural water flow too, that effect and returning the water flow to its natural conditions would cover most of the diversions

Commissioner Beamer – with regards to standing water, if we take the natural conditions of the stream water will puddle; but we don't want a cement structure like a catchment system, especially having reports of malaria that are spreading further across Maui.

PUBLIC TESTIMONY

Mr. Mark Vaught, Manager, East Maui Irrigation Company (EMI) – Aloha mai kākou Commission Chair and Commissioners. Mahalo for your patience today sitting through this long day as everyone did, but you folks had to sit up front and be attentive the whole time, mahalo for that.

I've been with EMI for many, many years. I was at the flumes that goes up along those intakes in 2007, and familiar with many of them. We've read through the submittal; we agree with all the amendments and to take care what we need to. We fully intend to remove anything that is not part of any structure out there and doesn't belong and whatever the Commission staff deems necessary, we're fully prepared to comply. Any questions for me?

Commissioner Hannahs – it really speaks of your character as an individual as well as the company. As others see the government just leave ʻōpala all over the place, so mahalo for that.

Mr. Mark Vaught – thanks, it really has been brought to light in the last several years and is something we're diligently working on. I've got piles of stuff at my baseyard that we pulled out of the mountain and taken pictures of it to make sure people know we're doing what we say we're going to do.

Ms. Lucienne deNae, Sierra Club – being a hiker, I've seen a lot of the places that have to do with the Water Commission decisions; Sierra Club did submit extensive comments on this and other stream permit application that was heard in September. I've been in East Maui for 35 years and am personally very familiar with most of the areas of these

permits. As you've noticed, our testimony was summarized that we just didn't want you to give the permit, but that's not actually is what we said. We're saying what you folks are saying now; don't approve the after-the-fact permit until the staff and the Ke'anae Wailuanui Community members are satisfied there's a plan and implementation scheduled to restore the biological connectivity for native stream species for the Waiokamilo and Wailuanui stream systems. This is the same conclusion you are coming to, that we need connectivity, clean out the debris that no longer functions; and we fully support DOFAW comments. We gave specific stream-by-stream conditions we noted in particular areas and the need for changes.

We feel strongly, like the Commission does, to ensure the Native Hawaiian residents of these areas, have the best functioning habitat for the uses of these streams. We're not here about gallons, but the whole quality of the stream, that's an important consideration. We would definitely support all the things you've suggested and if there could be a specific timeline that is put forth for the communities understanding. I don't live in Wailuanui or Ke'anae, but know many people who do because those communities are connected by families. The people always ask me "what are they doing Lucy, have they done that yet? I never hear anything." If there could be some communication through EMI and the Commission that would be great.

It's important to realize that some of these diversions are on state land, the Waiokamilo twenty-eight (28) diversions, some on the Kikokiko; they're not part of the regular ditch system, so disassembling them is not going to affect the performance of the Wailoa Ditch. This is a great place to start because it's the low-hanging fruit in terms of not impeding ditch operations.

We've been told some of the pipes lead to a small spring or seep which is not part of the stream, but a local resident that wrote in 2017 saying, EMI apparently no longer utilizes water from Waiokamilo, but this is not the same as restoration. EMI formally diverted water not only from the main flume at Kikokiko, but also from numerous tributaries of various sizes, which before the existence of the ditch, eventually found its way to Waiokamilo Stream. The water was collected by EMI via two dozen diversions consisting primary of concrete catchment basins with pipes, etc. EMI has cut these pipes so that water no longer goes into the ditch, instead it drips or flows onto the ditch road. It makes access difficult and dangerous, and feeds alien plants.

For restoration, allowing these seeps and sprays to have their natural course, and not be wasted water is very important. Another thing to point out, the monitoring and reporting is key like we heard of Nā Wai 'Ehā yesterday; the follow-up report the community could see would be good. I would also request (while a representative from Na Moku is appropriate) that outreach to the general community and a representative from Maui Tomorrow could also be invited to the site visit, so we could be of support to our allies there at Wailuanui and Ke'anae area.

Thank you for your careful consideration of this and look forward; this is the first decision where the permit says let's remove some things, I'm happy to hear it.

Deputy Manuel – on page 67, with the recommendations; amend recommendation #1 – to remove "after-the fact"; amend recommendation #2 – at the end of the paragraph add: "staff should use the following criteria in determining further actions that include: restoration of full un-diverted stream flow, fish passage, safety, no derelict accessory structures, erosion protection, minimizing stagnant waters to return to natural conditions as best as possible, and to limit future unauthorized diversions. The Commission reserves the right to require additional work upon submission and review of the final site inspection report. Also to recommendation #2 – (first line) …with assistance from "Division of Aquatic Resources, Division of Forestry and Wildlife…and to add "Hui" (after the Na Moku 'Aupuni O Ko'olau) for the official name correct.

Commissioner Beamer – and to add a representative from Maui Tomorrow

Deputy Manuel – yes, we will make that addition to add a representative from Maui Tomorrow.

Mr. Uyeno – *(referring to EMI's liability matters)*

Chair Case – asked for a motion

MOTION: (ANDERSON/MEYER)
To approve C-1 as amended
UNANIMOUSLY APPROVED

D. NEXT COMMISSION MEETINGS (TENTATIVE)

December 17, 2019 (TUESDAY)
January 14, 2019 (TUESDAY)

This meeting was adjourned at 4:46 pm.

Respectfully submitted,

Rae Ann Hyatt

RAE ANN HYATT
Secretary

OLA I KA WAI:

M. KALEO MANUEL
Deputy Director

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

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

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
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: race@mauiland.com

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 MacDonald'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.

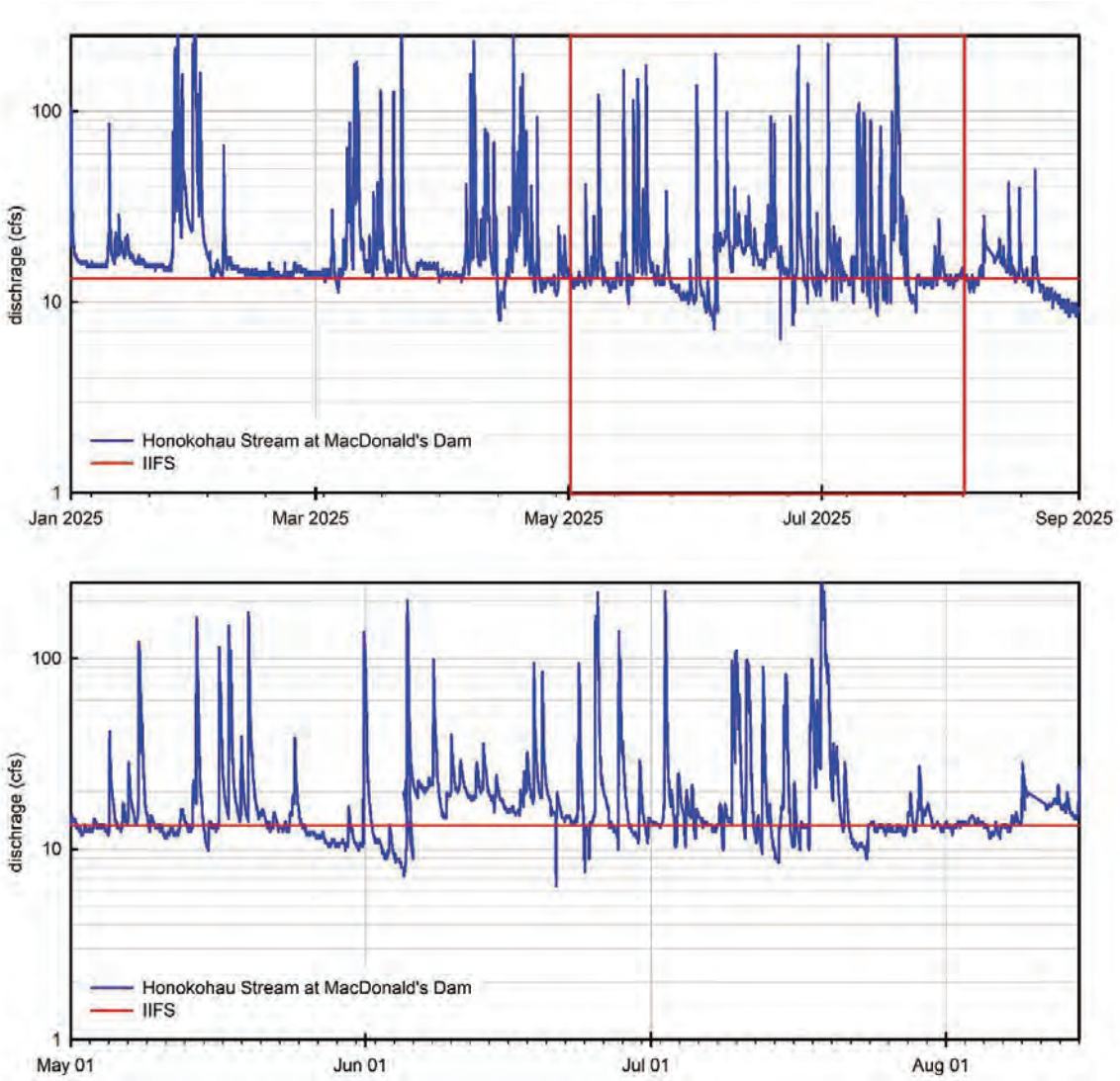


Figure 1. Continuous streamflow record for CWRM 6-149 Honokōhau Stream at MacDonald's Dam (blue) from January 1, 2025 to September 1, 2025 with the interim instream flow standard (red) identified (top graph). Zoomed in portion of top graph (red box) for May 1, 2025 to August 14, 2025 (bottom graph).

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
07/25/2205	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 Honolua 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 Honolua		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

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. Ayron Strauch of the Commission staff at (808) 587-0265, or via email at ayron.m.strauch@hawaii.gov.

Ola i ka wai,

CIARA W.K. KAHAHANE
Deputy Director

The Plantation Course #18 green as seen during the PGA Tournament in January 2025 (top) and on August 19, 2025 (bottom).

The Bay Course #4 and #5 greens seen on December 19, 2024 (top) and September 29, 2025 (bottom).

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

STAFF SUBMITTAL

For the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

November 20, 2019
Lahaina, Maui

Request to Address the Waste Complaint Filed by Ka Malu O Kahalawai and West Maui Preservation Association Against Maui Land and Pineapple Company Alleging Water Diverted from Honokōhau Stream Overflows the Honokōhau Ditch, Pursuant to Hawai'i Revised Statutes §174C-13, and to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honolua (6013) and Honokōhau (6014), West Maui

LOCATION MAP See Figure 1

SUMMARY OF REQUEST

Staff is requesting that the Commission on Water Resource Management (Commission) consider resolving a portion of the waste complaint filed by Ka Malu o Kahalawai and West Maui Preservation Association by replacing the intake control structure on Diversion 770 on Honokōhau Stream in order to remotely control the rate of diverted streamflow and to meet proposed interim instream flow standards (interim IFS), the domestic water supply needs of Maui County Department of Water Supply (DWS), and the non-potable water needs of the Department of Hawaiian Home Lands (DHHL).

Recommendations are provided for modifying the structures associated with:

DIVERSION 769 on Honolua Stream by modifying or abandoning the stream diversion works
DIVERSION 768 on Kaluanui Stream by abandoning and removing the stream diversion works
DIVERSION 770 on Honokōhau Stream by modifying the stream diversion works

And for amending the interim IFS for:

HONOLUA HYDROLOGIC UNIT (6013): Honolua Stream
HONOKŌHAU HYDROLOGIC UNIT (6014): Kaluanui Stream
HONOKŌHAU HYDROLOGIC UNIT (6014): Honokōhau Stream

Item C-2

BACKGROUND

The State Water Code (Code), Chapter 174C, Hawaii Revised Statutes (HRS), provides that the Commission shall have jurisdiction statewide to hear any dispute regarding water resource protection, water permits, or constitutionally or otherwise legally protected water interests. HRS §13-167-23. If any person files a complaint with the Commission that any other person is wasting or polluting water, or is making a diversion, withdrawal, impoundment, consumptive use of waters or any other activity occurring without a permit where one is required, the Commission shall cause an investigation to be made, take appropriate action, and notify the complainant thereof. HRS §13-167-82. Further, the Commission may take jurisdiction of and resolve any disputes regarding water resource protection, water permits, or constitutionally protected water interests. HRS §13-167-3(4).

The Code provides that the Commission may adopt interim IFS on a stream-by-stream basis or a general IFS applicable to all streams within a specified area. In the 2000 appellate ruling on the first Waiāhole Ditch Contested Case Decision and Order ("*Waiāhole* I"), the Hawai'i Supreme Court emphasized that "instream flow standards serve as the primary mechanism by which the Commission is to discharge its duty to protect and promote the entire range of public trust purposes dependent upon instream flows." 94 Haw. 97, 148, 9 P.3d 409, 460. This submittal seeks to address interim IFS on three streams in West Maui and the modifications to the stream diversion works to meet these interim IFS.

The current interim IFS for the streams being considered were established by way of Hawai'i Administrative Rules (HAR) §13-169-48, which, in pertinent part, reads as follows:

> Interim instream flow standard for West Maui. The Interim Instream Flow Standard for all streams on West Maui, as adopted by the Commission on Water Resource Management on October 19, 1988, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted off stream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard.

The current interim IFS effective date was December 10, 1988. Thus, the status quo interim IFS, in effect, grandfathered all then-existing diversions that were registered with the Commission by May 31, 1989. Following the initial registration of stream diversion works, any new or substantially modified stream diversion works required a permit for construction as well as an amendment to the interim IFS.

The Code defines an instream flow standard as a "quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses." *See* HRS § 174C-3 ("Definitions").

"Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

1) Maintenance of fish and wildlife habitats;
2) Outdoor recreational activities;
3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
4) Aesthetic values such as waterfalls and scenic waterways;
5) Navigation;
6) Instream hydropower generation;
7) Maintenance of water quality;
8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
9) The protection of traditional and customary Hawaiian rights.

In considering a petition to amend an interim instream flow standard, the Code directs the Commission to "weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses." HRS § 174C-71(2)(D).

"Noninstream use" means the use of stream water that is diverted or removed from its stream channel and includes the use of stream water outside of the channel for domestic, agricultural, and industrial purposes.

Since the establishment of the Stream Protection and Management Branch in July 2002, the Commission has been developing a framework for setting measurable instream flow standards statewide. This framework involves an assessment of natural flow conditions for the current climate period (1984-2013), an analysis of the instream uses protected by the State Water Code, the existing and planned off stream uses of surface water, and the availability of water from multiple sources. This information is compiled in the Instream Flow Assessment Report (IFSAR) for each hydrologic unit.

The assessment of instream uses for West Maui has been separated into multiple phases, the first of which addressed the interim IFS for the Ukumehame (6004), Olowalu (6005), Launiupoko (6006) and Kaua'ula (6007) hydrologic units in March 2018. The second phase addressed interim IFS for Kahoma and Kanahā streams in the Kahoma (6008) hydrologic unit. This submittal will address the interim IFS values for the Honolua (6013) and Honokōhau (6014) hydrologic units.

FORMAL WASTE COMPLAINT

On April 23, 2019, Ka Malu o Kahalawai and West Maui Preservation Association filed a formal Complaint / Dispute Resolution regarding water diverted from Honokōhau Stream and wasted in areas extending south to the Wahikuli hydrologic unit. In the complaint, water from Honokōhau Ditch was being released into gulches, roads, and ditches. Members of Ka Malu o Kahalawai

and West Maui Preservation Association include *lo'i kalo* farmers on lands adjacent to Honokōhau Stream and members who conduct traditional and customary practices including fishing, surfing, canoe paddling, and diving in nearshore areas of the Honokōhau hydrologic unit and other areas of West Maui.

In August and September 2018, Hurricanes Lane and Olivia hit West Maui, causing localized flooding and damage to Diversion 769 on Honolua Stream and Diversion 770 on Honokōhau Stream. The flooding resulted in an incised stream channel which lowered the elevation of the stream relative to the banks and damaged property throughout the valley.

In October 2018, Commission staff conducted a site visit with community representatives, the mayor of Maui County, and representatives from Maui Land and Pineapple (MLP) to assess the damage. The intake structure on Diversion 769 no longer existed, while the intake structure and sluice gate on Diversion 770 were badly damaged, rendering them inoperable. The location where MLP historically released water (Taro Gate) back into Honokōhau Valley from Honokōhau Ditch was blocked by sediment and debris, preventing the return of diverted water.

In September 2018, MLP lost their ditch operator, compounding problems associated with damage to the infrastructure.

In November and December 2018, a lack of flow in Honokōhau Stream was impeding efforts to restore *lo'i kalo* cultivation. At the same time, members of Ka Malu o Kahalawai and West Maui Preservation Association observed the release of water from Honokōhau Ditch in other locations.

Petitioners are seeking to prevent wastage by restoring flow to Honokōhau Stream and requiring upgrades to the stream diversion works (Diversion 770) to better regulate the amount of water removed from Honokōhau Stream. Establishing an interim IFS will protect instream uses of water, as identified by Ka Malu o Kahalawai and West Maui Preservation Association. Upgrades to Diversion 770 will enable MLP to continue to meet the domestic needs of Maui DWS and the non-potable needs of DHHL while ensuring adequate water remains in the stream to meet the interim IFS.

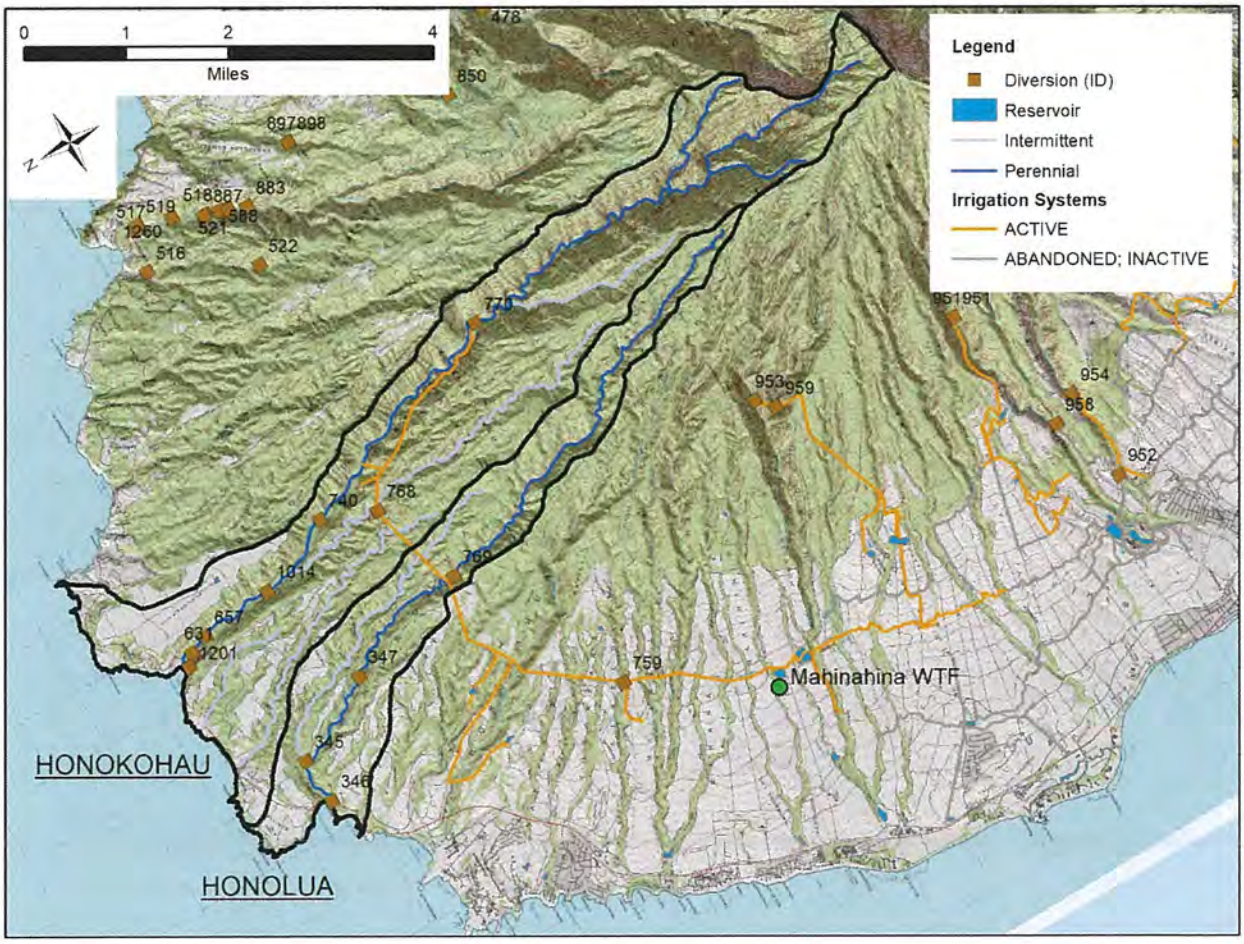
HISTORIC CONTEXT

The *ahupua'a* of Honokōhau, in the moku of Ka'anapali, supported one of the largest concentrations of Hawaiian agriculture in the Kingdom, with over 1000 surveyed *lo'i* in excess of 50 acres. While terracing in the *ahupua'a* of Honolua also suggests *lo'i kalo* was cultivated in the valley, archeological evidence and local knowledge points to Honolua being a focal region of religion and not agriculture.

Honolua Ranch began in 1853 with 2,675 acres of land awarded through a royal grant to Dwight Baldwin. By 1902, the ranch grew to 24,500 acres, and in 1914 became Baldwin Packers, eventually becoming the largest private producer of pineapple and pineapple juice in the nation. In 1904, Pioneer Mill partnered with Honolua Ranch to construct the Honokōhau Ditch (known

as the Honolua Ditch up to Māhinahina), taking advantage of West Maui's largest water source, Honokōhau Stream. Due to problems with the ditch (mainly landslides), the intake was moved from an elevation of 700 feet to its present location at 825 feet in 1913, with a new ditch running parallel to the older ditch, but mainly in tunnel. In 1912, the first 20 acres of pineapple were planted. Maui Pineapple Company (MPC) formed in 1932. The company produced pineapple grown on 5,000 acres as well as other diversified agriculture grown on Kapalua Farms.

Figure 1. The Honolua and Honokōhau hydrologic units, perennial and intermittent streams, registered diversions and irrigation systems, and water treatment facilities (WTF), West Maui.



In 1962, MPC merged with Baldwin Packers to form Maui Land and Pineapple (MLP). In 1975, MLP incorporated Kapalua Land Company (KLC) as a subsidiary dedicated to resort development with MPC dedicated to agricultural operations. Since that time, approximately 3,000 acres of land in Kapalua have been developed into golf courses, luxury homes, condos, and resorts.

In 2005, the real estate division of KLC began to expand its luxury resort development and sold its two existing golf courses.

At the end of 2009, MLP ceased pineapple operations, leaving a real estate division for land planning, development and sales, a leasing division for residential, resort, agricultural, commercial and industrial land and property leases, a resort amenities division for Kapalua Club members, and a utilities division, which operates the Kapalua Water Company (KWC) and Kapalua Waste Treatment Company.

In early 2010, Kapalua Farms organic pineapple operation was taken over by Ulupono Sustainable Agriculture Development. KWC continues to operate potable and non-potable water distribution systems, with potable water originating from three wells and non-potable water originating in Honokōhau Stream via Honokohau Ditch. The 8,304-acre Pu'u Kukui Nature Preserve is also owned and operated by MLP, one of the largest private nature preserve in the State of Hawai'i.

Today, there are 5.15 acres identified as *kuleana* lands, and *lo'i kalo* is currently grown on less than 3.5 acres. However, mirroring larger trends across Hawai'i, the Honokōhau community is experiencing a resurgence in food independence and Hawaiian cultural practices in which *lo'i kalo* cultivation is expanding.

TIMELINE

In 1987, with the passage of the State Water Code (HRS 174C), all wells and stream diversions had to be registered with the Commission on Water Resource Management (Commission) by May 31, 1989. Registered diversions accepted by the Commission in the hydrologic units considered here are listed in Table 1. The primary diversions on Honokōhau and Honolua streams were registered by MLP and maintained by MPC (FileRef: MAUI LAND&PINE). Following the cessation of pineapple cultivation in Kapalua, the operation and maintenance of the intake and ditch system were contracted out to a private company for MLP.

In 2003, the U.S. Geological Survey (USGS), in cooperation with the Office of Hawaiian Affairs, produced a Scientific Investigations Report (SIR 03-4060) which provides flow-duration estimates and detailed characterization of the distribution and availability of base flows in lower Honokōhau Stream. The analysis also showed groundwater gains between the USGS long-term continuous gaging station 1662000 at the 870 foot elevation time and Diversion 770 at the 825 foot elevation, as well as gains and losses of surface water downstream to the ocean.

In 2006, MLP filed separate petitions to amend the instream flow standard (PAIFS) for the Honolua and Honokōhau streams. These PAIFS followed biological assessments by SWCA Environmental Consultants, Inc.

In 2012, John Carty filed a PAIFS in order to pump water from the stream to a small reservoir to meet the agricultural irrigation needs of kalo, banana, sweet potato and other diversified crops on kuleana land.

In 2014, the USGS, in a Joint Funding Agreement with the Commission, published a Scientific Investigations Report (2014-5087), which characterized streamflow availability under natural low-flow conditions for streams in the Lahaina district, including Honolua Stream.

Following the publication of USGS SIR 2014-5087, Commission staff began analyzing historic and current data in support of the production of the Instream Flow Assessment Report (IFSAR) for each hydrologic unit in West Maui.

In September 2019, CWRM staff held a public fact-gathering meeting in Lahaina where 54 people attended. Oral testimony was submitted by about 25 people and written testimony was received from 6 other people. Overall, there was much support for the Commission's process for developing interim IFS and the need to protect the stream, traditional and customary practices, and domestic uses of stream water. Some comments were concerned about issues related to compliance, enforcement, and monitoring. Recommendations in this submittal seek to address these issues.

Table 2 summarizes staff research efforts towards production of the IFSAR for each hydrologic unit. Research included site visits and interviews with irrigation managers, community groups, land owners, and stakeholders as well as additional monitoring of stream and ditch flows, and surveying of instream resources. Information gathered contributed to a more complete understanding of the current water management and instream uses.

Table 1. Registration ID, diversion ID, diversion name, stream name, and additional information for diversions in the Honolua and Honokōhau hydrologic units, Maui.

Hydrologic Unit	Registrant	Diversion ID	Diversion name	Stream name	Additional information
Honokōhau	MAUI LAND & PINE	770	Aotaki Weir	Honokōhau	Intake #1 on Honokōhau Ditch at 825 ft
Honokōhau	MCDONALD J	740	McDonald's Dam	Honokōhau	Not active
Honokōhau	SHIM M	1014		Honokōhau	Not active
Honokōhau	LAHAINA PLTSCP	657		Honokōhau	Pump from stream
Honokōhau	KIM JW	631		Honokōhau	Pump from stream
Honokōhau	WATANABE WT	1201		Honokōhau	Pump from stream
Honokōhau	MAUI LAND & PINE	768	Kaluanui Intake	Kaluanui	Intake #2 on Honokōhau Ditch
Honolua	MAUI LAND & PINE	769	Honolua Intake	Honolua	Intake #3 on Honokōhau Ditch
Honolua	EZZO JSJR	347	n/a	Honolua	Diversion on TMK 241001002 of 100,000 gallons for 0.75 acres of taro, livestock, aquaculture, domestic
Honolua	EZZO JSJR	346	n/a	Honolua	Diversion on TMK 241001008 of 100,000 gallons for 2.0 acres of taro
Honolua	EZZO JSJR	345	n/a	Honolua	Diversion on TMK 241001002 of 100,000 gallons for 0.75 acres of taro, livestock, aquaculture, domestic

From 1995 to present day, Commission staff has received numerous requests in the form of a complaint or petition to protect stream resources in the subject area. Formal complaints and petitions are compiled in Table 3. Numerous informal requests in the form of phone calls, letters, and email have also been received by Commission staff. The primary concern is lack of streamflow and its effect on traditional and customary gathering practices, the cultivation of *lo'i kalo*, and recreational uses of the stream. Without reliable municipal water supply, many households in the valley rely on the stream for domestic uses as well.

Table 2. Summary of field investigations, by hydrologic unit and date, of Commission staff in support of developing interim instream flow standards for West Maui. [DDHL = Department of Hawaiian Home Lands; MDWS = Maui Department of Water Supply; MLP = Maui Land & Pineapple]

Date	Description
Honokōhau	
December 2014	CWRM site visit with Honokōhau Valley community members to investigate complaint at Chun's Dam
July 2017	CWRM and MLP site visit to diversion
December 2017	CWRM site visit with Honokōhau Valley community members to document existing lo'i complexes
October 2017	CWRM installation of gage at Honoapi'ilani Highway (6-157)
November 2017	CWRM flow measurements at gage 6-157
December 2017	CWRM flow measurements at gage 6-157
January 2018	CWRM flow measurements at gage 6-157
May 2018	CWRM site visit with Honokōhau Valley community members to discuss lo'i restoration following flood
October 2018	CWRM site visit with Honokōhau Valley community members to document flood damage
October 2018	CWRM and MLP site visit to diversion
November 2018	CWRM fieldwork at McDonald's Dam (6-149)
December 2018	CWRM flow measurements at gage 6-149
January 2019	CWRM flow measurements at gage 6-149
February 2019	CWRM flow measurements at gage 6-149
May 2019	CWRM site visit to Honokōhau Ditch at Wahikuli
June 2019	CWRM/DAR biota survey with MLP; flow measurement at gage 6-149
July 2019	CWRM site visit to Honokōhau ditch
November 2019	CWRM installation of gage at Adit 6 (6-201)
Honolua	
May 2012	CWRM and USGS conduct initial flow measurements
April 2017	CWRM and MLP site visit to diversion
September 2017	CWRM installation of gage at highway (6-158); flow measurement; initial USACOE survey
November 2017	CWRM flow measurement at highway
December 2017	CWRM flow measurement at gage 6-158
January 2018	CWRM flow measurement at gage 6-158
April 2018	CWRM flow measurement at gage 6-158
December 2018	CWRM flow measurement at gage 6-158
March 2019	CWRM flow measurement at gage 6-158
June 2019	CWRM/DAR biota survey with MLP
August 2019	CWRM site visit to gage 6-158

In the course of these research efforts, staff identified several existing, historic, or unregistered diversions within the Honokōhau hydrologic unit. Unregistered diversions are listed in Table 4.

While permits are needed for stream diversion works, traditional and customary practices, including the growing of *lo'i kalo* do not require an amendment to the interim IFS, as these uses are considered "instream" uses.

Based upon the best available information, as provided in this submittal, staff have developed recommendations that seeks to protect instream uses and public trust uses while providing for some noninstream uses; understanding that domestic needs of the public and reservations by the Department of Hawaiian Home Lands (DHHL) are public trust uses of water. The recommendations provided herein have also been developed in consideration of interim IFS values that were adopted by the Commission for previous areas of West and East Maui.

Table 3. Summary of complaints associated with the Honolua, or Honokōhau hydrologic units to Commission staff. [MLP = Maui Land & Pineapple Co.; DHHL = Department of Hawaiian Home Lands]

Date	Description of Complaint
Honokōhau	
August 1995	Lack of flow in stream
August 2004	Illegal grading of stream; rocks removed from stream to build an embankment to prevent erosion
August 2006	Petition to Amend the Interim IFS by MLP (PAIFS.1792.6)
August 2012	Lack of flow in stream
September 2014	Neighbor moved rocks in stream; unpermitted stream channel alteration
September 2018	Maui Co's pipeline catwalk broke across stream; lack of vegetation management affecting the stream
April 2019	Waste complaint: MLP failure to operate it's intake and water wasted at Wahikuli Flume
Honolua	
August 2006	Petition to Amend the Interim IFS by MLP (PAIFS.1792.6)
June 2012	Petition to Amend the Interim IFS by John Carty (PAIFS.3603.6)

Table 4. Existing, historic, or unregistered diversions in the Honokōhau hydrologic unit.

elevation (ft)	associated lo'i (count)	TMK	Description	notes
320	15	410040090000	Auwai on left bank	currently active
220	12	410030260000	Auwai on right bank	
110	22	410030140000	Auwai on left bank (Lindsey)	currently active; natural poowai in side channel
95	3	410020680000	Auwai on right bank	
90	90	410020680000	Auwai on right bank	some dryland kalo active
80	10	410020680000	Auwai on right bank	
70	0	410020510000	Auwai on left bank (McAulton)	concrete in channel
60	60	410020430000	Chun's Dam	currently active; concrete needs in channel repair

ISSUES/ANALYSIS

This section of the submittal begins with general considerations of issues that broadly apply to the development of an IFS. A discussion then follows of the unique hydrogeologic environment, the instream uses, and the noninstream uses of water. The general considerations are followed by an assessment summary for each stream and a simplified schematic diagram. The summary and diagram identify key points from the IFSAR while summarizing the hydrologic characteristics and is by no means intended to substitute for the information compiled in the report.

The next step to developing an interim IFS is to balance often-competing instream and noninstream uses of water, which may include public trust uses, against the amount of water available to accommodate the needs of these uses. Again, the quantity and quality of information varies from stream to stream. This step is further complicated by the tremendous variability of instream and non-instream uses across and within surface water hydrologic units. For example, one stream may support extensive *kalo* cultivation while another may primarily support domestic uses. The potential of the stream and hydrologic unit to support additional water use in the future has also been considered. The four public trust uses of water include: (1) Water in its natural state; (2) Water used for traditional and customary practices; (3) Water for domestic uses; and (4) Water reserved and used by the Department of Hawaiian Home Lands. The process is to be based upon best available information when balancing the present or potential, instream and non-instream uses.

In developing the interim IFS recommendations, staff has attempted to remain consistent in balancing all of the instream and noninstream uses of each stream based upon the best available information presented in the IFSAR, along with the oral and written comments received through the public review process. This process is challenging due to the unique nature of each stream, the various instream and noninstream uses of water, and the logistical challenges of instituting an interim IFS. Whether attempting to compare stream characteristics across multiple hydrologic units or within one unit, no single principal or equation determines the rate of flow restoration. However, the principals established by the State Constitution, the Hawai'i State Water Code (HRS 174C), administrative rules, and case law interpreting all of the above, are applied appropriately.

Hydrogeologic Context

The first step in developing an interim IFS is assessing the hydrogeology of the hydrologic unit. Freshwater resources originate as precipitation, falling in the form of rain, but also through fog drip intercepted by vegetation. Some of the precipitation evaporates from the canopy or the soil, some is transpired by plants, some flows as overland flow in runoff contributing to surface flow, and some infiltrates the soil and contributes to groundwater recharge. Much groundwater is stored in the basal aquifer found in the dike-free lava flows of the shield building phase of the volcano. This basal aquifer lens sits on the brackish transition zone, which then overlies saltwater.

"High-level" groundwater occurs where water is impounded by dikes or perched on buried low-permeability horizons. Dikes form vertical barriers of low-permeability rock behind which groundwater is stored in the intervening permeable lava. Dike compartments can increase the storage of an aquifer by impounding groundwater to hundreds or thousands of feet above sea level. Although conceptualized as "compartments", regions of high permeability are not closed on all sides and dikes are generally leaky. Inflow into dikes starts as recharge from infiltration of high-rainfall areas. Groundwater flows from higher compartments to lower compartments and eventually out of the dike-impounded groundwater area to adjacent groundwater bodies (e.g., basal lens) or in areas where the stream channel has incised into the water-bearing compartment producing spring flow. Where the stream channel has incised into dike-impounded groundwater, streams have substantial base flow (USGS SIR 2015-5164; p.100). The area of dike-impounded groundwater in West Maui was first delineated by Stearns and Macdonald (1942; USGS Hydrogeography Bulletin 7) but has since been modified by Gingerich (2008) and Gingerich and Engott (2012) as depicted in Figure 2.

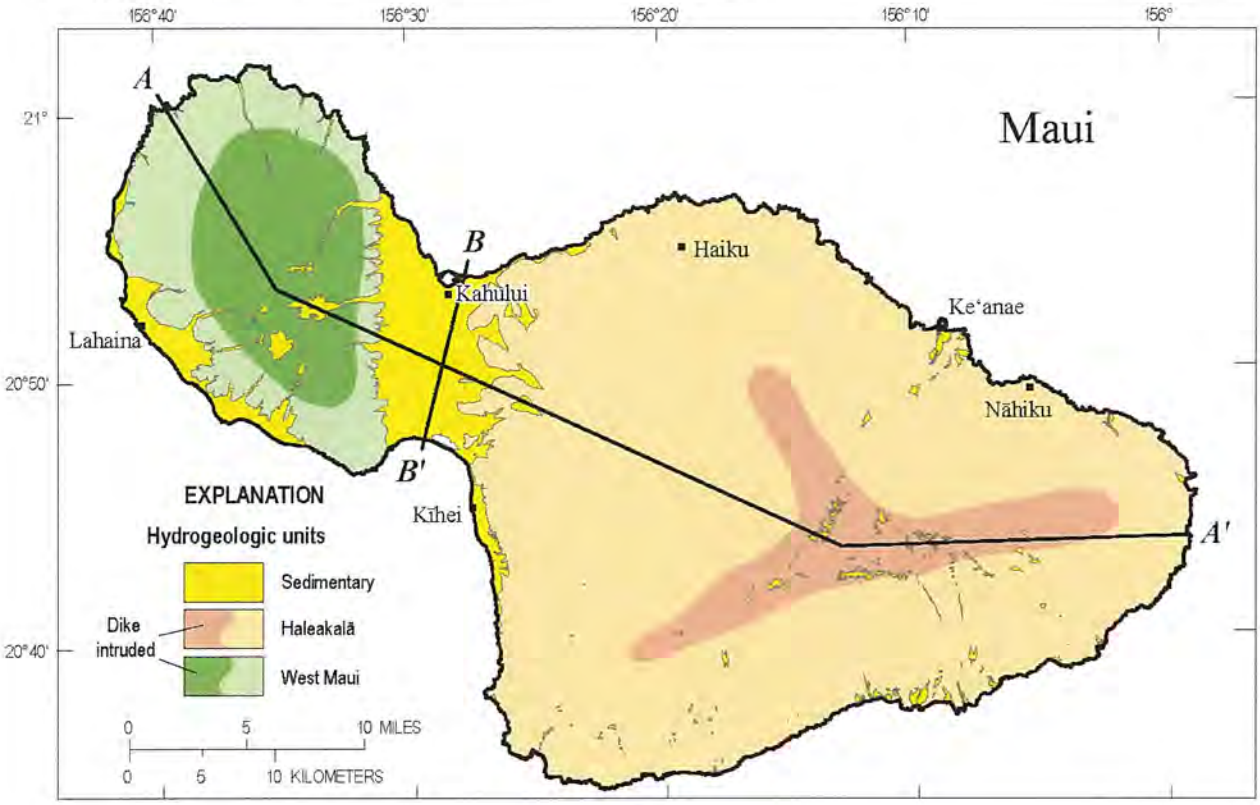
Hydrologic Considerations

Streams are largely characterized by different hydrologic and geologic components that affect flow regimes, particularly the groundwater-surface water interactions and rainfall-driven runoff. The amount of water flowing in a given stream is also affected by regional climate variations (e.g., rainfall, fog drip, solar radiation). The quantity and quality of data available to characterize these geologic and hydrologic components also varies considerably from stream to stream. For streams with long-term continuous data, the process for developing an interim IFS may be greatly different from that for streams with limited hydrologic data. For example, the groundwater contributions to surface flow (i.e., base flow) can be determined using continuously recorded data and statistical analyses, while record-augmentation is used with partial-record gaging stations to estimate low-flow characteristics where no continuous data exist.

Groundwater-surface water interactions influence the extent of gaining and losing stream reaches. A gaining reach is where the streambed intersects the underlying water table and groundwater contributes to streamflow as seepage or springs. A losing reach is where the streambed is above the water table and water infiltrates into the streambed and recharges the aquifer, sometimes leaving the stream dry even in undiverted conditions.

A common misconception is that flow restoration from diversions is immediately followed by continuous flow downstream from the point of release all the way to the coast (analogous to turning on a faucet); however, this is not always the case. For a stream that is losing, restored flow infiltrates underground once it reaches the losing section, and flow is often absent downstream of the losing reach. In some cases, flow will become continuous only after enough water has infiltrated the streambed and raised the water table, allowing base flow to be maintained by equilibrium with sub-surface flow. In other cases, the restored stream will remain dry at low-flows where the water table drops below the elevation of the stream bed. A stream can also become dry from prolonged periods of little or no rainfall as the water table drops below the streambed. In this case, adequate rainfall is necessary to restore the interaction between surface and groundwater, and to return base flow in the stream.

Figure 2. The zone of high elevation dike intrusion that contributes groundwater to surface flow on Maui. (Source: USGS SIR 2015-5164)



Honokōhau and Honolua streams have both gaining and losing reaches below the diversions, with Honokōhau mostly gaining and Honolua mostly losing below the diversion to the ocean. The presence of high elevation dike-impounded groundwater directly influences the availability of water during low-flow conditions in Honokōhau. In Honokōhau, spring flows from high-elevation dike structures were improved by the construction of development tunnels, which augmented surface flows (Figure 3). Thus, there is a disparity in surface water availability during low-flow conditions in Honokōhau, which has many dike-structures, and Honolua, which does not.

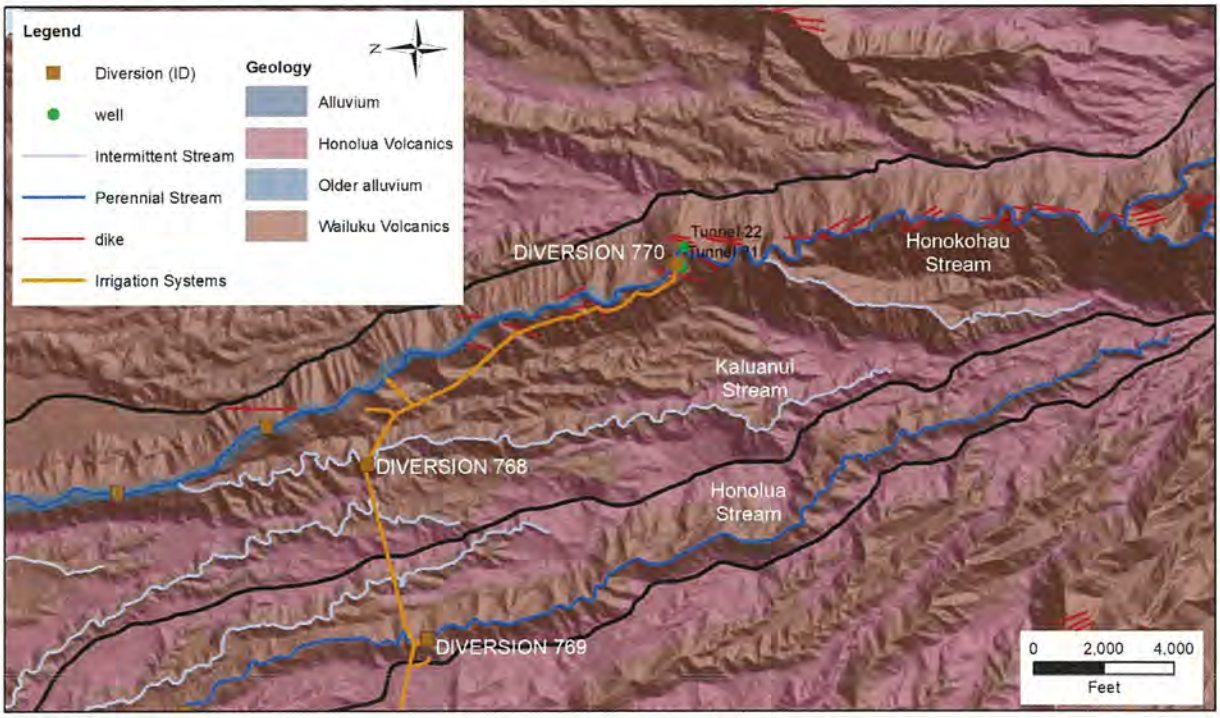
At 875 feet in elevation, a long-term (1914-present) continuous record gaging station exists on Honokōhau Stream. Median total flow (TFQ_{50}) and low total flow (TFQ_{90}) at this station are 15.5 mgd, and 8.4 mgd, respectively. Continuous data can be used to generate base flow duration statistics. Estimates of median base flow (BFQ_{50}) at USGS 1662000 on Honokōhau Stream for the (1984-2013) period is 11.2 mgd. On Maui, the estimated streamflow that supports approximately 90% habitat restoration is assumed to be the 64% of median base flow (USGS SIR 2005-5213), or 7.4 mgd at USGS 1662000. Kaluanui Stream is an intermittent tributary stream which contributed up to approximately 1 mgd to the Honokōhau Ditch during the wet season, but Diversion 768 on Kaluanui has remained inactive since 2005. Natural low-flow duration estimates at the 825 foot elevation (above Diversion 770) on Honokōhau Stream and at the 800 foot elevation (above Diversion 769) on Honolua Stream are listed in Table 5.

Table 5. Estimated natural median (Q_{50}) and low-flow (Q_{60} to Q_{90}) values available at the Honokōhau Ditch in the Honokōhau and Honolua hydrologic units. [cfs = cubic feet per second; mgd = million gallons per day]

Stream	Estimated natural-flow Q_{50}	Estimated natural-flow Q_{60}	Estimated natural-flow Q_{70}	Estimated natural-flow Q_{80}	Estimated natural-flow Q_{90}
Honokōhau[1]	30 (19.4)	26 (16.8)	23 (14.9)	20 (12.9)	17 (11.0)
Honolua[2]	3.8 (2.46)	2.3 (1.49)	1.2 (0.78)	0.40 (0.26)	0.0 (0.0)

[1]combined flow of USGS 1662000 and estimated Tunnel 21 and Tunnel 22 discharge as provided by USGS WRIR 03-4060
[2]from USGS SIR 2014-5087

Figure 3. Geology and extent of dike complexes in the Honokōhau and Honolua hydrologic units near development tunnels and stream diversions.



Trends in Rainfall and Streamflow

Long-term (1920-2012) and recent (1983-2012) trends indicate significant declines in rainfall across areas of West Maui, particularly during the dry season (Figure 4). There is some disagreement between dynamical and statistical downscaling models used to predict rainfall for the RCP 4.5 and RCP 8.5 climate scenarios[1], with dynamical models suggesting rainfall in the Honokōhau and Honolua aquifer systems marginally increasing (i.e., less than 3%) and statistical models suggesting rainfall declining 7.3% to 9.5%. Long-term declines in rainfall are generally coupled with a long-term decline in surface water availability and groundwater recharge, with consequences for base flow (Figure 5).

[1] Representative Concentration Pathway (RCP) are a set of greenhouse gas concentration trajectories adopted by the IPCC for its fifth Assessment Report in 2014

Figure 4. Annual, wet season (Nov-Apr) and dry season (May-Oct) rainfall trends for the 1920-2012 (A) and 1983-2012 (B) periods, Maui. Hashed line areas represent significant trend over the period. (with permission from Frazier and Giambelluca, 2017)

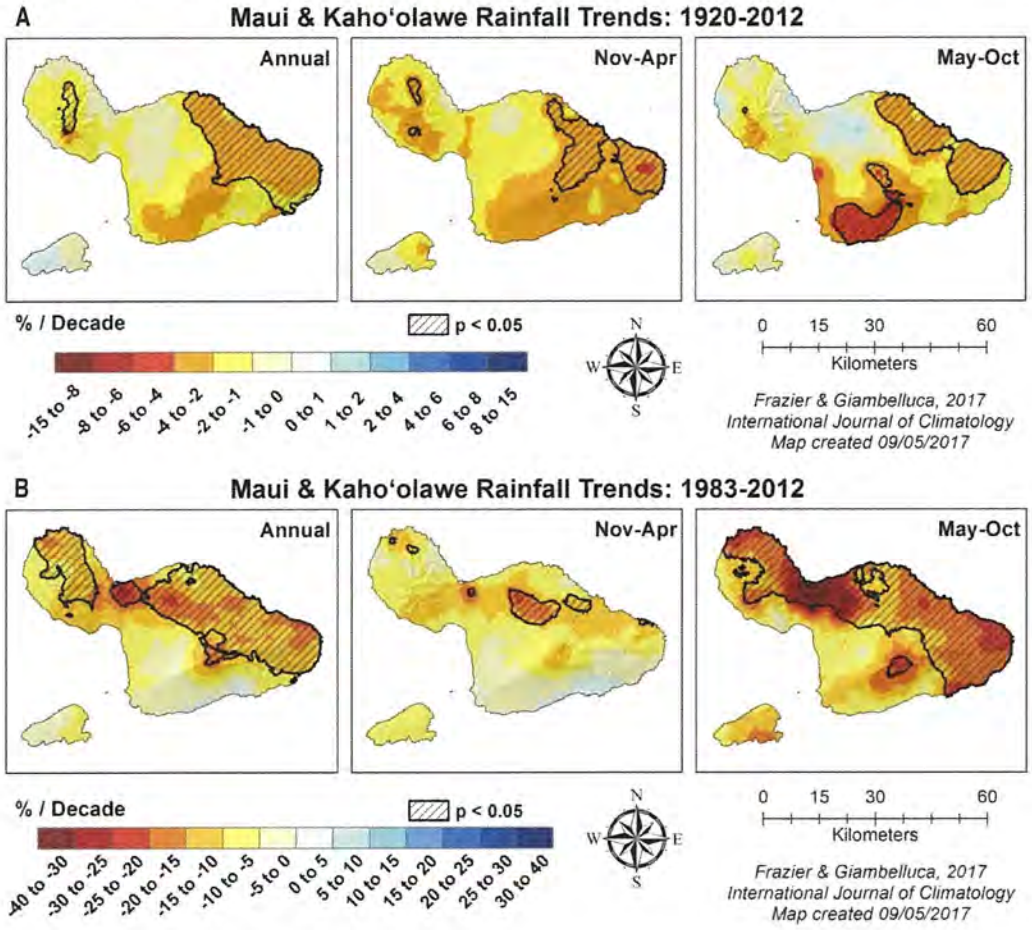
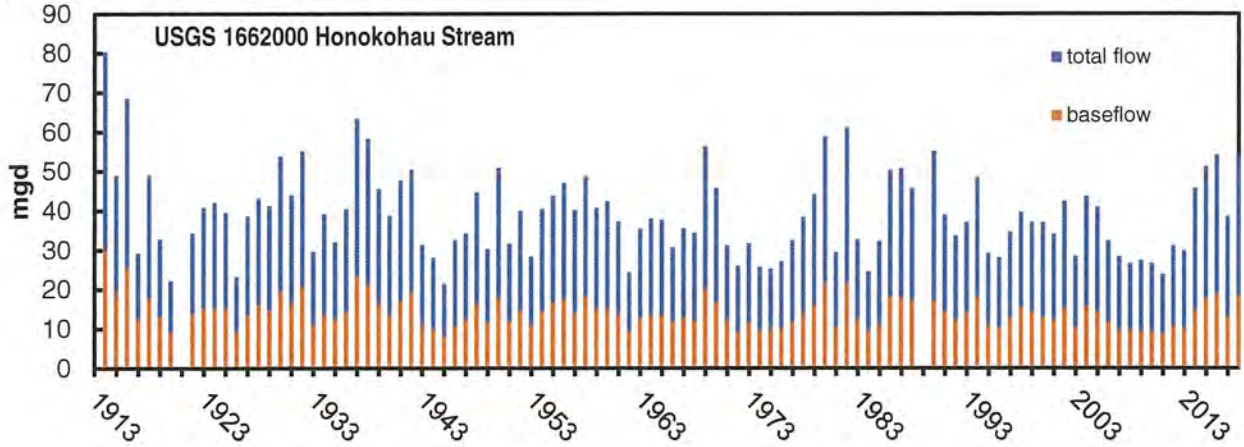


Figure 5. Mean annual total flow (million gallons per day, mgd) and mean annual baseflow (mgd) at USGS station 16620000 on Honokōhau Stream, West Maui.



AVAILABILITY OF ALTERNATIVE SOURCES

There are two potential alternative water sources that may be used to meet the needs of non-instream uses: 1) R1 recycled wastewater is available from the Lahaina Wastewater Treatment Facility (i.e., R1 alternative); 2) groundwater from the Honokōhau, Honolua, or Honokōwai aquifer systems (i.e., groundwater alternative).

R1 Alternative

Recycled wastewater treated to the R1 level can be used for golf course irrigation, landscape irrigation, and food crops. The Lahaina Wastewater Treatment Facility (LWWTF) currently produces about 4.0 mgd of R1 level water and is being upgraded to treat as much as 9.0 mgd. However, due to a lack of storage and distribution system, not all of this water is used and is currently pumped into injection wells. Because many of the sewage pipelines that feed the county wastewater transmission system located on private lands are in disrepair, saltwater intrusion into the system increases the chloride content of the wastewater up to 500 mg L^{-1}. This level of chloride is unacceptable for most orchard or row crops, and therefore this does not present a viable alternative for agricultural uses unless it is mixed with additional surface or groundwater of lower chloride content.

Maui County Department of Environmental Services (DES) has a pipeline from its LWWTF to the Honokōwai Reservoir at an elevation of 300 feet (currently owned by MLP). A former pipeline to Lower Field 14 Reservoir (TMK 4-4-004:012 State of Hawai'i) needs some repair and Maui County is working on a replacement pipeline to increase the capacity. Utilizing these two reservoirs and rehabilitating the Field 140 Reservoir (4-4-002:016 MLP) would make it possible to blend ditch water diverted via Honokōhau Ditch with R1 water and make it available to support agriculture or other non-potable water needs. The steps necessary to develop such a blending system in Field 140 Reservoir to achieve a desirable water source for all food crop uses needs to be supported by Maui County, DHHL, MLP, and other potential end users to be successful. In such a system, Maui County DES would be the responsible party for managing the supply and end users would be responsible for developing an irrigation management plan that optimizes this water source.

Groundwater Alternative

The Lahaina District of West Maui receives in excess of 250 inches of rainfall per year, providing recharge which saturates high level dike aquifers that then drain to basal aquifers at lower elevations. The principal dike trend ranges from 5° to 30°N in Honokōwai to almost northerly in Honokōhau. The dike zone plunges beneath the flank lavas several miles inland and groundwater from high level dike compartments seeps into the flank lavas, with leakage perpendicular to the trend adding to stream flow and further adding to local recharge of the basal lens.

The sustainable yields, current (2018) 12-month moving average, and 10-year average for the Honokōhau, Honolua, and Honokōwai aquifer systems are provided in Table 6. KWC operates

three wells with a combined capacity of 3.51 mgd and a 2018 total average pumpage of 0.936 mgd.

Table 6. Current sustainable yields for aquifer systems in the Lahaina Aquifer Sector north of Lahaina, current (2018) 12-month moving average (MAV) pumpage, and 10-year average pumpage. [million gallons per day, mgd]

System	Sustainable Yield (mgd)	2018 12-month MAV (mgd)	10-year average (mgd)
Honokōwai	6.0	3.380	3.249
Honolua	8.0	1.993	2.410
Honokōhau	9.0	0.000	0.000

SPECIFIC INSTREAM USE CONSIDERATIONS

The maintenance of instream flows is important for the protection of traditional and customary Hawaiian rights as they relate to the maintenance of stream (e.g., hīhīwai, ʻōpae, ʻoʻopu) and riparian (vegetation) resources for gathering, recreation within streams, and the cultivation of *kalo* or other traditional crops. The traditional Hawaiian *ahupuaʻa* concept is based on the premise of mauka-to-makai flow and a deep appreciation of water. Historical surveys by Duncan and Shishido (1900) show as much as 51.75 acres of *loʻi kalo* in Honokōhau Valley, although some of this was in the middle reaches above the current extent of community development.

Continuous streamflow benefits the maintenance of stream and nearshore habitat. Diversion structures can impede the downstream movement of larvae (entrainment) and the upstream movement of adults (recruitment). In previous surveys pre-restoration (2003) and post-restoration (2005) of flow at Aotaki Dam (Diversion 770) on Honokōhau Stream, restoration of as little as 1.5 cfs (1.0 mgd), in combination with natural pulse flood events, provided sufficient habitat and connectivity for new recruits of oʻopu alamoʻo (*Lentipes concolor*), oʻopu nakea (*Awaous stamineus*), and ōpae kalaʻole (*Atyoida bisulcata*) to return to the stream above Diversion 770. Recent (2019) surveys of Honokōhau and Honolua identified new recruits and reproductive-size adults of oʻopu alamoʻo, oʻopu nakea, oʻopu nopili (*Sicyopterus stimpsoni*), and ōpae kalaʻole.

The floods following two hurricanes (Lane and Olivia) in August and September 2018 carved a new channel around Diversion 770, allowing for a wetted pathway mauka to makai. Diversion 769 on Honolua Stream was discontinued in 2006, with the grate and transmission tunnel clogged with sediment, and then destroyed in September 2018 by the floods.

NON-INSTREAM USE CONSIDERATIONS

Kapalua Water Company Service Area

The active plantation diversions on Honokōhau and Honolua were originally built to irrigate pineapple and sugarcane for MLP and Pioneer Mill, respectively. In their registration, MLP

stated that KLC used 3.3 mgd for the irrigation of 600 acres of golf course (5,500 gallons per acre per day; gad), which, at that time, included three golf courses. Although one golf course was closed, MLP opened a golf academy using some of the available acreage. In the same registration, KWC used 1.0 mgd for the irrigation of 220 acres of resort landscaping (4545 gad). Metered use by KWC reported for 2017 and 2018 indicates approximately 1.0 mgd is used for resort and luxury home irrigation, approximately 0.8 mgd is used for golf course and related irrigation, and 0.2 mgd is used for diversified agriculture or other needs (Table 7). Non-potable water needs of the Kapalua area are currently only met by water diverted from Honokōhau Stream (Figure 6).

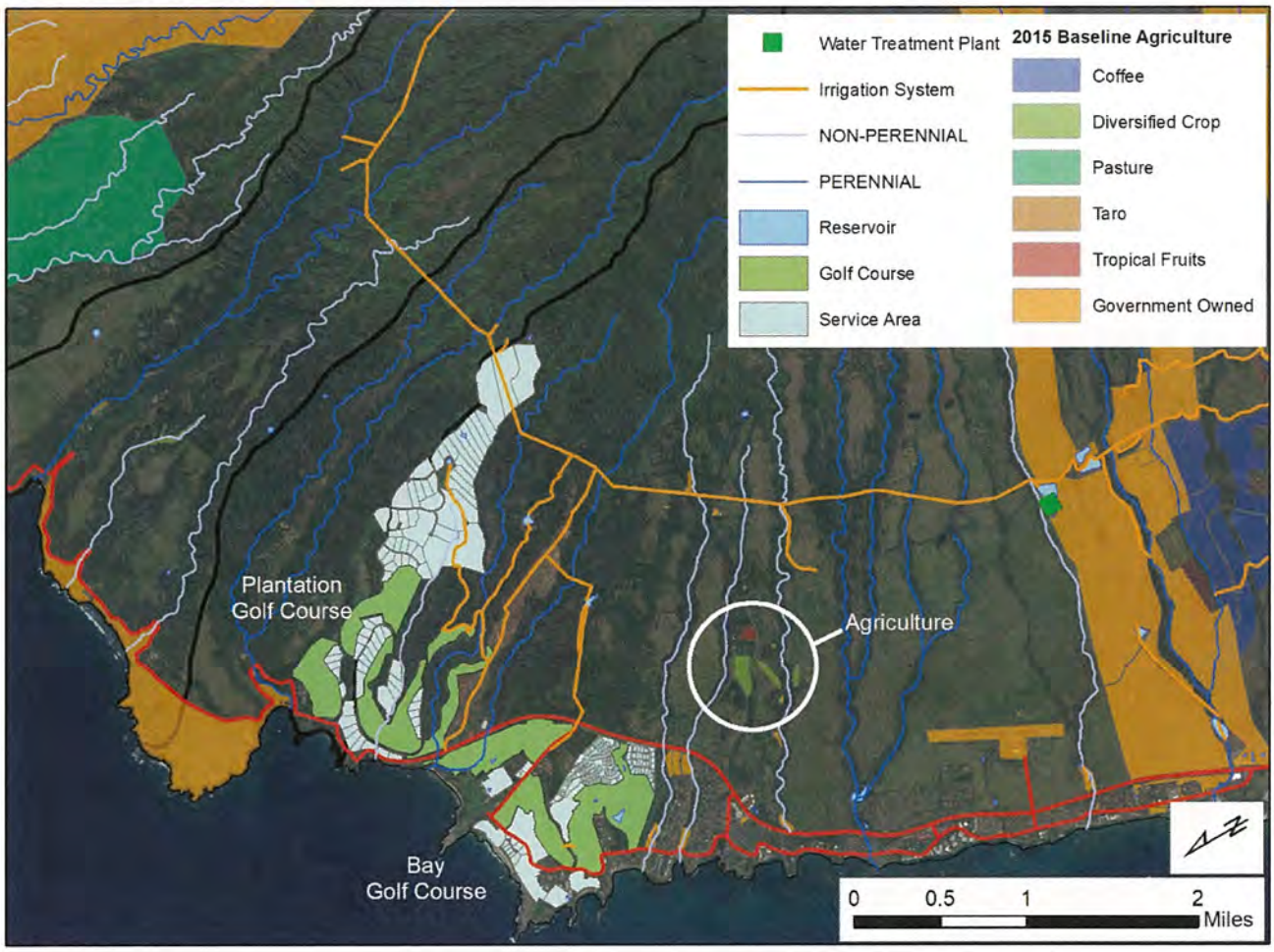
Table 7. Current actual and future estimated water use for various entities in the Kapalua-Napili region including golf course (GC) irrigation, resort landscape irrigation, luxury home landscape irrigation, Maui County Department of Water Supply (DWS), and Department of Hawaiian Home Lands (DHHL). [mgd = million gallons per day; gallons per acre per day, gad]

Water Use	2017 actual use (mgd)	2018 actual use (mgd)	2019 estimated use (mgd)	future estimated need (mgd)
Irrigation for Kapalua Resorts, common areas, luxury home landscaping	0.909	0.782	0.988	0.892
Irrigation for Plantation GC, Bay GC, Golf Academy	0.912	0.515	0.817	0.748
Other: Diversified Agriculture, Napili Gardens, Mailepai Cemetery, other homes	0.248	0.110	0.056	0.138
Future Planned Uses: Pulelehua, Wailele Ridge, Mahana Estates, Kapalua Mauka				3.64
Maui DWS Domestic/Municipal	1.74	1.78	2.00	2.28
DHHL Diversified Agriculture	--	--	--	2.10
Total	3.81	3.19	3.72	9.80

Domestic Water Supply

While not all municipal water supply is considered domestic water use, the Maui County Department of Water Supply (Maui DWS) serves a population of 18,122 within the Lahaina-Napili water system. This system relies on a combination of two surface water treatment facilities (WTF) at Lahaina and Māhinahina and 12 production wells. The total water production of Maui DWS is approximately 5.4 mgd, of which 5.08 mgd is considered domestic use (equating to 208 gallons per person per day) (Maui Water Use and Development Plan, 2017). Non-potable water is transmitted to the Maui DWS WTF at Māhinahina. Maui DWS currently has an agreement for the transmission of up to 2.5 mgd of water from MLP, but that contract expires in 2020. From 2015 to 2019, Māhinahina WTF treated a mean (±standard deviation) of 1.70 (±0.28) mgd of water received from Honokōhau Stream via Honokōhau Ditch, with a maximum daily production of 2.5 mgd.

Figure 6. Current land use and service area of non-potable water from the Honokōhau Ditch in the Kapalua area of Maui.



Water Needs of The Department of Hawaiian Home Lands

The reservation and use of water by the Department of Hawaiian Home Lands (DHHL) is a public trust use. The Honokōwai unit of DHHL's West Maui Regional Plan incorporates 780 acres, of which approximately 270 acres are south of Honokōwai Gulch and 510 acres are north of Honokōwai Gulch. The 2017 State Water Projects Plan for DHHL identified 2.1 mgd of non-potable use for Honokōwai in the West Maui Regional Plan. The DHHL West Maui Regional Plan is currently being revised, but it is expected that at least this much will be needed for non-potable needs. This availability of water could be doubled to 4.2 mgd of R1 water if the county blended at 50:50 R1 water with surface water from Honokōhau Ditch.

ASSESSMENT SUMMARY: HONOLUA HYDROLOGIC UNIT

Hydrology

The Honolua hydrologic unit lacks high elevation dike-impounded groundwater. As a result, the stream naturally runs dry during periods of extremely low rainfall. Based on partial-record

gaging station measurements, estimated median (Q_{50}) and low (Q_{90}) flow statistics for Honolua Stream above the intake for Honokōhau Ditch are 2.46 mgd and 0.00 mgd, respectively. Using two seepage runs, USGS estimated seepage loss below diversion 769 on Honolua Stream to be between 0.17 mgd per mile and 0.54 mgd per mile. Based on these measurements and a CWRM continuous-record gaging station at Honoapi'ilani Highway, mauka to makai flow does not occur naturally approximately 20% of the time.

Maintenance of Fish and Wildlife Habitat
In 2005, diversion 769 on Honolua Stream was inactivated, and all flow returned to the stream past Honokōhau Ditch. However, even with full restoration of surface water, Honolua Stream does not flow to the ocean 100% of the time. As a result, the stream does not support native aquatic biota in the lower reaches. Immediately below the diversion and upstream of diversion 769, the stream flows nearly 100% of the time and supports many native biota with pool refugia providing habitat during days with zero flow. The stream also supports native damselfly species (*Magdalagrion sp*) including the endemic *M. pacificum*. Stream surveys conducted in 2019, verified the utilization of upstream and downstream habitat by native aquatic species.

Outdoor Recreational Activities
The Hawaii Stream Assessment classified the recreational resources of Honolua as "limited" with the lowest rank possible. There are some hiking and scenic views available in the lowest reaches and at the coast. Honolua Bay offers snorkeling, diving, and surfing.

Maintenance of Ecosystems
The Hawaii Stream Assessment determined that the riparian resources of Honolua did not deserve to be a candidate for protection. Much of the riparian environment is dominated by non-native trees and shrubs, and pigs commonly damage the soil in lower elevations. There are efforts to restore native species and control invasive species in the portion of Honolua within the Pu'u Kukui Watershed Preserve.

Aesthetic
There is aesthetic value in the lowest reaches of Honolua Stream, where residents and the public interact with the stream.

Maintenance of Water Quality
Honolua Stream is classified by the Department of Health as Class 1b inland waters in the upper elevations and Class 2 inland waters in the lower elevations. It does not appear on the 2014 List of Impaired Waters in Hawaii, Clean Water Act §303(d), although there was insufficient data to support any conclusions. The Honolua hydrologic unit is part of the West Maui Ridge2Reef initiative in which multiple agency and stakeholder organizations are utilizing an all-encompassing approach to address land-based sources of pollution affecting nearby coral reef ecosystems. The initiative is working on reducing legacy sediment from historic agricultural practices that is carried in runoff into streams and out to the ocean.

Conveyance of Irrigation and Domestic Water Supplies
Honolua Stream is not used for the conveyance of irrigation or domestic water supplies.

Protection of Traditional and Customary Hawaiian Rights

There is partial coverage of archeological surveys, with scattered density, and moderate sensitivity in Honolua. There are examples of pre-contact culture with important and culturally noteworthy sites and historic features (e.g., auwai, terracing) associated with the stream both above and below diversion 769. Below the diversion there are registered uses which claim *kalo* cultivation. The cultural resources in Honolua were ranked as outstanding by the Hawaii Stream Assessment; however, Honolua was considered a religious center and not the primary *kalo* producing region compared to Honokōhau.

ASSESSMENT SUMMARY: HONOKŌHAU HYDROLOGIC UNIT

Hydrology
Stream flow in the Honokōhau hydrologic unit is supported by high elevation dike-impounded groundwater. The USGS has maintains a continuous-record gaging station (station 16620000) at an elevation of 875 feet with median (Q_{50}) and low (Q_{90}) flow statistics of 15.5 mgd and 8.4 mgd, respectively. Median base flow at this station is estimated to be 11.6 mgd. Two development tunnels and a spring augment surface flow between USGS 16620000 and Aotaki Dam (Intake #1 on Honokohau Ditch), providing an additional Q_{50} and Q_{90} flow of 3.4 mgd and 2.3 mgd, respectively. Using seepage runs, USGS estimated a gain in surface flow from an elevation of 600 ft to an elevation of 340 ft at McDonald's Dam of at least 1.4 mgd. Since December 2018, CWRM has maintained a continuous-record gaging station at McDonald's Dam to monitor current flow conditions at this elevation, with Q_{50} and Q_{90} flow duration statistics of 18.3 mgd and 12.6 mgd, respectively. Mauka to makai flow occurs 100% of the time.

Maintenance of Fish and Wildlife Habitat
In 2005, MLP initiated a release of 1.5 cfs (1.0 mgd) of stream water through Aotaki Dam (at Aotaki Gate) to supply a wetted pathway that supports habitat for migratory native biota. This release combined with a release of water at Taro Gate from Honokōhau Ditch supplied water for downstream uses. As a result, new recruits were observed above the diversion. In 2018, flash floods from hurricanes Olivia and Lane carved a new channel around Aotaki Dam and a portion of Honokōhau Stream continues to bypass the original diverted channel. Thus, there is now much more connectivity to support native aquatic biota, that there has been since the construction of Aotaki Dam. The Hawaii Stream Assessment ranked the aquatic resources of Honokōhau as "outstanding" with three of the most important native species observed (*o'opu 'alamo'o, o'opu nakea, o'opu nopili*). In 2019, additional stream surveys verified the utilization of upstream and downstream habitat by these species.

Outdoor Recreational Activities
The Hawai'i Stream Assessment classified the recreational resources of Honokōhau as "substantial". There are hiking and swimming recreational opportunities in the lower elevations, with many families living in the valley.

Maintenance of Ecosystems
The riparian resources of Honokōhau are dominated by detrimental plants (i.e., invasive, introduced) and only 30% of the riparian vegetation was native in the lower reaches. Invasive pigs damage the watershed in the lower reaches. There are efforts to restore native species and control invasive species in the portion of Honokōhau within the Pu'u Kukui Watershed Preserve.

Aesthetic
Honokōhau Waterfall is located at a high elevation above any diversions and is one of the top helicopter tour destinations on Maui. The stream provides aesthetic value for residents living in the valley.

Maintenance of Water Quality
Honokōhau Stream is classified by the Department of Health as Class 1b inland waters in the upper elevations and Class 2 inland waters in the lower elevations. It does not appear on the 2014 List of Impaired Waters in Hawaii, Clean Water Act §303(d), although there was insufficient data to support any conclusions.

Conveyance of Irrigation and Domestic Water Supplies
Honokōhau Stream is not used for the conveyance of irrigation water. However, many homes rely on the stream for domestic uses.

Protection of Traditional and Customary Hawaiian Rights
Honokōhau Valley has one of the largest concentrations of historic *lo'i* in Hawai'i and cultural resources were ranked as "outstanding" by the Hawaii Stream Assessment. While there is low survey coverage of archeological sites in Honokōhau, there is high predictability and moderate density of pre-contact or early contact sites which contain important and culturally noteworthy information. There are 5.15 acres of identified *kuleana* parcels in the valley (estimated demand of 1.11 mgd). Currently, there are approximately 3.5 acres of active *lo'i* (estimated demand of 0.75 mgd) but as much as 10 acres could be in cultivation with sufficient stream flow (estimated demand of 2.13 mgd).

Figure 7. A) Diversion 769 on Honolua Stream from right bank before 2018 storm damage; B) Diversion 769 from right bank after 2018 storm damage; C) Intake at diversion 769 before 2018 storm damage; D) Intake at diversion 769 after storm damage; E) upstream view of Honolua Stream before 2018 storm damage; F) upstream view of Honolua Stream after 2018 storm damage; G) O'opu in Honolua Stream above diversion 769; H) Honokohau Ditch crossing at Honolua Stream.

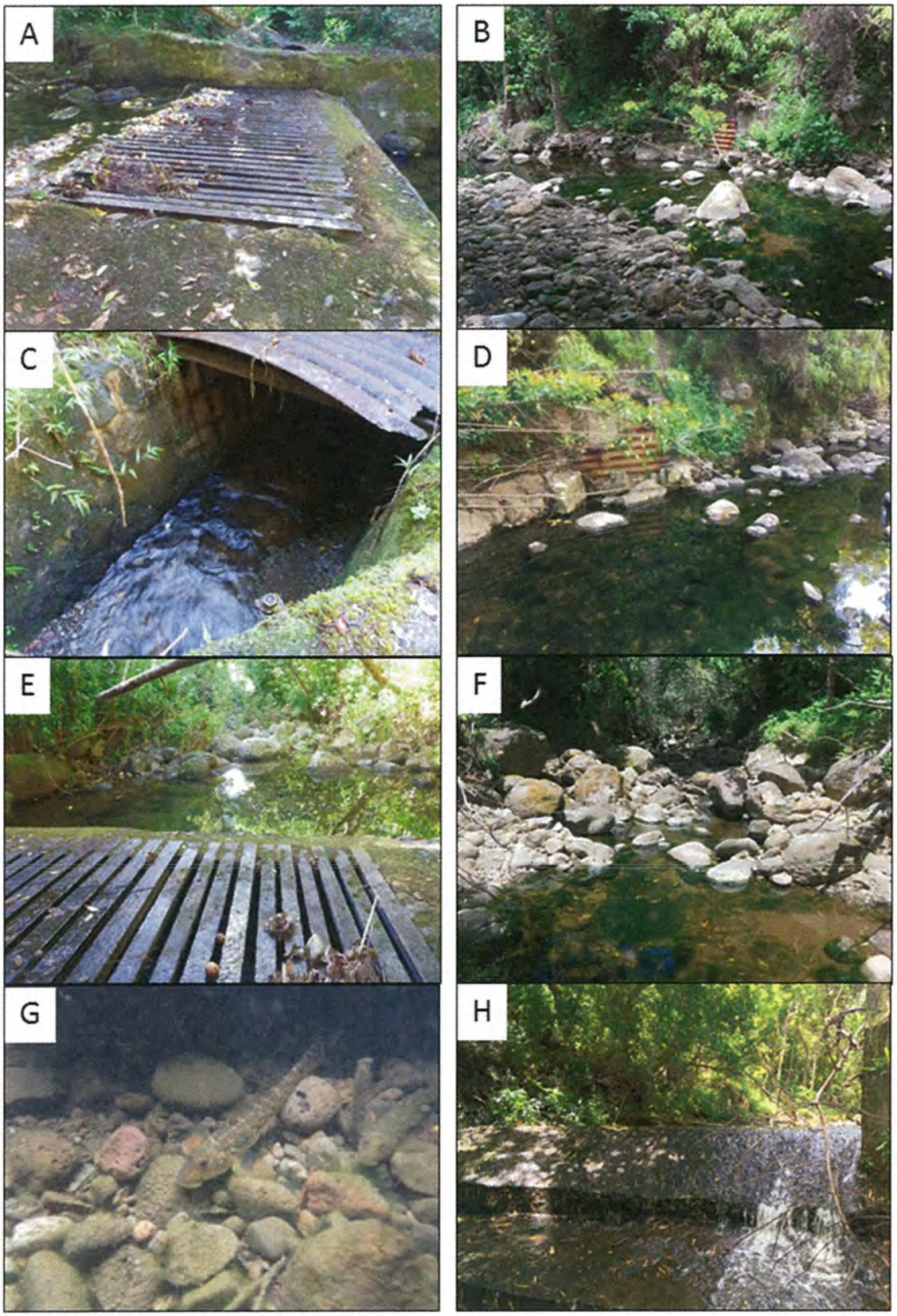


Figure 8. A) Diversion 770 on Honokōhau Stream from left bank; B) Intake at diversion 770 on left bank; C) upstream view of Honokōhau Stream following tropical storm Olivia; D) new channel along the right bank bypassing diversion 770; E) diversion 770 from right bank before Olivia; F) lo'i kalo in Honokōhau Valley; G) McDonald's Dam on Honokōhau Stream; H) unregistered auwai on left bank in Honokōhau Valley.

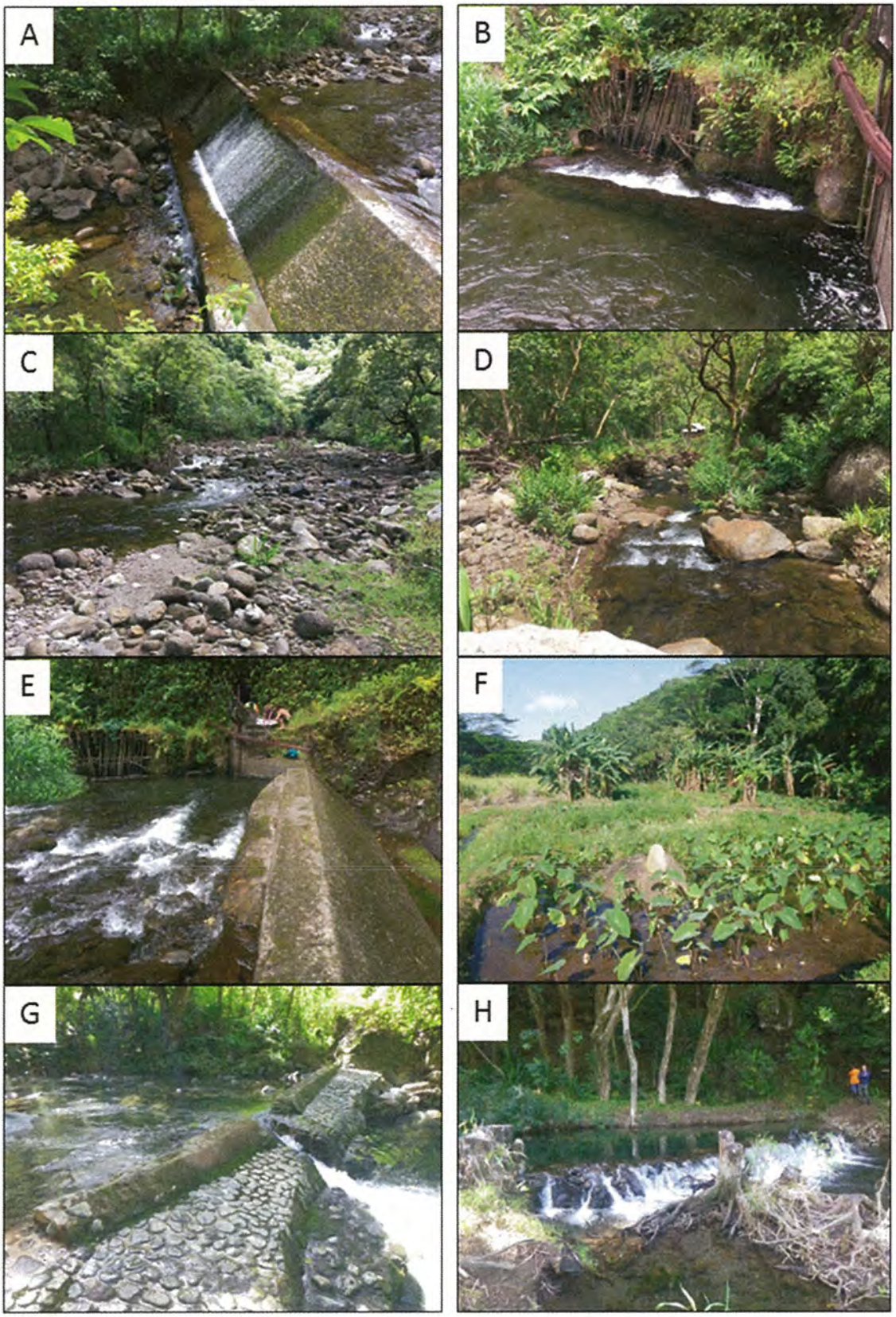
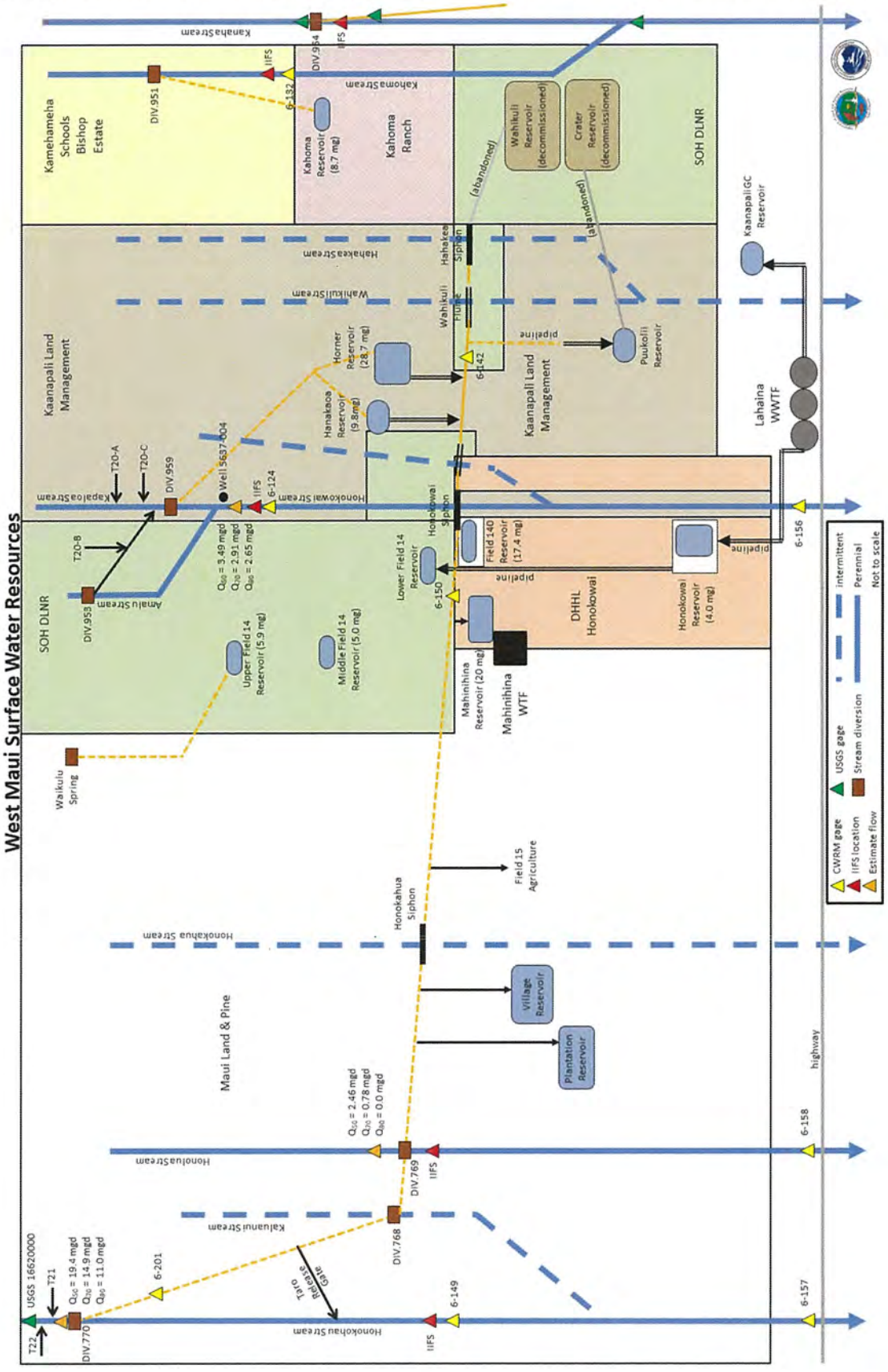


Figure 8: Simplified schematic of streams, ditches, pipelines, reservoirs, and tunnels in West Maui from Kahoma to Honokōhau.



FINDINGS OF FACT: HONOLUA HYDROLOGIC UNIT

1. The Honolua watershed is unique among the West Maui watersheds in that it is shorter in length, shallower in depth, and dominated by Honolua Volcanics and not Wailuku Volcanics, resulting in a lack of incised dike structures that would contribute to surface flow.

2. The estimated low-flow duration values for Honolua Stream at Diversion 769 are a median (Q_{50}) flow of 2.46 mgd and a Q_{90} flow of 0.00 mgd.

3. Honolua Stream is expected to flow mauka to makai naturally only 80% of the time.

4. Honolua Stream supports a high density of native aquatic species upstream and immediately downstream of the Diversion 769

5. Since 2006, Diversion 769 on Honolua Stream has been inactive and was destroyed by hurricanes Olivia and Lane.

FINDINGS OF FACT: HONOKŌHAU HYDROLOGIC UNIT

1. The estimated flow duration values for Honokōhau Stream at USGS 16620000 are a median (Q_{50}) flow of 16.0 mgd, a Q_{90} flow of 8.7 mgd, a BFQ_{50} of 11.2 mgd, and 64% of BFQ_{50} equal to 7.4 mgd.

2. Honokōhau Stream gains surface flow from two development tunnels and a spring between USGS 16620000 at an elevation of 900 feet and the Diversion 770 at an elevation of 825 feet; the magnitude of gain has a Q_{50} of 3.4 mgd and a Q_{90} of 2.3 mgd.

3. The total water available at Aotaki Weir at an elevation of 825 feet is estimated to have a Q_{50} flow of 19.4 mgd and a Q_{90} flow of 11.0 mgd.

4. Honokohau Stream gains approximately 1.4 mgd between Aotaki Weir at an elevation of 825 feet and McDonald's Dam at an elevation of 340 feet.

5. Diversion 770 at Aotaki Weir (Honokohau Ditch Intake #1) was designed to remove 100% of the flow in Honokōhau Stream at the 825ft elevation up to the Q_{10} magnitude flow (~55 mgd).

6. Honokōhau Stream is expected to flow mauka to makai naturally 100% of the time.

7. The Hawaii Stream Assessment rated Honokōhau Stream as having substantial recreational value, outstanding cultural resources, and outstanding habitat for freshwater biota.

8. There are at least 50 acres of potential *lo'i kalo* in Honokōhau Valley with approximately 3.5 acres in use as well as many other domestic needs that are met with surface water withdrawn from Honokōhau Stream.

9. The base flow of the stream is adequate to maintain a healthy aquatic ecosystem, aesthetic values, water quality, recreational uses, and traditional and customary practices.

10. Public trust uses of non-instream water include the Department of Hawaiian Home Lands (2.1 mgd) to meet the non-potable needs of future homestead lots and the Maui DWS (2.5 mgd) to meet the domestic water demands in the Napili-Lahaina service area.

11. Hurricanes Olivia and Lane generated flash flooding conditions which damaged the intake at Diversion 770, making the intake inoperable.

12. Diversion 770 currently removes water in excess of existing non-instream uses during moderate to high flow conditions.

13. Diversion 768 on Kaluanui Stream has been inactive for many years and historically contributed very little to the flow in Honokōhau Ditch.

14. Water in excess of 4.0 mgd that is removed from Honokōhau Stream, but not used, is wasted.

RECOMMENDATIONS

HONOLUA HYDROLOGIC UNIT

Honolua Stream

PROPOSED ACTION: INTERIM IFS

- Staff recommends full restoration be established for Honolua Stream below the Honokōhau Ditch diversion to maintain the habitat immediately downstream of the diversion.

IMPLEMENTATION

- There is no longer a functional diversion at Honokōhau Ditch from Honolua Stream, so the interim IFS will take effect immediately.
- Within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon the diversion.

MONITORING

- Staff shall continue to monitor streamflow by maintaining a stream gaging station on Honolua Stream or coordinating with USGS as needed.

HONOKŌHAU HYDROLOGIC UNIT

Kaluanui Stream

PROPOSED ACTION: INTERIM IFS

- Staff recommends full restoration be established for Kaluanui Stream below the Honokōhau Ditch diversion.

IMPLEMENTATION

- Within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon the diversion.

Honokōhau Stream

PROPOSED ACTION: INTERIM IFS

- To protect instream uses and non-instream public trust uses, staff recommends that an interim IFS be established in two phases for Honokōhau Stream:

Phase One

The interim IFS on Honokōhau Stream at McDonald's Dam (at the 340 foot elevation), shall be a flow of 8.6 mgd. The interim IFS represents the restoration of 64% of median base flow (BFQ_{50}) as estimated at USGS 16620000 (7.4 mgd), plus the additional 2.3 mgd of groundwater gains between USGS 16620000 and Aotaki Weir and 1.4 mgd of groundwater gains between Aotaki Weir and McDonald's Dam minus 2.5 mgd for the Maui DWS. The interim IFS is expected to be in excess of the water needs to support the existing 3.5 acres of *lo'i* as well as future acreage while protecting aquatic biota, recreation, and domestic uses at all elevations, and ensuring sufficient water to meet traditional and customary practices 100% of the time in Honokōhau Valley. MLP is required to meet the interim IFS 100% of the time. There should also be adequate ditch flow to meet Maui DWS needs of 2.5 mgd at the Māhinahina WTF 100% of the time. It is understood that during extreme drought ($< Q_{90}$; < 11.0 mgd at Aotaki Weir), 100% of the off-stream needs of non-public trust uses may not be met.

Phase Two

The interim IFS on Honokōhau Stream at McDonald's Dam (at the 340 foot elevation), shall be a variable interim IFS. The interim IFS will be the restoration of 50% of total flow at USGS 16620000 plus 2.4 mgd in groundwater gained between USGS 16620000 and McDonald's Dam. The 2.4 mgd is 50% of the estimated 4.8 mgd in total groundwater gain between USGS 16620000 and McDonald's Dam. The interim IFS is expected to support all instream values and Honokōhau Valley domestic uses while providing for non-instream public trust uses (Domestic and DHHL). MLP is required to meet the interim IFS 100% of the time. There should also be adequate ditch flow to meet Maui DWS needs of 2.5 mgd at the Māhinahina WTF 100% of the time. With 2.1 mgd of non-potable agricultural water for DHHL, Maui DEM can blend 2.1 mgd of R1 water from the Lahaina WWTF at 50:50 to make available 4.2 mgd of non-potable water to meet the agricultural needs of DHHL and other agricultural uses in the Lahaina Region. It is understood that during extreme drought ($< Q_{90}$; < 11.0 mgd at Aotaki Weir), 100% of the off-stream needs of non-public trust uses may not be met.

PROPOSED ACTION: SYSTEM MODIFICATIONS

- Due to the deteriorated state of the Honokōhau Ditch intake at Aotaki Weir on Honokōhau Stream (Diversion 770) and associated infrastructure, the Commission is requiring that MLP:

1. Replace the existing damaged intake with one that can be remotely operated; and

2. Provide real-time metering of each distribution point from the Honokōhau ditch and provide the real-time data to CWRM.

IMPLEMENTATION

- Phase One Interim IFS will be implemented within 30 days of Commission action.
- 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.
- Phase Two will be implemented within three years of Commission action or following completion of upgrades to Diversion 770, whatever is earlier; with the exception that when DHHL needs non-potable water, MLP will provide up to 2.1 mgd. The 2.1 mgd of water for DHHL will remain in the stream during Phase Two until such time as DHHL has a need for non-potable water.
- The variable interim IFS will have to be met by remotely adjusting the intake as needed to meet the interim IFS and public trust uses.
- Within 180 days of Commission action, MLP will submit a plan, in consultation with Maui DWS, that includes a timeline to replace Honokahua siphon.
- Within 180 days of Commission action, MLP will submit a plan to upgrade the monitoring of uses from Honokōhau Ditch.
- Staff shall seek to enforce the provisions of the State Water Code should any unauthorized, non-registered or non-permitted diversions be discovered in the course of its fieldwork.
- Staff recommends that all owners of unregistered diversion works contact staff to file the necessary applications to seek compliance with all permitting requirements set forth by the Code.

MONITORING

- While staff relied on USGS seepage run measurements to evaluate stream gains and losses within each stream channel, measurements were done during the 1995-1997 (Honokōhau) or 2011-2013 (Honolua) periods. Additional measurements at periodic intervals following restoration as recommended by the USGS will improve the evaluation of the hydrologic consequences of stream restoration.
- Continued funding to support real-time gaging of Honokōhau Stream and ditch system to monitor the availability of water for multiple public trust purposes.

ENFORCEMENT

- Pursuant to HRS § 174C-15, the Commission recommends that a violation of the interim IFS be defined as when the mean daily flow measured or monitored in Honokōhau Stream at McDonald'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. Real-time interim IFS monitoring and mean daily flow calculations will be provided by the Commission through a publicly available cloud-based database. Real-time flow in Honokōhau Ditch at Adit 6 will also be provided by the Commission through this database.

EVALUATION

- Within five years from the date of Commission action, staff shall report to the Commission on the progress of implementing the interim IFS and the impacts of the interim IFS upon instream and non-instream uses.
- Based on existing hydrological data, current uses, proposed interim IFS values, and future public trust uses, estimates of water availability to meet non-instream, non-public trust uses are summarized for various flow values in Table 8.
- Staff shall assess the implementation of these strategies on an as-needed basis, as may be necessary upon consultation with the affected parties.

Table 8. Predicted mean daily flow (mdf) and low-flow duration exceedance values (in million gallons per day, mgd) for flow above Diversion 770 at Aotaki Weir and available water for non-instream uses from Honokōhau Stream in Phase One and Phase Two of the proposed interim IFS values. Note: some discrepancy due to rounding

Phase One	**Water Use**	**mdf**	**Q_{50}**	**Q_{70}**	**Q_{90}**
flow at USGS 1662000	instream	22.6	16.0	12.1	8.7
groundwater gains	instream	3.4	3.4	2.8	2.3
available above DIV 770	instream	26.0	19.4	14.9	11.0
groundwater gains	instream	1.4	1.4	1.4	1.4
interim IFS at McDonald's Dam	instream	**8.6**	**8.6**	**8.6**	**8.6**
amount available off stream	non-instream	18.8	12.2	7.7	3.8
Uses met					
Maui DWS domestic water supply		2.5	2.5	2.5	2.5
DHHL agriculture water demand		0.0	0.0	0.0	0.0
MLP non-instream uses		2.1	2.1	2.1	2.1
total off-stream demand:		4.6	4.6	4.6	4.6
total off-stream demand met:		4.6	4.6	4.6	3.8
unmet demand:		0.0	0.0	0.0	0.8
Phase Two		**mdf**	**Q_{50}**	**Q_{70}**	**Q_{90}**
flow at USGS 1662000	instream	22.6	16.0	12.1	8.7
groundwater gains	instream	3.4	3.4	2.8	2.3
available above DIV 770	instream	26.0	19.4	14.9	11.0
groundwater gains	instream	1.4	1.4	1.4	1.4
interim IFS at McDonald's Dam	instream	**13.7**	**10.4**	**8.5**	**6.8**
amount available off stream	non-instream	16.0	12.0	9.1	6.5
Uses met					
Maui DWS domestic water supply		2.5	2.5	2.5	2.5
DHHL agriculture water demand		2.1	2.1	2.1	2.1
MLP non-instream uses		5.6	5.6	5.6	5.6
total off-stream demand:		10.2	10.2	10.2	10.2
total off-stream demand met:		10.2	10.2	7.9	5.7
unmet demand:		0.0	0.0	2.4	4.6

[1]assumes DDHL demand only during Phase Two

FORMAL COMPLAINT

- The interim IFS proposed will protect instream public trust uses including water in its natural state, domestic uses, and water for traditional and customary practices in the Honokōhau and Honolua hydrologic units while providing for non-instream public trust uses of water. These interim IFS also provide for off-stream uses of water that are reasonable and beneficial uses in the public interest, including making water available for agriculture and providing a source of water to be blended with the available R1 recycled water, therefore helping to protect nearshore coral reef ecosystems.
- The actions proposed in this submittal will improve instream flows, upgrade the infrastructure to improve the management of the irrigation system and provide protections for public trust uses of water.
- Commission actions to address other portions of the complaint related to waste will be addressed by a future Commission action following additional research.

Respectfully submitted,

M. KALEO MANUEL
Deputy Director

Note: Exhibits 1 to 3 are available from the Commission website at https://dlnr.hawaii.gov/cwrm/surfacewater/ifs/westmaui3/

Exhibit 1	Instream Flow Standard Assessment Report for Honolua Hydrologic Unit 6013, PR-2019-02
Exhibit 2	Instream Flow Standard Assessment Report for Honokōhau Hydrologic Unit 6014, PR-2019-03
Exhibit 3	Compilation of Public Review Comments, PR-2019-04
Exhibit 4	CDR.5095.6 Complaint/Dispute Resolution Filing Form, Ka Malu o Kahalawai & West Maui Preservation Association, 4/23/2019
Exhibit 5	CDR.5095.6 Complaint/Dispute Resolution Filing Form, Maui Land and Pineapple Company, Inc, 10/15/2019

APPROVED FOR SUBMITTAL:

SUZANNE CASE
Chairperson

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

COMPLAINT / DISPUTE RESOLUTION FILING FORM

Instructions: Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit http://dlnr.hawaii.gov/cwrm/..

For Official Use Only:
RECEIVED
2019 APR 23 PM 12:14
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
Complaint File No: C

1. Name: Ka Malu o Kahalawai & West Maui Preservation Association Date: 4/23/2019

Address: c/o Law Office of Lance D. Collins
P.O. Box 179336, Honolulu, HI 96817

Daytime Phone No.: (808) 243-9292 Fax No.

2. Location of the violation or water problem: Water diverted from Honokōhau stream overflows the Honokōhau ditch in areas extending south to Wahikuli and makai to Hanakao'o.

Tax Map Key: (2) 4-5-021:005, 4-4-002:012; 4-4-002:013; 4-4-002:014; 4-4-005:035; 4-6-018:011, 4-4-004:013; and others.

Landowner's Name: Dep't of Land and Natural Resources, Maui Land & Pine, Kaanapali Land Mgmt Corp. (lessee)

Landowner's Address: DLNR: 1151 Punchbowl St., Honolulu, HI 96813
MLP: 200 Village Rd, Lahaina, HI 96761

Landowner's Phone No.: DLNR: (808) 587-0400
MLP: (808) 665-5480

3. The party I have a complaint about or dispute with is: (if more than one party, please attach additional sheets)

Name: Maui Land & Pine Company, Inc. (MLP); Kapalua Water Company (KWC); and Kaanapali Land Mgmt Corp. (KLMC)

Address: KLMC: (Gary Nickele), 275 Lahainaluna Road, Lahaina Hawai'i 96761
KWC: (Tim Esaki, CFO) 200 Village Rd, Lahaina, HI 96761/ tesaki@kapalua.com
MLP: (Warren Haruki, Tim Esaki, P. Subrata) 200 Village Rd, Lahaina, HI 96761

Phone No.: KLMC: (808) 661-9652
KWC: (808) 681-9311
MLP (808) 665-5480

If the party is not the landowner listed in Section 2 above, please describe the party's relationship to the TMK parcel described in Section 2.

The intake from Honokōhau stream into Honokōhau ditch is located on MLP lands. Kapalua Water Company (KWC) is a wholly owned subsidiary of MLP. Upon information and belief, Aqua Engineers, Inc. operates the KWC and took over supervisory responsibility for Honokōhau and Honolua ditch management. MLP is diverting water from Honokōhau stream and into the Honolua and Honokōhau ditcesh, which runs across MLP lands and lands held by other entities, including KLMC.
KLMC holds a revocable permit from DLNR to use lands underlying the Honokōhau ditch at several locations of the water wasting practices, running south towards Lahaina. KLMC has sought to obtain a long term lease for these lands.

CDR-FILE Form (02/28/2007)

FILE ID: CDR.5095.6

EXHIBIT 4

4. Describe the complaint or reason for the dispute:
(Attach a sketch or photograph if that will help explain the problem.)

See Addendum to Complaint/Dispute Resolution Form, Response to Question No. 4.

5. Describe how your water usage or water rights are specifically affected by the other party, if at all:

Ka Malu o Kahalawai members include kalo farmers who farm on lands adjacent to Honokōhau stream and who require the water that is otherwise diverted into the Honokōhau ditch. For many years, these members have sought restoration of Honokōhau stream water to support traditional lo'i kalo growing.

Members also include those who conduct traditional and customary practices of fishing, surfing, canoe paddling, and diving in nearshore areas where the wasted water meets the ocean. The wasted water is warmer and its periodic intrusion may interfere with reef and other nearshore ecosystems and water quality, both of which are necessary for cultural resources for members' traditional and customary practices and recreation.

West Maui Preservation Association also has members who conduct traditional and customary practices that depend on Honokōhau stream water and healthy nearshore coastal resources along West Maui's coasts.

6. Date the problem was first noticed: Several decades ago, with several large wasting events observed in late 2018.

7. If this complaint or dispute is related to a water source, was the water source previously declared with the Commission on Water Resource Management?

☒ Yes ☐ No ☐ Don't Know

If yes, what was the name and tax map key of the source?

Honokōhau ditch TMKs: (2) 4-4-002:012; (2) 4-4-002:013; (2) 4-4-002:014; (2) 4-4-005:035; (2) 4-5-021:005; (2) 4-6-018:011, and others.
MLP Honokōhau ditch intake: (2) 4-1-001:017
Honokōhau Taro Gate: (2) 4-1-001:009

8. Have you had any communication with the party/parties described in Section 3 above?

☒ Yes ☐ No

If yes, list the communications and dates: (Attach copies if written communications were made)

See Addendum to Complaint/Dispute Resolution Form, Response to Question No. 8.

9. Have you sought resolution of this matter with any other entity?
(e.g., government agency, judicial body, or private entity)

Yes, each of the communications listed under Response to Question No. 8 constituted attempts to have the water wasting stopped.

If so, with whom and what was the outcome?
(Please provide copies of any documentation of this process)

No responses have been forthcoming. Please see responses to Response Question No. 8.

10. Describe what you believe a successful and fair remedy might be:

Petitioners seek to prevent wastage by restoring to Honokōhau stream surface water in amounts equal to that wasted. Petitioners seek to require upgrades to MLP/KWC's diversion intake works from Honokōhau stream to Honokōhau/ Honolua ditch to better regulate the amounts removed from Honokōhau stream to avoid waste in areas including lands used by KLMC through which the Honokōhau ditch runs. Upgrades and better maintenance and regulation of the Taro Gate would also allow more water to be restored to Honokōhau stream, instead of contributing to wasting events in offstream areas, including agricultural fields further south towards Wahikuli. KLMC should be prevented from allowing ditch water to run into fields and roads adjoining the ditch. KLMC's wastage facilitates MLP/KWC's ability to ignore the need to upgrade its intake/ diversion works and better regulation and maintenance of the taro gate.

MLP/KWC's intake should be upgraded such that it can be closed during periods of high water flow. This may mean better monitoring so that the Aotaki gate can be closed during high flow (or during times that less water is needed in the Honokōhau ditch) and thereby result in that surface water remaining in the Honokōhau stream. Another solution might lie in investing in sealing the current diversion and installing a gate with remote control capacity (to avoid difficulties and inconvenience with accessing the intake). Petitioners note that Kamehameha Schools has installed a remote control valve to control gate above Kahoma stream that can be controlled via a computer.

I request that the Commission on Water Resource Management assist in resolving the matter described herein.

Signature

23 Apr 19

Date

Addendum to COMPLAINT / DISPUTE RESOLUTION FILING FORM

Response to Question No. 4: Describe the complaint or reason for the dispute.

Petitioners' reasons for the dispute.
Petitioners' members rely on Honokōhau stream water for lo'i kalo, other agriculture, and domestic purposes. Members have a long history of complaints against MLP's failure to properly regulate its diversion of Honokōhau stream waters into the Honolua/ Honokōhau ditch and, conversely, to return water to the stream via the Taro Gate, which is downstream from the Honokōhau ditch intake. Members have concerns about ecological impacts on cultural resources consequent to periodic flows of ditch water running through Hahakea/ Wahikuli gulches to the coast.

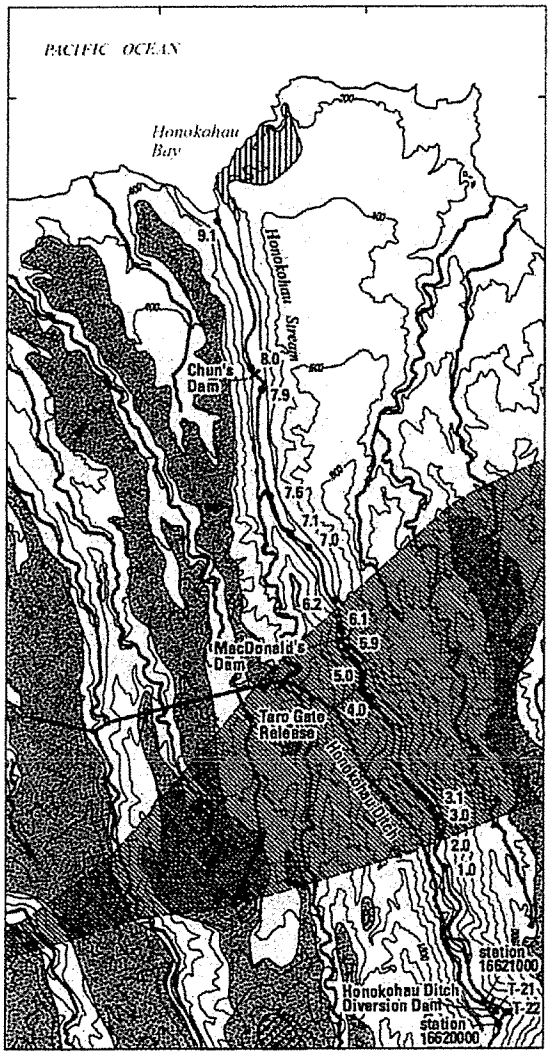


Fig. 1. Streamflow measurement sites and location of intake and Taro Gate. From Richard A. Fontaine, U.S. Geological Survey, "Availability and Distribution of Base Flow of Honokohau Stream, Island of Maui, Hawaii," Water-Resources Investigations Rpt. No. 03-4060, at 9 (Honolulu, 2003).

1

Wasting events

Diverted water is warmed while traveling through the Honokōhau ditch. For at least several decades, Petitioners observed periodic flows of warmed ditch water entering Hanakaoʻo and nearby coastal waters from Honokōwai stream, Hahakea gulch, and sometimes Honolua stream. The warmed water flows are observed several times a year and have been going on for decades.

In September 2018, Hurricane Olivia caused significant flooding and damage in Honokōhau valley. Thereafter, on October 5, 2018, Petitioners hiked to the intake and observed a new "stream" running around the diversion instead of remaining within Honokōhau stream. The Taro Gate was closed by excessive debris and therefore the extra water resulting from the storm went to the Honokōhau ditch, where it was spilled into fields and wasted.

On November 24, 2018, Wood emailed Roy Silva of Aqua Engineers, Inc., which is believed to be a managing entity for Honokōhau ditch, to make these ditch managers aware that Honokōhau stream was diminished while a new stream running around the Honokōhau diversion works had appeared.

On December 4, 2018, Petitioners observed water from Honokōhau ditch freely exiting the Honokōhau ditch through a gate and spilling into the fields and entering the Wahikuli Gulch at the northern end of the Wahikuli Flume. From there, the water spilled into agricultural fields and over cane haul roads into Wahikuli gulch. Also around this time, Petitioners observed water constantly flowing from Hahakea gulch (into which merges Wahikuli stream) into the ocean by Hanakaoʻo (Canoes beach). West Maui skies were clear and sunny when these wasted water flows were observed. *See* Fig. 2-6.

Fig. 2. Honokōhau ditch portion adjacent to Wahikuli flume. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

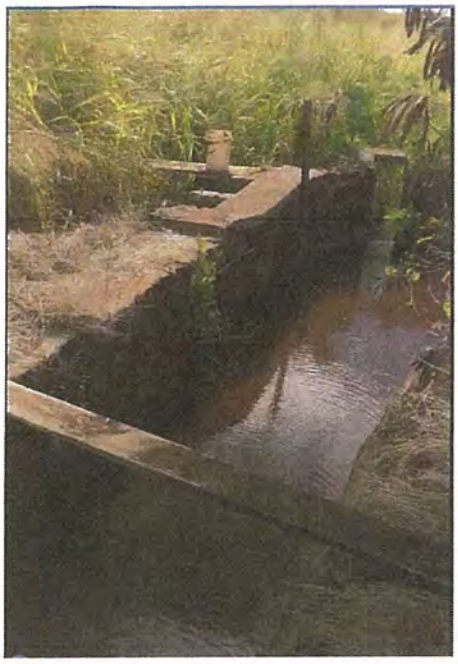


Fig. 3 (left) Water leaving Honokōhau ditch via Wahikuli flume. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 4 (right) Water from Wahikuli flume crossing cane haul road. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 5 (left) Water from fields makai of cane haul road flowing into Wahikuli gulch. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 6. Honokōhau stream water flowing from Hahakea/ Wahikuli gulch through Hanakao'o beach. Screenshot of video taken by Kai Keahi (approx. Dec. 9, 2018).

On or about December 9, 2018, Petitioner-member Kai Keahi observed that Honokōhau ditch water was flowing out to the ocean at Hanakao'o, At that time, Honokōhau stream was low - about ten inches to a foot lower than usual, and the Taro gate (installed for Honokōhau stream taro growers) was closed.

Also on December 9, 2018, Keahi called Roy Silva, who he believed to be working for MLP, to instruct him to restore water to Honokōhau stream instead of dumping into Wahikuli/ Hahakea gulches. Keahi was informed that water was being "turned off" at Mahinahina and Honokōwai, where several reservoirs exist, and pushed south towards Lahaina. Honokōhau ditch water was being dumped into fields near Wahikuli and Hahakea gulch and flowing to the ocean.

Response to Question No. 8: Have you had any communication with the party/parties described in Section 3 above?

Around ten years ago, Petitioner-member Kai Keahi called Jeffery Pearson of MLP. Keahi, Pearson, and Kimo Kapalehua discussed the issue of Honokōhau stream water being wasted from the Honokōhau ditch. MLP did not provide answers or plans for remediation.

In September 2018, Hurricane Olivia caused significant flooding and damage in Honokōhau valley. Prior to this time, the Honokōhau ditch system was reportedly managed by Steven Nikaido of Hoa ʻĀina Farm Services, LLC. However, Nikaido passed away roughly one week prior to Hurricane Olivia events and Hoa ʻĀina Farm Services has apparently transferred management of the ditch to Aqua Engineers.

On October 5, 2018, Petitioners noticed water wasting from Honokōhau stream. Petitioner-member Wili Wood contacted Paul Subrata from Kapalua Water Co. (which obtains water via Honokōhau tunnel) and Pōmaikaʻi Crozier, manager of the Puʻu Kukui Watershed partnership. Both referred Petitioners to Roy Silva of Aqua Engineers, Inc., who denied a contractual responsibility to "take care of the ditch," but also apparently coordinates use of the Honokōhau ditch waters. Silva stated he would open the taro gate to alleviate the low flow in Honokōhau stream by January 15, 2019. *See* Exh. 01 (Emails between Wili Wood, Petitioner-member, and Paulus Subrata, MLP (Oct. 2018)).

On November 24, 2018, Wood emailed Silva to make him aware that Honokōhau stream was diminished while a new stream running around the Honokōhau diversion works had formed. *See* Exh. 02 (Emails between Wili Wood, Petitioner-member, and Roy Silva, Aqua Engineers (Nov. 24, 2018 to Dec. 18, 2018).

On December 9, 2018, Petitioner Keahi called Roy Silva to complain about water dumping from Honokōhau ditch into Hahakea gulch.

On January 15, 2019, Wood received a phone call from Silva, who stated that the taro gate would not be opened until the end of February after the entire ditch system was cleaned from the intake in Honokōhau stream to the powerhouse siphon in Honokahua. That was the last Petitioners heard from Silva and no restoration of stream water has occurred.

Petitioners had also met and talked to Ayron Strauch of CWRM to discuss KLMC's proposal to lease lands underlying Honokōhau ditch and informed him of the location of water spillage in Kāʻanapali areas. After meeting with Strauch, Wood researched the proposed lease for Honokōhau water and identified the area where water was being wasted from Honokōhau ditch on a map. *See* Exh. 02 (map with water wasting location highlighted in red). Wood forwarded the highlighted map and other KLMC documents to Kapule Eubank, who has a home in Honokōhau valley. Strauch was installing a stream flow meter next to Eubank's home.

On or about February 10, 2019, Eubank shared Wood's map and papers with Strauch. Strauch confirmed with Eubank that water was being wasted from the ditch and shared Petitioners' concerns about long-term leasing to KLMC without first modifying the Honokōhau ditch system.

Strauch, however, noted that while he could make recommendations, he had restricted enforcement powers concerning proper water usage.

To the knowledge of petitioners, no further actions have been taken to remediate water wasting from the Honokōhau ditch or to upgrade diversion works at Honokōhau stream.

From: Paul Subrata <psubrata@mlpmaui.com>
Date: October 16, 2018 at 9:11:14 AM HST
To: Roy Silva <rsilva@aquaengineers.com>, "woodwili100@gmail.com" <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>
Subject: Fwd: Honokohau

Hi Wili, thank you for talking to me this morning. Cc'd on this email is Roy Silva whose team been working on the ditch as of late. His number is (808) 681-9311.

Hi Roy, I spoke to Wili Wood earlier and he was Stephen Nikaido eyes and ears up in Honokohau and have worked closely in the past. Wili and the community does farming in the area and would like to get updates on the situation at the intake. I'm providing you his contact information so we can keep in constant communication with him. His number is 808-870-0552 or 808-669-3038.

Thanks,

Paul
808-757-2666
Sent from my iPhone

Begin forwarded message:

From: Wili Wood <woodwili100@gmail.com>
Date: October 15, 2018 at 8:42:02 PM HST
To: psubrata@mlpmaui.com
Cc: Elle Cochran <ellekcochran@gmail.com>, Kekai Keahi <kekaikeahi@gmail.com>, Pomaikai Kaniaupio-Crozier <maunahalawai2@gmail.com>
Subject: Re: Honokohau

Aloha Paul,
Please see the message below I had forwarded to Pōmaika'i Crozier. He has put me in contact with you. Please let me know when you are able to meet. I look forward to your reply.

Mahalo Nui,
Wili Wood

On Thu, Oct 11, 2018 at 10:33 AM Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com> wrote:
Aloha mai e Council member Elle, Wili & Kekai
Mahalo for your email and raising your concerns, my role of taking care of Pu'u Kukui Watershed Preserve is to protect the native biodiversity up ma uka and keep that

EXHIBIT 01

natural native sponge intact which benefits water recharge and retention and ecosystem function as whole healthy. However, I have nothing to do with water transmission or ditch related issues. I am putting you in contact via this email with Paul Subrata who is in charge of water for ML&P. Aloha

From: ellekcochran@gmail.com <ellekcochran@gmail.com>
Sent: Tuesday, October 9, 2018 10:02 PM
To: Wili Wood <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>; kekaikeahi@gmail.com
Subject: Re: Honokohau

Per Jeff Pearson Chair for CWRM
MLP would need to get permit to do such work. Cwrm would allow it then.

Sent from my iPhone

On Oct 9, 2018, at 5:10 PM, Wili Wood <woodwili100@gmail.com> wrote:

Aloha Pomaika'i

As you are probably aware, the Honokohau water diversion has been compromised. A few others and I personally walked the stream on Friday October 5th to investigate debris in the upper valley and made it to the diversion. We found that the storm water from Olivia has cut a new stream right around the Honokohau diversion. Please see attached video. It is to the best of my knowledge that this can not be fixed by hand tools. Being that we are downstream users of this water source, we request to be notified of the plans in moving forward. Can you please put us in contact with the appropriate parties?

Mahalo nui for your time,
Wili Wood

Sent from my iPhone

Begin forwarded message:

EXHIBIT 01

From: Wili Wood <woodwili100@gmail.com>
Date: October 8, 2018 at 9:32:34 PM HST
To: Wili Wood <woodwili100@gmail.com>

<IMG_2330.MOV>

Sent from my iPhone

EXHIBIT 01

From: Roy Silva <rsilva@aquaengineers.com>
Date: December 18, 2018 at 6:53:05 AM HST
To: Wili Wood <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>, "ayron.m.strauch@hawaii.gov" <ayron.m.strauch@hawaii.gov>, Dean U <dean.d.uyeno@hawaii.gov>, Kekai Keahi <kekaikeahi@gmail.com>, Paul Subrata <psubrata@mlpmaui.com>
Subject: Re: Honokohau Stream Flow Issues Nov 2018

Morning,

What about tomorrow morning at 10:00 at our KWC office ?

Sent from my iPhone

On Dec 17, 2018, at 7:50 PM, Wili Wood <woodwili100@gmail.com> wrote:

Aloha Roy,
When is best for you? I can make myself available as needed. I look forward to meeting with you. Mahalo

Wili Wood

On Dec 17, 2018, at 1:50 PM, Roy Silva <rsilva@aquaengineers.com> wrote:

Aloha Wili,

When can we meet to discuss Honokohau ditch ?

Thanks

"The less we talk the more we hear"

Roy J Silva
Island Operations Manager
Aqua Engineers, Inc.
200 Village Rd, Lahaina HI 96761

Mobile: 808 - 681-9311
Email: rsilva@aquaengineers.com
<image001.png>

EXHIBIT 02

From: Pōmaika'i Kaniaupio-Crozier [mailto:pkaniaupio-crozier@kapalua.com]
Sent: Monday, December 17, 2018 11:14 AM
To: Wili Wood <woodwili100@gmail.com>
Cc: ayron.m.strauch@hawaii.gov; Dean U <dean.d.uyeno@hawaii.gov>; Kekai Keahi <kekaikeahi@gmail.com>; Roy Silva <rsilva@aquaengineers.com>; Paul Subrata <psubrata@mlpmaui.com>
Subject: Re: Honokohau Stream Flow Issues Nov 2018

Aloha e Wili
Mahalo for your hard work, observations and for reaching out. As mentioned in previous emails Paul Subrata of ML&P is the person in charge and has put Roy Silva of Aqua Engineering at the helm. Therefore, I am including them in this correspondence.
There have been on going efforts to mitigate the unprecedented damage in the aftermath from Tropical Storm Olivia and work is ongoing as you were present with CWRM in the reconnaissance.

After we spoke on Thursday, I flew into Honokohau with a crew to clear debris up ma uka and attempted to access taro gate but was unsuccessful due to time available and landslides along ditch trail. Please reach out to Paul and Roy to discuss or let me know if you need my assistance to set up a meeting.

The health of entire watersheds are a priority and mahalo for your support and all that you do to keep Honokohau ahupua'a intact. Aloha

---

From: Wili Wood <woodwili100@gmail.com>
Sent: Saturday, December 15, 2018 8:36 PM
To: Pōmaika'i Kaniaupio-Crozier
Cc: ayron.m.strauch@hawaii.gov; Dean U; Kekai Keahi
Subject: Fwd: Honokohau Stream Flow Issues Nov 2018

Aloha Pomaika'i
I want to thank you for answering my phone call this past Thursday to speak about the low flow of water we have been seeing in Honokohau stream since around mid November. We believe this is due to the taro gate being closed with debris. We would like to open a dialogue with the operator of this ditch system but are having a hard time finding the responsible party. The lack of adequate flow brings concerns regarding the health of the aquatic life and the maintaining of traditional and customary practices of downstream users. Mahalo for your time and I look forward to your reply.

---------- Forwarded message ---------
From: **Wili Wood** <woodwili100@gmail.com>

EXHIBIT 02

Date: Wed, Nov 28, 2018 at 9:24 PM
Subject: Fwd: Honokohau Stream Flow Issues Nov 2018
To: <psubrata@mlpmaui.com>
Cc: Kekai Keahi <kekaikeahi@gmail.com>, <pkaniaupio-crozier@kapalua.com>, <ayron.m.strauch@hawaii.gov>, Elle Cochran <ellekcochran@gmail.com>, <rsilva@aquaengineers.com>, Lance D. Collins, Ph.D <lawyer@maui.net>, <dean.d.uyeno@hawaii.gov>, <rebecca.r.alakai@hawaii.gov>, <tamara@tamarapaltin.com>, Skippy Hau <skippy.hau@hawaii.gov>, <kainoawilson@yahoo.com>

Aloha Paul,

I reached out to Roy Silva as you recommended. Please see email below. I also reached out to CWRM and we were told that currently MLP does not have an operator for the Honokohau diversion. The stream has been very low for two weeks and this is very concerning considering that a big majority of the stream flow is being dumped into the dry gulch of Mahinahina. I am requesting a meeting to discuss solutions to this issue moving forward. I look forward to your reply.

---------- Forwarded message ---------
From: **Wili Wood** <woodwili100@gmail.com>
Date: Sat, Nov 24, 2018 at 9:19 PM
Subject: Honokohau Stream Flow Issues Nov 2018
To: <rsilva@aquaengineers.com>

Aloha Roy,
As of last week, the water flow in the Honokohau stream has been diminished due to the new stream running around the Honokohau diversion.
Naturally this stream changes with each high water and there is now less flow being directed around the diversion and feeding the downstream users.

To correct this issue, we are asking that you implement Taro gate once again. If too much water is leaving the Honokohau water shed it can be regulated at Taro gate to make sure Honokohau stream users are not left with inadequate flow. This is also a good solution because when too much water leaves the valley, it simply overflows into the concrete channelized stream of Honokowai, preventing much-needed aquifer recharge.

Mahalo for taking the time to listen to our concerns and I look forward to your reply.

Sent from my iPhone

EXHIBIT 02

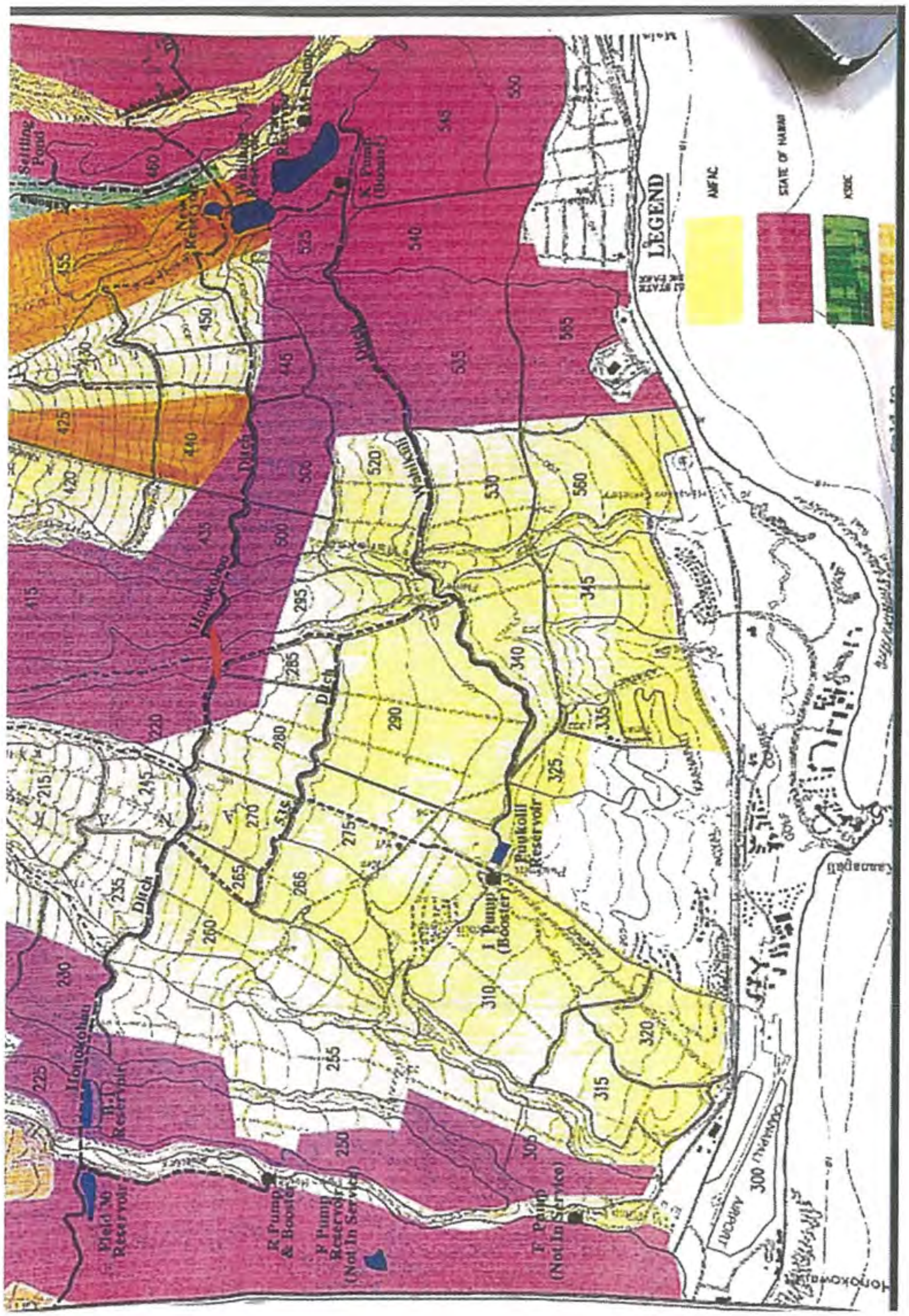

LEGEND
Ditch
Puukolii Reservoir
I Pump (Booster)
R Pump & Booster
Field 30 Reservoir
AIRPORT

EXHIBIT 03

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

COMPLAINT / DISPUTE RESOLUTION RESPONSE FORM

Instructions: Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit http://dlnr.hawaii.gov/cwrm/.

For Official Use Only:

Complaint File No: C

Please answer any applicable questions to the best of your knowledge. This is a standard form and some questions may not pertain to your specific situation.

1. Name: Tim T. Esaki Date: 10/17/19

   Address: 200 Village Road
   Lahaina, HI 96761

   Daytime Phone No.: (808) 665-5480 Fax No. (808) 665-0641

2. Were you aware of the problem prior to this complaint? ☐ Yes ☑ No

3 Tax Map Key:
If you are not the owner, please provide the landowner's information below.

Landowner's Name: Maui Land & Pineapple Company, Inc.

Landowner's Address: 200 Village Road, Lahaina, HI 96761

Landowner's Phone No.: (808) 665-5480

4. If this complaint or dispute is related to a water source on your property, was the water source previously declared with the Commission on Water Resource Management?

☑ Yes ☐ No ☐ Don't know

If yes, what is the name and tax map key of the source?

Honokohau Stream

TMK: 4-1-001-017

CDR-RESP Form (02/28/2007)

EXHIBIT 5

5. Attach a sketch or photograph that will give additional details of the situation described by the complainant.

6. Have you had any communication with the complainant(s)?

☐ Yes ☑ No

If yes, list the communications and dates: (Attach copies if written communications were made)

7. Do you know if resolution of this matter has been sought with any other entity? (e.g., government agency, judicial body, or private entity)

☐ Yes ☑ No ☐ Don't Know

If so, with whom and what was the outcome? Please provide copies of any documentation of this process.

8. Describe what you believe a successful and fair remedy might be:

MLP is in the process of repairing damage to intakes and the ditch from Hurricane Olivia in September 2018 and securing a maintenance contractor for the ditch.

I attest that the information given is accurate and complete, to the best of my knowledge.

Signature

10/17/19
Date

The Maui News

ML&P: Honokohau Stream ditch system repaired

The Maui News

Maui Land & Pineapple Co. reported the completion of repairs to the Honokohau Stream ditch system last week that followed complaints from area residents and a call for action by the state water commission.

ment Monday, said that the
ricanes Lane and Olivia in 2018.
300,000 to $400,000, company

Water from the ditch is used by the county and runs through its water treatment facility, Kapalua Water Co. and various residents and farmers for drinking, irrigation and fire suppression, the company said in a news release. Damage caused by the hurricanes resulted in irregular and inconsistent water availability due to the extensive flooding, which reduced flows and damaged a critical control gate, the company said.

As part of the restoration process, a full assessment of the ditch system was completed by ML&P engineers and contractors prior to commencing the repair effort in December, the company said. The first phase of the repair project focused on repairing the diversion gate, sluice gate, bridge, access roads and surrounding intake structures. This was completed in early 2020. The second phase of the repairs concentrated on clearing the ditch and siphons of blockages, landslide sediments, debris and fixing leaks in the system; that work was completed last week, the company said.

“The result is a renewed ditch system,” ML&P said. “The repaired areas are less susceptible to leaks, more accessible, and now provides consistent water availability to all of the users.”

ML&P has taken heat from area users and residents, who charge that the company was wasting water from Honokohau Stream. In fact, two groups, Ka Malu o Kahalawai and West Maui Preservation Association, comprising West Maui taro farmers, environmentalists and families, filed a complaint with the state water commission last spring over water shortages.

The complaint alleged that three companies — ML&P, its subsidiary Kapalua Water Co. and Kaanapali Land Management Corp. — were wasting water from Honokohau Stream, which is approximately 11 miles long, starts high in the West Maui Mountains and empties into Honokohau

On Nov. 20, the state Commission on Water Resource Management unanimously approved recommendations for ML&P to upgrade a damaged Honokohau Stream intake and other fixes meant to prevent water wasting.

Water commission staff reported nonstream uses of Honokohau Stream include 0.9 million gallons a day to Kapalua golf courses; 1 mgd to Kapalua resorts; 0.2 mgd for other uses such as agriculture, cemetery and Napili gardens irrigation; and 2.5 mgd for the county Department of Water Supply.

Maui Land & Pineapple Company, Inc.

August 20, 2020

Mr. M. Kaleo Manuel, Deputy Director
Commission on Water Resource Management
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Re: Maui Land & Pineapple Company, Inc. ("MLP") Update to Commission on Water Resource Management's ("The Commission / CWRM") December 4, 2019 Notice of Commission Action Letter

Dear Mr. Manuel:

We are writing this letter to provide you with an update on the action items CWRM listed on its December 4, 2019 letter which MLP was able to accomplish depite the challenges caused by the unprecedented COVID-19 situation. The table below summarizes the status of the 5 action items listed in the letter:

CWRM ACTION ITEMS	STATUS
1. Within 120 days of Commission action. MLP will submit a stream diversion works permit to formally abandon Diversion 769 at Honolua Stream.	**Done.** Permits submitted and accepted by CWRM staff on May 28, 2020 and requested the pictures of the diversions on June 5, 2020.
2. Within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon Diversion 768 at Kaluanui Stream.	**Done.** Stream diversion permit submitted to CWRM staff on May 28, 2020 and additional pictures on June 5, 2020.
3. Replace the existing damaged intake at Aotaki Weir on Honokōhau Stream (Diversion 770) with one that can be remotely operated. 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.	The repairs to the ditch system, including the Aotaki Weir and the Honokahua siphon, were completed by April 30, 2020 by Aqua Engineers. A Press Release announcing the completion of the repairs was issued on May 5, 2020 and a copy was previously provided to CWRM staff. On February 10, 2020, MLP engaged Akinaka & Associates, Ltd. ("Akinaka"), a consulting civil engineering and planning services firm based in Honolulu, to address all matters relating to whether it would be technically and economically feasible to install and maintain a remote automation system of the gate at Diversion 770. As Mr. Ken Kawahara, President of Akinaka, explained at the informal meeting with the CWRM staff on February 20, 2020, Akinaka believed that an automated remote control system at Diversion 770 is not feasible. With CWRM's understanding, he initiated the process of coordinating with MLP and CWRM staff to conduct another site visit downstream of Diversion 770 and the Taro Gate, located below Diversion 770, to assess other alternative options. The visit had to be postponed due to the COVID-19 situation. Since travel restrictions were lifted temporarily, Akinaka conducted a site visit on August 6, 2020. Akinaka will continue to work with CWRM staff to discuss alternate locations and options.

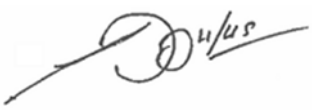
CWRM ACTION ITEMS	STATUS
4. Provide real-time metering of each distribution point from the Honokōhau ditch and provide the real-time data to CWRM. Within 180 days of Commission action, MLP will submit a plan to upgrade the monitoring of uses from Honokōhau Ditch.	Akinaka and Aqua Engineers are working with the CWRM staff to identify and install 3 new flow measurement devices to upgrade the monitoring of water uses from the Honokōhau Ditch. Due to COVID-19 restrictions, progress has been slow i.e. travel restrictions, supplies, etc. Since travel restrictions were lifted temporarily, Akinaka conducted a site visit on August 6, 2020. Akinaka will continue to work with CWRM on measurement options and make progress towards improvements.
5. Within 180 days of Commission action, MLP will submit a plan, in consultation with Maui DWS, that includes a timeline to replace Honokahua siphon.	Water delivery agreement between MLP, the County of Maui Department of Water Supply ("Water Department"), and the Pulelehua developer are in progress. The agreement includes, among other things, the cost sharing of major CAPEX items, such as fixing the siphons and other infrastructures of the ditch system. Aqua Engineers, MLP, and the Water Department do not believe a complete replacement of the Honokahua siphon is needed anymore since the recent ditch repair already addressed the primary water leak concern.

Lastly, while it was not set forth in the action items, MLP increased its efforts to communicate with the Honokōhau Valley residents. These meetings/communications included a site visit to their taro farms and irrigation systems – auwais – of certain Honokōhau Valley residents on February 8, 2020. The site visit was attended by the attorneys for the Honokōhau Valley residents, two MLP employees, and our attorneys.

MLP agreed that a second meeting between MLP and the Honokōhau Valley residents is needed to continue the discussions and was previously scheduled for March 30, 2020. However, because of the COVID-19 situation, the Emergency Proclamations, stay-at-home requirements, and inter-island travel restrictions, this scheduled meeting was postponed for the time being.

Please do not hesitate to call me if you have any questions or require further information. You can reach me at [redacted] or [redacted].

Sincerely,



Paulus Subrata
Vice President

TAKITANI AGARAN JORGENSEN & WILDMAN, LLLP

ANTHONY P. TAKITANI
GILBERT S.C. KEITH-AGARAN
DAVID M. JORGENSEN
JOSEPH L. WILDMAN

April 3, 2021

VIA EMAIL [redacted]

Mr. Kaleo L. Manuel, Deputy Director
Commission on Water Resource Management
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Re: Maui Land & Pineapple Company, Inc. Updates on Commission on Water Resource Management's December 4, 2019 Notice of Commission Action Letter.

Dear Mr. Manuel:

Our law firm represents Maui Land & Pineapple Company, Inc. ("MLP"). This provides you an update on certain action items required by the Commission on December 4, 2019 and making a request for revisions to certain of the action items. MLP requested an extension to complete certain action items on April 17, 2020 ("April 2020 Extension Request") due to the unprecedented COVID-19 situation and for MLP's consultants to prudently and efficiently consider and determine the appropriate course of action for some of the actions.

As set forth in its December 4, 2019 letter and based on subsequent informal discussions with CWRM staff to further clarify that letter, MLP's understanding is that the Commission directed MLP to implement the following action items:

Re: Honolua Hydrological Unit

1. Within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon Diversion 769 at Honolua Stream.

Re: Honokohau Hydrologic Unit

2. Within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon Diversion 768 at Kaluanui Stream.

3. Replace the existing damaged intake at Aotaki Weir on Honokohau Stream (Diversion 770) with one that can be remotely operated.

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

4. Provide real-time metering of each distribution point from the Honokohau ditch and provide the real-time date to CWRM.

- Within 180 days of Commission action, MLP will submit a plan to upgrade the monitoring of users from Honokohau Ditch.

5. Within 180 days of Commission action, MLP will submit a plan, in consultation with Maui DWS, that includes a timeline to replace Honokahua siphon.

Summary of Steps Taken on Action Items

Action Items 1 and 2: MLP timely submitted stream diversion work permit applications to formally abandon Diversion 769 and Diversion 768 to CWRM staff on March 17, 2020. The Commission approved the applications as Agenda Items B-1 and B-2 at its meeting on September 15, 2020. MLP subsequently removed the debris on the Honolua stream as requested by the Commission.

Action Item 3: MLP retained Akinaka & Associates, Ltd. ("Akinaka"), a consulting civil engineering and planning services firm based in Honolulu, to address all matters relating to complying with this item, including without limitation, determining whether it would be technically and economically feasible to install and maintain a remote automation system of the gate at Diversion 770. Since the November 19, 2019 CWRM meeting, MLP restored Diversion 770 to its pre-storm condition, working with Aqua Engineers, Inc. ("Aqua Engineers") to repair damage to the diversion caused by Hurricane Olivia in September 2018. Akinaka subsequently conducted a field visit to do initial assessment and feasibility.

As recounted in the April 2020 Extension Request, due to the COVID-19 situation, Akinaka was forced to delay subsequent site visits of Diversion 770 and Taro Gate (below Diversion 770) including assessing other alternative options in March 2020.

Based on Akinaka's observations, MLP believes that a remote operated control gate at Diversion 770, taking into account the need for power sources (whether solar or battery) and maintaining communications for data and communication transmission is not feasible for technical and economic reasons due to the location and the surrounding landscape. MLP would request that CWRM re-consider requiring Action Item 3.

Action Item 4: MLP installed the three monitoring gauges as directed by the CWRM staff. MLP, Akinaka and Aqua Engineers have had discussions with CWRM staff regarding options to address CWRM concerns regarding Action Item 4. MLP would like to submit to CWRM staff alternatives to making "real time" adjustments to the amount of water diverted into the system, including installation of improvements to limit the amount of water diverted into the system at the most appropriate location.

Action Item 5: Subsequent to the November 20, 2019 CWRM meeting, MLP and the County of Maui Department of Water Supply ("MDWS") amended their existing water delivery agreement ("The Amendment"). This Amendment contains cost sharing language and cooperation on repair and maintenance of various components of the existing ditch system, including the siphons. As discussed with CWRM staff, Aqua Engineers inspected the existing Honokahua siphon and determined that the siphon remains intact and does not require replacement at his time. MDWS concurs with Aqua Engineer's assessment. A copy of the amendment is attached to this letter.

MLP is requesting that CWRM revise this Action Item 5 to allow MLP to monitor the functioning of the siphon and to repair and maintain the existing Honokahua siphon as required. As part of the annual maintenance, MLP will arrange to clean and maintain the access road to the siphon, remove

rocks and debris from around the siphon columns in the riverbed, and conduct visual inspections of the siphon and perform maintenance as needed. Every five years, MLP will arrange to pressure wash the exterior, paint the exterior, and inspect the interior with CCTV technology.

On March 8, 2021, the Hawaii Public Utilities Commission approved the acquisition of the assets of Kapalua Water Company & Kapalua Waste Treatment Company from MLP to Hawaii Water Service (HWS). As part of the acquisition, HWS will be replacing Aqua Engineers as the operator of the Honokohau ditch system. The transition of HWS as the new ditch operator and the responsibility of Aqua Engineers ends on April 30, 2021. HWS will work with JSB construction LLC to maintain the ditch, which includes annual cleaning (in Q3 for the year 2021).

Thank you for consideration of MLP's request. Please do not hesitate to contact us if you have any questions or require further information. If desired or necessary, we can also arrange a conference or virtual call if you would like to discuss over the phone.

Very truly yours,

TAKITANI AGARAN JORGENSEN & WILDMAN, LLLP

By GILBERT S.C. KEITH-AGARAN

Cc: Paul Subrata, MLP (VIA EMAIL)
Mr. Ayron Strauch, CWRM (VIA EMAIL)
Mr. Ken Kawahara, Akinaka (VIA EMAIL)

Encl.

Outlook

[EXTERNAL] RE: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

From Frank Rodrigues [redacted]
Date Mon 3/8/2021 10:52 AM
To Strauch, Ayron M <ayron.m.strauch@hawaii.gov>; Paul Subrata [redacted]

Aloha Ayron,

We have no scheduled helicopter trips into the Honokohau Valley any time soon.

Thanks, Frank

From: Strauch, Ayron M [redacted]
Sent: Friday, March 5, 2021 8 15 PM
To: Paul Subrata <[redacted]
Cc: Frank Rodrigues [redacted]
Subject: Re: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Aloha Frank,
Are there any dates at the end of March or early April you are anticipating scheduling a helicopter flight for intake maintenance in Honokohau?

Thanks,
Ayron

From: Paul Subrata [redacted]
Sent: Tuesday, February 16, 2021 3:43 PM
To: Strauch, Ayron M [redacted]
Cc: Frank Rodrigues <[redacted]
Subject: [EXTERNAL] Re Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Hi Frank,

I approve for the helicopter visit for the CWRM staff and also let's plan out the trail maintenance and discuss when you are available.

Thanks,

Paul

On Feb 16, 2021, at 2 09 PM, Strauch, Ayron M [redacted] wrote

Aloha Paul,

Can you approve Aqua to helicopter into the intake for cleaning? If not every month, then every other month?

I would also assist Commission staff to measure ditch flows

Thanks,
Ayron

From: Frank Rodrigues [redacted]
Sent: Thursday, February 4, 2021 12:39 PM
To: Strauch, Ayron M [redacted]
Cc: Paul Subrata <[redacted]
Subject: [EXTERNAL] RE Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Ayron,

I mentioned to Paul that the Honokahau intake should be cleaned once a month and also let him know about the trail being unsafe. Paul said flying in and out was unacceptable so I don't know when the next time we will be going in If you can get Paul's approval we can set something up

Frank

From: Strauch, Ayron M <[redacted]
Sent: Thursday, February 4, 2021 12:36 PM
To: Frank Rodrigues <[redacted]
Cc: Paul Subrata <[redacted]
Subject: Re: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Ok ok, I believe you. Any chance you can let me know when you next plan to helicopter into the intake?

Thanks,
Ayron

From: Frank Rodrigues <[redacted]
Sent: Thursday, February 4, 2021 12:34 PM
To: Strauch, Ayron M <[redacted]>
Cc: Paul Subrata <[redacted]>
Subject: [EXTERNAL] RE: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Ayron,

Yes, the trail has gotten much worse!! About 3 months ago we flew in to clean the intake and walk out and my team said they were not going to walk the trail again until it was fixed. They stated it was super dangerous and not worth risking anybody safety. Two weeks ago we flew in to clean the intake and flew out.

Frank

From: Strauch, Ayron M <[redacted]
Sent: Thursday, February 4, 2021 12 27 PM
To: Frank Rodrigues <[redacted]
Cc: Paul Subrata [redacted]
Subject: Re: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Ok, has things gotten more unsafe in the last 6 months? Pomaikai and I were planning to hike in last year and then the pandemic hit.

It's just much easier to coordinate hiking in than a helicopter flight

Ayron

From: Frank Rodrigues <[redacted]>
Sent: Thursday, February 4, 2021 11:58 AM
To: Strauch, Ayron M <[redacted]>
Cc: Paul Subrata <[redacted]>
Subject: [EXTERNAL] RE: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Ayron,

It's totally up to you but my advice would be to fly in! Bridges are rotted and unsafe, plus a lot of landslides that made the trail dangerous to travel. We are also no stranger to backwoods country and I myself would not try the trail.

Frank

From: Strauch, Ayron M <[redacted]>
Sent: Thursday, February 4, 2021 11 55 AM
To: Frank Rodrigues <[redacted]>
Cc: Paul Subrata [redacted]
Subject: Re: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Oh, I was under the impression that it was rebuilt last year. Pomaikai said it would be fine to hike in.

CWRM works in all kinds of conditions (rivers, swamps, repelling down cliffs) and we aren't afraid of getting dirty. Is the trail truly not passable? Last time we did it I crawled on my stomach through the tunnel, but it was safe

Thanks,
Ayron

Get Outlook for iOS

From: Frank Rodrigues [redacted]
Sent: Thursday, February 4, 2021 11:47:20 AM
To: Strauch, Ayron M [redacted]
Cc: Paul Subrata <[redacted]>
Subject: [EXTERNAL] RE Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Aloha Ayron,

Yes, a site visit is fine Are you going to be flying in? The trail is now very unsafe and I would not recommend trying to walk in…

Frank

From: Strauch, Ayron M <[redacted]>
Sent: Thursday, February 4, 2021 11:25 AM
To: Frank Rodrigues <[redacted]>

Cc: Paul Subrata <[redacted]
Subject: Site visit to Adit 16 and Adit 6 on Honokohau Ditch

Aloha Frank,

I am a hydrologist for the Commission on Water Resource Management, and I have previously worked closely with Roy Silva and Pomaikai to access Honokohau Ditch and Aotaki Weir.

CWRM staff is requesting a site visit to Adit 16 to better understand the potential for implementing a Commission order.

CWRM also maintains a ditch gaging station at Adit 6 that we need to service (add a solar panel, replace the battery)

Would it be possible to schedule a site visit Friday Feb 19?

If you need to get ahold of me, my cell is [redacted]

Thanks,
Ayron

Ayron M. Strauch, Ph. D.

Hydrologist, Commission on Water Resource Management

Department of Land and Natural Resources

State of Hawaii

1151 Punchbowl St. Rm 227

Honolulu, HI 96813

[redacted]

[redacted]

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

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

May 18, 2021
Honolulu, O‘ahu

Approve Surface Water Reservation of 2.00 Million Gallons per Day For the Department of Hawaiian Home Lands and Amend Interim Instream Flow Standards for Honokōhau and Kaluanui Streams in the Surface Water Hydrologic Unit of Honokōhau (6014) and Honolua Stream in the Surface Water Hydrologic Unit of Honolua (6013), West Maui

SUMMARY OF REQUEST

Staff is requesting that the Commission on Water Resource Management (Commission) consider the recommendations to:

1. Approve the request for a surface water reservation of 2.00 million gallons per day (mgd) for the Department of Hawaiian Home Lands (DHHL) to meet their foreseeable future non-potable water needs in Honokōwai serviced by the Honokōhau Ditch from the Honokōhau Stream; and

2. Amend the interim instream flow standards (interim IFS) for two streams in the Honokōhau surface water hydrologic unit and one stream in the Honolua surface water hydrologic unit, in West Maui:

   HONOKŌHAU HYDROLOGIC UNIT (6014): Honokōhau Stream
   HONOKŌHAU HYDROLOGIC UNIT (6014): Kaluanui Stream
   HONOLUA HYDROLOGIC UNIT (6013): Honolua Stream

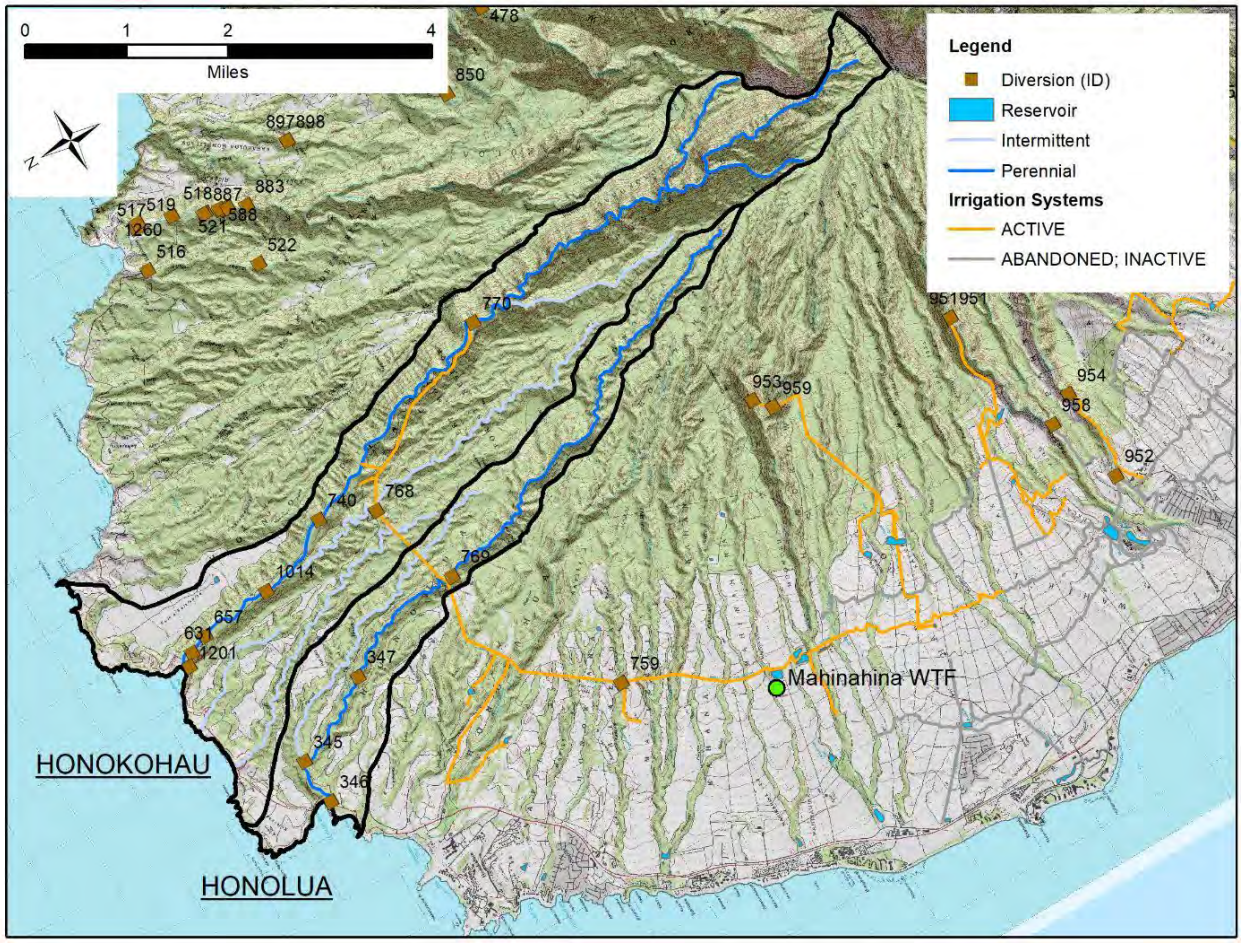
LOCATION MAP See Figure 1

In 2019, staff from DHHL and the Commission started discussing the non-potable water reservation for DHHL for future DHHL land uses in Honokōwai. In 2020, DHHL staff indicated that they were updating their West Maui Regional Plan following the development of the Villages of Leiali'i, in consultation with their beneficiaries, and that revised non-potable water demand estimates were forthcoming. The revised acreage, use, and water duties are provided in Table 1. Following this consultation, DHHL determined their non-potable reservation to be 2.00 mgd. The breakdown for this reservation is provided in Table 1.

Table 1. Acreage, water demand rate (gallons per acre per day, gpad) and total water demand (gallons per day) by land use for the DHHL water reservation.

Land Use	Type	Area (acre)	Rate (gpad)	Water Demand (gpd)
Subsistence Agriculture	Private Homestead	347	4849	1,682,602
Supplemental Agriculture	Private Homestead	14	4849	67,886
Communal Agriculture	Community Use	17	4849	82,433
Parks	Community Use	30	4849	145,470
			Total =	1,978,392

Figure 1. The Honolua and Honokōhau hydrologic units, perennial and intermittent streams, registered diversions and irrigation systems, and water treatment facilities (WTF), West Maui.



In 2003, the U.S. Geological Survey (USGS), in cooperation with the Office of Hawaiian Affairs, produced a Scientific Investigations Report (SIR 2003-4060) which provided flow-duration estimates and detailed characterization of the distribution and availability of base flows in lower Honokōhau Stream. The analysis also showed groundwater gains between the USGS long-term continuous gaging station 16620000 at the 870 foot elevation time and Diversion 770 at the 825 foot elevation, as well as gains and losses of surface water downstream to the ocean. Following the publication of USGS Scientific Investigations Report 2014-5087, Commission staff began analyzing historic and current data in support of the production of the Instream Flow Assessment Report (IFSAR) for each hydrologic unit in West Maui.

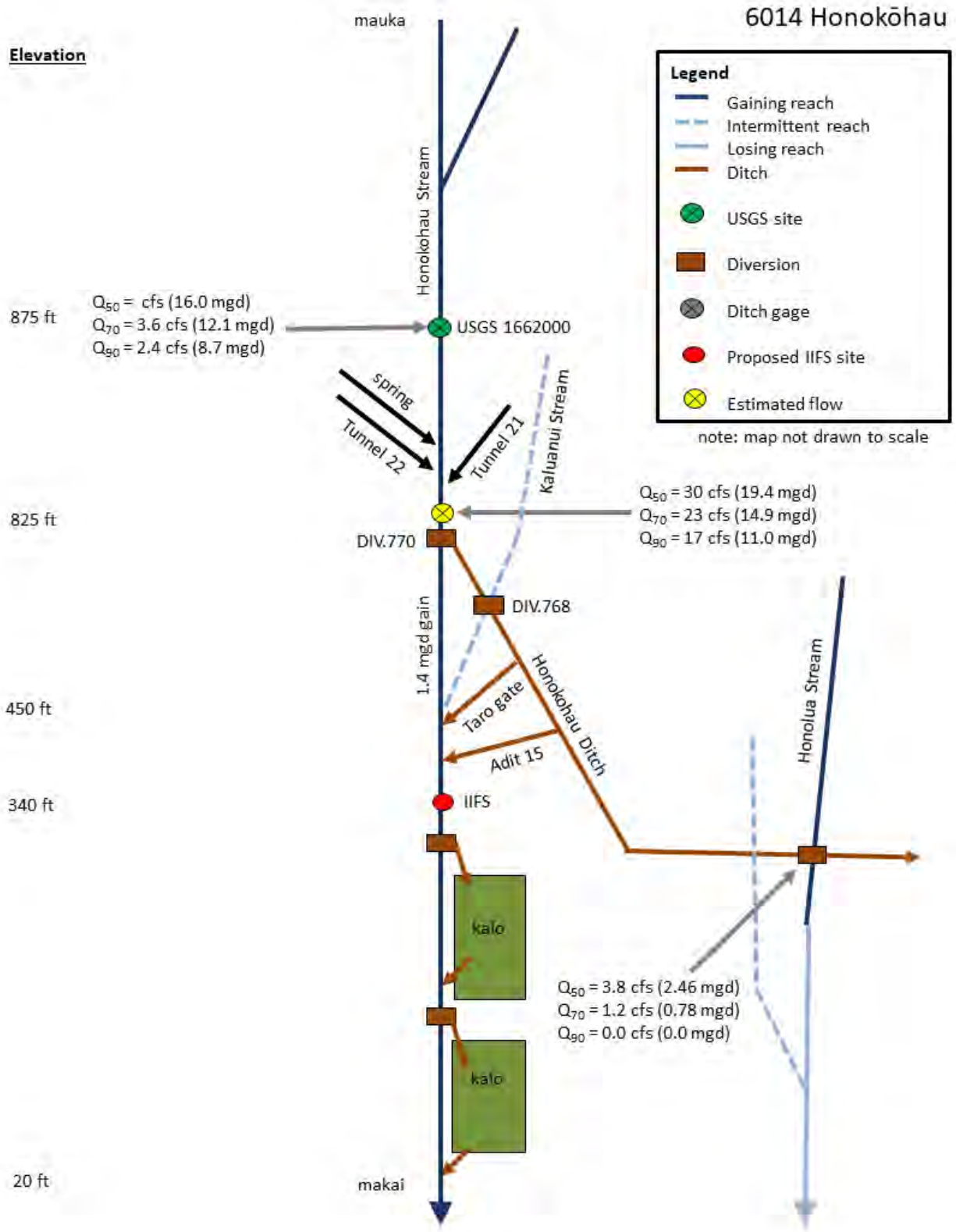
Based upon the best available information, as presented in the IFSAR[1], testimony provided by stakeholders at the public fact gathering meeting and previously agendized Commission meetings on this subject, and provided in the informational submittal presented to the Commission at the regularly scheduled meeting on April 20, 2021 (see Exhibit 2), staff have developed a recommendation that seeks to balance public trust uses, instream values, and reasonable and beneficial uses. Staff have provided a simplified diagram of stream and ditch flows in the Honokōhau and Honolua hydrologic units for reference in Figure 2.

At a regularly scheduled Commission meeting on November 19, 2019, Commission requested that Maui Land and Pineapple (MLP) formally apply for the abandonment of diversion 768 on Kaluanui Stream and diversion 769 on Honolua Stream. The Commission also directed MLP to upgrade diversion 770 infrastructure and monitoring such that it can be remotely operated to only divert the amount of water required to meet non-instream uses. On September 15, 2020, the Commission approved the Stream Diversion Works Permits (SDWP.5358.6 and SDWP.5359.6) for the abandonment and removal, to the extent practicable, of these stream diversions.

As ordered by the Commission on November 19, 2019, MLP is still required to upgrade the intake on diversion 770 to prevent high flows from entering Honokōhau Ditch, which will continue to be part of the implementation of the DHHL reservation and interim IFS proposed here.

[1] https://dlnr.hawaii.gov/cwrm/surfacewater/ifs/westmaui3/

Figure 2. Simplified schematic of streams, ditches, pipelines, reservoirs, and tunnels in Honokōhau and Honolua, Maui.



RECOMMENDATIONS

1. PROPOSED ACTION: RESERVATION OF WATER FOR DHHL
   - Approve a reservation of surface water for the Department of Hawaiian Home Lands based on the updated medium-range demands for the Honokōwai Regional Plan, in the amount of 2.00 mgd from the Honokōhau Stream through the Honokōhau Ditch. The reservation of 2.00 mgd of non-potable water for DHHL will also provide more certainty for Maui Department of Environmental Management (Maui DEM) to invest in the infrastructure needed to blend and distribute R1 with reduced chloride levels that meet non-potable needs in the Lahaina Region.

2. PROPOSED ACTION: INTERIM IFS ON HONOLUA STREAM

   - Staff recommends that natural flow be established for Honolua Stream below the Honokōhau Ditch diversion to maintain the habitat immediately downstream of the diversion.

   IMPLEMENTATION
   - Diversion 769 was formally abandoned on September 15, 2020, so the interim IFS will take effect immediately.

   MONITORING
   - Staff shall continue to monitor streamflow by maintaining a stream gaging station on Honolua Stream or coordinating with USGS as needed.

3. PROPOSED ACTION: INTERIM IFS ON KALUANUI STREAM

   - Staff recommends that natural flow be established for Kaluanui Stream below the Honokōhau Ditch diversion.

   IMPLEMENTATION
   - Diversion 768 was formally abandoned on September 15, 2020, so the interim IFS will take effect immediately.

4. PROPOSED ACTION: INTERIM IFS ON HONOKŌHAU STREAM

To protect instream uses and non-instream public trust uses, staff recommends that an interim IFS be established in two phases for Honokōhau Stream:

Phase One (pre-DHHL implementation of Regional Plan)
The interim IFS on Honokōhau Stream at McDonald's Dam (at the 340 foot elevation), shall be a flow of 8.6 mgd. The interim IFS represents the restoration of 64% of median base flow (BFQ_{50}) as estimated at USGS 16620000 (7.4 mgd), plus the additional 2.3 mgd of groundwater gains between USGS 16620000 and Aotaki Weir and 1.4 mgd of groundwater gains between Aotaki Weir and McDonald's Dam minus 2.5 mgd for the Maui DWS. The interim IFS is expected to be in excess of the water needs to support the

existing needs of loʻi as well as future acreage while protecting aquatic biota, recreation, and domestic uses at all elevations, and ensuring sufficient water to meet traditional and customary practices 100% of the time in Honokōhau Valley. MLP is required to meet the interim IFS 100% of the time. There should also be adequate ditch flow to meet Maui DWS needs of 2.5 mgd at the Māhinahina WTF 100% of the time. It is understood that during extreme drought (< Q_{90}; < 11.0 mgd at Aotaki Weir), 100% of the off-stream needs of non-public trust uses may not be met.

Phase Two (upon initial DHHL implementation of Regional Plan)
The interim IFS on Honokōhau Stream at McDonald's Dam (at the 340 foot elevation), shall be a variable interim IFS (See Table 2 below). The interim IFS will be the restoration of 50% of total flow at USGS 16620000 plus 2.4 mgd in groundwater gained between USGS 16620000 and McDonald's Dam. The 2.4 mgd is 50% of the estimated 4.8 mgd in total groundwater gain between USGS 16620000 and McDonald's Dam. The interim IFS is expected to support all instream values and Honokōhau Valley domestic uses while providing for non-instream public trust uses (domestic uses provided by Maui DWS and DHHL). MLP is required to meet the interim IFS 100% of the time. There should also be adequate ditch flow to meet Maui DWS needs of 2.5 mgd at the Māhinahina WTF 100% of the time. With 2.0 mgd of non-potable agricultural water for DHHL, Maui DEM can blend 2.1 mgd of R1 water from the Lahaina Wastewater Treatment Facility at 50:50 to make available 4.2 mgd of non-potable water to meet the agricultural needs of DHHL and other agricultural uses in the Lahaina Region. It is understood that during extreme drought (< Q_{90}; < 11.0 mgd at Aotaki Weir), 100% of the off-stream needs of non-public trust uses may not be met. However, Kapalua Water Company (KWC) has plenty of capacity in its drilled wells to utilize groundwater as a backup supply for its non-potable needs when insufficient water is available in the ditch.

IMPLEMENTATION
- Interim IFS will be implemented within 120 days of Commission action.
- Staff shall seek to enforce the provisions of the State Water Code should any unauthorized, non-registered or non-permitted diversions be discovered in the course of its fieldwork.

MONITORING
- While staff relied on USGS seepage run measurements to evaluate stream gains and losses within Honokōhau, measurements were done during the 1995-1997. Additional measurements will be conducted as part of the Joint Funding Agreement with USGS approved by the Commission March 17, 2020 and as recommended by the USGS.
- Continued funding to support real-time gaging of Honokōhau Stream and ditch system to monitor the availability of water for multiple public trust purposes.

ENFORCEMENT
- Pursuant to HRS § 174C-15, the Commission recommends that a violation of the interim IFS be defined as when the mean daily flow measured or monitored in Honokōhau Stream at McDonald'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.

Real-time interim IFS monitoring and mean daily flow calculations will be provided by the Commission through a publicly available cloud-based database. Real-time flow in Honokōhau Ditch at Adit 6 will also be provided by the Commission through this database.

EVALUATION

- Within five years from the date of Commission action, staff shall report to the Commission on the progress of implementing the interim IFS and the impacts of the interim IFS upon instream and non-instream uses.
- Based on existing hydrological data, current uses, proposed interim IFS values, and future public trust uses, estimates of water availability to meet non-instream, non-public trust uses are summarized for various flow values in Table 2.
- Staff shall assess the implementation of these strategies on an as-needed basis, as may be necessary upon consultation with the affected parties.

Table 2. Predicted mean daily flow (mdf) and low-flow duration exceedance values (in million gallons per day, mgd) for flow above Diversion 770 at Aotaki Weir and available water for non-instream uses from Honokōhau Stream in Phase One and Phase Two of the proposed interim IFS values. Note: some discrepancy due to rounding

Phase One	**Water Use**	**mdf**	**Q_{50}**	**Q_{70}**	**Q_{90}**
flow at USGS 1662000	instream	22.6	16.0	12.1	8.7
groundwater gains	instream	3.4	3.4	2.8	2.3
available above DIV 770	instream	26.0	19.4	14.9	11.0
groundwater gains	instream	1.4	1.4	1.4	1.4
interim IFS at McDonald's Dam	instream	**8.6**	**8.6**	**8.6**	**8.6**
amount available off stream	non-instream	18.8	12.2	7.7	3.8
Uses met					
Maui DWS domestic water supply		2.5	2.5	2.5	2.5
DHHL non-potable water demand[1]		0.0	0.0	0.0	0.0
MLP non-instream uses		1.8	1.8	1.8	1.8
system loss:		0.6	0.6	0.6	0.6
total off-stream demand:		4.3	4.3	4.3	4.3
total off-stream demand met:		4.3	4.3	4.3	3.2
unmet demand:		0.0	0.0	0.0	1.1
Phase Two		**mdf**	**Q_{50}**	**Q_{70}**	**Q_{90}**
flow at USGS 1662000	instream	22.6	16.0	12.1	8.7
groundwater gains	instream	3.4	3.4	2.8	2.3
available above DIV 770	instream	26.0	19.4	14.9	11.0
groundwater gains	instream	1.4	1.4	1.4	1.4
interim IFS at McDonald's Dam	instream	**13.7**	**10.4**	**8.5**	**6.8**
amount available off stream	non-instream	16.0	12.0	9.1	6.5
Uses met					
Maui DWS domestic water supply		2.5	2.5	2.5	2.5
DHHL non-potable water demand		2.0	2.0	2.0	2.0
MLP non-instream uses		1.8	1.8	1.8	1.8
system loss:		0.6	0.6	0.6	0.6
total off-stream demand:		6.3	6.3	6.3	6.3
total off-stream demand met:		6.3	6.3	6.3	5.1
unmet demand:		0.0	0.0	0.0	1.3

[1]assumes DDHL demand only during Phase Two

FORMAL COMPLAINT

- The interim IFS proposed will protect instream public trust uses including water in its natural state, domestic uses, and water for traditional and customary practices in the Honokōhau and Honolua hydrologic units while providing for non-instream public trust uses of water. These interim IFS also provide for off-stream uses of water that are reasonable and beneficial uses in the public interest, including making water available for agriculture and providing a source of water to be blended with the available R1 recycled water, therefore helping to protect nearshore coral reef ecosystems.
- The actions proposed in this submittal will improve instream flows, upgrade the infrastructure to improve the management of the irrigation system and provide protections for public trust uses of water.
- Commission actions to address other portions of the complaint related to waste will be addressed by a future Commission action following additional research.

Ola i ka wai,

M. KALEO MANUEL
Deputy Director

Note: Exhibits 1 to 4 are available from the Commission website and are incorporated by reference. Links are provided below.

Exhibit 1 Instream Flow Standard Assessment Report for Honolua Hydrologic Unit 6013, PR-2019-02
https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201902-6013-Honolua.pdf

Exhibit 2 Instream Flow Standard Assessment Report for Honokōhau Hydrologic Unit 6014, PR-2019-03
https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201903-6014-Honokohau.pdf

Exhibit 3 Compilation of Public Review Comments, Hydrologic Units of Honolua (6013) and Honokōhau (6014), PR-2019-04
https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201904.pdf

Exhibit 4 Staff Submittal, April 20, 2021, Item C5, Status of Request for Surface Water Reservation of 2.00 Million Gallons per Day for the Department of Hawaiian Home Lands and Draft Interim Instream Flow Standards for Honokōhau and Kaluanui Streams in the Surface Water Hydrologic Unit of Honokōhau (6014) and Honolua Stream in the Surface Water Hydrologic Unit of Honolua (6013), West Maui
https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210420C5.pdf

Exhibit 5 CDR.5095.6 Complaint/Dispute Resolution Filing Form, Ka Malu o Kahalawai & West Maui Preservation Association, 4/23/2019

Exhibit 6 CDR.5095.6 Complaint/Dispute Resolution Response Form, Maui Land and Pineapple Company, Inc, 10/15/2019

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE
Chairperson

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

COMPLAINT / DISPUTE RESOLUTION FILING FORM

Instructions: Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit http://dlnr.hawaii.gov/cwrm/..

For Official Use Only:
RECEIVED
2019 APR 23 PM 12: 14
DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII
Complaint File No: C

1. Name: Ka Malu o Kahalawai & West Maui Preservation Association Date: 4/23/2019

Address: c/o Law Office of Lance D. Collins
P.O. Box 179336, Honolulu, HI 96817

Daytime Phone No.: (808) 243-9292 Fax No.

2. Location of the violation or water problem: Water diverted from Honokōhau stream overflows the Honokōhau ditch in areas extending south to Wahikuli and makai to Hanakaoʻo.

Tax Map Key: (2) 4-5-021:005, 4-4-002:012; 4-4-002:013; 4-4-002:014; 4-4-005:035; 4-6-018:011, 4-4-004:013; and others.

Landowner's Name: Dep't of Land and Natural Resources, Maui Land & Pine, Kaanapali Land Mgmt Corp. (lessee)

Landowner's Address: DLNR: 1151 Punchbowl St., Honolulu, HI 96813
MLP: 200 Village Rd, Lahaina, HI 96761

Landowner's Phone No.: DLNR: (808) 587-0400
MLP: (808) 665-5480

3. The party I have a complaint about or dispute with is: (if more than one party, please attach additional sheets)

Name: Maui Land & Pine Company, Inc. (MLP); Kapalua Water Company (KWC); and Kaanapali Land Mgmt Corp. (KLMC)

Address: KLMC: (Gary Nickele), 275 Lahainaluna Road, Lahaina Hawaiʻi 96761
KWC: (Tim Esaki, CFO) 200 Village Rd, Lahaina, HI 96761/ tesaki@kapalua.com
MLP: (Warren Haruki, Tim Esaki, P. Subrata) 200 Village Rd, Lahaina, HI 96761

Phone No.: KLMC: (808) 661-9652
KWC: (808) 681-9311
MLP (808) 665-5480

If the party is not the landowner listed in Section 2 above, please describe the party's relationship to the TMK parcel described in Section 2.

The intake from Honokōhau stream into Honokōhau ditch is located on MLP lands. Kapalua Water Company (KWC) is a wholly owned subsidiary of MLP. Upon information and belief, Aqua Engineers, Inc. operates the KWC and took over supervisory responsibility for Honokōhau and Honolua ditch management. MLP is diverting water from Honokōhau stream and into the Honolua and Honokōhau ditcesh, which runs across MLP lands and lands held by other entities, including KLMC.
KLMC holds a revocable permit from DLNR to use lands underlying the Honokōhau ditch at several locations of the water wasting practices, running south towards Lahaina. KLMC has sought to obtain a long term lease for these lands.

CDR-FILE Form (02/28/2007)

FILE ID: CDR.5095.6

EXHIBIT 5

4. Describe the complaint or reason for the dispute:
(Attach a sketch or photograph if that will help explain the problem.)

See Addendum to Complaint/Dispute Resolution Form, Response to Question No. 4.

5. Describe how your water usage or water rights are specifically affected by the other party, if at all:

Ka Malu o Kahalawai members include kalo farmers who farm on lands adjacent to Honokōhau stream and who require the water that is otherwise diverted into the Honokōhau ditch. For many years, these members have sought restoration of Honokōhau stream water to support traditional lo'i kalo growing.

Members also include those who conduct traditional and customary practices of fishing, surfing, canoe paddling, and diving in nearshore areas where the wasted water meets the ocean. The wasted water is warmer and its periodic intrusion may interfere with reef and other nearshore ecosystems and water quality, both of which are necessary for cultural resources for members' traditional and customary practices and recreation.

West Maui Preservation Association also has members who conduct traditional and customary practices that depend on Honokōhau stream water and healthy nearshore coastal resources along West Maui's coasts.

6. Date the problem was first noticed: Several decades ago, with several large wasting events observed in late 2018.

7. If this complaint or dispute is related to a water source, was the water source previously declared with the Commission on Water Resource Management?

☒ Yes ☐ No ☐ Don't Know

If yes, what was the name and tax map key of the source?

Honokōhau ditch TMKs: (2) 4-4-002:012; (2) 4-4-002:013; (2) 4-4-002:014; (2) 4-4-005:035; (2) 4-5-021:005; (2) 4-6-018:011, and others.
MLP Honokōhau ditch intake: (2) 4-1-001:017
Honokōhau Taro Gate: (2) 4-1-001:009

8. Have you had any communication with the party/parties described in Section 3 above?

☒ Yes ☐ No

If yes, list the communications and dates: (Attach copies if written communications were made)

See Addendum to Complaint/Dispute Resolution Form, Response to Question No. 8.

9. Have you sought resolution of this matter with any other entity?
(e.g., government agency, judicial body, or private entity)

Yes, each of the communications listed under Response to Question No. 8 constituted attempts to have the water wasting stopped.

If so, with whom and what was the outcome?
(Please provide copies of any documentation of this process)

No responses have been forthcoming. Please see responses to Response Question No. 8.

10. Describe what you believe a successful and fair remedy might be:

Petitioners seek to prevent wastage by restoring to Honokōhau stream surface water in amounts equal to that wasted. Petitioners seek to require upgrades to MLP/KWC's diversion intake works from Honokōhau stream to Honokōhau/ Honolua ditch to better regulate the amounts removed from Honokōhau stream to avoid waste in areas including lands used by KLMC through which the Honokōhau ditch runs. Upgrades and better maintenance and regulation of the Taro Gate would also allow more water to be restored to Honokōhau stream, instead of contributing to wasting events in offstream areas, including agricultural fields further south towards Wahikuli. KLMC should be prevented from allowing ditch water to run into fields and roads adjoining the ditch. KLMC's wastage facilitates MLP/KWC's ability to ignore the need to upgrade its intake/ diversion works and better regulation and maintenance of the taro gate.

MLP/KWC's intake should be upgraded such that it can be closed during periods of high water flow. This may mean better monitoring so that the Aotaki gate can be closed during high flow (or during times that less water is needed in the Honokōhau ditch) and thereby result in that surface water remaining in the Honokōhau stream. Another solution might lie in investing in sealing the current diversion and installing a gate with remote control capacity (to avoid difficulties and inconvenience with accessing the intake). Petitioners note that Kamehameha Schools has installed a remote control valve to control gate above Kahoma stream that can be controlled via a computer.

I request that the Commission on Water Resource Management assist in resolving the matter described herein.

Signature

23 Apr 19

Date

Addendum to COMPLAINT / DISPUTE RESOLUTION FILING FORM

Response to Question No. 4: Describe the complaint or reason for the dispute.

Petitioners' reasons for the dispute.
Petitioners' members rely on Honokōhau stream water for lo'i kalo, other agriculture, and domestic purposes. Members have a long history of complaints against MLP's failure to properly regulate its diversion of Honokōhau stream waters into the Honolua/ Honokōhau ditch and, conversely, to return water to the stream via the Taro Gate, which is downstream from the Honokōhau ditch intake. Members have concerns about ecological impacts on cultural resources consequent to periodic flows of ditch water running through Hahakea/ Wahikuli gulches to the coast.

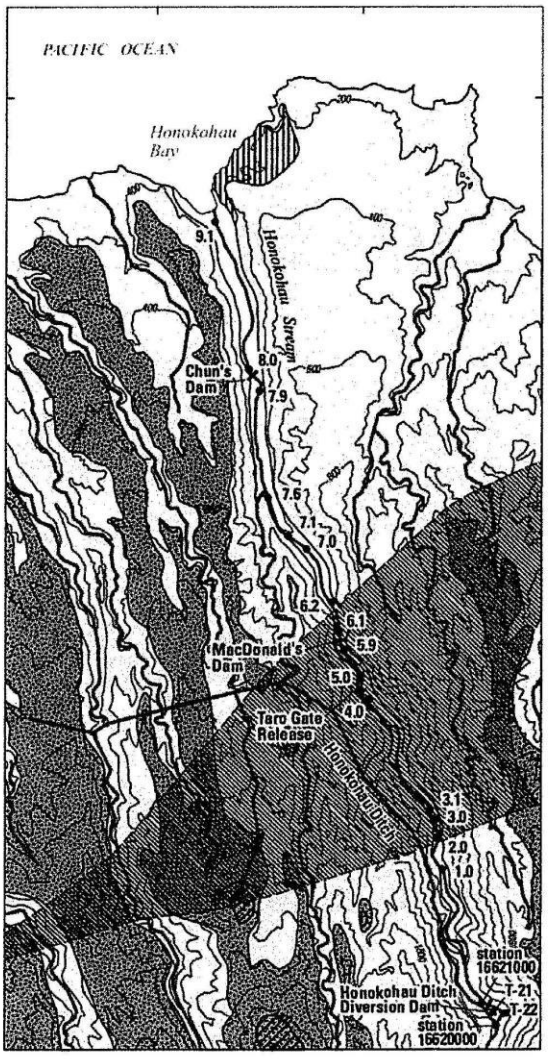


Fig. 1. Streamflow measurement sites and location of intake and Taro Gate. From Richard A. Fontaine, U.S. Geological Survey, "Availability and Distribution of Base Flow of Honokohau Stream, Island of Maui, Hawaii," Water-Resources Investigations Rpt. No. 03-4060, at 9 (Honolulu, 2003).

1

Wasting events

Diverted water is warmed while traveling through the Honokōhau ditch. For at least several decades, Petitioners observed periodic flows of warmed ditch water entering Hanakao'o and nearby coastal waters from Honokōwai stream, Hahakea gulch, and sometimes Honolua stream. The warmed water flows are observed several times a year and have been going on for decades.

In September 2018, Hurricane Olivia caused significant flooding and damage in Honokōhau valley. Thereafter, on October 5, 2018, Petitioners hiked to the intake and observed a new "stream" running around the diversion instead of remaining within Honokōhau stream. The Taro Gate was closed by excessive debris and therefore the extra water resulting from the storm went to the Honokōhau ditch, where it was spilled into fields and wasted.

On November 24, 2018, Wood emailed Roy Silva of Aqua Engineers, Inc., which is believed to be a managing entity for Honokōhau ditch, to make these ditch managers aware that Honokōhau stream was diminished while a new stream running around the Honokōhau diversion works had appeared.

On December 4, 2018, Petitioners observed water from Honokōhau ditch freely exiting the Honokōhau ditch through a gate and spilling into the fields and entering the Wahikuli Gulch at the northern end of the Wahikuli Flume. From there, the water spilled into agricultural fields and over cane haul roads into Wahikuli gulch. Also around this time, Petitioners observed water constantly flowing from Hahakea gulch (into which merges Wahikuli stream) into the ocean by Hanakao'o (Canoes beach). West Maui skies were clear and sunny when these wasted water flows were observed. *See* Fig. 2-6.

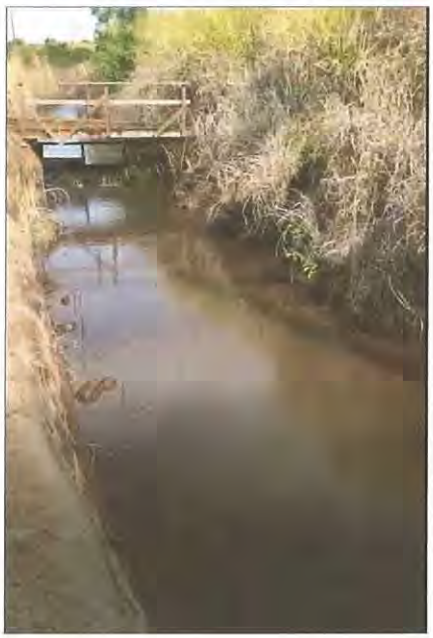


Fig. 2. Honokōhau ditch portion adjacent to Wahikuli flume. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

2

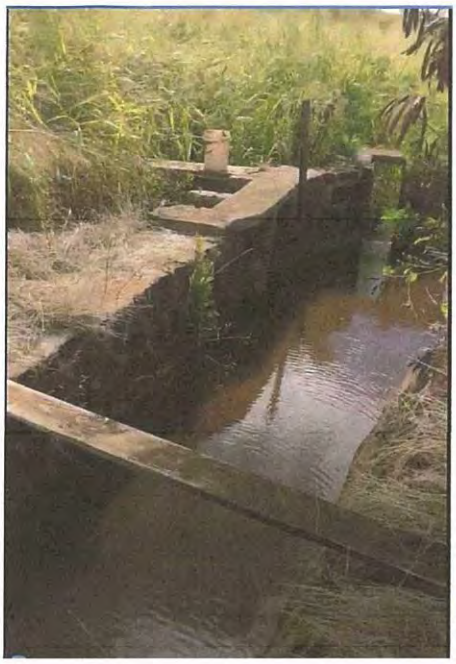


Fig. 3 (left) Water leaving Honokōhau ditch via Wahikuli flume. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 4 (right) Water from Wahikuli flume crossing cane haul road. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 5 (left) Water from fields makai of cane haul road flowing into Wahikuli gulch. Screenshot of video taken by Wili Wood on Dec. 4, 2018.

Fig. 6. Honokōhau stream water flowing from Hahakea/ Wahikuli gulch through Hanakaoʻo beach. Screenshot of video taken by Kai Keahi (approx. Dec. 9, 2018).

On or about December 9, 2018, Petitioner-member Kai Keahi observed that Honokōhau ditch water was flowing out to the ocean at Hanakaoʻo, At that time, Honokōhau stream was low - about ten inches to a foot lower than usual, and the Taro gate (installed for Honokōhau stream taro growers) was closed.

Also on December 9, 2018, Keahi called Roy Silva, who he believed to be working for MLP, to instruct him to restore water to Honokōhau stream instead of dumping into Wahikuli/ Hahakea gulches. Keahi was informed that water was being "turned off" at Mahinahina and Honokōwai, where several reservoirs exist, and pushed south towards Lahaina. Honokōhau ditch water was being dumped into fields near Wahikuli and Hahakea gulch and flowing to the ocean.

4

Response to Question No. 8: Have you had any communication with the party/parties described in Section 3 above?

Around ten years ago, Petitioner-member Kai Keahi called Jeffery Pearson of MLP. Keahi, Pearson, and Kimo Kapalehua discussed the issue of Honokōhau stream water being wasted from the Honokōhau ditch. MLP did not provide answers or plans for remediation.

In September 2018, Hurricane Olivia caused significant flooding and damage in Honokōhau valley. Prior to this time, the Honokōhau ditch system was reportedly managed by Steven Nikaido of Hoa ʻĀina Farm Services, LLC. However, Nikaido passed away roughly one week prior to Hurricane Olivia events and Hoa ʻĀina Farm Services has apparently transferred management of the ditch to Aqua Engineers.

On October 5, 2018, Petitioners noticed water wasting from Honokōhau stream. Petitioner-member Wili Wood contacted Paul Subrata from Kapalua Water Co. (which obtains water via Honokōhau tunnel) and Pōmaikaʻi Crozier, manager of the Puʻu Kukui Watershed partnership. Both referred Petitioners to Roy Silva of Aqua Engineers, Inc., who denied a contractual responsibility to "take care of the ditch," but also apparently coordinates use of the Honokōhau ditch waters. Silva stated he would open the taro gate to alleviate the low flow in Honokōhau stream by January 15, 2019. *See* Exh. 01 (Emails between Wili Wood, Petitioner-member, and Paulus Subrata, MLP (Oct. 2018)).

On November 24, 2018, Wood emailed Silva to make him aware that Honokōhau stream was diminished while a new stream running around the Honokōhau diversion works had formed. *See* Exh. 02 (Emails between Wili Wood, Petitioner-member, and Roy Silva, Aqua Engineers (Nov. 24, 2018 to Dec. 18, 2018).

On December 9, 2018, Petitioner Keahi called Roy Silva to complain about water dumping from Honokōhau ditch into Hahakea gulch.

On January 15, 2019, Wood received a phone call from Silva, who stated that the taro gate would not be opened until the end of February after the entire ditch system was cleaned from the intake in Honokōhau stream to the powerhouse siphon in Honokahua. That was the last Petitioners heard from Silva and no restoration of stream water has occurred.

Petitioners had also met and talked to Ayron Strauch of CWRM to discuss KLMC's proposal to lease lands underlying Honokōhau ditch and informed him of the location of water spillage in Kāʻanapali areas. After meeting with Strauch, Wood researched the proposed lease for Honokōhau water and identified the area where water was being wasted from Honokōhau ditch on a map. *See* Exh. 02 (map with water wasting location highlighted in red). Wood forwarded the highlighted map and other KLMC documents to Kapule Eubank, who has a home in Honokōhau valley. Strauch was installing a stream flow meter next to Eubank's home.

On or about February 10, 2019, Eubank shared Wood's map and papers with Strauch. Strauch confirmed with Eubank that water was being wasted from the ditch and shared Petitioners' concerns about long-term leasing to KLMC without first modifying the Honokōhau ditch system.

Strauch, however, noted that while he could make recommendations, he had restricted enforcement powers concerning proper water usage.

To the knowledge of petitioners, no further actions have been taken to remediate water wasting from the Honokōhau ditch or to upgrade diversion works at Honokōhau stream.

6

From: Paul Subrata <psubrata@mlpmaui.com>
Date: October 16, 2018 at 9:11:14 AM HST
To: Roy Silva <rsilva@aquaengineers.com>, "woodwili100@gmail.com" <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>
Subject: Fwd: Honokohau

Hi Wili, thank you for talking to me this morning. Cc'd on this email is Roy Silva whose team been working on the ditch as of late. His number is (808) 681-9311.

Hi Roy, I spoke to Wili Wood earlier and he was Stephen Nikaido eyes and ears up in Honokohau and have worked closely in the past. Wili and the community does farming in the area and would like to get updates on the situation at the intake. I'm providing you his contact information so we can keep in constant communication with him. His number is 808-870-0552 or 808-669-3038.

Thanks,

Paul
808-757-2666
Sent from my iPhone

Begin forwarded message:

From: Wili Wood <woodwili100@gmail.com>
Date: October 15, 2018 at 8:42:02 PM HST
To: psubrata@mlpmaui.com
Cc: Elle Cochran <ellekcochran@gmail.com>, Kekai Keahi <kekaikeahi@gmail.com>, Pomaikai Kaniaupio-Crozier <maunahalawai2@gmail.com>
Subject: Re: Honokohau

Aloha Paul,
Please see the message below I had forwarded to Pōmaikaʻi Crozier. He has put me in contact with you. Please let me know when you are able to meet. I look forward to your reply.

Mahalo Nui,
Wili Wood

On Thu, Oct 11, 2018 at 10:33 AM Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com> wrote:
Aloha mai e Council member Elle, Wili & Kekai
Mahalo for your email and raising your concerns, my role of taking care of Pu'u Kukui Watershed Preserve is to protect the native biodiversity up ma uka and keep that

EXHIBIT 01

natural native sponge intact which benefits water recharge and retention and ecosystem function as whole healthy. However, I have nothing to do with water transmission or ditch related issues. I am putting you in contact via this email with Paul Subrata who is in charge of water for ML&P. Aloha

From: ellekcochran@gmail.com <ellekcochran@gmail.com>
Sent: Tuesday, October 9, 2018 10:02 PM
To: Wili Wood <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>; kekaikeahi@gmail.com
Subject: Re: Honokohau

Per Jeff Pearson Chair for CWRM
MLP would need to get permit to do such work. Cwrm would allow it then.

Sent from my iPhone

On Oct 9, 2018, at 5:10 PM, Wili Wood <woodwili100@gmail.com> wrote:

Aloha Pomaika'i

As you are probably aware, the Honokohau water diversion has been compromised. A few others and I personally walked the stream on Friday October 5th to investigate debris in the upper valley and made it to the diversion. We found that the storm water from Olivia has cut a new stream right around the Honokohau diversion. Please see attached video. It is to the best of my knowledge that this can not be fixed by hand tools. Being that we are downstream users of this water source, we request to be notified of the plans in moving forward. Can you please put us in contact with the appropriate parties?

Mahalo nui for your time,
Wili Wood

Sent from my iPhone

Begin forwarded message:

EXHIBIT 01

From: Wili Wood <woodwili100@gmail.com>
Date: October 8, 2018 at 9:32:34 PM HST
To: Wili Wood <woodwili100@gmail.com>

<IMG_2330.MOV>

Sent from my iPhone

EXHIBIT 01

From: Roy Silva <rsilva@aquaengineers.com>
Date: December 18, 2018 at 6:53:05 AM HST
To: Wili Wood <woodwili100@gmail.com>
Cc: Pōmaika'i Kaniaupio-Crozier <pkaniaupio-crozier@kapalua.com>, "ayron.m.strauch@hawaii.gov" <ayron.m.strauch@hawaii.gov>, Dean U <dean.d.uyeno@hawaii.gov>, Kekai Keahi <kekaikeahi@gmail.com>, Paul Subrata <psubrata@mlpmaui.com>
Subject: Re: Honokohau Stream Flow Issues Nov 2018

Morning,

What about tomorrow morning at 10:00 at our KWC office ?

Sent from my iPhone

On Dec 17, 2018, at 7:50 PM, Wili Wood <woodwili100@gmail.com> wrote:

Aloha Roy,
When is best for you? I can make myself available as needed. I look forward to meeting with you. Mahalo

Wili Wood

On Dec 17, 2018, at 1:50 PM, Roy Silva <rsilva@aquaengineers.com> wrote:

Aloha Wili,

When can we meet to discuss Honokohau ditch ?

Thanks

"The less we talk the more we hear"

Roy J Silva
Island Operations Manager
Aqua Engineers, Inc.
200 Village Rd, Lahaina HI 96761

Mobile: 808 - 681-9311
Email: rsilva@aquaengineers.com
<image001.png>

EXHIBIT 02

From: Pōmaika'i Kaniaupio-Crozier [mailto:pkaniaupio-crozier@kapalua.com]
Sent: Monday, December 17, 2018 11:14 AM
To: Wili Wood <woodwili100@gmail.com>
Cc: ayron.m.strauch@hawaii.gov; Dean U <dean.d.uyeno@hawaii.gov>; Kekai Keahi <kekaikeahi@gmail.com>; Roy Silva <rsilva@aquaengineers.com>; Paul Subrata <psubrata@mlpmaui.com>
Subject: Re: Honokohau Stream Flow Issues Nov 2018

Aloha e Wili
Mahalo for your hard work, observations and for reaching out. As mentioned in previous emails Paul Subrata of ML&P is the person in charge and has put Roy Silva of Aqua Engineering at the helm. Therefore, I am including them in this correspondence.
There have been on going efforts to mitigate the unprecedented damage in the aftermath from Tropical Storm Olivia and work is ongoing as you were present with CWRM in the reconnaissance.

After we spoke on Thursday, I flew into Honokohau with a crew to clear debris up ma uka and attempted to access taro gate but was unsuccessful due to time available and landslides along ditch trail. Please reach out to Paul and Roy to discuss or let me know if you need my assistance to set up a meeting.

The health of entire watersheds are a priority and mahalo for your support and all that you do to keep Honokohau ahupua'a intact. Aloha

---

From: Wili Wood <woodwili100@gmail.com>
Sent: Saturday, December 15, 2018 8:36 PM
To: Pōmaika'i Kaniaupio-Crozier
Cc: ayron.m.strauch@hawaii.gov; Dean U; Kekai Keahi
Subject: Fwd: Honokohau Stream Flow Issues Nov 2018

Aloha Pomaika'i
I want to thank you for answering my phone call this past Thursday to speak about the low flow of water we have been seeing in Honokohau stream since around mid November. We believe this is due to the taro gate being closed with debris. We would like to open a dialogue with the operator of this ditch system but are having a hard time finding the responsible party. The lack of adequate flow brings concerns regarding the health of the aquatic life and the maintaining of traditional and customary practices of downstream users. Mahalo for your time and I look forward to your reply.

---------- Forwarded message ---------
From: **Wili Wood** <woodwili100@gmail.com>

EXHIBIT 02

Date: Wed, Nov 28, 2018 at 9:24 PM
Subject: Fwd: Honokohau Stream Flow Issues Nov 2018
To: <psubrata@mlpmaui.com>
Cc: Kekai Keahi <kekaikeahi@gmail.com>, <pkaniaupio-crozier@kapalua.com>, <ayron.m.strauch@hawaii.gov>, Elle Cochran <ellekcochran@gmail.com>, <rsilva@aquaengineers.com>, Lance D. Collins, Ph.D <lawyer@maui.net>, <dean.d.uyeno@hawaii.gov>, <rebecca.r.alakai@hawaii.gov>, <tamara@tamarapaltin.com>, Skippy Hau <skippy.hau@hawaii.gov>, <kainoawilson@yahoo.com>

Aloha Paul,

I reached out to Roy Silva as you recommended. Please see email below. I also reached out to CWRM and we were told that currently MLP does not have an operator for the Honokohau diversion. The stream has been very low for two weeks and this is very concerning considering that a big majority of the stream flow is being dumped into the dry gulch of Mahinahina. I am requesting a meeting to discuss solutions to this issue moving forward. I look forward to your reply.

---------- Forwarded message ---------
From: **Wili Wood** <woodwili100@gmail.com>
Date: Sat, Nov 24, 2018 at 9:19 PM
Subject: Honokohau Stream Flow Issues Nov 2018
To: <rsilva@aquaengineers.com>

Aloha Roy,
As of last week, the water flow in the Honokohau stream has been diminished due to the new stream running around the Honokohau diversion.
Naturally this stream changes with each high water and there is now less flow being directed around the diversion and feeding the downstream users.

To correct this issue, we are asking that you implement Taro gate once again. If too much water is leaving the Honokohau water shed it can be regulated at Taro gate to make sure Honokohau stream users are not left with inadequate flow. This is also a good solution because when too much water leaves the valley, it simply overflows into the concrete channelized stream of Honokowai, preventing much-needed aquifer recharge.

Mahalo for taking the time to listen to our concerns and I look forward to your reply.

Sent from my iPhone

EXHIBIT 02

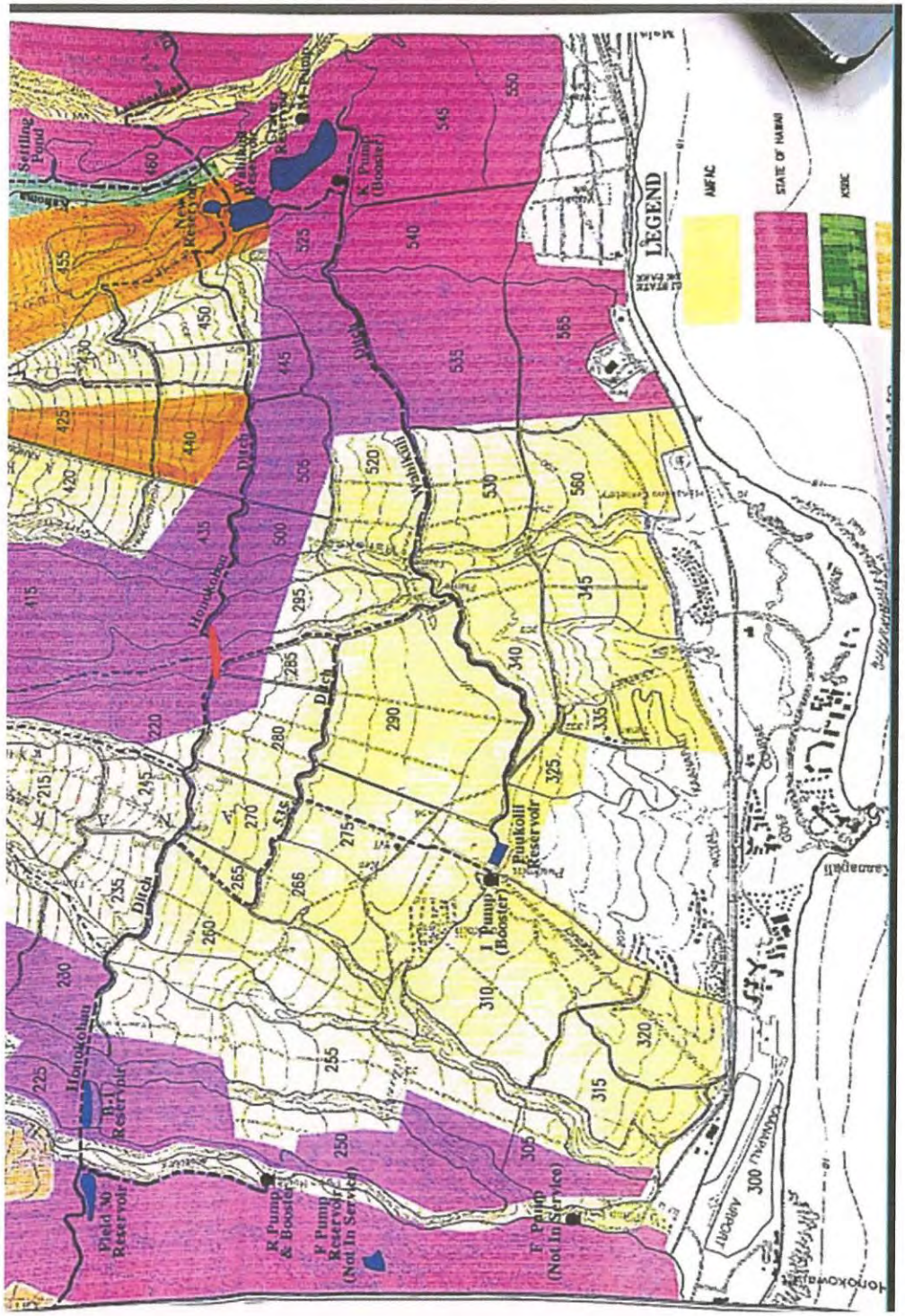

LEGEND
AMFAC
STATE OF HAWAII
KSBE
Settling Pond
New Reservoir
K Pump (Booster)
Ditch
Honokōhau
Puukolii Reservoir
J Pump (Booster)
Field 30' Reservoir
R Pump & Booster
F Pump Reservoir (Not In Service)
F Pump (Not In Service)
Honokōwai

EXHIBIT 03

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

COMPLAINT / DISPUTE RESOLUTION RESPONSE FORM

Instructions: Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit http://dlnr.hawaii.gov/cwrm/.

For Official Use Only:

Complaint File No: C

Please answer any applicable questions to the best of your knowledge. This is a standard form and some questions may not pertain to your specific situation.

1. Name: Tim T. Esaki Date: 10/17/19

   Address: 200 Village Road
   Lahaina, HI 96761

   Daytime Phone No.: (808) 665-5480 Fax No. (808) 665-0641

2. Were you aware of the problem prior to this complaint? ☐ Yes ☑ No

3 Tax Map Key:
If you are not the owner, please provide the landowner's information below.

Landowner's Name: Maui Land & Pineapple Company, Inc.

Landowner's Address: 200 Village Road, Lahaina, HI 96761

Landowner's Phone No.: (808) 665-5480

4. If this complaint or dispute is related to a water source on your property, was the water source previously declared with the Commission on Water Resource Management?

☑ Yes ☐ No ☐ Don't know

If yes, what is the name and tax map key of the source?

Honokohau Stream

TMK: 4-1-001-017

CDR-RESP Form (02/28/2007)

EXHIBIT 6

5. Attach a sketch or photograph that will give additional details of the situation described by the complainant.

6. Have you had any communication with the complainant(s)?

☐ Yes ☑ No

If yes, list the communications and dates: (Attach copies if written communications were made)

7. Do you know if resolution of this matter has been sought with any other entity? (e.g., government agency, judicial body, or private entity)

☐ Yes ☑ No ☐ Don't Know

If so, with whom and what was the outcome? Please provide copies of any documentation of this process.

8. Describe what you believe a successful and fair remedy might be:

MLP is in the process of repairing damage to intakes and the ditch from Hurricane Olivia in September 2018 and securing a maintenance contractor for the ditch.

I attest that the information given is accurate and complete, to the best of my knowledge.

Signature

10/17/19
Date

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

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

October 19, 2021
Honolulu, Hawai‘i

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

SUMMARY OF REQUEST

Staff is requesting that the Commission on Water Resource Management (Commission) consider amending the Order to Maui Land & Pineapple (MLP) made on November 20, 2019 to install a new, remotely-operated, control gate on the intake of Diversion 770 on Honokōhau Stream to Honokōhau Ditch. Following site visits by consultants, installation of required power supply and communications was deemed infeasible, and staff are in support of an alternative to this Order: installation of low-flow and high-flow restrictor plates on the intake grating to keep high stream flows in Honokōhau Stream and remotely-operated control gate on Adit 16.

LEGAL AUTHORITY

Under the Water Code (Code), the Commission as the responsibility of regulating the construction or alteration of stream diversion works. HRS § 174C-93. The Commission may impose such reasonable conditions as are necessary to ensure that the construction or alteration of such stream diversion works will not be inconsistent with the general plan and land use policies of the State and the affected county, or be inconsistent with the protection of instream uses. See HRS § 174C-71 (“Protection of instream uses”). In order to avoid or minimize the impact on existing uses of preserving, enhancing, or restoring instream values, the Commission shall consider physical solutions, including water exchanges, modifications of project operations, changes in points of diversion, changes in time and rate of diversion, uses of water from alternative sources, or any other solution. HRS § 174C-71(E).

Item B-1

HISTORIC CONTEXT

In 1904, the original Honokōhau Ditch was completed to bring water from Honokōhau and Honolua streams to Māhinahina and Lahaina.

In 1913, the ditch was rebuilt mostly in tunnel to increase efficiency and reduce maintenance costs. The ditch supplied up to 50 million gallons per day (mgd) to Baldwin Packers (and later MLP) and Pioneer Mill. The primary source of water was Diversion 770, also known as Aotaki Weir, a concrete dam across the stream channel and a grated intake at the start of Honokōhau Ditch (Table 1, a and b).

In 1999, Pioneer Mill ceased sugarcane operations.

In 2009, MLP ceased pineapple operations.

In 2018, two hurricanes (Lane and Olivia) caused localized flooding resulting in substantial damage to Diversion 770, both to the release gate at Aotaki Weir and to the intake grate to Honokōhau Ditch (see Table 1, c and d). Flooding also carved a new channel on the east side of the valley around Aotaki Weir, providing for a continuous wetted pathway mauka to makai.

In April 23, 2019, Ka Malu o Kahalawai and West Maui Preservation Association (community groups) 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 was tied to the inability of MLP to control the flow diverted by Diversion 770.

In November 2019, at a regularly scheduled Commission meeting, the Commission ordered MLP to upgrade the intake on Diversion 770 with a remotely-operated control gate to regulate the flow diverted (Order). The purpose of this Order was to force MLP to control the intake such that only the volume of water needed by MLP, Department of Hawaiian Home Lands, Maui Department of Water Supply, or others would be diverted from Honokōhau Stream.

In 2020, MLP replaced the damaged intake grates with new ones (see Table 1, e and f).

In June 2021, the Commission established an interim instream flow standard of 8.6 mgd in Honokōhau Stream at McDonald's Dam (elevation 340 feet).

In subsequent discussions with MLP, Kapalua Water (which was then sold to Hawaii Water Service), and their consultant following site visits, it was deemed impractical to supply the energy and communications necessary to operate such an upgrade to intake.

Adit 16 was identified as a location that is more easily accessible for the installation and maintenance of complex power and communications systems (Table 2).

Table 1. Images of intake on Diversion 770 at Honokōhau Stream from 2017 (a and b), 2018 post-hurricane Lane (c and d) and 2021 (e and f).

(a)

(b)

(c)

(d)

(e)

(f)

Table 2. Images of Adit 16 at Honokōhau Ditch from outside the tunnel (a), the pipeline intake inside the tunnel (b), and the original pipeline going back to the stream (c).

(a)

(b)

(c)

As a result, Commission staff have worked with MLP, their consultant, and the community groups to come up with an alternative to this Order. The alternative requires that new metal plates be installed to restrict low and high stream flows from flowing into Honokohau Ditch (i.e., a coarse adjustment) while installing a remotely-operable valve on a pipeline at Adit 16 (i.e., a fine adjustment) to return flow back to Honokōhau Stream. That is:

1) MLP, coordinated by Hawaii Water Service, will install a plywood restrictor plate to serve as a temporary mitigation measure to keep the highest flows in Honokōhau Stream until a permanent restrictor plate can be installed.

2) MLP will install a restrictor plate on the new intake grates to keep the lowest flows in Honokōhau Stream from flowing into Honokōhau Ditch.

3) MLP will install a restrictor plate on the new intake grates to keep the highest flows in Honokōhau Stream from flowing into Honokōhau Ditch.

4) 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.

Based on preliminary design plans, Commission staff believes that this modification to the existing infrastructure will not require a Stream Diversions Works Permit to be issued.

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.

RECOMMENDATIONS

Staff recommends that the Commission:

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, coordinated by Hawaii Water Service, will install a plywood restrictor plate to serve as a temporary mitigation measure to keep the highest flows in Honokōhau Stream until a permanent restrictor plate can be installed.

   b. MLP will install a restrictor plate on the new intake grates to keep the lowest flows in Honokōhau Stream from flowing into Honokōhau Ditch.

   c. MLP will install a restrictor plate on the new intake grates to keep the highest flows in Honokōhau Stream from flowing into Honokōhau Ditch.

   d. 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) All other orders from November 20, 2019 not explicitly modified by recommendation 1 above remain in full effect.

3) Within 90 days, MLP will submit final engineering plans for all plans for approval by staff and modifications to be completed within 1 year.

Ola i ka wai,

M. KALEO MANUEL
Deputy Director

Exhibit:
1. Conceptual Restrictor Plate Plan for Honokōhau Diversion 770 from Akinaka & Associates, Ltd., dated October 7, 2021.

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE
Chairperson

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

October 7, 2021

Mr. Kaleo Manuel
Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl St. #227
Honolulu, HI 96813

Subject: Conceptual Restrictor Plate Plan for Honokohau Diversion 770
Kapalua, Maui, Hawai i

Dear Mr. Manuel,

In accordance with the conditions established in the Staff Submittal and subsequent decision by the Department of Land and Natural Resources (DLNR), Commission on Water Resource Management (CWRM), we are submitting this conceptual design plan for review and approval based on various discussions with CWRM staff. The property owner, Maui Land & Pineapple Company, retained Akinaka & Associates, Ltd. to perform engineering services and conceptual modifications to the existing Honokohau Stream Diversion 770 to be in compliance with some of the directives made by the Commission on November 19, 2019. The proposed modification is to provide a restrictor plate at the bar screen of the intake to restrict excess water from flowing into the ditch during periods of higher flow.

Project Background

Diversion 770 is located on Honokohau Stream within Honokohau Valley **(see Exhibit 1 – Honokohau Ditch Users)**. On April 23, 2019, a Formal Complaint was filed by Ka Malu o Kahalawai and West Maui Preservation Association alleging Maui Land & Pineapple Company (MLP) of water waste. In response to the Complaint, CWRM addressed the issue during a Commission meeting on November 19, 2019. During the meeting, CWRM directed MLP to upgrade diversion 770 infrastructure so that it will only divert the water necessary to meet non-instream uses. CWRM also ordered MLP to upgrade the intake at diversion 770 to prevent higher flows from entering Honokohau Ditch that are in excess of non-instream uses. Furthermore, CWRM requested MLP to allow for a remote monitoring and remote operation for water release from Honokohau Ditch back in to Honokohau Stream. It should be noted that there is ongoing coordination to resolve this second issue; however, this submittal only speaks to action items regarding the first issue in preventing high flows from entering the ditch.

On May 18, 2021 CWRM approved to amend the Interim Instream Flow Standards (IIFS) for Honokohau and Kaluanui Streams. The IIFS on Honokohau Stream is to be implemented in two (2) phases. The first phase would take place prior to DHHL implementation of Regional Plan[1] and requires a flow[2] of 8.6 MGD to remain in-stream. MLP is required to meet the IIFS 100% of the time. The second phase would take place upon DHHL initial implementation of Regional Plan. Details of the second phase can be found in the May 18, 2021 CWRM meeting submittals for item B2.

[1] Information on the DHHL Regional Plan can be found in CWRM's April 20, 2021 meeting submittals under item C5
[2] Flow is measured at MacDonalds Dam

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

Conceptual Design

Based on discussion with CWRM staff, the bar screen at the entrance of diversion 770 was deemed the most feasible place for modifications to restrict higher flows from entering the diversion **(See Exhibit 2 – Site Plan)**. The proposed action includes the conceptual design of a metal restrictor plate, running across the entire length of the bar screen **(see Exhibit 3 – Restrictor Plate Detail)**. Since the design is still in conceptual phase and we do not have actual dimensions of the bar screen, actual measurements/dimensions were not used. Instead, the restrictor plate was sized relative to existing pictures.

During a September 17, 2021 meeting with representatives from CWRM, MLP, Hawaii Water Service, Akinaka, and Honokohau Valley residents, it was agreed that a temporary mitigation measure would be deployed until the permanent restrictor plate solution was approved and ready to be installed. This temporary mitigation measure includes the installation of a plywood restrictor in lieu of the metal restrictor plate as proposed in this conceptual design. This temporary mitigation measure will be coordinated by Hawaii Water Service.

Permitting

It was previously discussed that the work described in this submittal does not require a Stream Channel Alteration Permit (SCAP) or Stream Diversion Works Permit (SDWP); however, we are still getting verification from CWRM on this. It is still unknown whether the work will require other regulatory agency approvals; however, once CWRM approves of a conceptual design plan, the final design/construction plans will go through complete agency review and obtain all necessary approvals.

Schedule

A proposed schedule was also created to give an estimate on the amount of time that would be needed to complete all necessary work for the improvements **(see Exhibit 4 – Proposed Schedule)**. As mentioned within the exhibit, the schedule assumes no permitting requirements. The schedule also assumes that very few agencies would be required to review the construction plans. This schedule was based on the improvements and work described in this submittal. If CWRM rejects or modifies the conceptual design plan or there are permitting requirements, the schedule would need to be re-evaluated and another tentative schedule would have to be created.

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

Summary

In response to the order made by CWRM in November of 2019 to restrict excess higher flows from being diverted into the Honokohau Ditch, we respectfully ask for CWRM to approve of this conceptual design plan to install a metal restrictor plate at the bar screen at Diversion 770.

Should you have any questions or need further clarification, please feel free to contact me at 808-836-1900.

Sincerely,

Ken C. Kawahara, P.E.

KEN C. KAWAHARA
LICENSED PROFESSIONAL ENGINEER
No. 9148-C
HAWAII, U.S.A.

Attachments:

1) Exhibit 1: Honokohau Ditch Users
2) Exhibit 2: Site Plan
3) Exhibit 3: Restrictor Plate Detail

References:

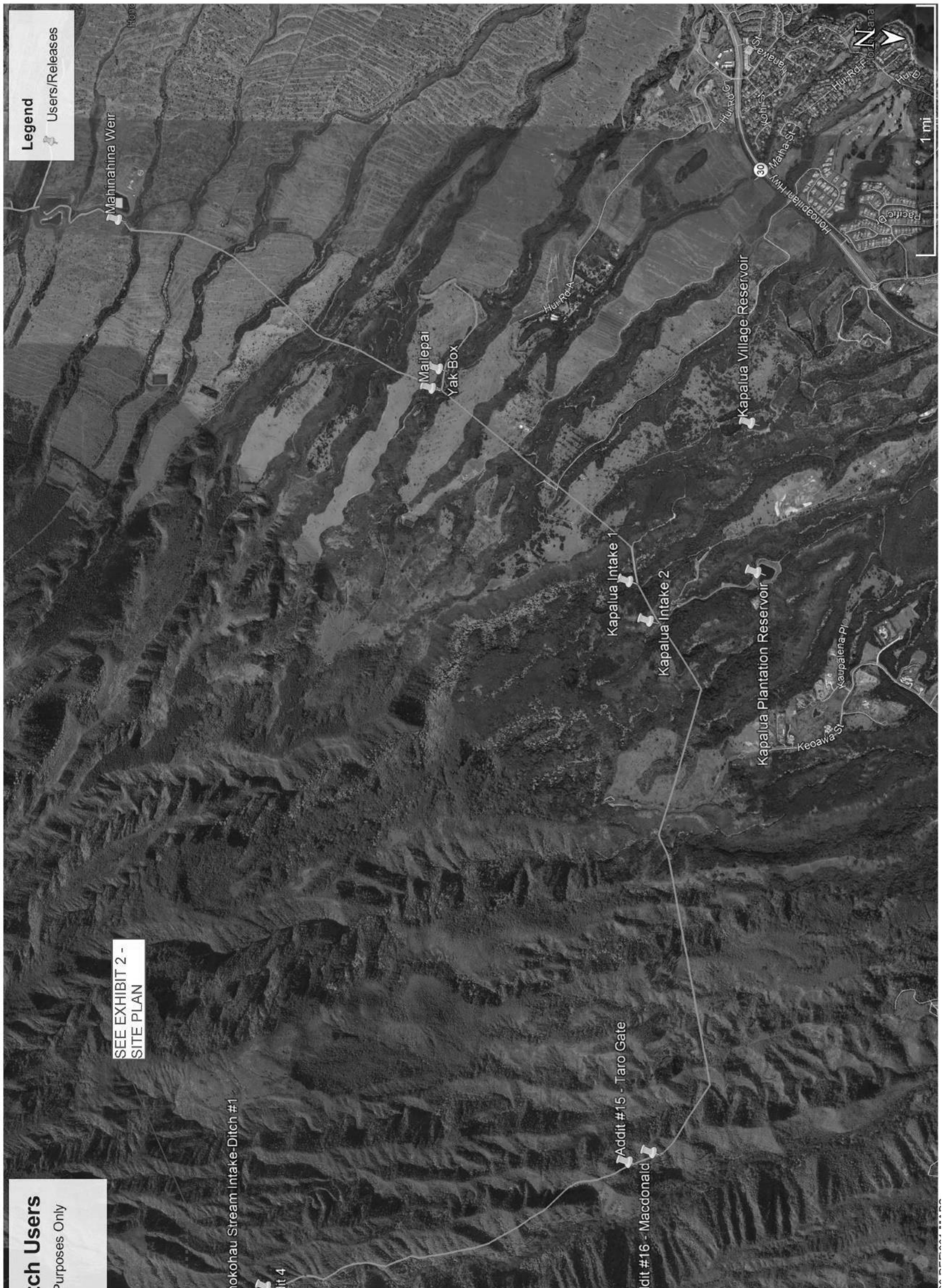
1) Reference 1: Staff Submittal from CWRM meeting on November 19, 2019
2) Reference 2: Minutes from CWRM meeting on May 18, 2021

cc: *Maui Land and Pineapple Co., Gilbert Keith-Agaran, Hawaii Water Services*

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

EXHIBIT 1

Alakea Corporate Tower • 1100 Alakea Street, Suite 1800 • Honolulu, Hawaii 96813
Phone: (808) 836-1900 • Fax: (808) 836-8852


Honokohau Ditch Users
DRAFT - For Discussion Purposes Only
Created 8/11/2020
8/27/2020 rev.
Legend
Users/Releases
Mahinahina Weir
Mailepai
Yak Box
Kapalua Village Reservoir
Kapalua Intake 1
Kapalua Intake 2
Kapalua Plantation Reservoir
SEE EXHIBIT 2 -
SITE PLAN
Honokohau Stream Intake-Ditch #1
Aotaki Gate
Addit 4
Addit #15 - Taro Gate
Addit #16 - Macdonald
Google Earth
1 mi

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

EXHIBIT 2

Alakea Corporate Tower • 1100 Alakea Street, Suite 1800 • Honolulu, Hawaii 96813
Phone: (808) 836-1900 • Fax: (808) 836-8852

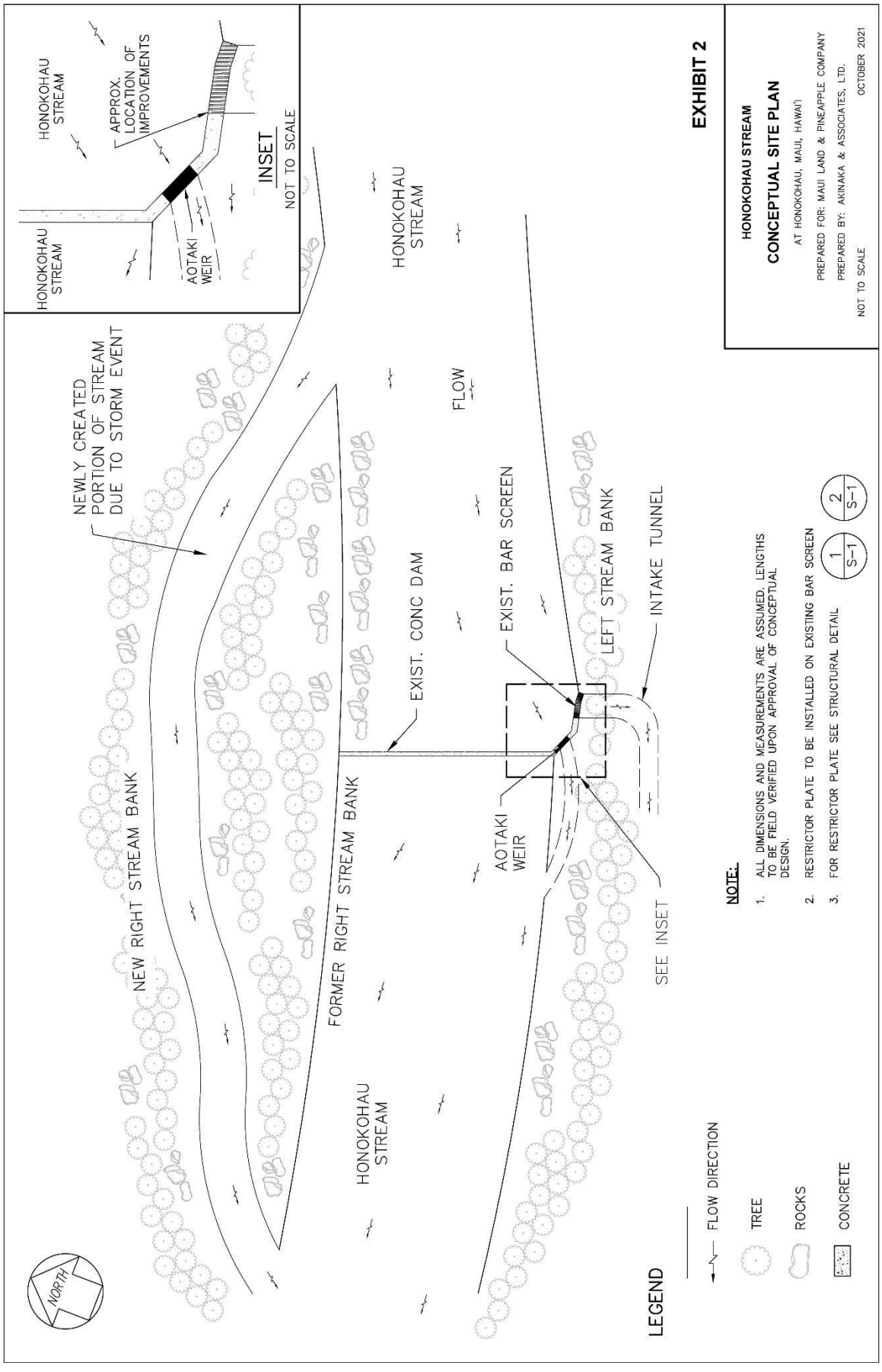
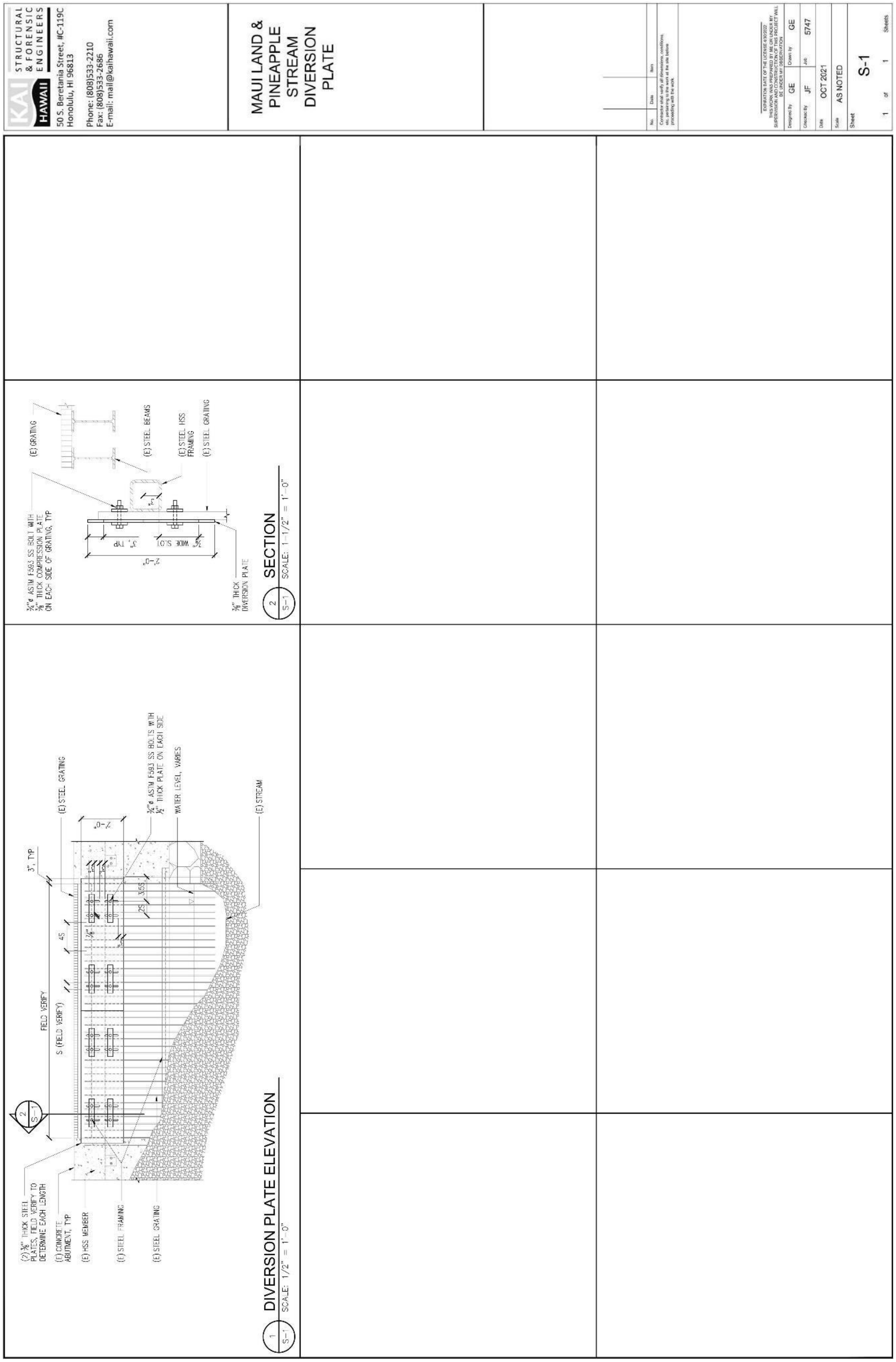


EXHIBIT 2
HONOKOHAU STREAM
CONCEPTUAL SITE PLAN
AT HONOKOHAU, MAUI, HAWAI'I
PREPARED FOR: MAUI LAND & PINEAPPLE COMPANY
PREPARED BY: AKINAKA & ASSOCIATES, LTD.
NOT TO SCALE
OCTOBER 2021
INSET
NOT TO SCALE
HONOKOHAU STREAM
APPROX. LOCATION OF IMPROVEMENTS
AOTAKI WEIR
NEWLY CREATED PORTION OF STREAM DUE TO STORM EVENT
NEW RIGHT STREAM BANK
FORMER RIGHT STREAM BANK
EXIST. CONC DAM
EXIST. BAR SCREEN
AOTAKI WEIR
FLOW
LEFT STREAM BANK
INTAKE TUNNEL
SEE INSET
NOTE:
1. ALL DIMENSIONS AND MEASUREMENTS ARE ASSUMED. LENGTHS TO BE FIELD VERIFIED UPON APPROVAL OF CONCEPTUAL DESIGN.
2. RESTRICTOR PLATE TO BE INSTALLED ON EXISTING BAR SCREEN
3. FOR RESTRICTOR PLATE SEE STRUCTURAL DETAIL 1/S-1
2/S-1
LEGEND
FLOW DIRECTION
TREE
ROCKS
CONCRETE
NORTH

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

EXHIBIT 3

Alakea Corporate Tower • 1100 Alakea Street, Suite 1800 • Honolulu, Hawaii 96813
Phone: (808) 836-1900 • Fax: (808) 836-8852


KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS
50 S. Beretania Street, #C-119C
Honolulu, HI 96813
Phone: (808)533-2210
Fax: (808)533-2686
E-mail: mail@kaihawaii.com
MAUI LAND & PINEAPPLE STREAM DIVERSION PLATE
OCT 2021
AS NOTED
S-1
SECTION
SCALE: 1-1/2" = 1'-0"
DIVERSION PLATE ELEVATION
SCALE: 1/2" = 1'-0"
(E) STREAM
WATER LEVEL, VARIES
(E) STEEL GRATING
FIELD VERIFY

AKINAKA & ASSOCIATES, LTD.
Consulting Civil Engineers

EXHIBIT 4

Proposed Schedule

The estimated time frame to install the interim restrictor plate is listed below.

Task	Time to Complete
Inspect project location	2 weeks
Install temporary plywood restrictor plate	1.5 months

The interim restrictor plate can be installed while the permanent restrictor plate is under design.

The estimated time frame to complete the permanent Restrictor Plate Plan for Honokohau Diversion 770 is listed below.[1]

Task	Time to Complete
Complete Design (construction document preparation)	3 months
Bid Document Preparation	1 month
Request for Bids	2 months
Bidder Selection	1 month
Construction	6 months

[1] Assume no permitting required

From:	Race Randle
To:	Ken Kawahara; Dean Frampton; Kadowaki, John (Kani)
Subject:	Re: Continued conversation about modifications to Honokohau Ditch intake
Date:	Wednesday, October 18, 2023 4:01:03 PM
Attachments:	image002.png image003.jpg image001.png

I can do 3pm on the 23rd and 2-4pm on the 31st.

Image

Race A. Randle | CEO
MAUI LAND & PINEAPPLE COMPANY, INC.
200 Village Road Lahaina, HI 96761
Mobile: 808-349-9364
race@mauiland.com

From: Ken Kawahara
Date: Wednesday, October 18, 2023 at 1:46 PM
To: Race Randle , Dean Frampton , Kadowaki, John (Kani)
Subject: RE: Continued conversation about modifications to Honokohau Ditch intake

Race,
Thanks for the quick reply. Of the dates, Ayron mentioned in his first email, I am not available on Oct 26 and 27 due to a water conference on the Big island…surprised that CWRM is not attending that conference. I am available on the other dates and times.
Perhaps, you or Dean could let me know your availability for:
Monday Oct 23 11:00-4:00
Tuesday Oct 31 12:00-4:00
Kani,
Would you or someone else from Hawaii Water participate? If so, please provide your availability.
Thank you!
Ken

Ken C. Kawahara, P.E.
President
1100 Alakea Street, Suite 1800
Honolulu, Hawaii 96813
Main Line: 808-836-1900
Direct Line: 808-203-6668
www.akinaka.com

From: Race Randle
Sent: Wednesday, October 18, 2023 12:01 PM
To: Ken Kawahara ; Dean Frampton
Cc: Kadowaki, John (Kani)
Subject: Re: Continued conversation about modifications to Honokohau Ditch intake

I would like to join in a meeting with them next week.
We should discuss and have a recommended strategy of what we do to achieve the goal stated by CWRM – County drinking water supply.
In this is already in hand, we should meet with them soon to talk through the results of the current temporary solutions, the diversion flow rates, and the instream flow measurements.

Image

Race A. Randle | CEO
MAUI LAND & PINEAPPLE COMPANY, INC.
200 Village Road Lahaina, HI 96761
Mobile: 808-349-9364
race@mauiland.com

From: Ken Kawahara <kck@akinaka.com>
Date: Wednesday, October 18, 2023 at 11:30 AM
To: Dean Frampton <dean@mauiland.com>
Cc: Kadowaki, John (Kani) <jkadowaki@calwater.com>, Race Randle <race@mauiland.com>
Subject: RE: Continued conversation about modifications to Honokohau Ditch intake

Dean,
Not sure if you contacted on this already, but State CWRM staff reached out to Kani and me (emails below). This is regarding the items that Akinaka briefed you back in late August. Looks like CWRM is refocusing on this.
I haven't responded back to these emails. Shall we discuss or how would you like to respond?
Thank you!
Ken

Ken C. Kawahara, P.E.
President

1100 Alakea Street, Suite 1800
Honolulu, Hawaii 96813
Main Line: 808-836-1900
Direct Line: 808-203-6668
www.akinaka.com

From: Strauch, Ayron M <ayron.m.strauch@hawaii.gov>
Sent: Monday, October 16, 2023 8:37 AM
To: Alakai, Rebecca R <Rebecca.R.Alakai@hawaii.gov>; Ken Kawahara <kck@akinaka.com>; Kadowaki, John (Kani) <jkadowaki@calwater.com>
Cc: Uyeno, Dean D <dean.d.uyeno@hawaii.gov>; Manuel, Kaleo L <kaleo.l.manuel@hawaii.gov>; Ching, Cody L <cody.l.ching@hawaii.gov>; Kaaa, Iwalani HR <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.
Ayron

From: Alakai, Rebecca R <Rebecca.R.Alakai@hawaii.gov>
Sent: Monday, October 16, 2023 7:56:18 AM
To: Strauch, Ayron M <ayron.m.strauch@hawaii.gov>; Ken Kawahara <kck@akinaka.com>; Kadowaki, John (Kani) <jkadowaki@calwater.com>
Cc: Uyeno, Dean D <dean.d.uyeno@hawaii.gov>; Manuel, Kaleo L <kaleo.l.manuel@hawaii.gov>; Ching, Cody L <cody.l.ching@hawaii.gov>; Kaaa, Iwalani HR <iwalani.hr.kaaa@hawaii.gov>
Subject: RE: Continued conversation about modifications to Honokohau Ditch intake

Ayron,

Fyi, we received SWUP.6072.6 Hawaii Water Service Inc., who's source of water is Div.770. I would think that modification of the diversion would be included in the evaluation of their permit application especially when it goes before the Commission.

Mahalo, Rebecca

From: Strauch, Ayron M <ayron.m.strauch@hawaii.gov>
Sent: Saturday, October 14, 2023 9:04 AM
To: Ken Kawahara <kck@akinaka.com>; Kadowaki, John (Kani) <jkadowaki@calwater.com>
Cc: Uyeno, Dean D <dean.d.uyeno@hawaii.gov>; Manuel, Kaleo L <kaleo.l.manuel@hawaii.gov>; Ching, Cody L <cody.l.ching@hawaii.gov>; Alakai, Rebecca R <Rebecca.R.Alakai@hawaii.gov>; Kaaa, Iwalani HR <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,

Ayron M. Strauch, Ph. D.

Hydrologist, Commission on Water Resource Management

Department of Land and Natural Resources

State of Hawaii

1151 Punchbowl St. Rm 227

Honolulu, HI 96813

808-587-0265

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MAUI LAND
& PINEAPPLE COMPANY INC.

August 21st, 2024

TY Management Company
Attn: Alex Nakajima
Kapalua Golf and Tennis
2000 Plantation Club Dr.
Lahaina, HI 96761

RE: **Water Delivery for Golf Courses**

Aloha Alex:

This letter is to update you regarding non-potable water availability.

Less Water Is Anticipated To Be Available
A number of significant factors have occurred beyond MLP's control, challenging our ability to provide non-potable surface water for irrigation in Kapalua. First, in 2018, heavy rains associated with Hurricane Lane caused irreparable damage to elements of the ditch system, resulting in the elimination of the Honolua intake and a natural circumvention of water around diversion 770 in Honokohau – both resulting in less water entering the ditch during rainfall events. Compounding matters, persistent drought conditions combined with the requirement to consistently meet CWRM interim inflow stream standards (IIFS) have impacted non-potable water availability in the Honokohau Ditch System. At this time, we anticipate that the after first meeting the IIFS in the stream, and satisfying the potable requirements of the County Department of Water Supply (DWS), there will be less water available than in past years.

Water Use Priorities
Our Agreement(s) For Water Delivery dated 2009 and 2010 reads as follows:
"*In the event of drought or other conditions that may reduce the water available to MLP below the amount required for MLP to meet its various potable and non-potable demands, commitments and requirements, the parties agree that MLP shall allocate its water resources as follows: first, to satisfy all Potable Uses; second, to satisfy Current Non-Potable Uses, provided however that if there is insufficient water to satisfy all Current Non-Potable Uses, MLP shall have the right to reduce the amount of water delivered hereunder to the Bay Course and the Golf Academy, provided that the delivery of water for all other Current Non-Potable Uses shall be similarly reduced in a nondiscriminatory manner based upon each Current Non-Potable Use's respective non-potable water usage over the preceding twelve months; and third, to the extent available, to satisfy the New Non-Potable Uses.*"

Accordingly, effective immediately, HWS is directed to serve water users from the Ditch System in the following priority:

1. Ensure the 2021 IIFS is met
2. Satisfy all Potable Uses, including DWS

If additional water is available, HWS is directed to serve water users in the following priority:

3. Satisfy current life-safety related non-potable uses including Kapalua fire systems, taking care to ensure that water stored for such purposes is not drawn for other purposes;
4. Satisfy the following current ongoing irrigation non-potable uses: (1) MLP's plantation agriculture, including any tenants of the agricultural lands (2) irrigation for TY, (3) the non-potable resort water system operated by the Kapalua Water Company (HWS), and (4) the Sustainable Agricultural Development in areas mauka of Napili including the Napili Community Garden. If there is not sufficient water to meet all needs, available water will be allocated proportionately based on respective usage over the last twelve months.
5. Satisfy other current ongoing irrigation non-potable uses.

We are not able to provide certainty that after prioritizing potable uses, there will be sufficient water to meet the needs of the Bay Course, Golf Academy, and Plantation Course.

Improvements to Ditch System

In light of the impacts to the Ditch System noted above, MLP has been, and will continue to make capital improvements, replacements and repairs to the System, which includes but is not limited to Major Preventative Maintenance (over $250,000) which may improve the productivity and efficiency of the Ditch System. Currently, our agreements with TY do not allow for the costs of these necessary improvements, replacements and repairs to be included in the calculation of water delivery charges. We hereby request that TY agree to an amendment of their Water Agreements to allow for the pro-rata amortized cost of these necessary improvements, replacements and repairs.

Water Delivery Charges

Due to increased operation and maintenance costs of the system as compared to available water, water delivery charges will be increasing for all users of water from the non-potable system.

In order to provide the best rate calculation for your needs, we ask that you <u>please provide, by September 15, 2024, the following information:</u>

MAUI LAND
& PINEAPPLE COMPANY INC.

- Estimate of any anticipated percentage (%) changes in monthly water use by the Bay Course, Golf Academy, or Plantation Course in the next 12 months. If you are not able to forecast percentage (%) changes, we will utilize prior usage as a forecast.

Alternative Water Sources and/or Onsite Storage
You are also hereby notified to pursue alternative water sources and/or improvements which would meet your water needs for future golf course irrigation use. Our agreements contain options for TY and MLP in regard to alternative sources. We recommend that TY evaluate those options and arrange a meeting with MLP to discuss their preferred options. In addition, we recommend you evaluate improvements within the golf courses which may improve your ability to retain and recycle water onsite from high rain events.

Thank you for your attention to this important matter.

MAUI LAND & PINEAPPLE COMPANY, INC.

By _____
Race Randle
Its CEO

With email copy to:
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Attorney for Plaintiffs
PLANTATION ESTATES LOT OWNERS' ASSOCIATION; ASSOCIATION OF APARTMENT OWNERS OF THE COCONUT GROVE ON KAPALUA; ASSOCIATION OF APARTMENT OWNERS OF THE RIDGE AT KAPALUA; HUA MOMONA FARMS LLC

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

PLANTATION ESTATES LOT OWNERS' ASSOCIATION, a Hawai'i nonprofit corporation; ASSOCIATION OF APARTMENT OWNERS OF THE COCONUT GROVE ON KAPALUA, a Hawai'i nonprofit corporation; ASSOCIATION OF APARTMENT OWNERS OF THE RIDGE AT KAPALUA, a Hawai'i nonprofit corporation; HUA MOMONA FARMS LLC, a Hawai'i limited liability company; TY MANAGEMENT CORPORATION, a Hawai'i corporation, Plaintiffs, vs. MAUI LAND & PINEAPPLE COMPANY, INC., a Delaware corporation; JOHN DOES 1-50, MARY DOES 1-50, and DOE PARTNERSHIPS 1-50, CORPORATIONS 1-50, DOE ENTITIES 1-50, AND DOE GOVERNMENTAL UNITS 1-50, Defendants.	CIVIL NO. _____ (Breach of Contract) COMPLAINT; EXHIBITS 1-9; SUMMONS

COMPLAINT

Plaintiffs Plantation Estates Lot Owners' Association ("PELOA"), Association of Apartment Owners of the Coconut Grove on Kapalua ("Grove AOAO"), Association of Apartment Owners of the Ridge at Kapalua ("Ridge AOAO"), Hua Momona Farms LLC ("Hua Momona"), and TY Management Corporation ("TY"), file this Complaint against Defendant Maui Land & Pineapple Company, Inc. ("Defendant" or "MLP"). Plaintiffs allege the following:

PRELIMINARY STATEMENT

1. In Hawai‘i, where the constitution requires that "the State and its political subdivisions shall conserve and protect Hawaii's […] natural resources […] and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State," Haw. Const. art. XI § 1, critical water infrastructure, like the Honokōhau Ditch System, should be managed by the State or the County of Maui.

2. But this is not the case. Instead, the Honokōhau Ditch System, on which residents, farmers, and businesses in Kapalua and parts of West Maui all depend, is owned by an often-struggling, once-nearly-bankrupt, former plantation company with a history of environmental violations and problems—Defendant Maui Land & Pineapple ("MLP").

3. And MLP is doing a terrible, actionable job of complying with its responsibilities as the Ditch System's owner and operator. This must stop; water users cannot bear MLP's incompetence any longer.

4. MLP has knowingly, and in violation of its promises and obligations to Plaintiffs, allowed the Ditch System to fall into a state of demonstrable disrepair. That disrepair, not any act of God, or force of nature, or other thing, is why users who need it are currently without water.

5. Plaintiffs bring this case against MLP because MLP has abused the trust of residents, farmers, and businesses in Kapalua and parts of West Maui, all of whom are now being starved for irrigation water by MLP.

6. Now, under scrutiny, MLP is telling Plaintiffs and other water users in West Maui that there is not enough water to serve their needs, repeatedly claiming that water is scarce "due to low precipitation in the Puʻu [K]ukui water shed."[1] But that statement is false.

7. Precipitation in the Puʻu Kukui water shed is anything but "low." The Puʻu Kukui region receives an average of 225 inches of rain per year[2] and the annual mean discharge of the Honokōhau Stream was slightly higher in 2024 than it was in 2009, when MLP first promised that there would always be enough irrigation water for all of West Maui.[3]

8. For comparison, the famously rainy "Emerald City," Seattle, Washington, received 55.14 inches of rain in **its wettest year ever.**[4]

9. Similarly rainy Portland, Oregon, in its **wettest year ever**, recorded 72.71 inches of rain.[5]

10. Water is scarce not because rain is falling in significantly smaller quantities. Rather, water is scarce because MLP has failed to honor its promises to maintain the

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[1] Hawaii Water Service, Kapalua: Mandatory Non-Potable Conservation Update, https://www.hawaiiwaterservice.com/alerts/kapaluanonpotableconservation/ (last visited Aug. 15, 2025).

[2] U.S. Geological Survey, National Water Information System, Water-Year Summary for Site USGS 205327156351102, *Data Reports Puu Kukui Rain Gage at altitude 5,771 feet, Maui, Hawaii*, https://waterdata.usgs.gov/nwis/wys_rpt?dv_ts_ids=41653&wys_water_yr=2014&site_no=205327156351102&agency_cd=USGS&adr_water_years=2007%2C2008%2C2009%2C2010%2C2011%2C2012%2C2013%2C2014%2C2015%2C2016%2C2017%2C2018%2C2019%2C2020%2C2021%2C2022%2C2023&referred_module= (last visited Aug. 14, 2025). The average of 225 inches of rain per water year is based on USGS Water-Data Reports from 2007 to 2024 (excluding data from 2013 and 2024 when reporting was incomplete).

[3] U.S. Geological Survey, Surface-Water Annual Statistics for the Nation, Water Year Summary for Site USGS 16620000, *Honokohau Stream near Honokohau, Maui, HI*, https://waterdata.usgs.gov/nwis/wys_rpt/?site_no=16620000&agency_cd=USGS (last visited Aug. 14, 2025). MLP signed agreements to deliver water to TY in 2009 and 2010, when the mean annual discharge was 26.4 cubic feet per second ("cfs") and 25.3 cfs, respectively. In 2024, the mean annual discharge was 27.4 cfs. The mean annual discharge, according to USGS, since 2007 is 33.06 cfs.

[4] Seattle Weather Blog, Rain Stats, https://seattleweatherblog.com/rain-stats/ (last visited Aug. 14, 2025).

[5] National Weather Service, Top 5 Wettest and Driest Months and Years, Portland Climate Book, https://www.weather.gov/media/pqr/climate/ClimateBookPortland/pg94.pdf.

infrastructure used to collect, carry, and store it properly. Making matters worse, MLP has repeatedly said that it is planning to develop new luxury residences, hotels, and even a new golf course, all while it claims there is not enough water for the existing Kapalua community.

11. Despite exhaustive efforts from TY and others to engage MLP in a cooperative fashion to fix the Ditch System, MLP has refused. MLP is evidently content to see water users' reasonable and beneficial needs go unmet, and to see the cost of irrigation water increase for end users. TY has gone so far as to offer to MLP that TY would finance maintenance and rehabilitation of the Ditch System as long as MLP completed studies on the integrity of the Ditch System and released those studies to the public. Incredibly, MLP said no.

12. And so, as a last resort Plaintiffs reluctantly find themselves before this Court. As of the filing of this Complaint, Kapalua's non-potable water users have been subject to unprecedented, nearly constant water use restrictions since September 2024.[6] Plaintiffs bring this Complaint to compel MLP to do what it should have done, and what it was required to do, from the start—repair, maintain, and improve the Ditch System for the benefit of all of Kapalua and West Maui's community members who rely upon it.

PARTIES

PELOA

13. Plaintiff Plantation Estates Lot Owners' Association ("PELOA") is a Hawai'i domestic nonprofit corporation that maintains its principal place of business in Lahaina, Hawai'i. With 103 lots and members, PELOA is a planned community association that manages the

[6] Hawaii Water Service, Kapalua: Mandatory Non-Potable Conservation Update, https://www.hawaiiwaterservice.com/alerts/kapaluanonpotableconservation/ (last visited Aug. 15, 2025). The update published February 20, 2025 references mandatory use reductions beginning on September 27, 2024; reductions are still active as of the most recent update on August 15, 2025.

Plantation Estates in Kapalua, Maui. Honolua Ridge in Kapalua, Maui is included in Plantation Estates.

14. PELOA brings this lawsuit because MLP's actions have created a public nuisance by increasing the risk of wildfires in Kapalua, and because their properties are damaged, and their property values diminished, by MLP's failures.

15. In or around 1990, MLP developed, constructed, and sold for its own profit the lots within the Plantation Estates through entities under its direction and control.

16. All 103 lots that comprise Plantation Estates are located within an agricultural zoning district, and therefore regulated by Chapter 19.30A of the Maui County Code ("MCC"), the Rules Relating to the Administration of Chapter 19.30A, Maui County Code Pertaining to the Agricultural District (the "Agricultural District Rules"), the Rules for Administrative Procedures and Civil Fines for Violations of Chapter 16.13 and Title 19 of the Maui County Code (the "Procedures and Fines Rules"), and Chapter 205 of Hawai‘i Revised Statutes ("HRS") (collectively, the "Zoning Laws").

17. The Zoning Laws restrict the activities and uses within an agricultural zoning district. Permitted uses include farming and cultivation of crops.

18. Under the Zoning Laws, owners of lots within agricultural districts are not permitted to construct residential dwellings unless they are "farm dwellings." "Farm dwelling" is defined in MCC Chapter 19.04 as "a single-family dwelling that is located on and used in connection with a farm," and in HRS § 205-4.5(a)(4) as "a single-family dwelling located on and accessory to a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

19. MCC Chapter 19.04 defines "farm" to mean "a lot on which **at least 51 percent** of the area of the land that is used for, and the predominant activity is, agriculture or agricultural land conservation." (Emphasis added).

20. To maintain a single-family dwelling on their properties, PELOA members must use more than fifty percent of their lots for agricultural purposes. Failure to comply with this requirement can result in adverse consequences under Section 12-103-12 of the Procedures and Fines Rules.

21. Therefore, PELOA's members grow a variety of crops, trees, flowers, gardens, and orchards on their properties, including but not limited to avocados, starfruit, guava, banana, papaya, lemon, lime, orange, and tangerines.

22. PELOA and its members are also subject to the Declaration of Covenants, Conditions & Restrictions for Plantation Estates, dated April 3, 1990, and recorded with the Bureau of Conveyances on April 6, 1990, as Document No. 90-049432, as amended ("PELOA Declaration").

23. The PELOA Declaration expressly requires compliance with HRS Chapter 205, and further restricts use of the lots to limited agricultural and single-family residential purposes.

24. Attached to the PELOA Declaration as "Exhibit B" is the Design and Construction Rules for Plantation Estate ("PELOA Design Rules"), which requires PELOA to maintain and water all Cook Pine trees that were originally planted by the developer-entity controlled by MLP.

25. The PELOA Design Rules require PELOA to maintain an existing "automatic irrigation system" installed by the developer-entity to water the Cook Pine trees, and PELOA must replace any Cook Pine trees that die.

26. The PELOA Declaration further requires PELOA and its members to maintain and keep in good order all trees and other plantings located within the community.

27. To do this, PELOA and its members receive and use non-potable irrigation water from Hawaii Water Service Company ("HWS"), to which they pay all water charges.

28. Upon information and belief, the actions of HWS as alleged in this Complaint are made at the direction and insistence of MLP, from whom HWS depends on to provide water to water users in Kapalua, and such conduct and actions are attributable to MLP.

29. PELOA's non-potable irrigation water originates from MLP's Honokōhau Ditch System (the "Ditch System" or "Water System," the components of which are described in the Statement of Facts below).

30. The non-potable irrigation water supplied by HWS is utilized by PELOA and its members to maintain their agricultural activities, landscaping, plantings, and Cook Pine trees, within their respective lots and/or common elements.

31. Thus, PELOA and its members depend on water from the MLP Ditch System.

32. Beginning in 2024, due to MLP's water restrictions, PELOA and its members' use of irrigation water has been restricted or prohibited.

33. Out of the 154 days immediately preceding the filing of this Complaint, PELOA and its members (as well as all Plaintiffs) have been restricted to using no irrigation water for 136 days, and restricted using only forty percent of their historical irrigation water usage for the remaining 18 days.

34. Due to MLP's water restrictions, PELOA members can no longer utilize water for required agricultural activities. This has increased the risk of wildfires for PELOA and its

members because their orchards, Cook Pine trees, and other plantings have become dry, dead, and flammable without irrigation water.

35. As a result, PELOA and its members not only face an unacceptable health and safety risk from potential wildfires, but also their property values are diminished, and they can no longer irrigate their crops and plantings as they are required to do.

Grove AOAO

36. Plaintiff Association of Apartment Owners of the Coconut Grove on Kapalua ("Grove AOAO") is an unincorporated Hawai‘i condominium association that maintains its principal place of business in Lahaina, Maui.

37. The Coconut Grove on Kapalua Bay ("Coconut Grove") is a residential condominium development consisting of thirty-six (36) residential units situated on approximately twelve (12) acres of property within the Kapalua Resort.

38. In or around 1999, MLP developed, constructed, and sold for its own profit the lots within Coconut Grove through entities under its direction and control.

39. The Grove AOAO and its members are governed by the Declaration of Condominium Property Regime executed on September 20, 1999, and recorded in the Bureau of Conveyances of the State of Hawai‘i on September 22, 1999, as Document No. 99-152615, as amended ("Grove Declaration").

40. The Grove Declaration requires that the Grove AOAO and its members maintain and keep in good order and repair all lots and/or common elements, as well as all residences, improvements, structures, and landscaping located within Coconut Grove.

41. Because of a shortage in water from MLP's Ditch System, beginning in 2024, the Grove AOAO and its members have received water restriction notices from HWS, forcing them to cease irrigation and halt the maintenance of landscaping and grass within the Coconut Grove.

42. As a result, the Grove AOAO and its members can no longer maintain the landscaping and grounds of their respective lots and/or common elements in good order and repair, in violation of the Grove Declaration.

43. As a result, the existing landscaping and grass has become dry and poses a wildfire risk.

Ridge AOAO

44. Plaintiff Association of Apartment Owners of the Ridge at Kapalua ("Ridge AOAO") is a Hawai‘i nonprofit corporation that maintains its principal place of business in Lahaina, Maui.

45. The Ridge at Kapalua ("The Ridge") is a residential condominium development consisting of 161 residential units situated on approximately twenty-one (21) acres of land located within the Kapalua Resort.

46. In or around 1979, MLP developed, constructed, and sold for its own profit the lots within The Ridge through entities under its direction and control.

47. The Ridge AOAO is governed by the Declaration of Horizontal Property Regime for The Ridge Condominium Project dated June 21, 1979, and recorded in Liber 13797 at Page 1, and the By-Laws attached thereto, as amended ("Ridge Declaration").

48. The Ridge Declaration requires the Ridge AOAO and its members maintain and keep in good order and repair all lots and/or common elements, as well as all residences, improvements, structures, and landscaping located within The Ridge.

49. Because of a shortage in water from MLP's Ditch System, beginning in 2024, the Ridge AOAO and its members have received water restriction notices from HWS, forcing them to cease irrigation and halt the maintenance of landscaping and grass within The Ridge.

50. As a result, the Ridge AOAO and its members can no longer maintain the landscaping and grounds of their respective lots and/or common elements in good order and repair, in violation of the Ridge Declaration.

51. As a result, the existing landscaping and grass has become dry and poses a wildfire risk.

52. PELOA, the Grove AOAO, and the Ridge AOAO are hereinafter collectively referred to as the "Association Plaintiffs."

53. The Association-Plaintiffs allege claims both personally and pursuant to associational standing under Hawai‘i law. The associational claims are brought because each Association's members would have standing to sue in their own right, the interests the Associations seek to protect are germane to their purpose, and neither the claims asserted nor the relief requested requires the participation of individual members of the Associations in this lawsuit. *Haw. Med. Ass'n v. Haw. Med. Serv. Ass'n*, 113 Hawai‘i 77, 95, 148 P.3d 1179, 1197 (2006).

Hua Momona

54. Plaintiff Hua Momona Farms LLC ("Hua Momona") is a Hawai‘i limited liability company with its principal place of business in Lahaina, Maui.

55. Hua Momona was formed in or around 2017 for the purpose of cultivating produce using organic and sustainable farming practices.

56. Hua Momona owns and operates Hua Momona Farms (the "Farm"), an organic farm situated on approximately twenty-five (25) acres of agriculturally zoned land in Kapalua, Maui. Hua Momona holds ownership of the Farm through its sole membership interest in a separate entity.

57. Hua Momona carries out all agricultural operations on the Farm, including the cultivation, harvesting, and distribution of field crops, microgreens, trees, and sod.

58. The Farm receives non-potable irrigation water from MLP's Ditch System for all of its agricultural and charitable operations.

59. Hua Momona produces a variety of crops for sale to local restaurants and has cultivated a reputation for excellent produce and microgreens.

60. In addition, Hua Momona is actively engaged in charitable efforts, including initiatives to address food insecurity in Maui and to support the community's long-term recovery in the aftermath of the wildfires that devastated Lahaina on or about August 8, 2023 ("Lahaina Wildfires").

61. As part of these efforts, Hua Momona prepares hot meals using its own produce and other locally sourced ingredients, which it sells at below-market rates to its partner nonprofit organization, the Hua Momona Foundation (the "Foundation").

62. The Foundation supports charitable efforts on Maui through agricultural activities, facilitating housing replacement, supporting mental health programs, youth programs, and providing hot meals and fresh local produce to those facing food insecurity.

63. To date, the Foundation has served over 80,000 hot, fresh meals to those impacted by the Lahaina Wildfires, and its efforts are made possible only through the support it receives from the Farm, which in turn depends on water from MLP's Ditch System.

64. Hua Momona also sponsors agricultural events and hosts activities designed to increase food security in Maui. These events, such as the Maui Music and Food Experience, attract local residents, schools, and agricultural partners, and are dependent on the continued operation of the Farm and the availability of irrigation water.

65. In the aftermath of the Lahaina Wildfires, Hua Momona partnered with Treecovery Hawaii to support reforestation efforts and to provide, at no cost, replacement trees to individuals who lost trees to the Lahaina Wildfires. To fulfill this commitment, Hua Momona cultivates trees on the Farm specifically for this purpose.

66. Hua Momona also cultivates and supplies sod to support rebuilding efforts in Lahaina.

67. On June 19, 2025, HWS issued Hua Momona a written warning for exceeding usage limits during a Tier 4 restriction period. That same day, HWS technicians came to the Farm and informed Hua Momona that its non-potable water meter was being removed—an action that would have shut off the Farm's access to irrigation water and terminated its agricultural and charitable activities and missions. The technicians left the meter in place that day, but the threat of an instant water cut off remains.

68. At peak capacity, Hua Momona supplied the Foundation with approximately 6,000 meals per month. That volume has since dropped to approximately 1,000 meals per month, due in significant part to the ongoing irrigation water restrictions.

69. An inadequate or unreliable water supply threatens Hua Momona with the imminent loss of crops; the collapse of its meal-provision program, community events, and Lahaina reforestation and rebuilding initiatives; and irreversible harm to the Farm's soil and long-term agricultural viability.

TY

70. Plaintiff TY Management Corporation ("TY") is a Hawai‘i corporation that maintains its principal place of business in Honolulu, Hawai‘i. TY owns and operates the Kapalua Plantation Golf Course ("Plantation Course"), a premier, destination golf course used by the PGA to host its annual Sentry Tournament of Champions. TY also owns and operates the Kapalua Bay Golf Course ("Bay Course"), a popular resort course that attracts golfers from all over the world (collectively these are the "Courses"). TY also owns and operates the "Golf Academy," which is a golf school and practice facility co-located near the Courses.

71. TY receives non-potable irrigation water from MLP's Ditch System for the Courses and its related facilities.

72. TY is pursuing the preservation of the Honokōhau Watershed, optimization of water usage at its facilities, and development of an alternative source of non-potable water for the Kapalua area.

73. TY supports the preservation of the Honokōhau Watershed and has been a strong supporter of Aloha Pu‘u Kukui, a nonprofit working to preserve the Pu‘u Kukui Watershed, of which the Honokōhau Watershed is a part.

74. In 2019, TY spent $12,673,590 on renovations to the Planation Course. These renovations optimized water use by converting the course to more drought resistant grasses and installing an upgraded and more efficient sprinkler system. Importantly, these renovations also reduced the area of the Course that receives irrigation by about **6-acres**. Similar renovation plans for the Bay Course were planned earlier this year, but are impossible to complete at this time without the use of any irrigation water.

75. Over the past ten years, and separate from the 2019 renovations to the Plantation Course, TY also invested an additional $10,347,026 in water monitoring equipment that allows TY to optimize and further reduce its water usage. These investments include repair, maintenance, and capital improvements to the irrigation systems, installation of weather stations that inform and reduce watering requirements, smart lawn mowers that gather data about the condition of the grass, and wireless soil sensor meters that provide real time data about moisture conditions.

76. TY has engaged consultants to evaluate the development of a wastewater treatment plant to produce recycled water suitable for irrigation purposes. TY's consultants are also evaluating the development of brackish water wells that would be used in conjunction with a desalinization system to produce irrigation water.

77. In addition to these and other long-term efforts, in July 2025, TY offered to provide MLP with financing for ditch maintenance and rehabilitation in the short term, so long as such efforts also included the completion of studies on the integrity of the Ditch System. MLP rejected this offer.

MLP

78. Defendant Maui Land & Pineapple Company, Inc. is a Delaware corporation that maintains its principal place of business in Lahaina, Hawai‘i. MLP is the owner of the lands underlying the Honokōhau Stream and other streams in the area. On MLP's lands also sits other critical water infrastructure including development intake tunnels, transmission and maintenance tunnels, siphons, diversions, ditches, gauging stations, storage tanks, valves, piping, adits, gates,

dams, weirs and reservoirs. These all serve Kapalua and other areas in West Maui. MLP is the sole supplier of non-potable water in Kapalua.

JURISDICTION AND VENUE

79. Plaintiffs bring the claims below under Hawai‘i law.

80. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 603-21.5, 603-21.9, 634-35 and 632-1.

81. This Court has jurisdiction over Defendant, as Defendant is headquartered in the County of Maui.

82. Venue is proper in this Circuit pursuant to HRS § 603-36 because a substantial part of the conduct, acts, or omissions giving rise to the claims occurred in this Circuit.

STATEMENT OF FACTS

I. The Ditch System

83. Over 120 years ago, MLP's corporate predecessors began building the Ditch System to transport water from Honokōhau Stream to West Maui for commercial agriculture purposes. *See* Figure 1.

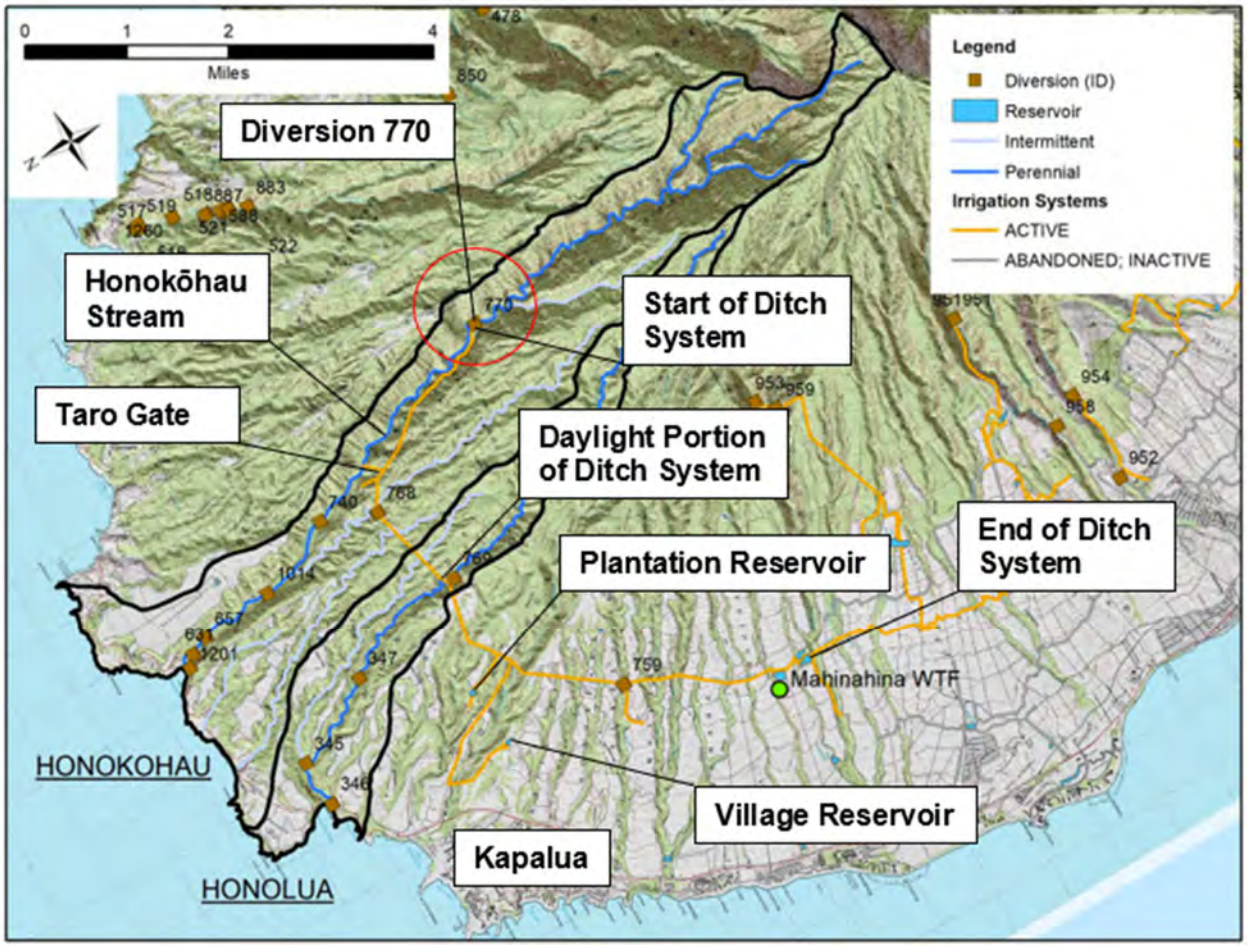

Figure 1[7]: Annotated map of Honokōhau Stream and Ditch System with Diversion 770 circled in red.

A. Water From The Ditch System Originates From The Water-Abundant Honokōhau Watershed

84. The headwaters of Honokōhau Stream are located on the western flank of Pu‘u Kukui. According to United States Geologic Service (“USGS”) and MLP data, the mean annual rainfall at the Pu‘u Kukui summit is 225 inches since 2007.[8] Annual rainfall variation across

[7] Base Map: Commission on Water Resource Management, Staff Presentation at 2 (Apr. 20, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210420C5B.pdf.

[8] *See* n.2.

Maui microclimates is extreme, and can be lower than 15 inches in the dry leeward areas of the western coast.[9]

85. In addition to rain, the Honokōhau Stream is primarily fed by freshwater lens or dike-impounded groundwater, as illustrated by Figure 2 below.[10] The Stream gains water from high-elevation groundwater in the uppermost regions of the watershed (*i.e.*, at and immediately below the Puʻu Kukui summit, where plentiful rainfall contributes to groundwater levels) and takes additional gains at certain points downstream along its mauka makai path to the ocean.[11] *See* Figure 2.

[9] U.S. Geological Survey, Groundwater Availability in the Lahaina District, West Maui, Hawaiʻi, USGS Scientific Investigations Report 2012-5010 (2012), https://pubs.usgs.gov/sir/2012/5010/sir2012-5010.pdf.

[10] Hawaii Department of Land and Natural Resources, Commission on Water Resource Management, Instream Flow Standard Assessment Report: Honokōhau (PR201903-6014) ("CWRM IIFS") at 31 (Nov. 2019), https://files.hawaii.gov/dlnr/cwrm/ifsar/PR201903-6014-Honokohau.pdf. Fresh water-lens groundwater is water that has been filtered through subsurface rock and creates a lens-shaped layer of fresh water that sits on top of "an intermediate transition zone of brackish water, and underlying salt water." *Id.* Dike impounded groundwater is comprised of water that filters through permeable volcanic rocks and is then trapped by dikes, which are less permeable cross cutting formations of volcanic rocks, creating a source of ground water at higher elevations . *Id.* at 36.

[11] *Id.*

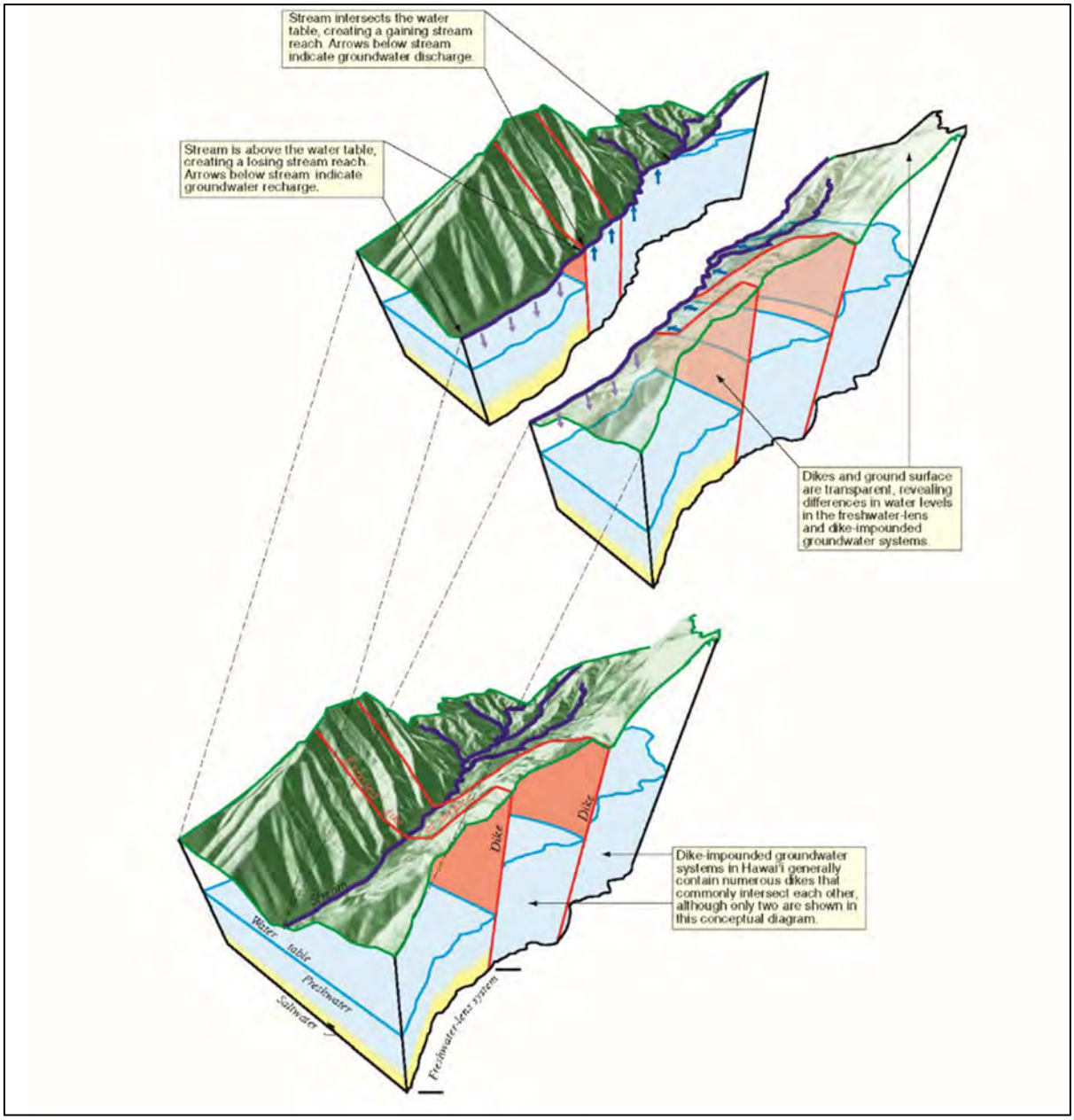

Figure 2[12]: Conceptual diagram illustrating surface water-ground water interactions in West Maui.

86. Honokōhau Stream is further supplemented by two man-made water development tunnels, which tap into water-filled volcanic dike formations releasing impounded groundwater and allowing it to enter the stream.[13] *See* Figure 2. These development tunnels are located

[12] *Id*. at 41.

[13] *Id.*at 31–32.

slightly upstream from "Diversion 770," where the Ditch System diverts water from Honokōhau Stream. *See* Figure 1.

87. When measured in 2018, these development tunnels provided an additional 3.2 million gallons per day to Honokōhau Stream.[14]

88. Water from Honokōhau Stream is dammed at Diversion 770 and funneled into the Ditch System via an intake tunnel. At one point, there were also controllable intake valves and water monitoring equipment at the intake tunnel. In recent years, water has been freely flowing over the dam, rather than being diverted to the Ditch System, due to sediment build-up. *See* Figure 3.

[14] *Id.* at 32.

Figure 3[15]: In the top left photo from 2017, water was dammed at Diversion 770 and funneled into the Ditch System intake tunnel; compare with the top right photo taken during a site visit in 2025, in which the red circle highlights significant sediment build-up and rocks accumulated behind the dam, causing water to spill over the dam. The bottom left photo from 2017 shows the intake gate where water was funneled from the dam to the Ditch System. This gate was severely damaged prior to storm events in 2018 showing years of neglect. The bottom right photo from 2025 shows newer gates and a temporary plywood restrictor plate at the intake installed between 2020 and 2021 after the Commission on Water Resources Management ("CWRM") ordered MLP to make repairs. As discussed below, MLP's failure to replace this piece of plywood with a more permanent fix is only one of the examples of ways that MLP failed to comply with CWRM's orders.

89. After entering the Ditch System, water flows through a tunnel parallel to Honokōhau Stream. A portion of the water in the Ditch System is released back into the stream at the Taro Gate for the benefit of downstream users in the Honokōhau Valley.[16] The remaining water continues through a series of tunnels to various reservoirs, including the Plantation Reservoir, Village Reservoir, and County of Maui Māhinahina Reservoir and Water Treatment Facility, before distribution to customers across West Maui. *See* Figure 1.

B. MLP Historically Maintained the Ditch System

90. Historically, MLP and its predecessor in interest corporations, which depended on the Ditch System for decades to provide water for its pineapple, sugarcane, livestock, and ranching operations, went to great lengths to maintain and repair the Ditch System.[17] These efforts allowed the Ditch System to be a constant and reliable source of water for West Maui since 1904.[18]

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[15] 2017 Photos: Commission on Water Resource Management, Staff Presentation at 7 (Apr. 20, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210420C5B.pdf.

[16] Historically, MLP was supposed to release a target amount of 1 million gallons per day at the taro gate, but generally failed to meet this amount. CWRM IIFS at 37. MLP is currently required to release enough water to meet the 8.6 million gallons per day interim instream flow standard below the taro gate established by CWRM.

[17] CAROL WILCOX, SUGAR WATER: HAWAII'S PLANTATION DITCHES 126 (1996).

[18] *Id.* at 127. The original Ditch System was completed in 1904, but it was completely rebuilt by 1913 while portions of it still remained in operation.

91. In the first 25 years of operation, the Ditch System was built, rebuilt, and then completely relined in response to leakage and deterioration. Much of this work was completed using pack mules and dump cars modified to fit the tunnels.[19]

92. At the time of completion of the rebuilt and relined Ditch System in 1928, the ditch had a capacity between 60 to 70 million gallons per day.[20] Historic flows in the Ditch System varied from 20 to 60 million gallons per day.[21]

93. Formerly, MLP employed a ditch manager, who lived near Diversion 770 and was responsible for monitoring, maintenance, and repairs of the Ditch System.

94. In modern times, a group of ditchmen hired by MLP would perform an annual inspection and periodic maintenance on the entire Ditch System. The maintenance included using mechanical means to temporarily stop the flow of water within the Ditch System to allow it to be walked, inspected, and repaired. These repairs included, among other things, the removal of rocks, debris, and sediment at Diversion 770, the removal of vegetation and sediment that encroached into and blocked the flow of the ditch, the maintenance of roads and trails leading up to the ditch, and the maintenance and repair of liners in reservoirs to prevent ground seepage.

95. All of this work was required to keep the Ditch System in a good, reasonable, and operable condition, avoiding unnecessary spillage or the waste of water resources.

96. Through these efforts, MLP was able to maintain the Ditch System in a condition that allowed for flows of 24.8 million gallons of water per day on average for the first 87 years of

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[19] *Id.* at 127–30.

[20] Estimates of the total ditch capacity range between 60 to 70 million gallons per day. *See id.* at 130 (70 million gallons per day); JONATHAN L. SCHEUER & BIANCA K. ISAKI, WATER AND POWER IN WEST MAUI 68 (2021) (60 million gallons per day); U.S. Geological Survey, Availability and Distribution of Base Flow in Lower Honokohau Stream, Island of Maui at 10 ("USGS 2003 Report") (2003), https://pubs.usgs.gov/wri/wri034060/pdf/wri034060.pdf (60 to 65 million gallons per day).

[21] CWRM IIFS at 37.

operation.[22] Between 2003 and 2016, the mean flow in the Ditch System was 15.3 million gallons per day.[23]

97. MLP's agricultural activities in the Kapalua area that depended on irrigation water from the Ditch System ended in 2009, right about the time MLP sold the Plantation Course to TY and right about the time MLP ceased growing pineapples after 97 years.[24]

II. MLP Built The Courses As An Amenity To Its Housing Developments Before Selling The Courses To TY Along With Promises To Deliver Needed Water

98. In 1975, MLP, which long owned the land on which the Kapalua Resort now stands, opened a golf course called the "Bay Course." Later, in 1992, MLP opened another golf course, the "Plantation Course." For many years, MLP operated the Courses itself.[25]

99. Concurrently with the development of the Courses, MLP built various condominium, hotel, and housing developments around the Courses, including the Plantation Estates, which include unobstructed views of the Plantation Course for most of the lots. The Ridge and Coconut Grove were also built around the Courses. Individuals purchased these homesites with the promise that they would be part of an exclusive golf community. MLP sold "Kapalua Club" memberships to a limited number of homeowners, which allow members to book tee times at the Courses at discounted rates, and grant complimentary privileges at practice facilities, among other benefits.

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[22] USGS 2003 Report at 25.

[23] CWRM IIFS at 91–92.

[24] Derek Paiva, *End of an Era: Maui Land & Pineapple closing its pineapple operations*, Hawai'i Magazine (Nov. 4, 2009), https://www.hawaiimagazine.com/end-of-an-era-maui-land-pineapple-closing-its-pineapple-operations/#:~:text=operations%20%2D%20Hawaii%20Magazine-,End%20of%20an%20era:%20Maui%20Land%20&%20Pineapple%20closing%20its%20pineapple,under%20its%20Maui%20Gold%20brand.

[25] For several years, MLP also operated the now-closed "Village Course" in Kapalua. To be clear, that means that for much of the time MLP owned the Courses, it supplied them **and an entire additional course** with the water those three courses needed. Water MLP now claims is unavailable.

100. But, in 2009, MLP fell on hard times and, "in order to reduce debt," MLP sold the Plantation Course to Plaintiff, TY.[26]

101. But still, MLP struggled. It reported losses of $123 million in 2009.[27] And by 2010 its condition was so poor that it was telling shareholders there was "substantial doubt about the company's ability to continue as a going concern."[28]

102. Again, TY stepped in to help. TY offered to buy the Bay Course from MLP in 2010. After the closing, cash-strapped MLP praised TY's purchase in its statement that "[w]ith this transaction, [MLP was] able to consolidate the ownership of both Kapalua golf courses with an esteemed partner."[29] MLP also stated that the sale of the two Courses, combined with other steps, put MLP "in a great position" by easing the company's debt load.[30]

103. Both before and since it sold the Courses to TY, MLP has owned, and had a responsibility to maintain, the infrastructure that supplies critical water to downstream users in Kapalua, including farmers, residents, and the Courses.

104. When MLP sold the Plantation Course to TY in 2009, it did so pursuant to the Plantation Course Sale, Purchase, and Escrow Agreement ("Plantation PSA") (Exhibit 1). Similarly, in 2010, MLP sold the Bay Course pursuant to the Bay Course, Sale, Purchase, and Escrow Agreement ("Bay PSA") (Exhibit 2)1 (collectively, the "PSAs").

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[26] Shane Nelson, *Maui Land & Pineapple to sell Plantation golf course*, TRAVEL WEEKLY (Mar. 20, 2009), https://www.travelweekly.com/Travel-News/Hotel-News/Maui-Land-Pineapple-to-sell-Plantation-golf-course.

[27] Maui Land & Pineapple, Inc. Annual Report to the Securities and Exchange Commission (Form 10-K) (Dec. 31, 2009), https://www.annualreports.com/HostedData/AnnualReportArchive/m/NYSE_MLP_2009.PDF.

[28] Andrew Gomes, *Maui Land to sell Bay Course*, HONOLULU STAR-ADVERTISER (Sept. 23, 2010), https://www.staradvertiser.com/2010/09/23/business/maui-land-to-sell-bay-course/.

[29] Nelson, *supra* n.26.

[30] Gomes, *supra* n.28.

105. Obviously, MLP knew in 2009 that the Courses it had been operating for decades needed water.

106. So, as part of the purchase of each of the Courses, MLP and TY executed water delivery agreements.

107. MLP and TY executed first the Agreement for Water Delivery (Kapalua Plantation Golf Course) ("Plantation Water Delivery Agreement") (2Exhibit 3) and then the Agreement for Water Delivery (Kapalua Bay Golf Course) ("Bay Water Delivery Agreement") (Exhibit 4)3 (collectively the "Water Delivery Agreements").

108. The Water Delivery Agreements are, at least in part, contracts for services, under which MLP would operate and maintain the Ditch System in exchange for payments by TY. Such exchange would allow MLP to deliver to TY, as it had long delivered to itself, "non-potable water in such quantity as may be required for irrigation use" at the Plantation Course, Bay Course, and Golf Academy.

109. Section 1 of the Water Delivery Agreements specify that MLP will deliver sufficient water to TY to maintain the Courses "at the level and in the condition" of the Plantation Course as of December 31, 2007, and the Bay Course as of September 30, 2010. The condition of the Plantation Course as of December 31, 2007 was that of a "Destination" course as classified by the United States Golf Association ("USGA"), suitable for PGA tournament play. The Plantation Course hosted PGA events in 2007 and 2008 and continues to do so today. The condition of the Bay Course as of September 30, 2010, was that of a "Resort" course, as classified by the USGA.

110. Section 2 of the Water Delivery Agreements outlines the water use priorities in the case of drought and specifies that MLP has the right to reduce the amount of non-potable

water uses in a nondiscriminatory manner based on each current non-potable use's respective water usage and with existing non-potable uses having priority over new non-potable uses.

111. Section 3 of the Water Delivery Agreements specifies how much MLP may charge TY for water delivery services. MLP is allowed to adjust the rate "commensurate with any material increase in MLP's costs in operating and maintaining the Ditch System, but not including the cost of any capital improvements, replacements, or repairs." Water Delivery Agreements § 6. Notices of adjustments must "include reasonably detailed information supporting such increase." *Id.*

112. As a part of the Water Delivery Agreements, and as material inducement for TY entering into them and into the purchases of the Courses, MLP warranted and represented in Section 6 of the Water Delivery Agreements "that MLP will at all times exercise commercially reasonable efforts to manage, repair and maintain the Ditch System in a condition adequate for the reliable delivery of water." Water Delivery Agreements § 6. MLP also warranted that it would exercise "commercially reasonable efforts to at all times maintain all permits and approvals required by law for the operation of the Ditch System, including those required by" CWRM. *Id.*

113. MLP included other provisions in the Water Delivery Agreements to induce TY to enter into them and into the purchases of the Courses, including an option for MLP to provide a substitute source of irrigation water from its existing or new wells in the event of a shortage of irrigation water. Water Delivery Agreements § 8.

III. After The Execution Of The Water Delivery Agreements MLP Stopped Adequately Maintaining The Ditch System

114. In the years following the execution of the Water Delivery Agreements, MLP stopped conducting commercially reasonable maintenance of the Ditch System. This neglect is

evidenced by, among other things, aerial photos over the last decade and a half that show deterioration of visible portions of the ditch, access roads, and reservoirs. *See* Figure 4.

Figure 4: Google Earth captures of the daylight portion of the ditch tunnel near the Honolua stream crossing in January 2007 (left) and February 2025 (right). On the left, the tunnel is clearly visible. On the right, it is nearly invisible due to vegetation overgrowth from lack of maintenance.

115. There can be no question that MLP knows, and has known for years, that its Ditch System is badly in need of repairs.

116. For instance, in November 2019, in response to a complaint about needed repairs to the Ditch System arising from the powerful 2018 storms, CWRM unanimously approved a proposal to require MLP to make fixes to the Ditch System including: (1) installing a remotely operated gate at Diversion 770 to ensure that MLP only diverted the amount of water necessary to meet their non-instream uses; (2) providing CWRM with real time metering data of each distribution point in the Ditch System; and (3) fixing the Taro Gate that diverts excess water from the ditch back into the stream to ensure the downstream taro farmers receive water at levels similar to pre-2018 storm conditions.[31]

[31] Minutes for the Meeting of the Commission on Water Resource Management at 26 (Oct. 19, 2021), https://files.hawaii.gov/dlnr/cwrm/minute/2021/mn20211019.pdf.

117. Also in 2019, MLP initiated a sale of its water utility assets in Kapalua to HWS. In this sale, MLP transferred the water distribution portion of its business, but retained its rights to the Ditch System and to supply water to HWS, maintaining its position as the only non-potable water supplier in Kapalua. MLP-HWS Water Delivery Agreement (Exhibit 5) at § 18.

118. That sale also shifted the responsibility for day-to-day maintenance of the Ditch System to HWS, as documented in the Ditch Maintenance and Services Agreement ("DMSA") (Exhibit 6). In the sale, MLP, however, retained the right to sign off on any major repairs or renovations. DMSA § 5, at 6. The Public Utilities Commission ("PUC") approved the sale in 2021.

119. In May 2021, CWRM adopted interim instream flow standards ("IIFS") for Honokōhau Stream. According to the CWRM staff report for this proceeding, MLP had not made upgrades to the gate at Diversion 770 as ordered by CWRM two years earlier.[32]

120. This finding contradicted MLP's statements to the press in 2020 that it had completed CWRM-ordered repair activities at a cost of $300,000 to $400,000 resulting in a "renewed ditch system."[33] Put more plainly, CRWM's finding confirmed that MLP lied to the public, and to other parties like TY who had contracted with MLP to operate and maintain the Ditch System, about fixing it.

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[32] Commission on Water Resource Management, Staff Submittal at 3 (May 18, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210518B2.pdf.

[33] *ML&P: Honokohau Stream ditch system repaired*, MAUI NEWS (May 12, 2020), https://www.mauinews.com/news/local-news/2020/05/mlp-honokohau-stream-ditch-system-repaired/. It appears that the only fixes at Diverion 770 that were made in 2020 were to replace damaged intake gakes that were **already damaged** before the 2018 storm events. https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20211019B1.pdf at 2–3; *see also* 2017 photos in **Error! Reference source not found.**.

121. In October 2021, CWRM approved an amendment to its November 2019 order to allow MLP to install temporary plywood restrictor plates to the top and bottom of the Diversion 770 intake instead of installing a remotely operated gate, which was deemed "impractical" due to challenges associated with installing a reliable power source and communications system for the equipment.[34] These plywood plates were to be eventually removed and replaced with permanent restrictor plates. CWRM also required MLP to install a remotely operable valve, associated power source, and communications system that would provide real time water monitoring near the Taro Gates, which was a more easily accessible location.[35]

122. Again, MLP disregarded its obligations by failing to make these changes in a reasonable or timely manner.

123. MLP received proposals from engineering firms to make the CWRM-required upgrades but failed to follow through with any of them.

124. Recently, in May 2025, in response to TY raising growing concerns about proper management of the Ditch System by MLP, MLP invited TY, its consultants, Maui County officials, and other interested parties to visit Diversion 770. Participants had to be transported in helicopters as the access roads to Diversion 770 were unusable due to MLP's failure to suitably maintain the access roads.

[34] Commission on Water Resource Management, Staff Submittal at 2 (Oct. 19, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20211019B1.pdf. During the hearing, MLP's consultant explained that securing a reliable power source was difficult because the thick tree canopy prevented use of solar photovoltaics and they needed to install either a satellite or a tower communications system to allow the gate to be operated remotely. Minutes for the Meeting of the Commission on Water Resource Management at 4 (Oct. 19, 2021), https://files.hawaii.gov/dlnr/cwrm/minute/2021/mn20211019.pdf.

[35] Commission on Water Resource Management, Staff Submittal at 2, 4–5 (Oct. 19, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20211019B1.pdf.

125. During this visit, TY and its consultants observed that the temporary plywood plates had not been replaced with permanent restrictor plates as specified in the October 2021 order. *See* Figure 3. TY observed a large buildup of sediment and debris behind the dam and debris clogging the intakes at Diversion 770 and the upstream development tunnels. Also, TY did not observe an operational gauging system. And one of the two development tunnels—which collectively provided an additional 3.2 million gallons per day to Honokōhau Stream, as measured in 2018[36]—was severely damaged and thus not providing water to the Stream.

126. In addition to MLP's failures to maintain its infrastructure at Diversion 770, TY and its consultants have recently observed significant damage at the Village Reservoir, which receives water from the Ditch System and stores water for fire protection and irrigation. *See* Figure 5Figure 51.

Figure 51: Severe deterioration of the liner of the Village Reservoir observed in July 2025. The photo on the left shows cracks in the liner visible from the banks of the reservoir. The photo on the right shows pieces of the liner that have detached from the bottom and floated to the surface.

127. Plaintiffs have all suffered water curtailments due to MLP's failures to maintain the Ditch System. But Plaintiffs aren't the only parties suffering from water shortages as a result of MLP's malfeasance.

[36] *See* n.14.

128. For instance, since at least May 2025, Maui County has been receiving intermittent deliveries of non-potable water at its Māhinahina Water Treatment Facility, which is also supplied by the Ditch System. This is a significant drop from the 2.5 million gallons per day that the County is required to receive pursuant to the IIFS.[37] Further, during a site visit in May 2025, water was observed entering the Ditch System at the intake on Honokōhau Stream while the portion of the ditch that feeds into the County's Māhinahina Reservoir remained dry. This indicates that water entering the Ditch System at Diversion 770 is lost well before reaching the point where MLP's customers receive their water.

IV. MLP Raised Rates On Its Customers And Began Curtailing Water Citing Issues With The Ditch System

129. In August and September 2024, MLP notified TY about a reduction in non-potable water availability and increased rates, citing damage to the Ditch System from storms in 2018 as justification for the rate increase and blaming the water shortage on the CWRM IIFS and low rainfall. Letter from MLP to TY dated Aug. 21, 2024 (Exhibit 7). MLP notified its other customers, including HWS, about increases in rates around this time as well.

130. This notification came six years after the storm MLP mentioned; five years after CWRM began evaluating the current IIFS for Honokōhau Stream; four years after MLP informed the media that it had finished its repairs;[38] and four years after MLP stated to the PUC that it "has not had issues obtaining additional non-potable water from the Honokōhau Ditch in the past."[39]

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[37] Commission on Water Resource Management, Staff Submittal at 6 (May 18, 2021), https://files.hawaii.gov/dlnr/cwrm/submittal/2021/sb20210518B2.pdf.

[38] *ML&P: Honokohau Stream ditch system repaired*, MAUI NEWS (May 12, 2020), https://www.mauinews.com/news/local-news/2020/05/mlp-honokohau-stream-ditch-system-repaired/.

[39] Applicant's Responses to the Division of Consumer Advocacy's Submission of Supplemental Information Request at pdf 35, *In re Joint Application of Kapalua Water Co., Ltd., et al.*, Dkt. No. 2020-

131. To be blunt, MLP's explanations did not seem true or even plausible.

A. Water Curtailments and Water Delivery Issues Have Impacted Users Throughout West Maui

132. As of the filing of this Complaint, Kapalua's non-potable water users have been subject to unprecedented, near-constant water use restrictions since September 2024.[40] These non-potable water use restrictions are ostensibly set by HWS, in conjunction with MLP, based on wind, local precipitation, Ditch System and streamflow data, and the levels in the MLP operated reservoirs, which receive water from the Ditch System.[41]

133. HWS has been sending regular notices of Tier 4 water curtailments since March 2025. Under Tier 4, non-potable water use is exclusively limited to fire protection purposes.

134. This is odd, especially when considering that other, drier parts of West Maui that do not depend on MLP for irrigation water and are instead served by Maui County, including Lahaina, Kāʻanapali, and Kahana, have only been subject to limited "Stage 1" restrictions pursuant to Chapter 14.06A of the MCC—restrictions that still allow for irrigation at reduced frequencies.

135. On July 11, 2025, HWS briefly lifted its restrictions to Tier 3, which allows for some non-potable water use, but reinstated Tier 4 a few days later on July 25, 2025.

136. During the curtailment period, TY had been using very limited amounts of irrigation water to maintain its greens and fairways and to test its irrigation equipment after

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0086, Before the Public Utilities Commission of Hawaii (Oct. 13, 2020), https://shareus11.springcm.com/Public/DownloadNative/25256/4f4be09d-800d-ee11-b83b-48df377ef808/93d5646b-530e-ee11-b83b-48df377ef808.

[40] *See* n.6.

[41] *Id.*

routine maintenance. However, after receiving notices from MLP in which MLP threatened to remove TY's water meters, TY stopped all watering while Tier 4 restrictions were in effect.

137. As of the filing of this Complaint, Plaintiffs last had access to water for irrigation on July 24, 2025.

138. MLP has not fairly or in the required "nondiscriminatory fashion" enforced the current irrigation water restrictions on all users in Kapalua.

139. As of the filing of this Complaint, simply looking at properties owned by MLP, as well as at properties like the Ritz-Carlton, Kapalua, reveals grounds that are lush and green.

140. Those properties must still be receiving water, even though there has been no allowable use of irrigation water since July 24, 2025 for any of Kapalua's businesses or residents.

141. Meanwhile, MLP has threatened certain of the Plaintiffs with removal of their water meters if they fail to strictly adhere to the ongoing water restrictions. Thus, MLP is not reducing irrigation water for existing users in Kapalua in a "nondiscriminatory" manner as required by the Water Delivery Agreements with TY. Figure 6 shows the green, lush grounds of the Ritz-Carlton as of August 6, 2025:

Figure 62: The Ritz-Carlton's lawns and landscaping appeared to be green and well-watered as recently as August 6, 2025, despite it being subject to the same curtailment orders as other homes and businesses in Kapalua.

142. Because of MLP's mismanagement of the Ditch System, as of the filing of this Complaint, the Courses' grasses are near death; Hua Momona has been forced to cut back on its efforts to grow plants for the restoration of Lahaina; and the homes at PELOA, the Ridge, and Coconut Grove are at a higher risk of wildfire due to dead landscaping, grass, and other vegetation.

143. The Kapalua Bay Course shows only vestiges of the lush green grass it once boasted. *See* Figure 7.

Figure 7: Kapalua Bay Course #4 and #5 greens, December 19, 2024 (top) and August 12, 2025 (bottom).

144. The PGA "Destination" Plantation Course is mostly brown and nowhere near the condition required to host the upcoming PGA Tournament of Champions (the "PGA Tournament"). *See* Figure 8.

Figure 83: Plantation Course #18 green, as seen in January 2025 (top)[42] and August 12, 2025 (bottom). Note that the white structures in the top image are temporary structures for the PGA Tournament that are not present in the bottom image.

145. Due to the rapidly deteriorating conditions, as pictured in part above, TY and its golf course managers received numerous complaints from customers about the Courses during the weeks preceding the filing of this Complaint. As a result, TY has had no choice but to reduce the rate it charges to play at the Courses.

[42] Golf Channel Staff, *The Sentry: Tee times, groupings for Round 1 at Kapalua*, NBC SPORTS (Jan. 1, 2025), https://www.nbcsports.com/golf/news/2025-the-sentry-tee-times-groupings-for-round-1-at-kapalua.

146. The Plantation Course standard rate is currently reduced from $469 to $199, and the local rate is reduced from $109 to $79. The Bay Course standard rate is reduced from $279 to $99, and the local rate is reduced from $75 to $49.

147. Due to the deteriorating condition of the Courses, TY also expects that it will have no choice but to imminently close the Courses. At the current rate of deterioration of the greens and fairways, TY expects that the Courses will be unplayable within two (2) weeks of the filing of this complaint.

B. Water Curtailments Have The Potential To Cause Significant Impacts To Maui's Economy

148. The water curtailments have the potential to impact not only TY, but many other parts of Maui's economy.

149. Since 1999, the Plantation Course has been the venue for the PGA Tournament that occurs annually in the first week of January.[43]

150. The PGA Tournament is broadcast to hundreds of thousands of viewers around the world and generates more than $48 million annually for Maui's economy, supporting small businesses, local jobs, and nonprofits. In 2025 alone, the PGA Tournament raised over $747,000 for nonprofits throughout West Maui including the Boys & Girls Club Lahaina, Ka Lima O Maui, and Lahainaluna High School Foundation.

151. The PGA will not continue to stage the PGA Tournament at the Plantation Course if the course fails to meet PGA Tour standards.

[43] Jeff Eisenband, *Five things to know: Kapalua's Plantation Course*, PGATOUR.COM (Jan. 1, 2023), https://www.pgatour.com/article/news/needtoknow/2023/01/01/five-things-about-the-plantation-course-at-kapalua.

152. Outside the PGA Tournament, the Courses support 100 full time jobs and 50 part time jobs, and millions of dollars in annual revenue for West Maui.

V. Water Curtailments Coincide With MLP's Expansion Plans

153. At the same time MLP is telling TY, as well as the greater Kapalua and West Maui communities, that drought and storms in 2018 are to blame for the fact that there isn't enough water to go around, MLP is making its own plans to use more and more water. Strange.

154. Specifically, MLP's alleged non-potable water shortage issues come at a time when MLP is seeking to develop its remaining real estate assets.

155. In its most recent Form 10-K, MLP told its shareholders that it has "entitlements to develop a variety of projects in the Kapalua Resort. Three projects that are currently in various stages of planning include Kapalua Central Resort, Kapalua Mauka, and Kapalua Makai." And it said that the Kapalua Makai "remaining project area encompasses approximately 930 acres of land and has State and County land use entitlements to deliver up to 639 single-family homes, resort amenities, and **an additional golf course** or recreational space. As of this filing, planning and pre-development efforts are underway for the project."[44]

156. MLP's most recent Form 10-Q similarly confirms that, at the same time as MLP's neglect and mismanagement of the Ditch System is starving West Maui of the water MLP promised to provide, MLP has roughly tripled revenues from its water operations, presumably on account of the significant increase in water rates that MLP has imposed.[45] In other words, rather

[44] Maui Land & Pineapple, Inc. Annual Report to the Securities and Exchange Commission (Form 10-K) at 2 (Dec. 31, 2024), https://www.sec.gov/Archives/edgar/data/63330/000143774925010266/mlp20241231_10k.htm(emphasis added).

[45] *See id.* at 16.

than using these revenues to make needed repairs, MLP is pocketing the extra money, all while the water needs of those who depend on MLP's water infrastructure go unmet.

157. Just last month, on July 8, 2025, Pacific Business News reported that MLP has recently experienced significant growth partly due to increased entitlements for real estate development on its properties. A few weeks later, again during a time of alleged water scarcity for existing users, the same source ran a profile on MLP's CEO Race Randle,[46] in which he stated that MLP is aiming to get "land productive," including "land that's already entitled for residential and resort zoning."[47]

158. When MLP sold its water distribution assets to HWS in 2021, it included the right to "provide wastewater and potable and non-potable water services to the 'Kapalua Mauka' future expansion area" as part of the deal. Asset Purchase Agreement (Exhibit 8) at 4.

159. According to information filed with the PUC, these new developments are estimated to be completed by 2039 and are projected to require up to 620,934 gallons per day of potable water and 3,445,872 gallons per day of non-potable water.[48]

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[46] Race Randle ended 2024 with an overall compensation of $2.93 million, making him one of the highest paid CEOs in Hawai'i. Nichole Villegas, *Hawaii's highest-paid CEOs of publicly traded companies*, PACIFIC BUSINESS NEWS (July 7, 2025), https://www.bizjournals.com/pacific/news/2025/07/07/highest-paid-ceo-public-company-hawaii.html. This is 4.5 times the cost of MLP's budget for capital improvement projects for the Ditch System and $374,250 more than MLP's projected costs to operate, repair, and improve the Ditch System in 2025. Amended Formal Complaint at pdf 51, *TY Management Corp., v. MLP*, Dkt. No. 2025-0188, Before the Public Utilities Commission of Hawaii (Apr. 22, 2025), (https://shareus11.springcm.com/Public/DownloadNative/25256/c70c8747-c71f-f011-b848-48df377ee710/6f5d6d16-c81f-f011-b848-48df377ee710).

[47] Alexander Lugo, *Maui Land & Pineapple CEO steers company toward new revenue streams amid island's recovery*, PACIFIC BUSINESS NEWS (July 25, 2025), https://www.bizjournals.com/pacific/news/2025/07/25/race-randle-executive-insight.html.

[48] Applicant's Responses to the Division of Consumer Advocacy's First Submission of Information Requests at pdf 610–11, *In re Joint Application of Kapalua Water Co., Ltd., et al.*, Dkt. No. 2020-0086, Before the Public Utilities Commission of Hawaii (Sept. 9, 2020), https://shareus11.springcm.com/Public/DownloadNative/25256/fc051fbf-800d-ee11-b83b-48df377ef808/7afc4709-5f0e-ee11-b83b-48df377ef808.

160. MLP has also recently facilitated the improper annexation of at least 20 of its properties into the Kapalua Resort Association, which oversees the various homeowners' associations in the Kapalua area, including PELOA, the Ridge, and Coconut Grove. This annexation inflated its voting rights to approximately three quarters of all voting rights for the association and established its control over homeowners in Kapalua.

CAUSES OF ACTION

COUNT I: PUBLIC NUISANCE (ALL PLAINTIFFS)

161. Plaintiffs reallege and incorporate by reference all of the foregoing allegations as though fully set forth herein.

162. Hawai‘i law recognizes a claim for public nuisance where there the plaintiff can demonstrate that there is "an unreasonable interference with a right common to the general public" in a place where the public is likely to be affected, *Haynes v. Haas*, 146 Hawai‘i 452, 455, 460 P.3d 1109, 1112 (2020) (citations omitted), and the plaintiff has "suffered an individualized harm," *id.*, 146 Hawai‘i at 453, 460 P.3d at 1110.

163. The general public has a right to health, safety, peace, comfort, or convenience. Restatement (Second) of Torts § 821B, cmt. g (Am. Law Inst. 1979).

164. MLP's reduction of irrigation water has caused crops, landscaping, and grass in Kapalua and West Maui, including but not limited to those owned by Plaintiffs, to die or begin dying. The dead and dying vegetation in the area has created excessive flammable material, which increases the risk of wildfire and poses a safety hazard to all members of the general public within Kapalua and West Maui.

165. As described above, MLP itself originally planted and maintained, or required the Association Plaintiffs to plant and maintain, a significant amount of grass, landscaping, and other water-dependent plants and vegetation on agriculture-zoned lands that are now dead or dying.

166. As described above, MLP itself originally planted and maintained, and sold to TY with the Courses, a significant amount of grass, landscaping, and other water-dependent plants and vegetation that are now dead or dying.

167. Fire hazards, like the one created by MLP, are a public nuisance.

168. MLP has created this public nuisance by failing to repair, maintain, and improve the Ditch System so that it can continue to supply water at adequate, historical levels to meet the needs of Kapalua and the greater West Maui area, which include needs to keep crops, landscaping, and grass from dying and becoming hazardous flammable material.

169. Plaintiffs have been individually harmed by MLP's creation and maintenance of this public nuisance.

170. As a direct, proximate and foreseeable result of Defendant's public nuisance, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT II: BREACH OF CONTRACT FOR THE WATER DELIVERY AGREEMENTS (TY)

171. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

172. Plaintiff TY has fully and timely performed all of its obligations under the Water Delivery Agreements.

173. The Water Delivery Agreements are both valid and binding contracts between Plaintiff TY and MLP.

174. Despite being repeatedly informed of, and asked to cure, its deficiencies and breaches of the Water Delivery Agreements, MLP has failed to cure its breaches.

175. MLP's failure to provide reasonably detailed information supporting any rate increases constitutes a material, continuing breach of Section 3 of both Water Delivery Agreements.

176. MLP's failure to use commercially reasonable efforts at all times to maintain all permits and approvals required by law for the operation of the Ditch System constitutes a material, continuing breach of Section 6(b) of both Water Delivery Agreements.

177. MLP's failure to exercise commercially reasonable efforts to manage, repair, and maintain the Ditch System and related infrastructure in condition adequate for the reliable delivery of water to the Courses constitutes a material, continuing breach of Section 6(c) of both Water Delivery Agreements. These failures include, but are not limited to:

a. Failing to remove sediment and debris from Diversion 770;

b. Allowing intakes at Diversion 770 to be clogged and obstructed by debris;

c. Failing to maintain roads and access trails that were used to maintain the Ditch System;

d. Failing to maintain reservoirs and their liners, which allowed unreasonable amounts of water to be lost to ground seepage and resulted in the storage of inadequate amounts of water;

e. Failing to repair a damaged and inoperable development tunnel, further reducing the amount of ground or service water available in the Ditch System.

f. Failing to repair damage including to even seek the proper permits to bring back the alignment of the Honokōhau Stream and to close off the stream alteration above Diversion 770 that was created by storm events in 2018.

178. In addition, certain irrigation water users in Kapalua, including MLP itself, have not adhered to, followed, or been required to follow the ongoing irrigation water restrictions as evidenced by their lush green landscaping, yards, and gardens. Accordingly, MLP has failed or

refused to enforce irrigation water restrictions on Kapalua's non-potable water users in a "nondiscriminatory manner" as required by Section 2 of the Water Delivery Agreements.

179. As a direct, proximate and foreseeable result of Defendant's failures and breaches of its duties owed to Plaintiff TY under the Water Delivery Agreements, Plaintiff TY has been damaged in an amount to be proven at trial.

COUNT III: BREACH OF CONTRACT FOR PURCHASE AND SALE AGREEMENTS OF THE COURSES (TY)

180. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

181. Sections 4.2 and 16.9 of the Plantation PSA explicitly acknowledge the representations and warranties of the Plantation Water Delivery Agreement. Plantation PSA §§ 4.2.6, 16.9.

182. Section 4.1 of the Bay PSA explicitly acknowledges the representations and warranties of the Bay Water Delivery Agreement. Bay PSA §§ 4.1.7, 16.9.

183. Both Water Delivery Agreements require that MLP conduct "commercially reasonable efforts to manage, repair and maintain the Water System in condition adequate for the reliable delivery of water." Plantation Water Delivery Agreement, § 6, at 3; Bay Water Delivery Agreement, § 6, at 4.

184. MLP is in breach of the Plantation PSA and the Bay PSA, including by failing to use commercially reasonable efforts to maintain the Water System.

185. The PSAs contain no cap as to MLP's liability for these breaches and no time constraints for these breaches.

186. As a direct, proximate and foreseeable result of Defendant's breaches of the Plantation PSA, Plaintiff TY has been damaged in an amount to be proven at trial.

COUNT IV: BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING FOR THE WATER DELIVERY AGREEMENTS AND PURCHASE AND SALE AGREEMENTS (TY)

187. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

188. Hawai‘i courts have held that "every contract contains an implied covenant of good faith and fair dealing that neither party will do anything that will deprive the other of the benefits of the agreement." *See, e.g.*, *Best Place, Inc. v. Penn Am. Ins. Co.*, 82 Hawai‘i 120, 123–24, 920 P.2d 334, 337–38 (1996). This doctrine "'emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party.'" *Hawaii Leasing v. Klein*, 5 Haw. App. 450, 456, 698 P.2d 309, 313 (1985) (quoting Restatement (Second) of Contracts § 205, cmt. a (1981)).

189. A court may find that a party breached the covenant of good faith and fair dealing based on factors demonstrating bad faith, including "'evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.'" *Barranco v. 3D Sys. Corp.*, No. CIV. 13-00412, 2015 WL 419687, at *11 (D. Haw. Jan. 30, 2015) (quoting Restatement (Second) of Contracts § 205, cmt. d (1979)).

190. Defendant has abused its power to specify terms by enforcing the curtailment of non-potable water use under arbitrary drought restrictions triggered by its own failure to fulfill its contractual obligations under both of the Water Delivery Agreements, which form part of the PSAs.

191. Defendant has demonstrated a lack of diligence regarding, and/or willfully rendered imperfect performance of, its contractual obligation to exercise commercially reasonable efforts to manage, repair, and maintain the Ditch System and related infrastructure.

192. At the heart of the "spirit of the bargain" by which TY purchased the Courses was that MLP would continue to maintain the Ditch System in order to provide necessary water to both of the Courses at the level MLP had operated them and at which users of the Courses, including the PGA, had rightly come to expect.

193. MLP operated the Courses itself for many years and knows full well that the Courses cannot function, much less function at their expected levels, without water.

194. MLP further knows that water will not be available to West Maui, which is dry, unless MLP maintains the Ditch System as it promised to do and as it did, for itself, for decades prior to selling the Courses.

195. Further, Defendant is interfering with TY's benefit under the Water Delivery Agreements and voiding the fundamental purpose of both Water Delivery Agreements and the PSAs.

196. As a direct, proximate and foreseeable result of Defendant's breaches of the covenant of good faith and fair dealing for the Water Delivery Agreements and the PSAs, Plaintiff TY has been damaged in an amount to be proven at trial.

COUNT V: BREACH OF CONTRACT AS THIRD-PARTY BENEFICIARY (ALL PLAINTIFFS)

197. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

198. Plaintiffs are third-party beneficiaries of certain contracts between MLP and HWS, specifically: **(1)** the First Amendment to the Asset Purchase Agreement ("APA") (Exhibit 9) transferring the assets of Kapalua Water Company ("KWC") to HWS **and** KWC's

prior contracts assigned to HWS pursuant to the APA including: **(2)** the MLP-HWS Water Delivery Agreement; and **(3)** the DMSA.

199. Hawai‘i law recognizes the right of third-party beneficiaries to bring a claim for breach of contract so long as they are the intended beneficiary of the third-party contract, rather than an incidental beneficiary. *Velasco v. Sec. Nat’l Mortg. Co.*, 823 F. Supp. 2d 1061, 1067 (D. Haw. 2011) (citing *Ass’n of Apartment Owners of Newtown Meadows v. Venture 15, Inc.*, 115 Hawai‘i 232, 167 P.3d 225, 262 (2007)).

200. Third-party beneficiaries are defined as “one for whose benefit a promise is made in a contract but who is not a party to the contract.” *Laeroc Waikiki Parkside, LLC v. K.S.K. (Oahu) Ltd. P’ship*, 115 Haw. 201, 214, 166 P.3d 961, 974 (2007) (citation omitted).

201. The APA assigns certain contracts from KWC to HWS including the MLP-HWS Water Delivery Agreement, which states in Section 1 that MLP shall “undertake and agree to deliver from the Ditch System to [HWS], for the term of this Agreement, non-potable water in such quantities as [HWS] may require to meet its service obligations in effect from time to time” and that per Section 8 MLP shall “exercise commercially reasonable efforts to manage, repair and maintain the Ditch System in condition adequate for reliable delivery of water to the Non-Potable System.” MLP-HWS Water Delivery Agreement, § 1, at 1; § 8, at 4. The Ditch System is defined as a system for water collection, water transmission, and water storage. MLP-HWS Water Delivery Agreement, Recital A, at 1.

202. Section 10 further states that “**MLP has existing commitments for irrigation water delivery to the owner of the Kapalua Resort’s Plantation and Bay golf courses, golf academy and related golf facilities**.” MLP-HWS Water Delivery Agreement, § 10, at 5 (emphasis added); APA, Exhibit N. Section 10 also provides that in case of drought or other

shortage that HWS, the Courses and related golf facilities, and other third-party irrigation water users "shall have equal priority for the Ditch System's available capacity" after satisfying the County of Maui's potable water needs. MLP-HWS Water Delivery Agreement, § 10, at 5.

203. Additionally, the APA's Section 11 states that HWS "agrees to accept water from the Ditch System and transmit that water . . . through the Non-Potable System to the Golf Facilities." APA § 11, at 5.

204. Finally, the DMSA provides for certain maintenance obligations between MLP and HWS, while again stating that HWS "will provide non-potable water service to the Service Area," which is defined in the APA as the "approved service area at or near the Kapalua Resort." DMSA at 1; APA at 1; APA, Exhibit A, at 12.

205. Pursuant to the DMSA, MLP is the sole decisionmaker and performer for Capital Improvement Projects after annual notification of recommended improvements by HWS, which are defined as improvements that: (1) improve performance or increase the capacity of the facilities, (2) address or anticipate the obsolescence of portions of the facilities, (3) reduce the cost to HWS of performing the MLP-HWS Water Delivery Agreement, (4) produce cost savings or efficiency innovations to the facilities, or (5) comply with existing or anticipated changes to the law. DMSA § 5, at 6.

206. Unsafe conditions can also trigger the need for a Capital Improvement Project, requiring MLP to correct such conditions and proceed diligently at MLP's sole cost and expense. DMSA § 9, at 8–9. No unsafe conditions were listed when the DMSA was executed. *See* DMSA, Exhibit F.

207. Likewise, HWS performs Basic Services under the DMSA, which supposedly includes performing maintenance tasks for $14,416.66 per month to keep the Ditch System in

"good working order and condition for the intended uses" and pursuant to equipment manuals as well as applicable laws, permits, rules, and regulations. DMSA §§ 1, 3, Exhibits B and C. Basic Services supposedly includes vegetation control and inspections of reservoir liners, but does not include replacement of failed equipment or infrastructure, maintenance of service roadways, or intake inspections. DMSA, Exhibit B. In its most recent visit to the Ditch System, TY and its consultants observed little to no vegetation control and observed obvious damage to the reservoir liners.

208. MLP has breached its obligations under the APA, as described herein, by failing to abide by the terms of the MLP-HWS Water Delivery Agreement and the DMSA which were assigned pursuant to the APA.

209. MLP has breached its obligations under the MLP-HWS Water Delivery Agreement. For example, MLP has breached its obligations by failing to exercise commercially reasonable efforts to manage, repair, and maintain the Ditch System, including the ditch collection intakes, ditch gates, the ditch itself, and the reservoirs and their liners. MLP is failing to deliver water "in such quantities as [HWS] shall require to meet its service obligations" to TY and pursuant to the MLP-HWS Water Delivery Agreement.

210. MLP has breached its obligations under the DMSA. For example, MLP's failure to maintain the Ditch System has created unsafe conditions, triggering the need for Capital Improvement Projects, which have not been completed, to correct failures in the Ditch System, including but not limited to its intakes, ditch gates, ditch, gauges, adits, tunnels, siphons, pipes, diversions, dams, weirs, valves, high and low water restrictors, reservoirs, and reservoir liners.

211. TY and the Courses are explicitly stated as beneficiaries pursuant to, and named in, the APA, the MLP-HWS Water Delivery Agreement, and the DMSA.

212. The Association Plaintiffs and Hua Momona are beneficiaries pursuant to, and named in, the APA, the MLP-HWS Water Delivery Agreement, and the DMSA, "as other third party irrigation water users" and customers.

213. As a direct, proximate and foreseeable result of Defendant's breaches of the APA, MLP-HWS Water Delivery Agreement, and DMSA, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT VI: NEGLIGENCE
(ALL PLAINTIFFS)

214. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

215. Hawai'i law recognizes a claim for negligence if plaintiff can prevail on the four elements necessary for a finding of negligence: "(1) A duty, or obligation, recognized by the law, requiring the defendant to conform to a certain standard of conduct, for the protection of others against unreasonable risks; (2) A failure on the defendant's part to conform to the standard required: a breach of the duty; (3) A reasonably close causal connection between the conduct and the resulting injury; and (4) Actual loss or damage resulting to the interests of another." *Molfino v. Yuen*, 134 Hawai'i 181, 184, 339 P.3d 679, 682 (2014).

216. Defendant had a duty to:

a. "[T]o exercise reasonable care or competence in obtaining or communicating information for the guidance of others in their business transactions." *State by Bronster v. U.S. Steel Corp.*, 82 Hawai'i 32, 41, 919 P.2d 294, 303 (1996), *overruled on other grounds by State ex rel. Shikada v. Bristol-Myers Squibb Co.*, 152 Hawai'i 418, 526 P.3d 395 (2023).

b. To properly maintain and repair its Water System and infrastructure so that it can meet the needs of those users who depend on it;

c. To not interfere with the public health, the public safety, the public peace, the public comfort, or the public convenience; and

d. To ensure that its use and stewardship of the water resources supplied by the Honokōhau Stream will not affect the uses protected by the public trust doctrine.

217. Defendant has communicated to TY on multiple occasions that the Ditch System was capable of supplying—and would in fact supply—sufficient water to meet their various needs.

218. Defendant also communicated to Association Plaintiffs and Hua Momona on multiple occasions that the Ditch System was capable of supplying-and would in fact supply—sufficient water to maintain their respective properties for the purpose of agriculture and landscaping, among other uses.

219. Defendant also told the public during the hearings on the CWRM Staff Submittals, on October 19, 2019 and November 20, 2021 (collectively, "Hearings"), that it would repair and maintain the Ditch. Defendant, TY, and others attended and provided testimony at both Hearings.

220. TY relied upon the information communicated by Defendant in its decision to purchase the Courses, enter into the Water Delivery Agreements, and forego constructing a water well on the Courses as an alternative water source.

221. Defendant has breached each of the above-listed duties owed to Plaintiffs as evidenced by, among other things, observations of a lack of maintenance at Diversion 770; a failure to maintain access roads necessary for the operation and maintenance of the Ditch System; observations of a severely degraded reservoir liner at the Village Reservoir; and through other ways that will be proven at trial.

222. Defendant's failure to maintain the Ditch System is directly connected to the water shortage being experienced throughout Kapalua as evidenced by factors including a lack of water in lower reaches of the Ditch System despite water entering the ditch at the intake.

223. As a direct, proximate and foreseeable result of Defendant's failures and breaches of duties owed to Plaintiffs, Plaintiffs have been damaged in an amount to be proven at trial.

COUNT VII: UNFAIR METHODS OF COMPETITION ("UMOC") (TY)

224. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

225. Under HRS Chapter 480, a method of competition is "unfair" where it threatens or harms competition; where it offends public policy as established by the common law, statutes, or other established concepts of fairness, or where it is immoral, unethical, oppressive, or unscrupulous; or where it causes substantial injury to consumers. HRS Chapter 480-2.

226. Hawai'i law recognizes a claim for unfair methods of competition if plaintiff can establish: "(1) a violation of HRS Chapter 480; (2) an injury to the plaintiff's business or property that flows from the defendant's conduct that negatively affects competition or harms fair competition; and (3) proof of damages." *Field, Tr. of Estate of Aloha Sports Inc. v. Nat'l Collegiate Athletic Ass'n*, 143 Hawai'i 362, 372, 431 P.3d 735, 745 (2018).

227. MLP controls the largest supply of water in Kapalua and is the sole supplier of non-potable water in Kapalua.

228. MLP is obligated to maintain the Ditch System in order to provide water to TY and others. But it is not currently meeting that obligation.

229. Still, MLP plans to develop its own real estate projects in Kapalua; it has even publicized plans that include its own, new golf course.

230. Defendant acted unfairly within the meaning of HRS Chapter 480 including but not limited to when Defendant: (i) breached its contracts entered into by and between it and its customers (including TY); (ii) refused to use reasonable efforts to manage, repair, and maintain the Ditch System and related infrastructure in a condition adequate for the reliable storage and

delivery of water to its customers, even though it knew and was told such efforts were both required and absent, and in doing so, increased its bottom line by saving the costs of maintenance and repairs to the Ditch System; and (iii) imposed significant rate increases on its customers.

231. Defendant's conduct, described in this Complaint, is contrary to, and violates, public policy, including but not limited to by deliberately mismanaging infrastructure to artificially create scarcity of water, causing use restrictions and rate increases.

232. MLP's unfair methods of competition and the nature of competition are further demonstrated where MLP has commenced plans to develop new residences, hotels, and a golf course in Kapalua, which will further exacerbate the shortage of water to existing users and further pad MLP's bottom line.

233. The foregoing acts, practices, and conduct of Defendant constitute unfair methods of competition under HRS Chapter 480.

234. Defendant's unfair competition practices have directly injured Plaintiff TY; Plaintiff TY is therefore entitled to recover treble damages, costs, and reasonable attorneys' fees.

<u>COUNT VIII</u>: PROMISSORY ESTOPPEL/ DETRIMENTAL RELIANCE (TY)

235. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

236. Hawai'i recognizes a claim for promissory estoppel if plaintiff can establish: "(1) a promise; (2) at the time the promisor made the promise, the promisor must foresee that the promisee would rely upon the promise (foreseeability); (3) the promisee does in fact rely upon the promisor's promise; and (4) enforcement of the promise is necessary to avoid injustice." *Furuya v. Ass'n of Apartment Owners of Pac. Monarch, Inc.*, 137 Hawai'i 371, 387, 375 P.3d

150, 166 (2016) (cleaned up). Furthermore, "the essence of promissory estoppel is detrimental reliance on a promise." *Id.*

237. In addition to its contractual promises discussed above, Defendant made other promises to TY on multiple occasions, that the Ditch System was capable of supplying—and would in fact supply—sufficient water to maintain the Courses, including, but not limited to: (1) before and during TY's purchase of the Courses and execution of the PSAs; (2) before and during the execution of the Water Delivery Agreements; and (3) while TY was considering whether to construct a water well on the Courses as an alternative water source.

238. Defendant made other specific promises to TY, on multiple occasions, that it would properly maintain and operate the Ditch System, including so as to deliver sufficient water to maintain the Courses.

239. Defendant made other specific promises to TY that, should sufficient water from the Ditch System be unavailable to meet TY's needs, Defendant could and would supply needed water from its wells.

240. In reliance on Defendant's promises and representations, TY: (1) agreed to purchase the Courses from Defendant and paid substantial sums in connection with the purchase; (2) agreed to pay, and did in fact pay, Defendant for the delivery of non-potable water to the Courses; and (3) declined to immediately construct a water well on the Courses as an alternative water source.

241. Defendant knew, or had reason to know, that TY relied upon such promises when Plaintiff TY carried out the foregoing actions.

242. Defendant has failed and refused to satisfy its promises and representations that the Ditch System was capable of supplying, and would continue to supply, water for the Courses,

and that Defendant would repair and maintain the Ditch System, despite its clear obligation to do so and despite TY's reliance on said promises and representations.

243. TY relied to its detriment upon the promises and representations made by Defendant, as it has not received the promised benefits of a sufficient supply of water from the Ditch System, including to the Courses, the adequacy of which has significantly and detrimentally been impacted by Defendant's failure to maintain and repair the Ditch System in a condition adequate for the reliable delivery of water.

244. Therefore, Defendant should be estopped from asserting that its promises are unenforceable, and the Court should enforce those promises and award Plaintiff the damages it has suffered and will suffer as a result of Defendant's failure to honor its promises and other actions.

COUNT IX: DECLARATORY RELIEF
(ALL PLAINTIFFS)

245. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

246. Under Hawai'i law, "a party has standing to seek declaratory relief in a civil case brought pursuant to HRS § 632-1 (1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) where the party seeking declaratory relief has a concrete interest in a legal relation, status, right, or privilege that is challenged or denied by the other party, who has or asserts a concrete interest in the same legal relation, status, right, or privilege; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding." *Tax Found. of Hawai'i v. State*, 144 Hawai'i 175, 202, 439 P.3d 127, 154 (2019).

247. Antagonistic claims exist between Plaintiffs and Defendant where Plaintiffs have a concrete interest in the sufficient supply of water from the Ditch System, including to the

Courses, and the repair and maintenance of the Ditch System arising out of the Water Delivery Agreements, as well as Defendant's express and implied statements, representations, and promises related therein.

248. Defendant has challenged or denied Plaintiffs' foregoing interests by failing to ensure a sufficient supply of water to the Courses from the Ditch System, and by failing to properly repair and maintain the Ditch System.

249. Based upon the terms of the Water Delivery Agreements, and Defendant's conduct and representations and obligations described herein, Plaintiffs seek a Court order declaring, among other things, the following:

a. The PSAs and Water Delivery Agreements are valid, enforceable, and binding contracts between Plaintiff TY and Defendant;

b. The APA, MLP-HWS Water Delivery Agreement, and the DMSA are valid, enforceable, and binding contracts executed by Defendant, wherein the Association Plaintiffs and their members, and the Farm are third-party beneficiaries;

c. Defendant's promises, representations, and statements regarding the supply of water from the Ditch System, and its commitment to maintain and repair the Ditch System, are enforceable obligations;

d. Defendant is required to ensure that the Ditch System supplies a sufficient quantity of water to the Courses, the Association Plaintiffs and their members, and the Farm;

e. Defendant is required to exercise commercially reasonable efforts to repair and maintain the Ditch System in a condition adequate for the reliable delivery of water to all users, including Plaintiffs;

f. The Ditch System has not been maintained in a commercially reasonable manner, and Defendant must complete commercially reasonable maintenance and repair on the Ditch System;

g. Defendant breached its obligations to Plaintiffs under, as applicable, the PSAs, Water Delivery Agreements, APA, MLP-HWS Water Delivery Agreement, and the DMSA, by failing to supply water sufficient to meet their needs and by failing to maintain and repair the Ditch System; and

h. Plaintiffs are entitled to such further relief as the Court determines is fair and reasonable under the circumstances.

COUNT X: INJUNCTIVE RELIEF
(ALL PLAINTIFFS)

250. Plaintiffs hereby reallege and incorporate by reference all the above allegations.

251. Under Hawai‘i law, plaintiff may obtain injunctive relief if plaintiff can prevail on the four elements for a finding of injunctive relief: "(1) whether the plaintiff has prevailed on the merits; (2) whether the balance of irreparable damage favors the issuance of a permanent injunction; and (3) whether the public interest supports granting such an injunction." *Pofolk Aviation Haw., Inc. v. Dep't of Transp. for the State*, 134 Hawai‘i 255, 261, 339 P.3d 1056, 1062 (Ct. App. 2014) (cleaned up).

252. To give full effect to the declaratory and other relief to which Plaintiffs are entitled, and to prevent Plaintiffs from suffering irreparable harm, Plaintiffs seek and are entitled to injunctive relief against Defendant, and anyone acting by, through, or under it, or otherwise at its direction, as follows:

a. Requiring that Defendant undertake all commercially reasonable steps necessary to inspect, repair, and maintain the Ditch System, including access roads, reservoirs, intakes, damaged development tunnels, and gates, in a condition adequate for the reliable delivery of water;

b. Preventing Defendant from acting in bad faith to the Water Delivery Agreements by abusing its power to specify terms under arbitrary drought restrictions;

c. Preventing Defendant from imperfectly performing its contractual obligations to exercise commercially reasonable efforts to maintain the Ditch System;

d. Preventing Defendant from evading the spirit of the bargain of providing the necessary water to maintain the Plantation Course at the elite level and condition as it was in 2007 and the Bay Course at the level and condition as in 2010 per the Water Delivery Agreements; and

e. Awarding against Defendant, and requiring defendants to comply with, additional relief necessary to ensure the adequate supply of water from the Ditch System, including to the Courses.

253. Based on the allegations herein, Plaintiffs have demonstrated a likelihood of prevailing on the merits of their claims.

254. Plaintiff TY is suffering and will continue to suffer irreparable harm as a result of Defendant's failure to maintain and repair the Ditch System in a condition adequate for the reliable delivery of water, and to supply sufficient water to the Courses and to them because such water curtailments kill the grass on the Course, which thereafter threaten the continued viability of Plaintiff TY's operations, including hosting professional golf tournaments, supporting local jobs and small businesses, maintaining the Courses' membership, continuing operations of the Courses and providing significant economic contributions to Maui's community.

255. The Association Plaintiffs are also suffering, and will continue to suffer, irreparable harm as a result of Defendant's failure to maintain and repair the Ditch System in a condition adequate for the reliable delivery of water, and to supply sufficient water to their respective properties. These water curtailments cause the death of grass and other vegetation on the properties, which in turn jeopardizes the Association Plaintiffs' and their members' ability to comply with the Zoning Laws and/or maintenance obligations set forth in their respective governing documents and creates conditions that pose significant fire hazards and threats to the safety of the community.

256. Hua Momona is also suffering, and will continue to suffer, irreparable harm as a result of Defendant's failure to maintain and repair the Ditch System in a condition adequate for the reliable delivery of water, and to supply sufficient water to its Farm. These water curtailments cause the death of field crops, trees, and sod on the Farm, which in turn jeopardizes Hua Momona's business and ongoing operations, including its ability to cultivate produce for

sale to local restaurants and for use in prepared meals for the Foundation, support local jobs, grow trees and sod for the reforestation and restoration efforts in the aftermath of the Lahaina Wildfires, and provide economic and charitable contributions to the Maui community.

257. Monetary damages alone are insufficient to remedy this harm.

258. The public interest strongly supports the issuance of injunctive relief, as "the right to water is one of the most important usufruct of lands, and . . . the right to water was specifically and definitely reserved for the people of Hawai‘i for their common good in all of the land grants." *Kauai Springs, Inc. v. Planning Comm'n of Cnty. of Kauai*, 130 Hawai‘i 407, 423, 312 P.3d 283, 299 (Ct. App. 2013) (cleaned up). Defendant's failure to ensure a sufficient supply of water to the Courses and to the Association Plaintiffs is a direct result of its failure to maintain and repair the Ditch System as required and as necessary to supply needed water.

259. This failure has caused widespread harm to all who rely on the Honokōhau Stream and Ditch System, including farmers, residents, businesses, and government entities. Continued deterioration of the Ditch System, coupled with Defendant's mismanagement and resulting water supply restrictions, threatens not only Plaintiffs' rights, but also the broader Kapalua and West Maui communities. Judicial intervention is necessary to ensure reliable water access, prevent further economic, environmental, and social harm, and safeguard the public trust in Hawai‘i's water resources.

WHEREFORE, Plaintiffs pray:

A. That process of this Court issue commanding the Defendant above named to appear and answer the allegations of this Complaint.

B. That the Court grant judgment in favor of Plaintiffs against the Defendant.

C. That the Court order MLP to specifically perform its obligation to Plaintiff TY under the Water Delivery Agreements and the PSAs as well as to specifically perform its obligations to HWS, by which TY is a third-party beneficiary, under the APA, the MLP-HWS Water Delivery Agreement, and the DMSA.

D. That the Court grant Plaintiffs their requested declaratory and injunctive relief.

E. That Plaintiffs be awarded general, special, incidental, consequential, and treble damages, in an amount to be proven at trial.

F. That Plaintiffs be awarded reasonable attorney's fee and costs incurred in this case along with any and all interest as allowed under the agreements discussed above and/or applicable laws, including (but not limited to) HRS § 607-14 and/or the private attorney general doctrine.

G. That Plaintiffs have such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawai'i, August 18, 2025.

/s/ Grant F. Allison
GRANT F. ALLISON
IVANA P. TRAN
CAYLI R. HIRATA
THOMAS C. JENSEN
JEAN-JACQUES CABOU
KAELA M. SHIIGI

Attorneys for Plaintiff
TY MANAGEMENT CORPORATION

/s/ Addison D. Bonner
ADDISON D. BONNER
CHELSEA COBB

Attorney for Plaintiffs
PLANTATION ESTATES LOT OWNERS' ASSOCIATION; ASSOCIATION OF APARTMENT OWNERS OF THE COCONUT GROVE ON KAPALUA; ASSOCIATION OF APARTMENT OWNERS OF THE RIDGE AT KAPALUA; HUA MOMONA FARMS LLC

STATE OF HAWAIʻI CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	

CASE NUMBER

PLAINTIFF

PLANTATION ESTATES LOT OWNERS' ASSOCIATION, a Hawaiʻi nonprofit corporation; ASSOCIATION OF APARTMENT OWNERS OF THE COCONUT GROVE ON KAPALUA, a Hawaiʻi nonprofit corporation; ASSOCIATION OF APARTMENT OWNERS OF THE RIDGE AT KAPALUA, a Hawaiʻi nonprofit corporation; HUA MOMONA FARMS LLC, a Hawaiʻi limited liability company; TY MANAGEMENT CORPORATION, a Hawaiʻi corporation

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

GRANT F. ALLISON 10368-0
IVANA P. TRAN 11758-0
CAYLI R. HIRATA 11874-0
Lung Rose Voss & Wagnild
700 Bishop Street. Suite 900
Honolulu. Hawaii 96813
Telephone: (808) 523-9000

DEFENDANT(S)

MAUI LAND & PINEAPPLE COMPANY, INC., a Delaware corporation; JOHN DOES 1-50, MARY DOES 1-50, and DOE PARTNERSHIPS 1-50, CORPORATIONS 1-50, DOE ENTITIES 1-50, AND DOE GOVERNMENTAL UNITS 1-50

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to filed with the court and serve upon
GRANT F. ALLISON, ESQ. / IVANA P. TRAN, ESQ. / CAYLI R. HIRATA, ESQ.
Lung Rose Voss & Wagnild, 700 Bishop Street, Suite 900, Honolulu, Hawaii 96813
THOMAS C. JENSEN, ESQ. / JEAN-JACQUES CABOU, ESQ. / KAELA M. SHIIGI, ESQ.
Perkins Coie, LLP, 700 Thirteenth Street, N.W., Suite 800, Washington, D.C. 20005-3960
ADDITON D. BONNER, ESQ. / CHELSEA M. COBB, ESQ.
Bonner Sogi & Associates, 705 S. King Street, Suite 105, Honolulu, Hawaii 96813,

plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRYOF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

Effective Date of 03-Jul-2023
signed by: /s/M. Ferreira
Clerk, 2nd Circuit, State of Hawai`i

The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us

DATE ISSUED August 18, 2025

If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:
Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.

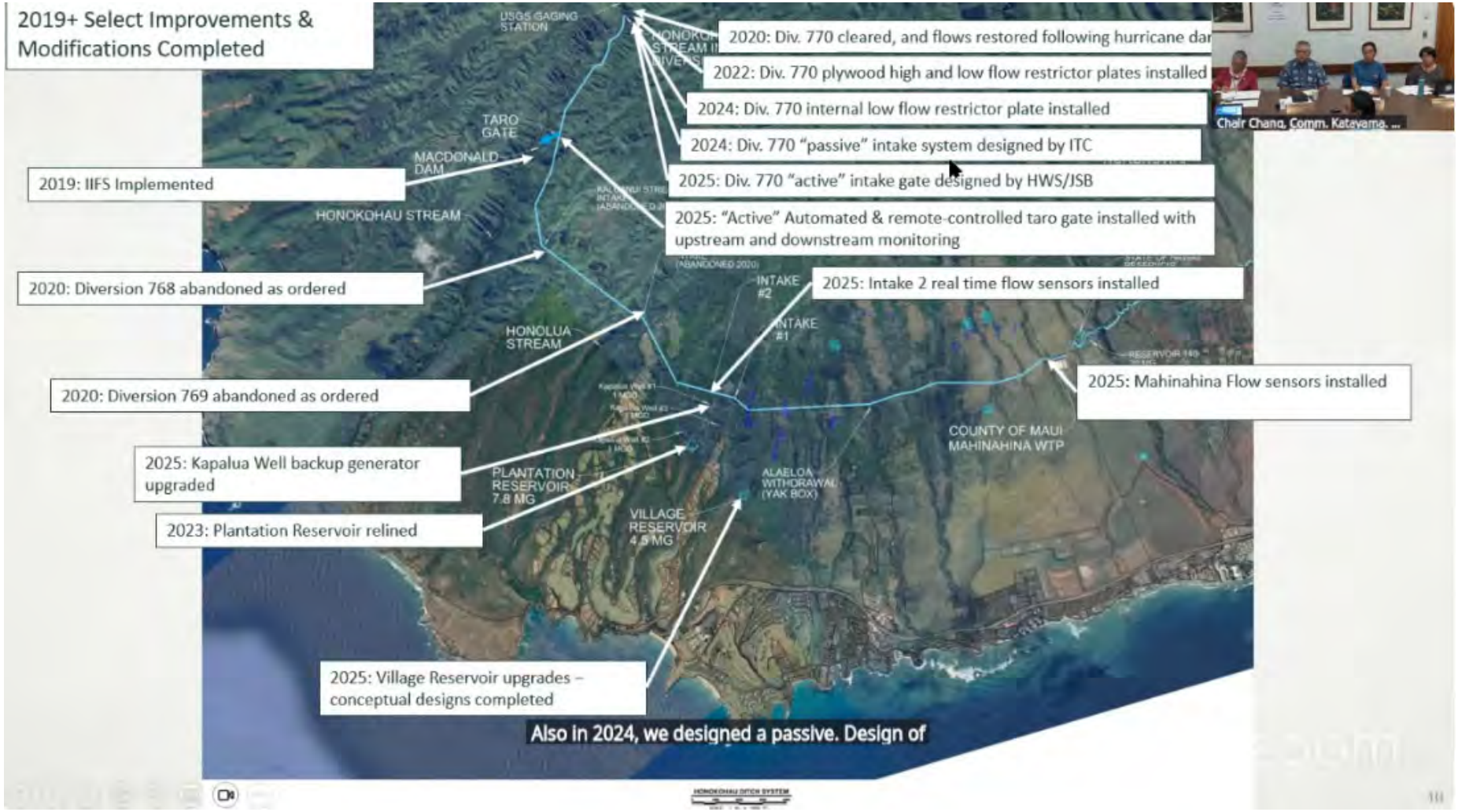
(Rev. 7/3/2023)

Screenshots of MLP Slides
September 16, 2025 CWRM Meeting - Agenda Item C-1

September 16, 2025 Monthly Water Commission Meeting

September 16, 2025 Monthly Water Commission Meeting


2021+ IIFS Operations
by Hawaii Water Service
USGS GAGING STATION
HONOKOHAU STREAM INTAKE DIVERSION 770
Pu'u Kukui Watershed Preserve
TARO GATE
MACDONALD DAM
1. Daily IIFS = 8.6 MGD
HONOKOHAU STREAM
KAHANA STREAM
HONOKOWAI STREAM
HONOKOHUA STREAM
INTAKE #2
INTAKE #1
HONOLUA STREAM
Honolua Valley Nature Preserve
PLANTATION RESERVOIR 7.8 MG
VILLAGE RESERVOIR 4.9 MG
ALAELOA WITHDRAWAL (YAK BOX)
COUNTY OF MAUI MAHINAHINA WTP
DHHL Reservation 2.0MGD
2. County DWS: Up to 2.5MGD
- Treated for domestic use
- Requires low turbidity water
- 20MG Reservoir
- 2022-2024 avg use ~1.2MGD
Temporary supplemental groundwater use:
• Approximately ~1.3MGD available from two potable wells into non-potable system
• HWS managing water use restrictions to maintain reservoir levels
3. Kapalua Irrigation and Fire Protection
• 12.3MG of Reservoir Storage
• Hawaii Water Service (Irrigation and Fire Systems)
• 2022 – 2024 avg use ~1.1MGD
• TY Management Corporation (Golf Course Irrigation)
• 2022 – 2024 avg use ~0.7MGD
3. Agricultural Tenant Irrigation
• No reservoir Storage available
• 2022 – 2024 avg use 0.05MGD
Pulelehua Treatment Facility
Reservation: 1.0MGD
- Two MLP Reservoirs made available to Pulelehua
- Timing TBD (SWUPA Submitted)
With a priority to maintain our reservoir levels
Chair Chang, Comm. Katayama, ...
LIVE


2019+ Select Improvements & Modifications Completed
USGS GAGING STATION
TARO GATE
MACDONALD DAM
HONOKOHAU STREAM
HONOLUA STREAM
INTAKE #2
INTAKE #1
PLANTATION RESERVOIR 7.8 MG
VILLAGE RESERVOIR 4.5 MG
ALAELOA WITHDRAWAL (YAK BOX)
COUNTY OF MAUI MAHINAHINA WTP
2020: Div. 770 cleared, and flows restored following hurricane dar
2022: Div. 770 plywood high and low flow restrictor plates installed
2024: Div. 770 internal low flow restrictor plate installed
2024: Div. 770 "passive" intake system designed by ITC
2025: Div. 770 "active" intake gate designed by HWS/JSB
2025: "Active" Automated & remote-controlled taro gate installed with upstream and downstream monitoring
2019: IIFS Implemented
2020: Diversion 768 abandoned as ordered
2020: Diversion 769 abandoned as ordered
2025: Intake 2 real time flow sensors installed
2025: Mahinahina Flow sensors installed
2025: Kapalua Well backup generator upgraded
2023: Plantation Reservoir relined
2025: Village Reservoir upgrades – conceptual designs completed
Also in 2024, we designed a passive. Design of
Chair Chang, Comm. Katayama, ...

Improvements In Process: Modernize for future drought conditions

Communications
- Flow rates (w/velocity)
- Turbidity
- Temperature
- Usage
- Community Engagement

Controls
(require stable IIFS measurement)
- Remote actuation
- Automation

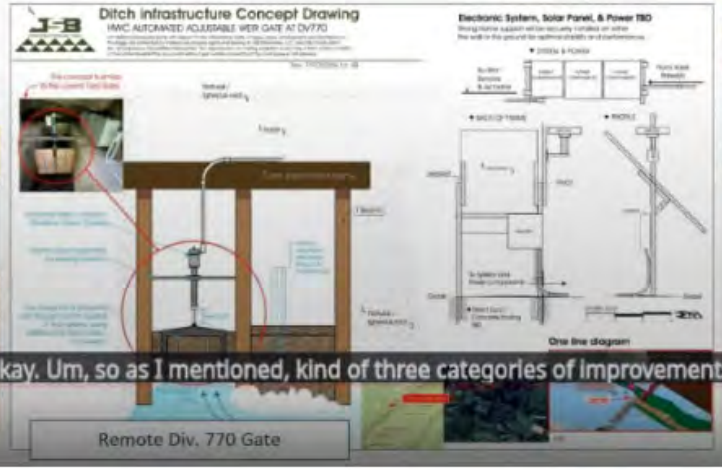
Sto
- Increased capacity
- Settling areas prior to

Taro Gate remote control and sensors

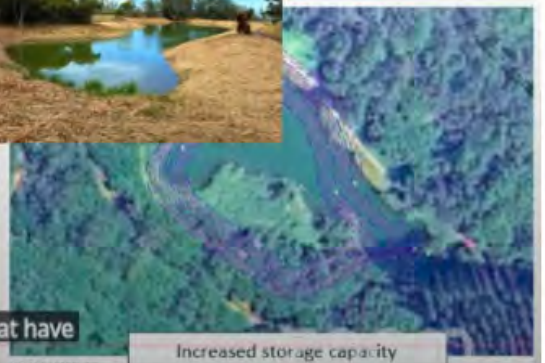
Plantation reservoir

Village Reservoir

Communication equipment



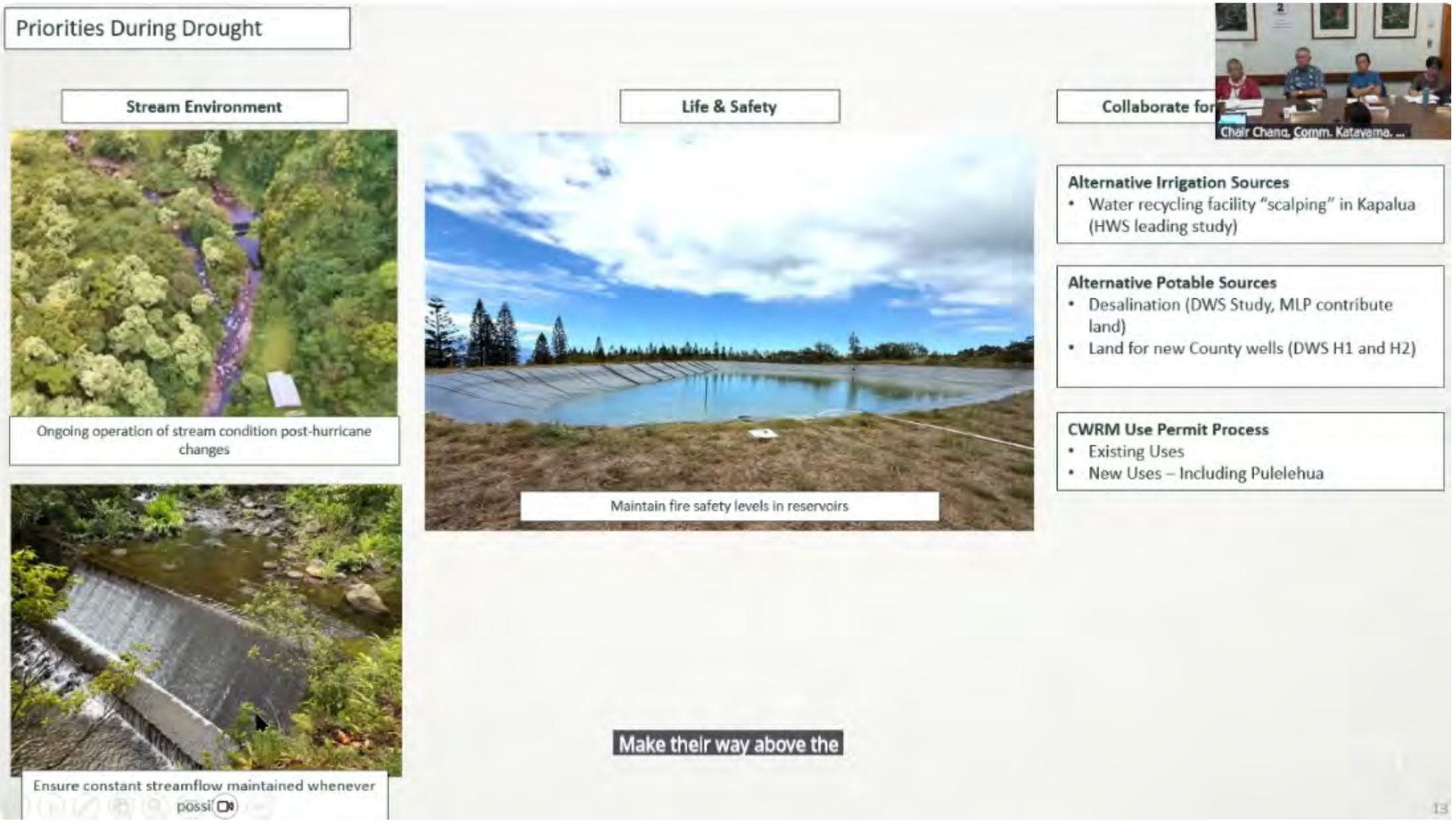
Remote Div. 770 Gate



Increased storage capacity

Okay. Um, so as I mentioned, kind of three categories of improvements that have

Priorities During Drought



Outlook

Re: MLP Modifications to Aotaki Weir

From Kahahane, Ciara WK <[redacted]>
Date Thu 10/9/2025 11:05 AM
To Race Randle [redacted]
Cc Uyeno, Dean D <[redacted]>; Strauch, Ayron M <[redacted]>; cchipchase@cades.com <cchipchase@cades.com>

Aloha Race,

Mahalo for the update and confirmation that MLP will install the remotely operated gate at Aotaki Weir. Please provide the final engineering plans as soon as possible. Photos and data, as you mentioned, will also be helpful for the Commission's review.

Commission staff supports the improvements being made at Aotaki Weir. I'm copying Dean and Ayron for their awareness of the schedule and proposed plan. We appreciate the offer to have CWRM staff observe the improvements during or after installation. Given the timing, staff likely will not be able to attend the installation next week, but would like to see the gate once installation is complete.

Staff will coordinate with you further as we prepare to take a submittal to the Commission to modify the 2021 order.

Mahalo for your continued cooperation in implementing these improvements.

Na'u,
Ciara

From: Race Randle <[redacted]>
Sent: Wednesday, October 8, 2025 6:46 PM
To: Kahahane, Ciara WK <[redacted]>; cchipchase@cades.com <cchipchase@cades.com>
Subject: [EXTERNAL] Re: MLP Modifications to Aotaki Weir

Aloha Ciara,
Thank you for the message.

Per our July 11th meeting and subsequent discussions, MLP's operator is proceeding with the installation of a remotely operated control gate at Diversion 770 along with sensor upgrades throughout the system. In addition, we made power upgrades to the remotely controlled taro gate last week, so the system will soon have two separate mechanisms to remotely support the IIFS.

I will have our team follow up with the plans. As for the schedule, the materials were ordered earlier this year and are scheduled to be installed and tested next week, weather permitting. We'll plan to document the installation and can provide data and imagery for your use. We'd also be happy to host CWRM during or after the installation if desired.

Hawaii Water Service believes they have overcome prior power/communications challenges at Diversion 770, and we believe this solution will exceed the intent of the previous orders by keeping water from entering the ditch during low flow conditions, plus providing a backup return gate at the taro location with remote operability

Please also feel free to call me if you'd like to discuss further I'll plan to circle back with the engineering plans.

Mahalo,
Race

Race A Randle | *CEO*
MAUI LAND & PINEAPPLE COMPANY, INC (NYSE MLP)
[redacted]
500 Office Road | Lahaina, HI 96761
mauiland com

MAUI LAND
& PINEAPPLE COMPANY INC.

From: Kahahane, Ciara WK <[redacted]>
Date: Wednesday, October 8, 2025 at 5 51 PM
To: cchipchase@cades.com <cchipchase@cades.com>
Cc: Race Randle [redacted]
Subject: MLP Modifications to Aotaki Weir

Aloha Cal,

Copying Race for his awareness.

I'm following up on our conver ation today A di cu ed, the Commi ion' November 20, 2019 order required MLP to in tall, among other improvement , a remotely operated control gate at Diver ion 770 (Aotaki Weir) Due to logi tical and operational challenge with modifying Aotaki Weir, the Commi ion amended it order ion October 19, 2021 to in tead require the in tallation of a remotely operated valve at Adit 16

The presentation given by MLP and HWS at the September 16, 2025 Commission meeting indicated that they are planning to install a remotely operated gate at Aotaki Weir rather than Adit 16. If that is the case, the Commission will need to modify its 2021 order and recognize that the planned improvements at Aotaki Weir meet the intent of its prior, 2019 directive—otherwise, the 2021 order will remain in effect. If necessary, a modification of the Commission's 2021 order could be considered at the same meeting when the Notice of Alleged Violation issued to MLP is brought for decisionmaking.

Please confirm whether MLP intends to pursue improvements at Aotaki Weir or Adit 16. Consistent with the Commission's prior orders, MLP must provide final engineering plans for the proposed work. We also request a proposed construction schedule to ensure timely implementation of the required improvements.

Na'u,

Ciara

Ciara W.K. Kahahane
Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
Ka 'Oihana Kumuwaiwai 'Aina

1151 Punchbowl Street, Room 227
Office: 587 0214
[redacted]

Testimony of Punahele Dapitan-Ladera
Unofficial Transcription from the Video Recording of the
December 16, 2025, CWRM Hearing

01:39:02 Ms. Dapitan-Ladera

Aloha Chair Chang and Commissioners.

01:39:05 Ms. Dapitan-Ladera

I was born and raised in [indiscernible] and I appreciate the opportunity to share my testimony today.

01:39:12 Ms. Dapitan-Ladera

Growing up, I spent a lot of time in the mountains above West Maui because many of my uncles worked for MLP. They worked for MLP.

01:39:25 Ms. Dapitan-Ladera

For over 20 years.

01:39:27 Ms. Dapitan-Ladera

Managing the water systems, including.

01:39:30 Ms. Dapitan-Ladera

Um, maintaining the Honokōhau ditch system.

01:39:35 Ms. Dapitan-Ladera

Because of his work or their work, our family regularly went up to the mountains.

01:39:41 Ms. Dapitan-Ladera

For family days.

01:39:45 Ms. Dapitan-Ladera

I remember those days clearly. The trails were clear, safe, the water was flowing. Fun to be in.

01:39:55 Ms. Dapitan-Ladera

The land was lush, green, and healthy. Everything felt the

01:39:58 Ms. Dapitan-Ladera

Way it should be.

01:40:00 Ms. Dapitan-Ladera

We could walk freely through the area.

01:40:02 Ms. Dapitan-Ladera

And truly see what Mālama ʻāina looked

01:40:05 Ms. Dapitan-Ladera

Like in practice?

01:40:08 Ms. Dapitan-Ladera

We would also go to Honokohau stream to swim. The water was clean, healthy and inviting.

01:40:15 Ms. Dapitan-Ladera

Today, no longer the case.

01:40:19 Ms. Dapitan-Ladera

The trails are now overgrown, unsafe, showing years of little and no maintenance.

01:40:27 Ms. Dapitan-Ladera

The stream itself has changed. There is a visible, visible algae and the water no longer feels healthy and welcoming.

01:40:38 Ms. Dapitan-Ladera

UM, the

01:40:42 Ms. Dapitan-Ladera

Instream flow standards of Honokohau stream are not being met and it is deeply concerning that this issue is being addressed separately from the conditions of the Honokohau ditch system.

01:40:57 Ms. Dapitan-Ladera

These two issues

01:40:58 Ms. Dapitan-Ladera

Go hand in hand without repairing and maintaining the ditch system. We cannot meaningfully address water flow and stream health.

01:41:10 Ms. Dapitan-Ladera

Fixing the ditch. Sorry, I'm nervous. Fix fixing the ditch system.

01:41:14 Commissioners

You're doing fine.

01:41:17 Ms. Dapitan-Ladera

May not solve all of our water.

01:41:18 Ms. Dapitan-Ladera

Problems, but it will help.

01:41:21 Ms. Dapitan-Ladera

It will help restore flow, improve water quality, support [inaudible] apartments in [inaudible].

01:41:28 Ms. Dapitan-Ladera

And benefit the broader community. I'm also the co-owner of Taverna Kapalua. We just celebrated one year in business.

01:41:38 Ms. Dapitan-Ladera

Learning that the PGA's Sentry Tournament was not returning 2026 was gut wrenching.

01:41:46 Ms. Dapitan-Ladera

They family lost was huge.

01:41:49 Ms. Dapitan-Ladera

Huge for our business and for Maui as a whole.

01:41:55 Ms. Dapitan-Ladera

This loss is directly tied to long standing infrastructure neglect, including the water system, the Maui Land & Pine[apple] is not held accountable, nothing will change.

01:42:10 Ms. Dapitan-Ladera

I urge the Commission to seek responsible partnership with real solutions and financial capacity. Water is a public trust resource. It should not be neglected or treated as a private asset.

01:42:26 Ms. Dapitan-Ladera

Please recognize that the conditions of the ditch system and the failure

01:42:31 Ms. Dapitan-Ladera

Failure to meet IFSS are connected and they must be addressed together.

01:42:37 Ms. Dapitan-Ladera

Mahalo for your time and consideration.

01:42:41 Commissioners

Thank you so much for.

01:42:41 Commissioners

The help, I appreciate you being here.

01:42:42 Ms. Dapitan-Ladera

Thank you.

Testimony of Larrick Kapule Eubank
Unofficial Transcription from the Video Recording of the
December 16, 2025, CWRM Hearing

01:49:04 Commissioner

After Kenji, I have Kapule Eubank.

01:49:20 Kapule Eubank

Aloha Chair Chang and Honorable Commissioners. My name is Kapule Eubank. I live at the very top of Iao Valley, where my family, and I are the last house upstream.

01:49:31 Kapule Eubank

I am a Kalo farmer and a grateful steward of Honokohau stream. Because of where I live, I can closely monitor the stream.

01:49:38 Kapule Eubank

Flow as it passes my property and supports my well being.

01:49:43 Kapule Eubank

I see the stream every day. I know when the flows are healthy and I know when they are not. I want to begin by thanking the Commission for its work to protect the instream flows and recognize water as a public trust resource.

01:49:58 Kapule Eubank

These protections matter deeply to our community, however. Enforcement has fallen mainly to community members. We are the ones monitoring flows, documenting when water levels are low and raising concerns when the IIFS are not being met. Above my property, there are no upstream

01:50:18 Kapule Eubank

Diversions other than Maui Land and Pineapple.

01:50:21 Kapule Eubank

When the stream flow is low, it's not due to rainfall alone. It is because diversions exceed the IIFS.

01:50:31 Kapule Eubank

This directly impacts the people of Honokohau Valley. Low flows affect our ability to grow Kalo, farm, stream health, and disrupt cultural practices that depend on constant flowing water.

01:50:45 Kapule Eubank

As others have shared, the lack of proper maintenance on the Honokohau ditch system is a major part of this problem. IFSS compliance cannot be separated from infrastructure maintenance without proper inspection and repair of the ditch system, water will continue to be lost before it ever reaches the stream.

01:51:05 Kapule Eubank

I also want to raise a serious public safety concern and recently contacted CWRM staff regarding dangerous conditions in Honokohau Valley, ongoing erosion and existing bridge pose a significant flood risk during heavy rain events. These conditions could lead to catastrophic impact similar to what

01:51:26 Kapule Eubank

We experienced in 2018.

01:51:29 Kapule Eubank

I respectfully urge the Commission to prioritize removal of the bridge and address the erosion hazards to protect public safety and the watershed. Finally, I asked the Commission to hold Maui Land & Pineapple accountable, not on paper but through real, measurable action. Accountability is essential if conditions in Honokohau stream are going to improve.

01:51:49 Kapule Eubank

Mahola for your time

01:51:51 Kapule Eubank

And your commitment to protecting Hawaii's water resources, Kapule Eubank Honokohau Valley. This is for you guys, there's a bunch of pictures and videos on there. I'd like you guys to look at just they've been collecting it over the years since 2016, so everything is labeled on there and you can just go through it and see what you think.

01:52:10 Commissioner

So Kapule , you talked about the bridge, was that the BWS Bridge? Yeah.

01:52:13 Kapule Eubank

The DWS bridge is the one that caused the.

01:52:15 Kapule Eubank

2018 flood.

01:52:18 Commissioner

That's and then whereabouts are you above?

01:52:23 Kapule Eubank

I am approximately about 300 yards from McDonald's dam, so I live above McDonald's Dam, so I have to cross McDonald's Dam every day to get to and from my home. So, I worked very closely with Aaron and helping them get access and get up there and do what he needs to do so.

01:52:30 Commissioner

Oh, I see. OK.

01:52:32 Kapule Eubank

OK.

01:52:34 Commissioner

OK.

01:52:41 Commissioner

And so you're Makai of the Taro Gate

01:52:44 Commissioner

.

01:52:44 Kapule Eubank

Yes. So I can actually walk the Taro Gate in about 15 to 20 minutes. So, I live the closest out of you know anybody. So, it gives me the ability to get there very quick.

01:52:45

OK.

01:52:55 Kapule Eubank

And you know, I've been doing it for years and kind of started by getting up there and kind of having to, like, make sure everything was working properly before these guys stepped in.

01:53:04 Commissioner

OK, that's good.

01:53:05 Commissioner

Thank you so much and I appreciate you being.

01:53:07 Commissioner

Here.

01:53:07 Commissioner

Too, thank you. Thank you.

01:53:08 Kapule Eubank

It was really hard to get here. I'm glad I made it.

Testimony of Kenji Yui
Unofficial Transcription from the Video Recording of the
December 16, 2025, CWRM Hearing

01:42:46 Commissioners

Next I have Kenji.

01:42:51 Commissioners

Please come on up.

01:42:54 Kenji Yui

I'd like to show some photos.

01:43:01 Kenji Yui

Oh. Oh, OK.

01:43:07 Kenji Yui

I created some photos.

01:43:11 Commissioners

You provided testimony, written testimony.

01:43:16 Kenji Yui

And the same once.

01:43:23 Commissioners

Sorry. Yeah. OK. Thank you.

01:43:29 Kenji Yui

OK.

01:43:40 Kenji Yui

OK. Thank you very much Chair Chang and Commissioners. My name is Kenji Yui. I am general manager at KY Management. Thank you for allowing me, allowing me this opportunity to testify.

01:43:54 Kenji Yui

KY Management or the Golf Courses in Kapalua.

01:43:58 Kenji Yui

At the Plantation Course, the PGA Sentry Golf Tournament has being hosted for 25 plus years, generating at least 50 million in [inaudible] each year.

01:44:13 Kenji Yui

It was cancelled for 2026 because the course did not receive enough water from April through August 2025, which is a period noted in the infographic.

01:44:28 Kenji Yui

[Inaudible] supplies irrigation water to KY's courses along with many others in West Maui.

01:44:36 Kenji Yui

MLP citing drought conditions, stopped supplying irrigation water from March through August.

01:44:44 Kenji Yui

In response, I asked the MLP to visit the home Honokohau ditch so I could see for myself the condition of the ditch and Honokohau stream.

01:44:55 Kenji Yui

I visit the diversion on 770 of the ditch in May with MLP, my company and our water consultant [inaudible].

01:45:07 Kenji Yui

I was surprised and shocked.

01:45:11 Kenji Yui

To see no evidence of repairs or maintenance.

01:45:16 Kenji Yui

There are many issues other than the alleged violations.

01:45:21 Kenji Yui

I'd like to show the photos.

01:45:25 Kenji Yui

So this is the photo of the broken bridge that prevents workers from accessing to the ditch.

01:45:33 Kenji Yui

To maintain, to repair and maintain.

01:45:37 Kenji Yui

Why hasn't MLP fixed this?

01:45:43 Kenji Yui

The temporary plywood water restrictor, ordered by CWRM 6 years ago, was still there.

01:45:52 Kenji Yui

Past May.

01:45:54 Kenji Yui

Next please.

01:45:56 Kenji Yui

This is the inside of the ditch in May.

01:46:01 Kenji Yui

Maintenance equipment was left untouched.

01:46:04 Kenji Yui

There were old and damaged water infrastructures.

01:46:08 Kenji Yui

Why hasn't MLP touched inside until recently?

01:46:17 Kenji Yui

Aotaki Weir or divergent 770 cannot function properly because of the large amount of sediment accumulated behind the damn.

01:46:26 Kenji Yui

And increases the potential for rocks and cement to enter and damaged it, why hasn’t MLP cleared debris and made safe.

01:46:35 Kenji Yui

Next.

01:46:38 Kenji Yui

The top photo shows one of the two development tunnels.

01:46:44 Kenji Yui

This was almost completely blocked by land slide. Why hasn't MLP removed debris?

01:46:50 Kenji Yui

Next page please.

01:46:53 Kenji Yui

This is a photo of the Village Reservoir.

01:46:56 Kenji Yui

Liners to retain water in the reservoir were completely stripped off.

01:47:01 Kenji Yui

Detached liner was floating in the landscape.

01:47:05 Kenji Yui

These damaged conditions resulted in unnecessary waste and prevention system losses.

01:47:12 Kenji Yui

Why hasn't MLP fixed this?

01:47:15 Kenji Yui

How can they be transparent,

01:47:18 Kenji Yui

Without showing these facts

01:47:21 Kenji Yui

To the Commission.

01:47:24 Kenji Yui

Could you look down to my written testimony, please, KY asked MLP to repair the ditch and the fix the issues as soon as possible after my visit and offered alone to assist.

01:47:41 Kenji Yui

MLP rejected KY's offer.

01:47:44 Kenji Yui

There were many days between April and August when stream flow was sufficient to provide irrigation water, but the ditch was dry and failed to provide the expected water.

01:47:58 Kenji Yui

It is obvious that the lack of maintenance and repair the ditch and stream caused the water restrictions.

01:48:07 Kenji Yui

Water is a public trust asset, MLP as the custodian of this asset has a duty to care and protect this invaluable public resource, particularly when they receive revenue

01:48:21 Kenji Yui

From this asset, MLP's improvements seem too late to little.

01:48:30 Kenji Yui

Therefore, we respectfully ask permission to exercise more oversight.

01:48:37 Kenji Yui

Over MLP and to issue a significant fine for the six years of neglect.

01:48:44 Kenji Yui

We hope the Commission [inaudible] Mahalo for your time and consideration.

01:48:51 Commissioner

Thank you very much, Kenji.

01:48:59 Commissioner

Thank you. Thank you.