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Citizens Seek State Oversight For Central Maui Streams **Companies' Attempts To Monopolize Water Violate The Public Trust**

Today, Earthjustice, on behalf of two Maui community groups, Hui o Nā Wai `Ehā and Maui Tomorrow Foundation, Inc., filed an action urging the state Commission on Water Resource Management to assume regulatory control over Central Maui's streams: Waihe`e, Waiehu, `Īao, and Waikapū (traditionally known as "Nā Wai `Ehā" or "The Four Great Waters"). This petition to "designate" Nā Wai `Ehā a water management area seeks state regulation to end illegal attempts by two Maui companies (Wailuku Water Company ("WWC"), formerly Wailuku Agribusiness Co.; and Hawaiian Commercial & Sugar Co. ("HC&S"), a subsidiary of Alexander & Baldwin ("A&B")) to monopolize Nā Wai `Ehā's water resources. These companies continue to drain Nā Wai `Ehā streams dry, even though their combined water uses have declined. Meanwhile, WWC and A&B are in the process of developing water treatment plants to sell treated surface water to Maui residents for private profit.

Hawai`i's state constitution mandates that the Water Commission "protect, control and regulate the use of Hawai`i's water resources for the benefit of its people." Despite this clear directive, the Water Code provides administrative control through water use permitting only in designated water management areas ("WMAs"). While designation does not, in itself, determine water allocations, it is a critical step in controlling water use because it establishes a permitting process to ensure that all water use in that area is consistent with the public interest.

"During our November election, I heard candidate after candidate say that we must demand accountability from water users to better manage Maui's limited water resources," explained Maui Tomorrow Board Member Lucienne deNaie. "Water in Hawai`i is a public trust and we have a legal right to know where our stream waters are going and what they are being used for. If there is "extra" water for Wailuku Agribusiness to set up a water company, there should be enough water to give life back to our streams. Through this petition, we hope to provide the Water Commission with a necessary tool to demand accountability for this vital public resource," she said.

Since 2004, the community groups have been pursuing legal action to restore Nā Wai `Ehā's streams. The County of Maui has supported these efforts and also seeks public management of these resources to alleviate the critical shortage of ground water for drinking and other uses. The companies, however, continue to hoard all of the water, totaling about 60 million gallons a day, and have refused for years to provide complete information on their actual end uses, much less restore any water to the streams. The community groups' petition is the latest effort to end the companies' attempted private monopoly over public water resources, in violation of Hawai'i law establishing water as a public trust.

"This is 2006, not 1906, and the days when plantations were able to hold the people of Maui hostage by monopolizing their life-giving waters are long gone," said Earthjustice Attorney Kapua Sproat. "No one is above the law, and this action merely asks the Water Commission to provide Nā Wai `Ehā's streams and communities with the protection that the law requires," explained Sproat.

The Commission has designated all of Moloka`i and most of O`ahu as WMAs for ground water. In 2003, the Commission also designated the `Īao Aquifer in Central Maui, which is Maui County's principal source for drinking water, as a ground WMA.

Because the streams of Nā Wai `Ehā overlie the `Īao Aquifer and are directly connected with it, the Community Groups' petition requests the Commission to regulate Nā Wai `Ehā surface water as part of the existing `Īao Aquifer WMA. The Hawai'i Supreme Court required such integrated regulation in the landmark Waiāhole case, which involved diversions from Windward O`ahu streams.

In the alternative, the petition requests the Commission to designate the streams' watersheds as a WMA for surface water. Such designation is necessary, the petition explains, to halt the undue impairment of public instream uses and water quality the companies' diversions are causing, and to resolve the "serious disputes" between the Community Groups, Maui County, and the companies over water from these streams.

"The waters of Nā Wai `Ehā are critically important to Native Hawaiians, both for their traditional uses such as raising kalo and for their future use on ceded lands," said Office of Hawaiian Affairs Administrator Clyde Namu`o. "OHA has been working closely with Earthjustice and Maui County for years to help restore these four streams, and we strongly support the proposed designation. If all the people of Maui are going to continue to suffer from stream diversions, it is only appropriate that the companies diverting these streams be required to apply for permits and justify their supposed uses," explained Namu`o.

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Photos Available Upon Request

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Earthjustice is a non-profit, public-interest, environmental law firm. The Hawai'i regional office opened in Honolulu in 1988 as the Sierra Club Legal Defense Fund, and has represented dozens of environmental, Native Hawaiian, and community organizations. Earthjustice is the only non-profit environmental law firm in Hawai'i and the Mid-Pacific, and does not charge clients for its services.