

From the Mountains to the Sea: When Big Money Moved in on Maui's Agriculture

A private market acquisition of a former sugar plantation could have been a cause for celebration, but the project has been mired by conflict and opposition. Could transparency and authentic engagement with the community have changed the outcome?

INTRODUCTION

When legacy land owner Alexander & Baldwin (A&B) announced in December of 2018 that it had sold its 41,000-acre sugar plantation in Maui's central plains, it looked like an opportunity for the Hawaiian island to turn the page on its colonial history of extractive economics dependent on single crop plantations -- and move forward on a path toward sustainable agriculture and food security. [1]

The new owners, Mahi Pono LLC, backed by an investment from a large Canadian union pension plan, embraced the language of sustainable investment and promised to do right by the community. Instead, working with previous landowner A&B, Mahi Pono continued many of A&B's practices and behaviors, in particular seeking to secure bargain-rate water leases.

In Hawai'i water is a public trust. Its uses impact the local environment, culture, and food security. As a result, Mahi Pono's actions resulted in significant community resistance. This

resistance has put the investment at risk, even as the owners continue to use the language of sustainability to promote their work. The standoff between Mahi Pono and the community is ongoing.

A transparent approach, one that truly takes into consideration community needs and sustainable practices, could have avoided these problems and resulted in better outcomes for all – including, potentially, better risk adjusted investment returns for the investor Canada’s Public Sector Pension Investment Board (PSP).

Moving forward, an independent Community Benefit Audit (CBA), combined with an understanding of the traditional ahupua’a land management system and interconnected community values, could help all stakeholders.

This case study serves as an initial analysis of Mahi Pono, based on Environmentally friendly, Socially responsible, and good Governance (ESG) standards. It provides an illustrative example of the types of issues CBA Audit would need to address, and how a CBA audit might lead to better outcomes.

BACKGROUND

mahi

1. nvt. To cultivate, farm; a farm, plantation, patch.
2. vs. Strong, energetic, as a worker

pono

1. nvs. Goodness, uprightness, morality, moral qualities, correct or proper procedure, excellence, well-being, prosperity, welfare, benefit, behalf, equity, sake, true condition or nature, duty; moral, fitting, proper, righteous, right, upright, just, virtuous, fair, beneficial, successful, in perfect order, accurate, correct, eased, relieved; should, ought, must, necessary.
2. vs. Completely, properly, rightly, well, exactly, carefully, satisfactorily, much (an intensifier).
3. n. Property, resources, assets, fortune, belongings, equipment, household goods, furniture, gear of any kind, possessions, accessories, necessities.
4. n. Use, purpose, plan.
5. n. Hope.

With its abundant rainfall, rich volcanic soil, and eleven climate zones, the island state of Hawai'i has the natural resources necessary to be a very productive agricultural region. Yet 85 to 90% of Hawai'i's food is currently imported. This makes the geographically isolated islands highly food insecure given vulnerabilities to natural disasters and other events that could disrupt shipping. [2] [3] All the more so because the vast majority of crops that are grown have historically been for export. [4].

Hawai'i's asymmetrical food system stems from its colonial history. During that time, farming businesses operated by powerful conglomerates grew produce on large plantations, using largely immigrant labor. They sold their agricultural products to the mainland United States and around the world [5].

The colonial plantation owners utilized gravity-fed surface water, generally much more cost effective than pumping ground water [6]. They procured that water through building an elaborate series of aqueducts which took water away from the mountainous regions of the state to the plains, where their plantations were. This water usage was a deeply fraught social and political issue for Hawai'i, and remains so to this day.

Through the redirection and monopolization of water, these owners didn't just turn Hawai'i's abundance into an engine for their own wealth. They disrupted a way of life which had been built upon a sustainable complex form of land management for generations [7]. The foundation of the traditional Hawaiian system is self-sustaining land sections – ahupua'a -- that run from the mountains to the sea (mauka to makai), following the natural boundaries of the watershed [8]. Each ahupua'a contains the resources the local community needs, from fish and salt, to fertile land for farming staple crops such as taro or sweet potato, to koa and other trees growing in upslope areas. By maintaining the ahupua'a, communities also ensure the health of the ecosystem [9].

The colonial farming powers severely reduced local farming and harmed the ahupua'a by drying up the streams. This negatively impacted the health of the forests and the marine environment and disrupted Hawaiian cultural life [7]. Many Hawaiians could no longer sustain themselves on their own lands and were forced to move out of their communities to find other work to support themselves. [10] [7] [11] .

On the Hawaiian island of Maui, the largest colonizing force was Alexander & Baldwin, Inc, (A&B). One of the "big five" American conglomerates that acquired significant amounts of land in Hawai'i in the 19th Century, A&B started out cultivating sugarcane. It became the largest, and most powerful, landowner on Maui. [7] [12] [13].

Sugar requires significant amounts of water to grow. Maui's central plains, where A&B owned its land, was relatively arid. As a result, starting in 1876, A&B built a series of aqueducts to transport water from the lush Haleakalā mountain region to A&B's plantation [7].

Built between 1876 and 1923, the East Maui Irrigation System (EMI) consists of 74 miles of tunnels, ditches, inverted siphons, and flumes, with a capacity of 435 million gallons per day. The American Society of Civil Engineers called the EMI aqueduct “Hawai’i’s most dramatic water story” and “a pioneering example of irrigation technology” [14]. The system captures surface water from streams which are primarily fed by rainfall and subsurface flow. It traverses multiple watersheds and the combined catchment area is approximately 56,000 acres. The majority of the land -- 33,000 acres -- is in State Lease Areas [15]. A&B/EMI currently controls about 18,000 acres.

EMI operates with water leases for the parts of the system on state land. The East Maui Water License fee is issued by the Hawai’i state Board of Land and Natural Resources (BLNR.) BLNR sets the terms of the water license, including how much EMI will pay for it.

In Hawai’i, water is a Public Trust [16]. This means that there is a dual objective of protection and maximum reasonable beneficial use and no one can charge for the use of the water, just the delivery [17]. Yet, historically, the East Maui Water License fee structure has been extremely beneficial to EMI, including low lease rates. The State’s justification of this low lease rate was to offset ditch construction and maintenance costs, but after the EMI system was built, little maintenance was performed. [15] [18] As a result, today the condition of much of the system is a community concern.

A&B was established as a partnership in 1870 and incorporated in 1900. It went public and trades on the New York Stock Exchange with the ticker symbol ALEX. In 2016 A&B announced its decision to cease growing sugar [19], effectively ending more than a century of sugar production on Maui and throwing a question mark over the agricultural future of the island. The next year A&B converted to a public real estate investment trust (REIT.)

A&B cited “continuing and significant operating losses stemming from low sugar prices and poor production levels” as its reason for halting sugar production [19]. The Honolulu based company planned a transition to a “diversified agribusiness model” [19]. In its annual report on its 2015 operations, A&B said that it was “currently evaluating several categories of replacement agricultural activities in the transition to the diversified model, including but not limited to energy crops, agroforestry, grass finished livestock operations, diversified food crops/agricultural park, and orchard crops.” [20]¹

Almost three years later, in December of 2018, the firm announced [21] that it was selling to Mahi Pono Holdings, LLC. According to the announcement filed with the Securities and Exchange commission (SEC), the terms of the agreement were that:

A&B will sell approximately 41,000 acres of agricultural land located on the island of Maui and 100% of the Company’s ownership interest in Central Maui Feedstocks LLC

¹ A&B’s REIT structure would have made it hard, if not impossible, for the company to develop and execute a new farming plan by itself since the capital outlay would reduce, or eliminate, the ability of A&B to pay out cash dividends to its investors.

and Kulolio Ranch LLC. In addition, A&B also has agreed to sell 50% of its ownership interest in East Maui Irrigation Company, LLC (“EMI”), which includes 15,000 acres of conservation and agricultural land, no later than February 1, 2019, and A&B’s remaining 50% ownership interest upon the occurrence of certain events in the future. In exchange, Mahi Pono shall pay approximately \$267 million, less customary closing costs and fees, to A&B, subject to certain rebates, which may amount to up to \$62 million and are further described in the Agreement relating to certain contingencies.

The main contingencies [22] were that A&B would continue to help the new buyer to secure the long-term water leases for EMI. If those rights were not secured within nine years of purchase², then A&B could owe Mahi Pono Holdings the entire \$62 million rebate. As A&B had stated in its 2018 financial report outlining its vision for a diversified agricultural business, an affordable supply of water was absolutely crucial to this plan’s success.

Mahi Pono announced the A&B deal with a press release [23]. Mahi Pono advisor Shan Tsutsui, the former Lt. Governor of the State of Hawai‘i and a former State Senator from Maui was quoted saying, “this agreement significantly increases the potential for a meaningful advancement in food security and a renewed pledge to growing agriculture on Maui.”

The new owners said their plans included:

- Production of high-quality, non-GMO foodstuffs for local consumption, with export potential.
- Creation of jobs for local residents, with job training and educational programs for employees.
- Providing land and water in an agricultural park for use by small, local farmers.
- Providing local partners with resources such as farming expertise, farming resources and equipment, and development and farming capital.

The name Mahi Pono comes from the Hawaiian words “mahi”, to cultivate, and “pono”, meaning “goodness, properly, or resources,” and loosely translates as “to cultivate the land responsibly.” But Mahi Pono Holdings LLC only came into existence in 2018 as a purchasing entity for the A&B lands [24]. The purchasing announcement called Mahi Pono a farming venture between Pomona Farming, identified as a California-based agriculture group, and the Public Sector Pension Investment Board (PSP Investments.)

² According to the terms of the agreement:

If either EMI or A&B are legally prohibited from delivering a minimum of 30 million gallons a day to Mahi Pono prior to obtaining a long-term state water lease or eight years after the closing date of the sale of the A&B properties to Mahi Pono (December 17, 2018) — whichever comes first — then A&B will be required to rebate Mahi Pono \$31 million of the original purchase price. If the circumstances which led to the requirement that A&B pay the initial \$31 million rebate continue for more than one additional year, then A&B will be required to rebate Mahi Pono a second \$31 million for a total rebate of \$62 million.

PSP Investments manages the money of Canada's Public Sector Pension Investment Board (PSP), which oversees \$136 billion³ in pension assets for Canadian public sector workers [25]. PSP was providing the capital – estimated to be \$600 million total (including the \$267 million land purchase) according to one report [26]. Pomona Farming was bringing the farming expertise.

Pomona Farming is affiliated with San Francisco Bay Area based investment firm, Trinitas Partners. Trinitas was founded in 2007 by three business partners, Ryon Paton, Kirk Hoiberg and William Hooper with experience in commercial real estate, real estate development and the hospitality business.⁴

In Montreal, Canada, PSP Investments highlighted the Mahi Pono deal, an allocation from its natural resource portfolio, as a sustainable investment. In its 2019 annual report [27], PSP Investments said a “critical step in the approach taken by Mahi Pono [...] was reaching out to community stakeholders so their needs and priorities could be incorporated into a land use plan. This led to a plan that envisions multiple crops, with a focus on local consumption, and up to 100 acres being set aside for local farmers who will be able to grow crops and sell their produce at an on-site farmers’ market.”

The byzantine nature of Mahi Pono's ownership (Figure One) raised some local eyebrows. But there was also a level of excitement that farming and food security along with jobs could be coming to Maui [28].

When A&B closed its sugar operations in 2016, close to 700 workers lost their livelihoods [19]. Mahi Pono promised to keep on any existing agricultural workers who wanted to stay when it bought the property and ultimately, maintain a work force of around at least 700, if not more [29].

In the 1940s, the organizing of sugar workers by the International Longshore and Warehouse Union (ILWU) countered the power of A&B and changed the course of Hawai'i's history, resulting in Hawai'i's sugar plantation workers becoming some the highest paid agricultural workers in the world [30]. As of November 2020, Mahi Pono was employing 220 people [31]. But while A&B used a unionized labor force, Mahi Pono has not yet demonstrated that it will remain neutral in any effort by the ILWU to organize its agricultural workforce, nor has there been public discussion of whether the new Mahi Pono jobs will be union jobs.

³ US dollars

⁴ During the summer of 2018, Responsible Markets Principal Ian Chan Hodges was introduced to Ryan Paton, Mr. Paton requested a meeting with Mr. Chan Hodges to discuss a potential significant land acquisition on Maui. After an initial phone conversation, Mr. Paton sent Mr. Chan Hodges a non-disclosure agreement that proposed a consulting relationship, which Mr. Chan Hodges declined to sign.

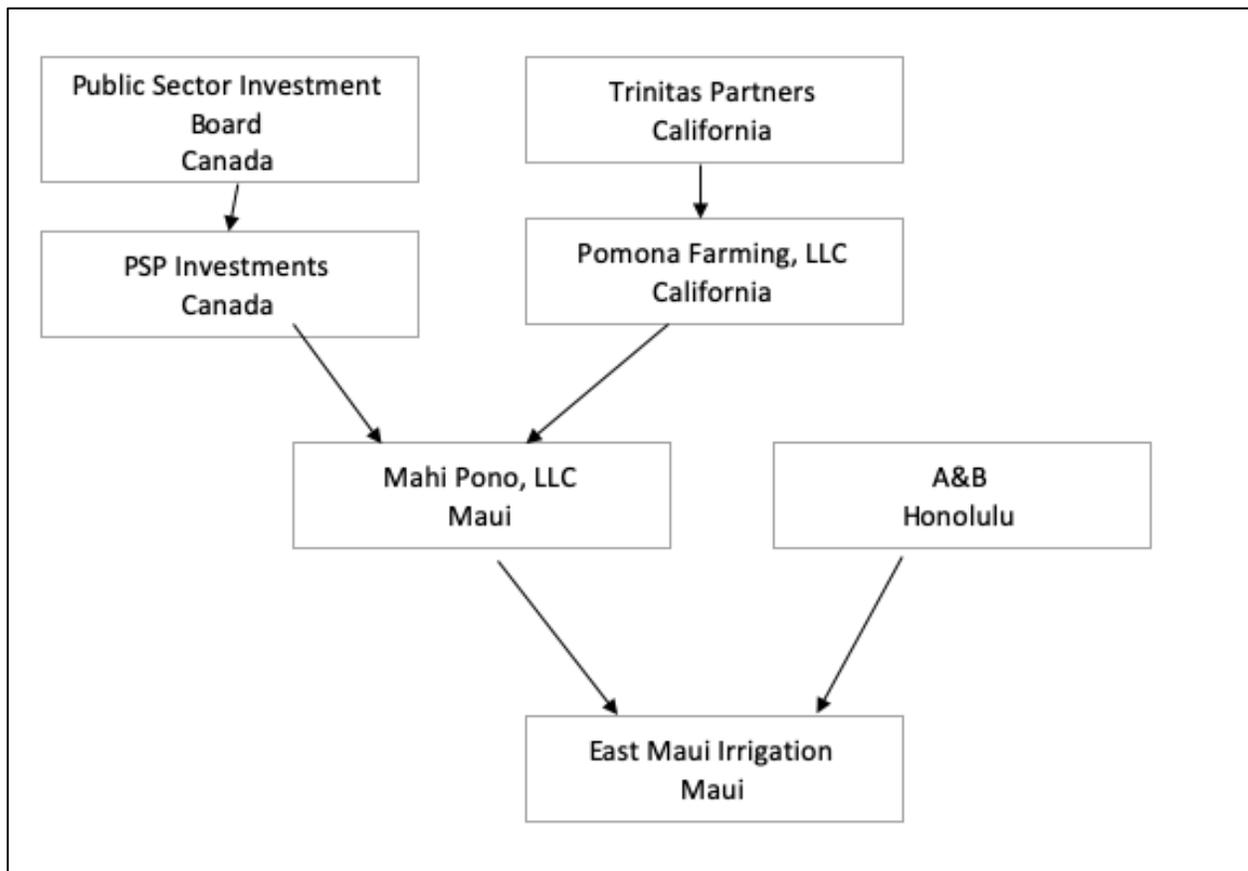


Figure One: Mahi Pono Relationships at time of 2018 purchase⁵

In early 2020, Mahi Pono was reporting that it had set aside 40 acres of land for 10 community farmers. Other crops already in the ground include potatoes, onions and breadfruit [32]. However, after more than two years Mahi Pono’s job creation and crop production have fallen well short of expectations. At a November 2020, BLNR meeting Operations Manager Grant Nakama testified that Mahi Pono was projecting to start 2021 “with approximately 2,100 acres of crops in the ground combined with 12,000 acres of pasture land for our Maui Cattle Company operation.” He said that by the end of 2021, the company will have 5,700 acres of crops in the ground [31].

A major issue holding back further agricultural development by Mahi Pono is the lack of a long-term license for cheap water being supplied through the EMI system.

In a 2019 interview about the Mahi Pono purchase, PSP’s head of natural resources Marc Drouin said that water licenses were crucial to the deal. “If we didn’t have the irrigation assets

⁵ As of 2021, Trinitas Partners and Pomona Farming are no longer listed as members of Mahi Pono, LLC in Hawai’i State filings.

and the associated water licenses, we wouldn't be able to undertake the cropping plan that we have here, it's all very integrated," he told Agri Investor [33].

PSP, however, does not have the water leases. Rather, A&B's previous water leases are still in dispute central to a series of court battles -- battles that Mahi Pono became party to when it made its land purchase from A&B. [34]

One of the major lawsuits, Carmichael v. BLNR⁶, had a May 5th 2020 hearing before the Supreme Court of Hawai'i [35]. At the heart of Carmichael are four revocable water permits issued to A&B/EMI (to be succeeded by Mahi Pono), authorizing the diversion of millions of gallons of water a day from four areas of the Ko'olau Forest Reserve.

Another pending lawsuit, Sierra Club vs. BLNR, Dept of Land and Natural Resources, A&B, and EMI⁷, claims that BLNR has not upheld its public trust responsibilities and that the public has not been provided with adequate information on the impact of the continued diversions by A&B/EMI of 13 East Maui streams, nor sufficient information on what the diverted water is actually being used for. Final arguments for this case were heard on September 24, 2020. As of time of publication, the community is awaiting the decision on both the Sierra Club and Carmichael cases⁸.

A&B had been operating without a long-term water lease since 1986, meaning that in order to access water on state lands, EMI/Mahi Pono would need to obtain approval for state water leases. In October 2019 Mahi Pono was approved unanimously by the 6-member BLNR for a one-year revocable permit for the four lease areas, at a rate of \$19,622.05 per month for 45

⁶ **Case ID:** ICC151000650 - HEALOHA CARMICHAEL ETAL VS BOARD OF LAND ETAL

Type: CV - Circuit Court Civil

Status: ACTIVE - Active Case

Last Updated: 20-Oct-2019

Filing Date: FRIDAY, APRIL 10, 2015

Court: FIRST CIRCUIT

Location: PUNCHBOWL

<http://jimsps1.courts.state.hi.us:8080/eCourt/ECC/CaseSearch.iface>

⁷ **Case ID:** ICC191000019 - SIERRA CLUB VS BOARD OF LAND & NATURAL RESOURCES

Type: CV - Circuit Court Civil

Status: ACTIVE - Active Case

Last Updated: 23-Nov-2020

Filing Date: MONDAY, JANUARY 7, 2019

Court: FIRST CIRCUIT

Location: PUNCHBOWL

<http://jimsps1.courts.state.hi.us:8080/eCourt/ECC/CaseSearch.iface>

⁸ The Sierra Club filed a second separate case against BLNR concerning the EMI leases in November of 2020. That case is also on going.

Case ID: ICCV-20-0001541 - SIERRA CLUB vs. BLNR

Type: CV - Circuit Court Civil

Status: ACTIVE - Active Case

Last Updated: 11-Mar-2021

Filing Date: TUESDAY, NOVEMBER 17, 2020

Court: FIRST CIRCUIT

Location: PUNCHBOWL

million gallons a day (mgd). In November 2020, the BLNR again unanimously approved a one-year water lease for Mahi Pono.⁹ For the four revocable permits approved for 2021, the lease rate is \$19,863.47 per month, a \$241.42 per month increase over 2020.

In both instances Mahi Pono, like A&B before it, was approved to receive the water at a price that is significantly below market rates¹⁰ and over the objections of community members¹⁰. [31]

⁹ Prior to the BLNR's decision, Mahi Pono Operations Manager Grant Nakama testified that the farming company's water use throughout 2020 has averaged less than 25 mgd, reflecting COVID-19's impact on "the company's planting schedule and Mahi Pono's temporary shift to produce row crops and food in the wake of the pandemic."

Sources: <https://www.mauinews.com/news/local-news/2019/10/state-board-oks-more-water-for-mahi-pono/>
<https://www.mauicounty.gov/216/Water-Charges>

<https://www.mauinews.com/news/local-news/2020/11/blnr-oks-e-maui-water-for-mahi-pono/>

¹⁰ If Mahi Pono uses all the water allowed to be diverted by the State, it would be paying approximately \$0.015 per 1,000 gallons of water per its lease with the State of Hawai'i. Based on most recent reports of usage (25 mgd versus 45 mgd allowed), Mahi Pono is currently paying \$0.026 per 1,000 gallons per its lease.

EMI bills Maui county for water delivered to County treatment plants (6 cents per 1,000 gallons since 1973).

- DWS charges \$1.10 per 1,000 gallons for agricultural use (over 15,000 gallons per month).
- Maui agricultural users who use less than 15,000 gallons per month pay residential rates.
 - 0-5,000 gallons per month - \$2.05 per 1,000 gallons
 - 5-15,000 gallons per month - \$3.90 per 1,000 gallons

¹⁰ The November 2021 BLNR proposed one-year extension of the water rights received testimony in favor and opposition. Communities in Upcountry and Central Maui rely on the EMI system for domestic and agricultural usage. At issue here is not that some community members derive benefit from the EMI system, they certainly do. Instead, the problem is the way in which Mahi Pono disproportionately benefits from the cheap and bountiful delivery of water, at great cost to other community members, most notably the residents of East Maui.

On this topic the Office of Hawaiian Affairs was particularly damning in its objection to the November 13, 2020 extension. Making the point that Mahi Pono and BLNR cannot dismiss the potential disruption to East Maui of the proposed water revocable permits (RP) as "probably have minimal or no significant effects" (which is what the exemption notification does. Noting that:

The diversion of 45 mgd from East Maui, which would otherwise recharge groundwater sources, provide critical habitat services for riparian flora and fauna, and contribute to the estuarine conditions necessary for limu and other marine life that in turn support the overall ecological integrity of East Maui's coastal areas (as well as associated subsistence and Native Hawaiian traditional and customary practices), cannot be considered as "probably hav[ing] minimal or no significant effects" as would be necessary for any categorical exemption to apply. The "outer limits" of the RPs at issue here would also allow for the disruption of mauka-to-makai connectivity, if not the complete diversion, of entire streams, which could also result in the extirpation of riparian and nearshore aquatic life that may take years if not decades to recover.

OHA also makes the point that neither it or any other agency with jurisdiction over these issues was consulted about the ruling. Stating that:

While the exemption notification here does indicate that consultation took place with the Commission on Water Resource Management (CWRM), the Division of Forestry and Wildlife, and the Division of Aquatic

Further, this decision has a negative economic impact on native Hawaiians because the Department of Hawaiian Homelands is entitled to 30% of water lease revenues.¹¹ In effect, these cheap water rates subsidize Mahi Pono at an economic cost to the indigenous community, which has constitutional primacy over water rights.

Over the course of 2020 and into 2021, community hostility toward Mahi Pono has further increased. All the more so since the advent of COVID-19. The global pandemic and ensuing economic shut down effectively closed Hawai'i to tourism for much of 2020, drawing greater attention to the need for Hawai'i to diversify its economy, and underscored the need for the island state to become food secure.

In December 2020 Mahi Pono announced it had promoted Shan Tsutsui, who came on board as a full-time employee shortly after the 2018 purchase, to chief operating officer [36]. Tsutsui replaced Tim O'Laughlin, a California water rights attorney who had worked with Trinitas Partners previously in his home state. Mahi Pono said O'Laughlin would be returning to California to work on "new initiatives" for Mahi Pono and Pomona Farming.

Tsutsui, had no farming or farm management experience prior to joining Mahi Pono, though he does have a BA in Economics from the University of Hawai'i. Tsutsui was registered with the state of Hawai'i as a lobbyist for Mahi Pono [37], and worked for a lobbying and strategic communications firm before joining Mahi Pono¹² [38].

Resources (DAR), **none of these consulted agencies appear to have specific "jurisdiction or expertise" over the totality of potential historic, cultural, economic, social, or health effects of the proposed continuation of the East Maui RPs, which may be particularly salient for the Native Hawaiian practitioners and community members known to reside in this region.**

OHA was notably not consulted in the propriety of the proposed exemption, despite its statutory responsibility to "assess the policies and practices of other agencies impacting on native Hawaiians and Hawaiians," as well as its routine review of environmental review and historic preservation review documents; its decades-long history of advocacy for Native Hawaiian traditional and customary practices; its extensive research on Native Hawaiian health and socioeconomic issues; and its specific involvement – including through the consistent submission of testimony on Board agenda items and environmental review documents – in East Maui stream diversion issues, as well as numerous other water disposition matters on Maui and throughout the islands.

Separately, the proposed water usage is wasteful and inefficient.

¹¹ Article XII, section I of the State Constitution (In fact, one of the original sources of funding for implementation of the Hawaiian Homes Commission Act of 1920 was 30% of the revenue from water licenses, Section 213), The Office of Hawaiian Affairs is technically entitled to 20% of water lease revenues as well because state departments are required to transfer 20% of all revenues from ceded lands, former lands of the Hawaiian Kingdom. However, the total amount that OHA is allowed to keep is currently capped by the State Legislature at \$15.1 million. <https://www.civilbeat.org/beat/oha-returned-2m-of-ceded-land-revenue-in-2019/>

¹² At time of writing Shen Tsutsui was still listed as a Managing Partner on the website of Strategies 360, the communications and lobbying firm he joined in 2018 after resigning from his role as Hawai'i's Lieutenant Governor.

According to Nakama’s November 2020 BLNR testimony, in response to COVID-19 Mahi Pono changed its planting plans to emphasize row crops, to be grown for local consumption [31]. In 2021 Mahi Pono donated 60,000 pounds of produce to charities that address food insecurity on Maui [39]. According to the Maui Food Bank, 48,000 people on Maui do not know where their next meal is coming from [40]. Mahi Pono’s largess would provide less than two days of sustenance to Maui’s chronically food insecure.

EVALUATION

In recent years, large institutional investors have focused on the need for investments that are environmentally friendly, socially responsible and practice good governance (ESG.) The Canadian pension plans, including PSP, are widely considered among the leaders on sustainability and ESG investment. Most of the country’s largest public funds have robust ESG policies and responsible investment teams. In the case of PSP, the plan’s CIO is also the head of its responsible investment practices. PSP has a comprehensive ESG policy and framework (Figure 2) [41].

PSP’ Investment’s Natural Resources Group is responsible for PSP’s investment in Mahi Pono. Natural resources have and continue to be a good source of diversified, differentiated returns for pension plans, sovereign wealth funds, foundations, and endowments. However, especially for funds in the \$100 billion plus range, finding investment opportunities of the size and scale needed to be meaningful, and with the desired risk return profile, can be difficult.

General ESG framework



Figure 2: PSP’s Responsible Investment Framework. Source, PSP.

Real assets, such as natural resource investments, can prove challenging from an ESG perspective. Capital is being invested in land and natural resources and can cause community disruption. These investments can also, however, be some of the most ESG friendly

investments, providing capital to finance sustainable systems of food, energy, transportation, digital infrastructure, and other needs.

In order to build a robust natural resources portfolio, PSP's Marc Drouin describes how the pension plan likes to identify and work with trusted partners. According to Agri Investor, "Drouin said, it has looked to form long-term partnerships with like-minded operators capable of managing ESG-related risks." When they find those partners: "We delegate a lot of the day-to-day to our partners and if they haven't got the ability to do that, they wouldn't meet the filter to be our partners in the first place." [33]

Trinitas is among the investment managers that meets PSP's standard to be an investment partner. In a 2014 video about Trinitas Farming, principal and co-founder Ryon Paton describes Trinitas Partners (the managing parent company) by saying "we're the classic Silicon Valley startup, except we have nothing to do with technology, we have everything to do with investing in and looking at sustaining a company and its values in the agricultural space." [42]

Founded in 2011, Trinitas Farming owns over 200,000 acres of farmland in California's Central Valley [43]. It was Trinitas Partner's most significant ag investment prior to December 2018.

Both the Trinitas Farming and Pomona Farming are clear in their commitment to sustainable investment and working with the community. Trinitas Farming says on its website that "we want to be a model for the best agricultural practices in the California almond industry. We are stewards of the land, responsible users of water and protectors of the environment." [44]

But while Trinitas Partners and their affiliates have shown themselves to be masters of sustainable investment rhetoric, the on the ground realities of their agricultural investments show a much more complex picture.

In California, a controversial water deal struck with the local authorities [45] was central to Trinitas Farming's strategy -- as was converting land previously used for vineyards and other crops to almond farms. Almond farming in California's central valley's is a hot button issue because it uses significant amounts of water, something that was already in scarce supply in the Western states and became all the more so with recent droughts¹³. [46] [47]

Having been successful in winning its water rights in California, Trinitas now appears to be looking to do the same on Maui. Key people who currently are, or have been, involved in Trinitas Farming are now or have also been part of Pomona Farming and/or Mahi Pono.

One big difference in how Trinitas approached Maui was the on-going relationship with A&B. The required rebate for nonperformance on obtaining the water lease gives A&B a \$62 million

¹³ In a 2015 open letter on its website Trinitas Farming makes the case for almonds as a sustainable crop and defends its water usage.
https://static1.squarespace.com/static/53f3b4d7e4b0ecc28e97af31/t/558c596fe4b0adbb0553fa49/1435261295256/Trinitas_Flyer-sm.pdf

reason to put its lobbying muscle and powerful connections behind Mahi Pono. And Trinitas seems to be relying on these and other political connections – including former Lt Governor Tsutsui – to advance its water agenda.

What Trinitas may not have fully recognized, however, is the added layers of complexity that water has in Hawai'i. Water rights in California are fraught and complex but dealing with water in Hawai'i is like playing chess to California's checkers.

Even if the Hawai'i Supreme Court rules in favor of Mahi Pono in the Carmichael case, further disputed issues about land and water ownership remain. The local community farmers and residents are still lobbying to return the waters to the streams and to restore the ahupua'a system and way of life. Increasingly they are seeing their rights win the day in court¹⁴. Multi-generational farmers also continue to open up lo'i (taro patches that rely on the streams) and re-build communities¹⁵.

For large infrastructure investments, disputes and objections from and with local stakeholders are not unusual. In fact, they are an expected part of the process. An investment can be good for a community, and even popular in the community, but still cause local objections because different stakeholders have different interests and agendas.

PSP Investments says that the level of community engagement was critical to them in making the Mahi Pono investment [41]. It is clear, however, that very little true engagement with impacted communities was even attempted. Mahi Pono's own Draft Environmental Impact Study (DEIS)¹⁶ outlines that the actual community engagement which happened as part of the Community Outreach Study was so poor, it elicited minimal input from community members [48]. The feedback that the DEIS report does include depicts a community that is highly suspicious and concerned about their water rights.

It is unclear how a planting strategy which relies on significant amounts of water at a substantial discount – and Mahi Pono's DEIS study makes clear that both are necessary to make its approach work – is an ESG friendly approach. It neither wins on the environmental metrics nor the community ones. Additionally, the crops that Mahi Pono is planning on growing (Figure 3) [49], namely coffee, citrus, macadamia nuts, and beef (by using the land for cattle grazing), are export crops. They help little with Maui's food security needs.

The 700 plus jobs Mahi Pono promised have not yet materialized. And much of Mahi Pono's resource allocation since the A&B acquisition to date appears to have gone to political engagement and legal expenses. By not being entirely honest and transparent with the community, Mahi Pono has cost itself and PSP money, good will, and time.

¹⁴ Many local Hawaiian's consider what happened to be a theft of their local water, water that legally and morally belongs in the streams, to them, and the land.

¹⁵In November of 2019 Mahi Pono did reach a settlement agreement with a group seeking the return of water to the streams from a separate water system which is owned by the Wailuku Water Company.

¹⁶ http://oeqc2.doh.hawaii.gov/EA_EIS_Library/2019-09-23-MA-DEIS-East-Maui-Water-Lease.pdf

It is true that some local residents and farmers benefit from, and depend on, the EMI system. But those residents would still benefit if EMI was being operated more responsibly and effectively. An ESG strategy which pits local residents against one another is not an effective or compassionate ESG approach. Instead, it merely perpetuates and continues the very behaviors that have led to the oppression and disenfranchisement of marginalized groups. Mahi Pono and PSP cannot cherry pick a select few community groups they like while ignoring and overriding the very real objections of those that do not fit their narrative.

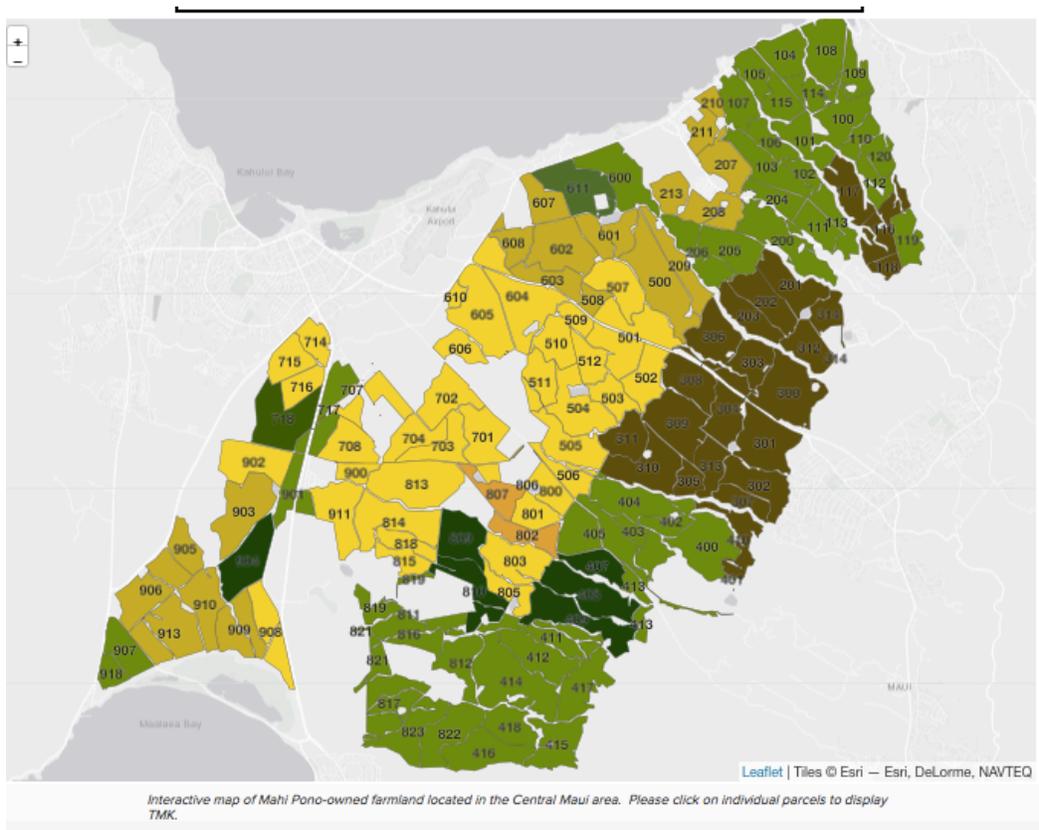


Figure 3: Mahi Pono’s planting plan. Source Mahi Pono.

Since certain community members are dependent on the EMI system for water, and other community groups have been given access to Mahi Pono land for farming, Mahi Pono (and A&B) are able to suggest to government officials that any challenge to their water demands could threaten or end the water supply to those community groups.¹⁷ [50] This approach is not so

¹⁷ In a July 1, 2019 letter to Maui County Water Supply Director Jeffrey Pearson, Mahi Pono Operations Manager Grant Nakama stated, “we have always been committed to supplying the County of Maui – and by extension, the Upcountry Maui community – with water from the EMI system. Having said that, our ability to supply water is 100% dependent on our right to legally access and deliver water.” He concluded by stating, “That said, if a RP is

much community engagement as it is a hostage situation.¹⁸ The same is true of Mahi Pono's food security promises. The company continues to promise to help the state with its food needs, while its own long-term plans show that agricultural output for domestic consumption will be limited.

At the same time, if Mahi Pono were to decide to focus on domestic consumption it might not be a net benefit for Maui. Mahi Pono's control of significant portions of the land and water for agricultural use on Maui and its ready access to substantial capital puts the company at a competitive advantage. Local farmers, many of whom want to grow food for the community, are now at a significant price and resource disadvantage. Mahi Pono has the luxury of being able to pivot to local consumption when it benefits them. Most local farmers, who lack the ability to export their goods, do not.

There are also objections to the use of the name Mahi Pono and the appropriation of indigenous language and values. Many in the community feel the company merely represents a continuation of the colonization of resources, specifically water, and an undermining of community authority. Some community leaders have taken to substituting the word "poho" for pono when referring to Mahi Pono. Poho means hollow, out of luck, damaged, lost and a waste of time.

This focus on the name Mahi Pono comes at a cultural moment in the U.S. where major institutions of power are being called out for their systemic racism and cultural bias. After decades of protest by indigenous groups, major sports franchises which had used indigenous names and mascots have recently been forced to change their names. And the food company Land O'Lakes has removed an image of a Native American woman, considered racist by many, from its branding.

It is hard to escape the accusation that Trinitas is using the rhetoric of sustainability, with a wrapper of indigenous language and values, to engage in greenwashing. PSP Investments, which has given the internal team that worked on the Mahi Pono deal an award for their efforts [51], appears to be either misinformed, willfully ignorant or directly complicit.

In November 2020, PSP joined the seven other largest pension funds in Canada¹⁹ in calling for better ESG disclosure by corporations. "We're going to have a lot more impact changing behaviors if we speak as eight organizations representing \$1.6-trillion," PSP Investments CEO

successfully obtained – whether by A&B, EMI or by Mahi Pono – then the County will continue to receive water for the Upcountry Maui community."

¹⁸ In a July 19, 2019 Maui News article entitled, Panel votes to create committee to look into EMI system, Water Board Member Norman Franco is quoted as saying, "We are trying to find an alternative way of delivering clean, safe water to (the public) as a public utility instead of a weird situation where a corporation pretty much tells us what, when and how we're going to get our water, which is kind of spooky."
<https://www.mauinews.com/news/local-news/2019/07/panel-votes-to-create-committee-to-look-into-emi-system/>

¹⁹ Alberta Investment Management Co., British Columbia Investment Management Co., the Caisse, CPPIB, Healthcare of Ontario Pension Plan, Ontario Municipal Employees Retirement System, and Ontario Teachers' Pension Plan

Neil Cunningham said in an interview with Canadian pension blog Pension Pulse [52]. Cunningham stressed that tracking such details is crucial for making investment decisions. "The ability to identify those outperformers will increase our returns, and then benefit our beneficiaries. This is just smart investing."²⁰ Yet, Mahi Pono appears to have consistently suffered from a woeful lack of transparency concerning the real impacts of its activities on Maui.

In March 2021, the state of Hawai'i experienced heavy rain and flash flooding, causing the Kaupakalua Dam on Maui to be breached by flood waters, resulting in road closures, damaged homes, and evacuation of residents. The Governor was forced to declare a state of emergency [53].

The Kaupakalua Reservoir and Dam is part of the EMI system. The flooding was a major news story locally, nationally, and even internationally. The cost of the damages is still being estimated. The 138-year-old dam was issued a Notice of Deficiency by the Department of Land and Natural Resources (DLNR) on February 18, 2020 for being in poor or unsatisfactory physical condition. It had received an additional citation from the DLNR as recently as February 24 2021 [54]. According to Tsutsui, however. "the dam did not fail." Instead the water "reached peak levels causing the over-topping of the dam" [55]²¹.

Additional impacts can be expected and will likely worsen with time, as climate change increasingly disrupts weather patterns and causes storms. All the more so if the EMI aqueduct system continues to be in significant need of repairs. These impacts will likely come at an additional cost to the local communities and taxpayers. Indeed, they already are.

PROPOSED SOLUTIONS

ahupua'a

n.

1. Land division usually extending from the uplands to the sea, so called because the boundary was marked by a heap (ahu) of stones surmounted by an image of a pig (pua'a), or because a pig or other tribute was laid on the altar as tax to the chief.
2. The altar on which the pig was laid as payment to the chief for use of the ahupua'a land.

Ahupua'a land management operates on a cyclical and regenerative sustainable system that runs "from the mountains to the sea." [56] Water flows down from mountains through rivers and

²⁰ <http://pensionpulse.blogspot.com/2020/11/canadas-top-eight-pensions-unite-on-esg.html>

²¹ Shan Tsutsui and representatives from Trinitas Partners did not respond to multiple requests for comment for this report.

tributaries, is “loaned” to the taro patches, and then returned to the stream to flow into the sea and then up, again, through evaporation and perspiration, to the mountain tops.

This system of environmental stewardship and agriculture respects not only the water and the land but the creatures and aquatic life that exist as part of the ecosystem, as well as the people and the communities that use the land for their livelihood.

Business as usual is not working for Trinitas and Mahi Pono. Even if, or especially if, Mahi Pono is successful in winning the long-term water rights at or below market price, there is growing evidence demonstrating that the Mahi Pono plan is not a good ESG investment.

One possible solution, then, would be for Trinitas and PSP to acknowledge the on the ground reality. Mahi Pono is not an ESG investment designed to help the community, but a land grab dependent on successfully executing long-term water arbitrage.

Once separated from the language of ESG, the investors would at least free themselves of accusations of misrepresentation and so-called greenwashing (presenting something as a sustainable investment when it is not.) But this would be a difficult position for PSP and its purported ESG values.

In the worst-case scenario, no one wins. Mahi Pono loses its fight for the water rights, ditches its plans for a sustainable diversified agriculture business (which it has said is not possible without the water leases) and, either sells the land and/or looks to develop it for commercial or residential real estate purposes (something Mahi Pono currently says it does not want to do.) PSP decides investing in Maui presents too many challenges and pulls its funds or vows never to invest in the state again. Hawai'i is left food insecure without a diversified agriculture business on Maui, and without the jobs Mahi Pono promised, nor the support for small farmers.

Any true ESG solution should include:

- Transparency
- Compromise
- True community engagement
- True value creation for the community
- Respect for communal resources and values
- An acceptable level of investment returns

It may be that the community has grown too distrustful of Trinitas and Mahi Pono, in which case PSP could step in and take the lead.

PSP would benefit from being more involved with its investment. It should not only rely on its partners for information and communications²². As a fiduciary, PSP needs to make a return on

²² For this case study Stéphanie Lachance, Vice President, Responsible Investment, for PSP Investment directed all questions regarding Mahi Pono to COO Shan Tsutsui.

its investment. But that investment return should not come at the cost of its own ESG principles, and the community in which it is investing.

The pension plan could engage with the local community and identify common values. Hawaiians are committed to their kuleana (responsibility) to steward and protect their island resources and communities, including taking care of their kūpuna (elders)²³ and safeguarding the future. It is what they want for their own community, and they can understand that Canadian pension beneficiaries need the same.

Either in partnership with Trinitas or with a separate fund manager, PSP could consider systems and ways of farming which are less water intensive and which can restore at least some of the water back to local communities and water systems, while offering sustainable approaches to agriculture that can fulfill local food needs but also provide the type of investment return that PSP and its beneficiaries are seeking to achieve²⁴.

Sustainable agricultural solutions do exist which could offer this kind of investment profile. Additionally, PSP could look for interest aligned partners to off-set some of the risk and/or take a lower investment return.

If PSP Investments continues to operate as an absentee landlord, the community could decide to step in and reclaim the land using eminent domain. Maui would then be in the position of having to find a new investor, or investors, for the former sugar plantation.

RECOMMENDATIONS

“Ua Mau ke Ea o Ka ‘Āina I ka Pono.”

The Hawai’i state motto, adopted in 1959. “The life of the land is perpetuated in righteousness.”

The Maui Mahi Pono experience shows what happens when good ideas and intentions as to ESG frameworks are undermined by speculation and rent-seeking, extractive, behavior. Hawai’i’s food insecurity was, and still is, a serious problem. The sale of the A&B sugar plantation represented a unique moment for Maui to be freed from its colonial past toward a more diverse and egalitarian economy.

²³ Grandparent, ancestor, relative or close friend of the grandparent’s generation, grandaunt, granduncle.

²⁴ Our research has found that Mahi Pono could achieve 90 percent of the investment return while paying market rate for water and returning 30 percent more water to the streams. With application of additional tectological innovation 60 percent of the water could be returned to the streams with no additional loss of revenue to Mahi Pono.

The investors were able to use the language of ESG and sustainable investment to make it appear as if they were facilitating that transition. All the while they were in fact, carrying on the old A&B legacy through their efforts to secure a massively advantageous long-term water contract, at the cost of local stake holders.

Institutional asset owners and more importantly, institutional asset managers should not be allowed to independently and unilaterally decide what a sustainable investment is. It is too easy for investors, even with the best of intentions, to highlight the good and ignore the bad.

In Maui's case, PSP Investments appears to have focused on Mahi Pono's plans for sustainable agriculture, job creation, and renewable energy. They may have overlooked the on-going issues around water, the disruption of local ways of farming, and the use of political lobbying.

Institutional investors have an agency problem. They hire partners and trust them to do the work in the field. Disputes and problems are dealt with by the managers, who then report back to the investment staff. The investment staff then share those reports internally. Staff report to board members. And, finally, some information is shared with stakeholders through, for example, the sustainable investment report.

There is practically no established mechanism by which stakeholders on the ground can communicate with the actual investors. They can send communications, but these are almost inevitably going to be overlooked in favor of the "official" narrative from the trusted investment partner. After all, that is what the manager was hired to do. As a result, however, it is hard for asset owners to know when there really is a material ESG problem with an investment in cases where the investment manager does not perceive a problem.

The issue is not a lack of information.

Extensive material exists showing that Mahi Pono is having problems on Maui. PSP could, for example, simply read the draft environmental impact study. But it is not the job of PSP to wade through copious court documents and hearings to keep track of one investment, even with such a significant financial commitment. The issue is the lack of a trusted, objective, third party source to monitor and convey that information.

For PSP and Trinitas to move forward with a successful investment, they should take the following steps:

- **An independent Community Benefit Audit²⁵** of Mahi Pono as a sustainable investment, paid for by PSP. At a minimum, PSP should engage with and respond to government and community groups who are seeking information.

²⁵ A **Community Benefit Audit (CBA)** would be paid for by the asset owners, or Limited Partners (LP's) in a private equity fund. The audit would review and monitor infrastructure and private market assets to insure they are meeting their ESG goals and to assess their impact on the local communities and the environment. This audit

- **Resolution of the water disputes.**
- **Recognition of Hawaiian water rights.**
- **Productive and transparent engagement on ESG issues in the public square.**
- **Engagement with organized labor.** With a commitment to remaining neutral to organization of its workforce with the intention of creating high quality, local, jobs.
- **Engagement with community leaders.** On a no strings attached basis.
- **Movement toward operations that support the ahupua'a system.** Aligned with community values and sustainable approaches to agriculture.
- **Reduction of water consumption.** With a focus on more sustainable agricultural systems.
- **Identification of interest aligned sources of capital.** Both profits seeking and mission orientated.
- **Partnering on technology and innovation.** Bringing innovative technology to the community.

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should be shared with all stakeholders. It should be derived from independent sources and include the opportunity for community feedback and comment.

A CBA could be something that investors enter into voluntarily, with the audit to be conducted by trusted, qualified, partners. Or it could be something that investors are required to do, either through regulation and/or integration into investment policy documents. A CBA should be considered best practice for sustainable infrastructure investment.

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