

APT Committee

From: Dick Mayer <dickmayer@earthlink.net>
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POLITICS ON MAUI

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Council Urges Mayor to Pursue Leases for East Maui Water

By [Deborah Caulfield Rybak](#) January 19, 2022 [Comments](#)

The Maui County Council's recent override of Mayor Michael Victorino's veto of the widely supported hotel moratorium rightly made a lot of news. However, the Council took another action during its marathon 10-hour January 7th meeting on a subject even **more critical to Maui's future: who controls the water on our island.**

At issue are the 30-year East Maui water leases coveted by East Maui Irrigation [EMI], which is jointly owned (at present) by Alexander & Baldwin and Mahi Pono. Mahi Pono is the manufactured Hawaiian name for a company owned by the Canadian Public Sector Pension Investment Board (PSP), a for-profit entity dedicated to maximizing investment returns for Canada's federal employees.

That day, **the Council voted 8-1 to urge Victorino to contact the Department of Land and Natural Resources [DLNR] and pursue an intergovernmental agreement that would let Maui County take over the proposed 30-year lease and turn Maui's largest source of water supply into one held by the people, rather than by a foreign-based, for-profit investment behemoth.** The resolution was introduced by councilmember Shane Sinenci, after DLNR testimony given during his Agriculture and Public Trust Committee meeting in November. Councilmember Keani Rawlins-Fernandez worked with Sinenci to fine-tune the resolution, which was **approved by everyone except councilmember Yuki Lei Sugimura.**

This isn't the first stop for this idea; it's actually one of the last. The idea of Maui County taking away EMI's current control of East Maui's water supply has been under discussion for years. It's been endorsed by state representatives, civic leaders, the county Board of Water Supply, the Department of Hawaiian Homelands and many local organizations. Everyone, it seems, except Mayor Michael Victorino, who has failed to address the matter for the past three years. A call to the mayor's office asking if he intended to act on the resolution was not returned.

Turning Private Water Control Public

If you are a regular reader, then you know that EMI is currently seeking 30-year leases on the water that flows through EMI ditches from East Maui streams to Central Maui ag land. Most of the East Maui watershed land is governed by the DLNR, which, for years, has been granting EMI temporary one-year "revocable" water leases. EMI gets that water cheap. Although Maui County gets a break in rates, local farmers pay more than a dollar per 1,000 gallons to water their crops. Many of those

crops are the same as those grown by Mahi Pono, which is paying pennies per thousand gallons to irrigate. With numbers like that, the 30-year permanent water lease is a game-changer and the impetus for this resolution.

At the heart of this issue is the Hawaii state constitution, which defines water as a “public trust resource” and requires that water be used for the public good. As Sinenci explained to his colleagues, “When a private, for-profit entity acquires the right to water, [it] then becomes an economic commodity.”

If a municipal government like Maui County manages the water, Sinenci continued, “This incongruity is solved.” He said an intergovernmental lease agreement with the state would “provide for equitable water rates for all users...and provide parity among farmers.” He added that it was **“unrealistic to expect full island sustainability and a robust local farming industry when an international company is receiving heavily subsidized water rates and local farmers are forced to pay much more.”**

The resolution does not call for buying the EMI irrigation system, nor does it carry any legal weight. Called an “urging resolution,” it authorized two main actions: that **“the council send a letter to the mayor “urging” him to engage in discussions with the DLNR about the county taking over the 30-year water leases** (there are four, covering different areas of East Maui). The reason? Because if the county gets involved, all DLNR efforts to structure a water lease auction—which it is starting to do now and where EMI is expected to be the sole bidder—will halt because a government entity has priority to ask for a lease. Then the county wouldn’t be caught up in a bidding war with EMI if an auction were held.

The resolution **also orders a letter expressing the council’s interest in the leases to be sent directly to the DLNR.** Why? Well, to date, the Victorino administration’s attitude toward anyone challenging Mahi Pono/A&B/EMI/PSP on water usage has been dismissive, to say the least. It has repeatedly ignored all efforts to bring the county into the matter.

Water on the Corporate Brain

PSP/Mahi Pono has maintained a single-minded focus on controlling East Maui water since it bought 41,000 acres of ag land and 15,000 acres of East Maui watershed from A&B in November 2018. A&B has provided major backup and political clout along the way. Why? One financial condition of the sale stands out: A&B will remain a part-owner of EMI until a long-term water lease with the state is signed. If such a water lease is not signed by the end of 2023, A&B must rebate up to \$62 million of the \$267 million purchase price.

That’s all we knew about PSP/Mahi Pono’s water interests at the time of the purchase. New information was sketchy. PSP representatives dodged questions about its water use plans (and lots of other things) at several community meetings. That’s before they stopped attending meetings altogether and took their conversations behind closed doors with the mayor and others, such as County Department of Water Supply director Jeff Pearson.

Within months of the purchase, attention shifted to the 2019 state legislative session, when Mahi Pono and A&B lobbied hard for a bill to change the terms of its temporary “revocable” water leases in their favor. After starting out as a slam dunk success, the proposed legislation, nicknamed the “Corporate Water Theft Bill,” ultimately died in the 11th hour, after sustained outcry from numerous groups, including the state Democratic Party itself. The stormy fight provoked a letter in May 2019 to Victorino from then-State Senator Kai Kahele, who chaired the Senate Committee on Water and Land. (He is now a U.S. representative.)

Kahele wrote, “I truly believe it is in the best interest of the County of Maui to secure its own long-term water lease with the State of Hawaii and to free itself from the dependency on private, commercial, third-party operators who are not duty bound, as we are, to uphold the state’s public trust obligation to conserve and protect Hawai’i’s natural resources for the benefit of present and future generations.”

He concluded by offering the mayor help “to navigate this process.”

Victorino, by the way, spent most of the legislative session fighting for the bill, doomsaying that Upcountry water would be shut off if the bill wasn’t passed. The bill died and yet, the water kept flowing.

Water Board Support

Meanwhile, Maui’s Board of Water Supply [BWS] quickly ran into its own problems with Mahi Pono, which ignored its invitations to come before the BWS so that it could better understand what the company was doing. The mayor stepped into that as well, at one point forbidding then-chair Shay Chan Hodges from sending a letter to Mahi Pono about its behavior.

As a result of this interaction (or lack of it), **the BWS established a Temporary Investigative Group (TIG) to research the feasibility of the county taking over operation of EMI and turning it into a public utility.** It subsequently published a [comprehensive report](#) advocating the pursuit of such a goal. It was unanimously adopted by the BWS in December, 2019. Last month, the board sent letters to the mayor and the council encouraging them to pursue an intergovernmental agreement with the state to acquire the East Maui water leases.

The Problems with PSP

On top of all this, in 2019, PSP was making headlines, not necessarily favorable ones, with news reports that it had purchased rights to 23 billion gallons of Australian water during that nation’s unprecedented 2019 drought, which it will control for the next 50 years. Since then, it’s [bought up even more](#) Australian water.

Around that time California water attorney Tim O’Laughlin took the reins as Chief Operating Officer at Mahi Pono. O’Laughlin’s specialty? Privatizing public water. He didn’t last long at the job, but he hasn’t disappeared. During Sierra Club’s contested case hearing in front of the DLNR last month regarding East Maui water leases, O’Laughlin was identified as one of the Mahi Pono principals watching the proceeding.

Shay Chan Hodges referenced some of PSP's more recent business dealings during her pro-resolution testimony before the council. She quoted a 2021 [Toronto Star story](#) on PSP's \$870 million investment in Pretium Partners, a company that got busy buying up distressed U.S. rental properties and evicting tenants during the COVID-19 pandemic. Pretium currently is under investigation for those practices.

"The Pretium investment is just one example of PSP's values," Chan Hodges testified. "PSP is also implicated in deaths, negligence and tax avoidance at the [Revera elder care homes](#), where they are the sole investor and operator, and which operate in Canada...Clearly PSP's number one priority is making a sizeable return on their investment."

Water Needs Local Control

Joining Chan Hodges in urging the council to adopt the resolution were an impressive array of big names in Hawaii water circles. Environmental/cultural consultant (and co-author of *West Maui Water and Power*) Jonathon Likeke Scheuer appeared on behalf of the Department of Hawaiian Homelands to voice support. Also testifying: Jerome Kekiwi, Jr., whose organization, Na Moku 'Aupuni O Ko'olau Hui, has been the lead plaintiff in most of the lawsuits against EMI's use of East Maui water. After saying his group currently enjoyed a good relationship with Mahi Pono, Kekiwi added, **"Hawaii's public trust resources should be controlled by Hawaii. It is dangerous to surrender this trust obligation to a foreign, for-profit corporation."**

Retired UH Maui economics professor and community activist Dick Mayer pointed out the potential profits that could accrue to Maui County if it controlled the water lease, especially if the state offered a good water rate. "If they give the relatively low rates that presently exist, the county will then have that water available to sell back to Mahi Pono, which right now does not pay extra for that water." Mayer estimated that Maui farmers who currently pay more than one dollar for a thousand gallons could subsequently get the same amount of water for as low as "30 to 50 cents."

Swimming Upstream

So what's next? The resolution is swell, but nobody expects the mayor to lift a finger to proceed on the matter. Whether a letter to the DLNR from the council can jump start the process remains to be seen. However, if either Michael Victorino or the County Council opens the door to talks with the DLNR, the room they will enter is dark and chaotic. **Establishing a Water Authority to define and manage Maui's water and its use makes creating a county Department of Agriculture look like child's play. In the right hands it could be precedent-setting and beneficial. In the wrong ones: well, the water flowing today to Central Maui fields could end up building more Wailea condominiums for absentee owners.**

But if Maui doesn't take steps to act on this matter now, it will have to wait 30 years for another opportunity. In the meantime, a profit-driven Canadian pension investment corporation will be calling the shots. As Hawaiian rights activist Joyclynn Costa told councilmembers, "It scares me that government has to get involved in our water. It's like a having a choice of a shotgun to my head, or a

beebee gun in my eye. Either way I'm gonna get hurt. But the DLNR cannot allow private entities to control our water."