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BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation) **TEMPLE OF LONO RESPONSE IN**
District Use Permit (CDUP) (HA-3568 for) **SUPPORT OF INTERVENOR**
The Thirty Meter Telescope at the Mauna) **DWIGHT J. VICENTE MOTION TO**
Kea Science Reserve, Kaohe Mauka,) **DISQUALIFY JUDGE RIKI MAY**
Hamakua District, Island of Hawai'i,) **AMANO (RET.); STATE OF HAWAII**
TMK (3) 4-4-015:009) **LACK OF JURISDICTION TO HEAR**
) **THIS CONTESTED CASE HEARING;**
) **EXHIBIT 1 WITH EXHIBITS A AND B**

**TEMPLE OF LONO RESPONSE IN SUPPORT OF INTERVENOR DWIGHT J.
VICENTE MOTION TO DISQUALIFY JUDGE RIKI MAY AMANO (RET.); STATE OF
HAWAII LACK OF JURISDICTION TO HEAR THIS CONTESTED CASE HEARING
EXHIBIT 1 WITH EXHIBITS A AND B**

I. INTRODUCTION

On June 24, 2016, Intervenor Dwight J. Vicente filed his Motion to Disqualify Judge Riki may Amano (ret.); State of Hawaii Lack of Jurisdiction to Hear This Contested Case Hearing (Hereinafter "Vicente Motion"). DOC-80.

On July 22, 2016, the Board of Land and Natural Resources denied the motion. DOC- _____ (Minute Order No. 14)

On July 24, 2016, Intervenor Temple of Lono filed its Motion to Vacate and Supplement Response Time. DOC-_____. This motion noted that the Hearing Officer had adopted a schedule that set the deadline for responding to motions on August 1, 2016, ten days after the Board issued its ruling. *Ibid.*, Memorandum at 1. The

motion sought vacating of the Board's ruling and the provision of a ten-day period for responding to Mr. Vicente's motion. *Ibid.* at 3-4.

*As the Board has not yet ruled on the motion to vacate and in order not to waive any right to respond to the Vicente motion, the Temple of Lono is proceeding to file its response to the Vicente motion in order to be **timely under the schedule set by the Hearing Officer.***

Intervenor Temple of Lono herein files its response to the Vicente motion.

II. ARGUMENT

The indigenous Kanaka Maoli had a governing system composed of the kuleana of the Kahuna, the Ali'i, and the Maka'ainana. Kuleana meant the responsibility to take care of (malama) the land belonging to all and manage the civilization. The people served the land that sustained them. Each group within the civilization fulfilled its particular responsibility.

After contact with foreigners, the Kanaka Maoli adopted a constitutional monarchy form of government. Within that form, the Kingdom Government derived its powers from the Kingdom Constitution.

Having convinced the Hawaiians to adopt that form of government, the foreigners then seized the monarch and overthrew the government with the intent to abolish the nation and annex Hawaii to the United States.

The Kingdom Government was overthrown by traitors backed by the United States Minister to the Kingdom and United States Marines.

Illegitimate governments, including first, the Provisional Government, and then its successor, the Republic of Hawaii, displaced the legitimate Kingdom Government.

The United States Government never successfully concluded a treaty of annexation with either the Kingdom, the Provisional Government, or the Republic of Hawaii.¹

Eventually, the United States Government seized the Kingdom through passage of a resolution, known as the Newlands Resolution.

There is no provision in the United States Constitution or international law that allows one sovereign nation to annex another sovereign nation by simply passing a resolution, as opposed to a treaty ratified by both parties.

In his motion, Mr. Vicente asserts the logical implications of this history and law, to wit:

-- If there was never a treaty of annexation ratified by both the United States Government and the Kingdom Government, then the Kingdom still exists as a sovereign entity.

-- The passage of a joint resolution by the United States Congress could not and did not change the status of the Kingdom from sovereign to United States territory.

¹ Of course, even if the United States and either of the two usurper governments had mutually agreed to and ratified an annexation treaty, the illegitimate nature of the usurper governments denied those governments the authority to agree to such a treaty.

-- The Newlands Resolution claimed to seize lands that were the private property of the Crown. Even had the annexation proceeded between two legitimate governments, that agreement between governments could not extinguish the private property rights of the monarch.

-- If the Kingdom still exists, then the Kingdom has jurisdiction over the lands in question in this proceeding.

-- The jurisdiction of the State of Hawai'i is based on the legally ineffective Newlands Resolution and subsequent enactments by the United States founded on that ineffective act, including the Admission Act and the Organic Act. The absence of a legal basis for claiming annexation negates any claimed authority based on subsequent acts that relied on the legality of the joint resolution.

-- The United States, therefore, never perfected its jurisdiction over the Kingdom and officers of the United States Government and its political subdivisions cannot legitimately exercise jurisdiction over Kingdom lands.

-- Nor is the claim of annexation limited to the lands. The subjects of the Kingdom supposedly lost their nation and their citizenship through the annexation.

-- The so-called annexation went beyond the taking of land to forced dispossession of the rightful owners of the land.

-- Now a political subdivision of the United States is seeking to lease the seized lands to a foreign, non-profit corporation for purposes of constructing a large facility without the permission of the rightful owner of the land.

Based on this analysis and argument, Mr. Vicente seeks a ruling that these proceedings are not legitimate and should cease.

A key element in Mr. Vicente's argument is the legally ineffective nature of the Newlands Resolution. That defect did not go unnoticed in the United States Congress at the time the resolution was considered.

The Newlands Resolution passed the United States House of Representatives first. That success renewed the push for an annexation treaty.

Briefly, the victory in the House inflated Henry Cabot Lodge's hope to round up a genuine two-thirds vote in the Senate for the Treaty of Annexation, reflecting a concern for both the dignity and constitutionality of the method of annexation. After Lodge and the others assessed the opposition, the treaty, which had been awaiting a vote for five and a half years, was discarded for good.

Tom Coffman, Nation Within: The Story of America's Annexation of the Nation of Hawai'i, Epicenter, Kāne'ohe, Hawai'i 1998 p. 310 (emphasis added).

When the Senate proponents moved for passage of the [Newlands] House Resolution, the opposition responded with a filibuster. The session was supposed to be over soon, and they hoped to talk the resolution to its death. Opponents were driven by a wide range of reasons, but foremost was their perception that the rights of the native citizens were being trampled upon, and that an entire nation of people was to be placed under the American system of government without their consent. Senators also complained that their traditional responsibility under the constitution for confirming treaties had been disregarded. The fury of the opposition kept Congress in session long after it was to have adjourned. The determination of the proponents also kept the session going, since the opposition gladly would have agreed to adjourn without voting – all of this in the midst of the Spanish-American War.

The filibuster went on for seventeen days. The length of the filibuster, the profound division in the Senate, and the expansionists' giving up on gaining a two-thirds majority [to ratify a treaty of annexation] – all reflected the American nation faltering as it approached the moment of acquiring an empire abroad.

Ibid., p. 310-311 (emphasis added)

After the proposed amendments were defeated, the vote at last came up upon the main motion. Lorrin Thurston sat in the gallery watching. Forty-two senators voted aye and twenty-one voted nay. Twenty-six did not vote. Of those who voted, exactly two-thirds voted yes, but nearly a third of

the entire Senate ducked out of voting. As a result, America's annexation of the previously sovereign nation of Hawai'i rested on the votes of fewer than half the members of the United States Senate.²

In denying Mr. Vicente's motion, the Board relies primarily upon the United States Supreme Court ruling in *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009). DOC- ___ (Minute Order 14).

In that case, the legal effectiveness of the Newlands Resolution was not before the Court. *Office of Hawaiian Affairs, supra*. The Court simply accepted the historical fact that the resolution was enacted and did not address the legal implication of the act being a resolution, not a treaty.

Nor did the United States Supreme Court address the issue of the Kingdom's continued existence.

As the Kingdom of Hawai'i Notice of Absence of Necessary and Indispensible Party, DOC-79 (Hereinafter "Notice") argues:

State courts in Hawai'i have been willing to address the question of the Kingdom's continued existence when raised. *See State v. Lorenzo*, 883 P.2d 641, 643-644 (1994), 77 Haw. 219 (Haw. App 1994) ("[T]here is no clear consensus that the Kingdom does continue to exist. Consequently, it was incumbent on Defendant to present evidence supporting his claim. ... Lorenzo has presented no factual (or legal) basis for concluding that the Kingdom exists as a state in accordance with recognized attributes of a

² United States Constitution, Article II, Section 2, Clause 2 states: "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur..." (emphasis added). While the vote to approve the resolution was two-thirds of those voting, the abstention of another twenty-six members meant that the aye vote represented less than half of those present. The proponents of annexation could not, therefore, argue that the two-thirds of those voting in favor could even be analogized to a vote ratifying a treaty. The super majority vote of those present, required by the Constitution for treaty ratification could not be satisfied by a vote of fewer than half of those present.

Besides, the proposal being voted on was not the same document as the treaty that was withdrawn.

state's sovereign nature.”) (emphasis added); see also *State v. French*, 77 Haw. 222, 228, 883 P.2d 644, 649 (Ct. App. 1994) (absence of a “factual (or legal) basis for concluding that the [Hawaiian] Kingdom exists as a state in accordance with recognized attributes of a state's sovereign nature.” citing *Lorenzo*); *Nishitani v. Baker*, 921 P.2d 1182, 1191 (ICA Haw. 1996) (“Defendants have produced no evidence in support of their defense that as ‘birth descendants of Native Hawaiians, who inhabited the Hawaiian Islands prior to 1778,’ they enjoy immunity from a civil suit regarding contracts entered into by them in the State of Hawai`i.”); *State v. Lee*, 976 P.2d 444, 456 (1999) (“the ICA has suggested that it is an open legal question whether the ‘Kingdom of Hawai`i’ still exists”).

Notice at 8 (emphases added).

Furthermore, the Notice identifies circumstances and arguments that did not exist at the time of the Supreme Court decision relied upon by the Board. Notice at 7-8. Specifically, the new facts and arguments include the existence of a restored Kingdom of Hawai`i Government with a record of governmental acts that support a finding that the “Kingdom exists as a state in accordance with recognized attributes of a state’s sovereign nature” and has the rights of statehood, whether diplomatically recognized by other governments or not. *Lorenzo supra*.

The Notice argues that presentation of the evidence of the Kingdom’s continued existence and current viability “would satisfy the objections of previous State courts that evidence of the existence of the Kingdom was not produced.” *Ibid.* at 8.

These new facts raise issues that have

never been addressed by the Executive Branch of the United States Government, the Judicial Branch of the United States Government, or the Judicial Branch of the State of Hawai`i Government.

Ibid. at 7.

As to the legitimacy of the annexation, arguably the United States Government is avoiding that question.

The United States Government has a department called the Office of the Historian. <https://history.state.gov/> That office has a website that presents milestones in United States history. *Id.*

At one time, the website contained the following presentation:

Annexation of Hawaii, 1898

America's annexation of Hawaii in 1898 extended U.S. territory into the Pacific and highlighted resulted [sic] from economic integration and the rise of the United States as a Pacific power. For most of the 1800s, leaders in Washington were concerned that Hawaii might become part of a European nation's empire. During the 1830s, Britain and France forced Hawaii to accept treaties giving them economic privileges. In 1842, Secretary of State Daniel Webster sent a letter to Hawaiian agents in Washington affirming U.S. interests in Hawaii and opposing annexation by any other nation. He also proposed to Great Britain and France that no nation should seek special privileges or engage in further colonization of the islands. In 1849, the United States and Hawaii concluded a treaty of friendship that served as the basis of official relations between the parties.

A key provisioning spot for American whaling ships, fertile ground for American protestant missionaries, and a new source of sugar cane production, Hawaii's economy became increasingly integrated with the United States. An 1875 trade reciprocity treaty further linked the two countries and U.S. sugar plantation owners from the United States came to dominate the economy and politics of the islands. When Queen Liliuokalani moved to establish a stronger monarchy, Americans under the leadership of Samuel Dole deposed her in 1893. The planters' belief that a coup and annexation by the United States would remove the threat of a devastating tariff on their sugar also spurred them to action. The administration of President Benjamin Harrison encouraged the takeover, and dispatched sailors from the USS *Boston* to the islands to surround the royal palace. The U.S. minister to Hawaii, John L. Stevens, worked closely with the new government.

Dole sent a delegation to Washington in 1894 seeking annexation, but the new President, Grover Cleveland, opposed annexation and tried to restore the Queen. Dole declared Hawaii an independent republic. Spurred by the nationalism aroused by the Spanish-American War, the United States

annexed Hawaii in 1898 at the urging of President William McKinley. Hawaii was made a territory in 1900, and Dole became its first governor. Racial attitudes and party politics in the United States deferred statehood until a bipartisan compromise linked Hawaii's status to Alaska and both became states in 1959.

<http://2001-2009.state.gov/r/pa/ho/time/gp/17661.htm>

While supposedly addressing the history of annexation, the most important omission in this presentation is the process by which the Kingdom of Hawai'i was "annexed" to the United States.

The Office of the Historian never mentioned the two attempts to have a treaty of annexation ratified in the United States Senate that both failed.

Nor did it mention the Ku'e Petition signed by almost all adult Hawaiians expressing their opposition to annexation. That opposition contributed to the rejection of one of the proposed treaties of annexation.

The Office of the Historian also failed to mention the Newlands Resolution, that supposedly annexed the Kingdom after treaty ratification failed or to discuss the legal effectiveness, or lack thereof, of that resolution in achieving annexation.

In 2014, this legal flaw in the annexation presentation by the Office of the Historian became more visible and controversial as the legitimacy of the annexation became increasingly questioned by the Hawaiian sovereignty movement.

In the Fall of 2014, the Office of the Historian removed the text on the "annexation" page from their website, posting a notice on the page that said that the page was being revised to ensure "accuracy and clarity."

<https://history.state.gov/milestones/1866-1898/hawaii>

In response to a recent inquiry, the Office of the Historian said that they no

longer intend to revise the page. Exhibit 1 and Exhibits A and B to Exhibit 1.

The decision of the United States Office of the Historian to censor the history, rather than face the implications of the truth, is a tacit admission that the implications of the truth are too politically uncomfortable, i.e. finding that annexation never legally took place disrupts the entire charade of legitimacy surrounding the United States pursuing imperial ambitions by illegally destroying a friendly government and seizing another sovereign nation.

Governments that basically tear pages out of history to avoid confronting an unpleasant past do not deserve the characterization as democratic. Historians that cooperate in that censorship do a disservice to their profession.

An additional fact not yet addressed by any court or government is the Kingdom's direct claim to have reestablished its jurisdiction over the lands in question. See e.g. Notice, Exhibit 1, ¶¶6-7; DOC-____, Exhibit 1 (Temple of Lono Motion to Dismiss for Lack of Jurisdiction Based on Unresolved Land Claims, Exhibit 1).

Given that these core issues, new evidence, and new legal arguments, directly relevant to whether the Applicant has the right to lease the lands in question, have never been addressed, there is no basis for simply denying Mr. Vicente's motion based on a case decided many years ago that did not address these issues, evidence, and arguments.

III. Conclusion

The options available to the Board are to take up the issues raised and set up a briefing schedule to address them based on the latest evidence; decide that the

Board cannot decide the core issues for jurisdictional reasons and dismiss the case; or refuse to recognize the changed circumstances and issues never before addressed.

The Temple of Lono argues that Mr. Vicente raised significant issues not previously decided and that addressing those issues will compel a decision against issuing the CDUA at issue in this proceeding. To ignore those issues or otherwise exclude those issues, as suggested by Intervenor PUEO, DOC-99, would violate the Due Process rights of all intervenors with an interest in having those issues heard.

For the Board to blithely accept the Newlands Resolution as a legal basis for the United States annexing the Kingdom of Hawai'i, without addressing the issue of whether such an action is even legally possible, would be to find appearance to be more determinative than substance.

That trivialization of the truth would be tantamount to a determination of sovereignty, a determination that is outside the scope of the Board's jurisdiction.

That determination would be based on omission, i.e. reliance on assertions known to be false.

When the impact of glossing over the fundamental issues is the extinguishing of a nation, the need to address the issues is even more compelling.

Dated: July 27, 2016

Respectfully Submitted,

_____/s/_____

Lanny Alan Sinkin

Lay Representative for Temple of Lono

Exhibit 1

Lanny Alan Sinkin
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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation) **DECLARATION OF**
District Use Permit (CDUP) (HA-3568 for) **LANNY ALAN SINKIN**
The Thirty Meter Telescope at the Mauna)
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

DECLARATION OF LANNY ALAN SINKIN

Declaration of Lanny Alan Sinkin

I declare the following to be true and correct:

1. I represent the Temple of Lono as an intervenor in the above-captioned proceeding.
2. On July 1, 2016, I sent an inquiry to the United States Office of the Historian regarding a page on their website titled "Milestones: 1866-1898" "Annexation of Hawaii, 1898." Exhibit A.
3. I noted that the Office of the Historian had previously posted information on that page about the "annexation" of Hawai'i. Id.
4. I noted that the information previously available had been removed in 2014. Id.
5. I noted that the prior information had been replaced in 2014 with a notice that the page was being revised. Id.
6. I noted that the page had not yet been revised. Id.
7. I inquired as to when the revision would be published. Id.

8. On July 19, 2016, the Office of the Historian informed me that they no longer intended to revise the annexation page. Exhibit B.

Dated: July 27, 2016 in Kurtistown, Kingdom of Hawai'i

_____/s/_____
Lanny Alan Sinkin

Exhibit A

From: Lanny Sinkin [mailto:lanny.sinkin@gmail.com]
Sent: Friday, July 01, 2016 2:42 PM
To: The Office of the Historian
Subject: Inquiry

To: Office of the Historian

In the Fall of 2014, the Office of the Historian removed the article titled "Milestones: 1866-1898" "Annexation of Hawaii, 1898" from the Office of the Historian website.

The Office of the Historian replaced that article with a notice that stated: "Notice to readers: This article has been removed pending review to ensure it meets our standards for accuracy and clarity. The revised article will be posted as soon as it is ready. In the meantime, we apologize for any inconvenience, and we thank you for your patience."

Almost two years later, that same notice still appears.

[<https://history.state.gov/milestones/1866-1898/Hawaii>]

Can you please update me on any plans the Office of the Historian may have to update that page?

Is Dr. Stephen Randolph the person most qualified to testify to the Office of the Historian position on how the "annexation" of the Kingdom of Hawai'i took place?

Thank you for your attention to these questions.

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Exhibit B

From: The Office of the Historian <history@state.gov>

Subject: RE: Inquiry

Date: July 19, 2016 5:14:14 AM HST

To: Lanny Sinkin lanny.sinkin@gmail.com

Dear Mr. Sinkin,

My sincere apologies for our delayed response. Thank you for your inquiry and interest in the Office of the Historian's material available on our website. We are sorry to say that we cannot always provide information on every subject and there is currently no plan to republish this Milestone.

Kind regards,

Tiffany H. Cabrera, Ph.D.
Historian, Special Projects Division
Office of the Historian
U.S. Department of State

This email is UNCLASSIFIED.

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Lay representative for Temple of Lono

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The Thirty Meter Telescope at the Mauna)
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Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the Temple Of Lono Response In Support Of Intervenor Dwight J. Vicente Motion To Disqualify Judge Riki May Amano (Ret.); State Of Hawaii Lack Of Jurisdiction To Hear This Contested Case Hearing; Exhibit 1 with Exhibits A and B was served on the following parties by eMail: "Judge Riki May Amano (Ret.)" <rma3cc@yahoo.com>, "Julie China Deputy Attorney General Land and Transportation Division" <julie.h.china@hawaii.gov>, "Michael Cain" <michael.cain@hawaii.gov>, "Ian Sandison" <isandison@carlsmith.com>, "Richard N. Wurdeman" <RNWurdeman@RNWLaw.com>, "Watanabe Ing LLP" <rshinyama@wik.com>, "Harry Fergerstrom" <hankhawaiian@yahoo.com>, "Richard L DeLeon" <kekaukike@msn.com>, "Mehana Kihoi" <uhiwai@live.com>, "C. M. Kaho'okahi Kanuha" <kahookahi@gmail.com>, "Joseph Kualii Lindsey Camara" <kualiic@hotmail.com>, "Lincoln S. T. Ashida" <lsa@torkildson.com>, "Jennifer Leina'ala Sleightholm" <leina.ala.s808@gmail.com>, "Maelani Lee" <maelanilee@yahoo.com>, "Lanny Alan Sinkin" <lanny.sinkin@gmail.com>, "Kalikolehua Kanaele" <akulele@yahoo.com>, "Stephanie-Malia:Tabbada" <s.tabbada@hawaiiantel.net>, "Tiffnie Kakalia" <tiffniekakalia@gmail.com>, "Glen Kila" <makakila@gmail.com>, "Brannon Kamahana Kealoha" <brannonk@hawaii.edu>, "Cindy Freitas" <hanahanai@hawaii.rr.com>, "William Freitas" <pohaku7@yahoo.com>

Dated: July 27, 2016

_____/s/_____
Lanny Alan Sinkin

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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the Temple Of Lono Response In Support Of Intervenor Dwight J. Vicente Motion To Disqualify Judge Riki May Amano (Ret.); State Of Hawaii Lack Of Jurisdiction To Hear This Contested Case Hearing; Exhibit 1 with Exhibits A and B was served on the following parties by first class mail:

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Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Dated: July 27, 2016

_____/s/_____
Lanny Alan Sinkin