

1 BOARD OF NATURAL RESOURCES
 2 STATE OF HAWAII
 3 In Re Petitions requesting) DLNR NO. HA-11-05
 a Contested Case Hearing Re)
 Conservation District Use) VOLUME V
 Permit (CDUP) HA-3568 for the)
 Thirty Meter Telescope at the)
 Mauna Kea District, Island of)
 Hawaii, TMK (3) 4-4-015:009)

7 CONTESTED CASE HEARING

9 Taken on August 25, 2011, at the State Building, 75
 10 Aupuni Street, Conference Room C, and University of
 11 Hawaii Hilo, College of Tropical Agriculture and
 12 Human Resources Building, 200 W. Kawili Street,
 13 Conference Room A, Hilo, Hawaii, commencing at 9:00
 14 a.m. before Hearings Officer Aoki.

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 NATURAL RESOURCES
 STATE OF HAWAII

25 BEFORE: Jean Marie McManus, CSR #154

McMANUS COURT REPORTERS 808-239-6148

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1 HEARINGS OFFICER AOKI: We're on the
 2 record. The hearing is reconvened.
 3 I understand there's some procedural
 4 matters to discuss before we actually start with
 5 testimony again. So do you want to start?
 6 MR. LUI-KWAN: Tim Lui-Kwan on behalf of
 7 the Applicant. With me today is Ian Sandison and Jay
 8 Handlin representing University of Hawaii Hilo
 9 MS. TOWNSEND: Marti Townsend with KAHEA.
 10 MS. WARD: Deborah Ward representing
 11 myself.
 12 MS. PISCIOTTA: Kealoha Pisciotta for Mauna
 13 Kea Anaina Hou.
 14 MR. CHING: Kukauakahi, Clarence Ching,
 15 Petitioner.
 16 MR. NEVES: Kumu Paul Neves for myself and
 17 my halau.
 18 MS. CASE: Aloha, I'm Pua Case. I'm
 19 representing the Flores-Case Ohana.
 20 MR. LUI-KWAN: The first thing I have to
 21 take up is where we left off last week with the
 22 so-called joint exhibits.
 23 We've actually -- well, I think everybody
 24 has seen the exchange in e-mails. We've actually
 25 prepared what is formally known as state exhibits and

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RE-CROSS-EXAMINATION

1 BY MR. HANDLIN:

2 Q Ms. Townsend, Ms. Nagata was a witness in
3 this contested case hearing, correct?

4 A Yes.

5 Q And she was in fact in the witness chair
6 for a number of hours, right?

7 A Yes.

8 Q You didn't ask her any further questions,
9 did you, about that delegation issue; did you?

10 A I didn't need to. It's already in the
11 record.

12 Q So anything that may have happened, for
13 example, between February and now, you didn't care
14 about?

15 A It was her opportunity to bring it up, and
16 she didn't. It's already in the record. BLNR made a
17 decision knowing that there were holes in the process
18 for protecting rights, duties and privileges of
19 specific individuals. So, I mean --

20 Q And you didn't ask any further questions to
21 see if anything else had been done?

22 A Asked and answered.

23 MR. NEVES: Objection, she's already said
24 it was on the record.

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1 HEARINGS OFFICER AOKI: Overruled. Go

2 ahead.

3 Q (By Mr. Handlin): So, again, you didn't
4 think it was worth asking any questions to see if
5 anything further had been done to develop what Ms.
6 Nagata had referred to in February, correct?

7 A I guess I thought it was her obligation to
8 bring that up in her direct if that were true. There
9 are a universe of things that should have been done
10 between then and now that haven't. And the hearing
11 would have been much longer if I had gone through all
12 of those.

13 Q Move to strike that. Can I get an actual
14 response to the question?

15 HEARINGS OFFICER AOKI: Not going to strike
16 it, but you can follow up on the question.

17 THE WITNESS: I don't think that my lack of
18 asking that question is a demonstration of lack of
19 care.

20 Q (By Mr. Handlin): You didn't ask the
21 question?

22 A I didn't ask the question, but I personally
23 may not have asked the question, but other
24 Petitioners may have asked questions along those
25 lines.

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1 Q The record well reflect what the record is.

2 A Yeah. I don't know.

3 Q I have nothing else.

4 MR. CHING: I have a few questions I would
5 like to ask the witness.

REDIRECT EXAMINATION

6 BY MR. CHING:

7 Q Ms. Townsend, you were asked a number of
8 questions about the Mauna Kea Hui?

9 A Yes.

10 Q Is the Mauna Kea Hui a legal organization?

11 A It's not a 51C3, if that's what you're
12 asking, not incorporated in any way.

13 Q In any way?

14 A In any way.

15 Q It's not a joint venture? It's not a
16 corporation? It's not a business?

17 A Nothing like that, no.

18 Q What is it?

19 A It's a loose association of people

20 concerned about the natural and cultural resources of
21 Mauna Kea that had, as time and ability allowed,
22 tried to advocate for protection of those resources.

23 Q Thank you. No further questions.

24 MR. HANDLIN: I have nothing else.

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1 HEARINGS OFFICER AOKI: Okay. Next

2 witness.

DIRECT EXAMINATION

3 MR. CHING: I am Kukauakahi, also known as
4 Clarence Ching. I'm one of the Petitioners in this
5 action.

6 I am 75 years old. I am a cultural
7 practical for Mauna Kea. I also practice my culture
8 in other ways and in other places.

9 I think that I will talk about some of the
10 things I've read in the CDUA, things that bring to
11 mind questions that should be asked but have not
12 which may not be legally required. I'll briefly
13 state some of that.

14 For instance, the University is an
15 Applicant for the construction of an observatory for
16 a third-party. I believe we know who that
17 third-party is. However, the University does not
18 have an operating contract with this third-party, and
19 this third-party has not signed any of the legal
20 documents, including the CDUA in this case.

21 There is no sublease. In fact, it has been
22 stated that the sublease or sublease negotiations
23 have not started yet. It would seem that this
24 third-party has all the information, or should have
25

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1 all the information that is necessary for this CDUA,
2 and yet, we have the University, at public expense,
3 for instance, financing this proceeding.

And if what I read in the newspaper is correct, they're going to pay more than a million dollars. So we're doing all of this stuff at public expense, questions about this third-party have not been asked.

I think it would be prudent if these questions were asked. For instance, what is the form of this third-party, their organization? For instance, which we all know the temple of worship that it is corporation. We also know that corporations are not -- well, the members or the stockholders, I don't think they're stockholders in this case, but the members don't have any individual legal responsibility or fiscal responsibility.

This third-party has not ever built a telescope before that I know of. This organization has, as far as I know, no credit record. And in light that no signatures have been signed on any papers that make them even halfway legally responsible, I think this is an oversight, a very big oversight.

And so these are some of the questions I
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1 have asked. I haven't gotten answers. And as far as
2 my written testimony is concerned, I must confess
3 that -- well, first of all, I did write them, but I
4 must confess that I haven't seen them in about two
5 months, and until about an hour or so ago, and I have
6 looked over them. It's very small print. I can't
7 really see what I'm reading, but, you know, I said
8 them, so I'm subject to cross-examination.

But, anyway, like I'm trying to say, it's not required. I mean, you know the statutes and all these kinds of things don't require the asking and the answering of some of the issues that I just brought up, for instance. And many others that I have.

For instance, the world economic situation is chaotic. We've seen problems with Greece, problems with Portugal, Spain, France coming up, and whether you like it or not, I suspect that the United States will be coming into the action also along with problems in Japan, with tsunamis and nuclear plants being violated.

The situation in the State of California is also chaotic. The newspapers tell me that they may have to cut their classes and all of that and raise tuition, yet, you know, they not liable for any of

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1 this stuff that they are involved in as far as the
2 CDUA is concerned.

And so my feelings are DLNR, as the permitting agency, although not required by law to ask the kinds of questions on the issues I have just brought up, should because of prudence and because they are spending the taxpayers money of the State of Hawaii, should. And on that I will shut up.

CROSS-EXAMINATION

BY MR. LUI-KWAN:

Q Mr. Ching.

A Yes.

Q Good afternoon.

A Good afternoon.

Q On December 2nd, 2010, you attended public hearing in Hilo on the TMT project. Do you recall that?

A I don't remember the exact date, but if you tell me that that was when the Hilo hearing took place, I was there.

Q And you testified at that hearing, right?

A Yes.

Q And in your testimony you objected to the propriety of the hearing, isn't that right?

A Could you expand on that little bit?

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Q You said the so-called State of Hawaii had no legal jurisdiction in this matter. Do you recall saying that?

A I don't recall saying that, but I know what you mean and I agree.

Q So you don't recall saying it?

A I don't remember the specific words I said, but the principle issue, yes.

Q By that you mean it has no jurisdiction to decide the permitting issue here, right?

A Yes. I am one of the numbers of people who believe that Hawaii is an occupied nation; that the United States is the occupying power. There is no treaty of annexation as the United States claims it has being done by resolution. Resolutions having the force of law only in the sponsoring country, if it has any at all.

And many times there are also -- what you call them? When the people vote for a treaty, what you call that -- excuse me, I'm getting old and I can't remember all the dang terms.

Q In your view then, the laws of Hawaii don't really govern Mauna Kea, the laws of the State of Hawaii; isn't that right?

A Mauna Kea are the stolen lands of the

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1 **Kingdom of Hawaii.**

2 **Q** Okay. So in your view the Conservation
3 District rules of the Board of Land and Natural
4 Resources do not govern Mauna Kea as well, is that
correct?

6 **A** **Although I am telling you that I am
7 primarily a subject of the Kingdom of Hawaii, I also
8 live here. And I also recognize there's a certain
9 degree of governance of the United States and State
10 of Hawaii. I don't always agree with them, as you
11 probably don't either all the time.**

12 **Yes, in this case, from a strictly
13 international point of view, I do not believe the
14 State of Hawaii has jurisdiction.**

15 **Q** Thank you.

16 So no matter what the outcome of this
17 contested case is, you think this whole proceeding is
18 invalid, right, because it's done pursuant to laws
19 and rules which you don't recognize?

20 **A** **I participate in this action, if you want
21 to --**

22 **HEARINGS OFFICER AOKI: Hold on.**

23 **MS. TOWNSEND: I'm sorry, I don't know the
24 right terminology, but when they mischaracterize the
25 position of the testifier, like basically putting**

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1 **THE WITNESS: So although I have some
2 fundamental ideas of my own, secondarily speaking, I
3 have to live here, and I have to be somewhat
4 responsive to the laws of this state, although I
5 don't believe them wholeheartedly.**

6 **Q** (By Mr. Lui-Kwan): So your answer is no or
7 yes? Your answer is yes as to whether or not you
8 recognize the rules and laws regarding this
9 proceeding, contested case?

10 **A** **I recognize them up to a point, yes.**

11 **Q** Thank you. No further questions.

12 **THE WITNESS: Redirect? I mean, sorry.**

13 **REDIRECT EXAMINATION**

14 **BY MR. NEVES:**

15 **Q** Paul Neves, Kumu Hula.

16 Clarence, are there many people that share
17 your view that the State of Hawaii may just not be
18 the proper jurisdiction here?

19 **A** **I haven't conducted any surveys, but I have
20 heard that point of view from a number of people that
21 I have indeed talked to.**

22 **Q** And it's amongst political discussion even
23 at the University of Hawaii, is it not?

24 **A** **I believe that's true.**

25 **Q** And books are written about it?

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1 **words in his mouth, mischaracterizing what he is
2 trying to say.**

3 **HEARINGS OFFICER AOKI: I don't think he
4 did that. He asked the question, the witness can
5 respond to the question.**

6 **MR. CHING: Can you restate the question?**

7 **Q** (By Mr. Lui-Kwan): No matter what the
8 outcome of this contested case is, you think the
9 whole proceeding is invalid because it's being done
10 pursuant to laws and rules which you yourself
11 personally do not recognize, pursuant to all these
12 other things you mentioned a few minutes ago?

13 **A** **What I said I believe. However, I also
14 know that I live in this so-called jurisdiction, and
15 am subject to certain things about it. For instance,
16 you know, there are certain laws on taxation. There
17 are certain laws like you have to pay property tax.
18 You have to license your car, and you have to have a
19 driver's license. And if you don't, you know, you
20 might have to go to jail. I don't want to go to
21 jail. So although I have these --**

22 **Q** Can the witness be responsive to the
23 question?

24 **HEARINGS OFFICER AOKI: He's trying, so
25 overruled.**

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1 **A** **Yes.**

2 **Q** Did the United States, in fact, apologize?

3 **A** **Yes, they did. It must mean something, but
4 they haven't, you know, fixed the situation yet. I
5 don't know, you know.**

6 **Q** And haven't there been moves by our own
7 senators and state legislatures to recognize some
8 type of sovereignty for our people?

9 **A** **Yes, but I don't know what the legal
10 repercussions are.**

11 **Q** There's been the discussion?

12 **A** **Yes, because, you see, by international
13 law, the Nation State of Hawaii continues to exist,
14 and whatever has happened here and now is because
15 this place is -- well, they deposed our queen, but
16 the queen being the head of state, you still have the
17 government and governmental actions. All the people
18 have been taken out of those positions and seats.**

19 **The real nation state continues to exist,
20 but by international law there's no way that it can
21 end except by treaty, by annexation, by all these
22 kinds of things which have not happened.**

23 **Q** Did you file as the Petitioner in this
24 case, as the Petitioner in this case under the laws
25 and rules of the State of Hawaii even though you

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1 don't agree with it?

2 **A Yes.**

3 **Q** Thank you. No questions.

HEARINGS OFFICER AOKI: No other questions?
Any further questions?

6 MR. LUI-KWAN: No recross.

7 THE WITNESS: Thank you.

8 MS. TOWNSEND: Can we take a small break?

9 HEARINGS OFFICER AOKI: Okay.

10 (Recess taken.)

11 HEARINGS OFFICER AOKI: We're back on the
12 record. Our next witness is ready to go.

13 **B. PUALANI CASE**

14 **DIRECT EXAMINATION**

15 MS. CASE: Aloha kakou. I'm Pua Case.

16 Mahalo. I'm looking at the picture right now that I
17 submitted with my testimony, and it says ceremony.

18 MS. TOWNSEND: Exhibit G-16.

19 THE WITNESS: As you know, that I said if
20 we were on Deadliest Catch, I would be the greenhorn
21 here, so kala mai.

22 I'm going to do the best I can, and just
23 say up-front that I'm sitting with six Petitioners
24 total that have a wide and diverse array of points,
25 opinions, feelings, background, but we all have one

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1 thing in common. We love our mauna. And when I am
2 up on Pu'u 'Owa'owaka, which is next to Pu'u
3 Lanikapu, Pu'u Laelae, Pu'u Ki, Pu'u Ohu, I'm facing
4 the mountain in the early morning hours, aWakea,
5 lunch, 12:00 noon, sun up high in the sky, or at
6 sunset. I've taken hundreds of people up there, the
7 first thing we do in ceremony is we always chant and
8 address and pule to Mauna Kea o Wakea.

9 I'm going to jump right into it and
10 hopefully not read all of this, because I think I
11 went over this morning. And I'm not upset about that
12 because I'm just here because I was requested to be
13 here. And when I say that you can say objection, you
14 can say hearsay, you can say whatever it is, it's
15 just the truth.

16 As a cultural practitioner, as a Kanaka
17 Maoali, I have lived my life here in Hawaii. I was
18 born and raised in Waimea. I'm a middle school
19 teacher there at Waimea Middle School. I teach what
20 it is 'ike, to know, to see, to understand, to
21 perceive, to feel.

22 That's what I teach students every day. I
23 teach them a sense of place and a sense of identity.
24 Who they are is dependent upon what they know, how
25 they feel, what their relation is, and what their

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1 connection is to the landscape around us. We face
2 the mountain every day. Every school in our
3 community, Mauna Kea is our background. Many of the
4 schools chant every morning to the mountain. That is
5 the little bit of tradition and culture that we can
6 begin with every day.

7 Yes, I was requested to be here. And I did
8 say that Mo'oinanea, who I refer to as simply Mo'o
9 Wahine, to me you may call it a spirit, as we said
10 earlier, because it was the most common term that
11 maybe we understand. I simply refer to her as Mo'o
12 Wahine. Mo'oinanea made her presence known at a
13 place called Manaua. We indicated rain rock in
14 Waimea, Mo'oinanea made her appearance at that time
15 to my daughter. This was a few years ago, my
16 daughter is now 11.

17 When she appeared there, how would I know
18 that, you might ask? Because I can feel her. I may
19 not see her, but I know she's there. And I pose the
20 questions, my daughter simply reveals the answers.

21 Now, how did this all begin? Ohana that I
22 had no doubt, maybe here in this setting, I'm not
23 sure, that would be hearsay. But I'm not here to
24 prove that. I'm just stating what is.

25 What it is that as Kanaka we still have.

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1 What it is that I say to children today, have no fear
2 when you see something like that, it is a gift. It
3 is a gift to share information.

4 So I will just proceed. How did I know
5 that was real? When I was about six years old we
6 were camping at 'Anaeho'omalua. We camped there all
7 the time because my father worked for Parker Ranch,
8 and we had the entire access to the site that the
9 hotels are at now.

10 And one day we're sitting on the beach and
11 my father and his brothers were out in the ocean.
12 And let me stop here and say that I'm sharing stories
13 that I have never shared before. And I'm very
14 uncomfortable with that, but I'm going to do that for
15 my mauna today, and I'm just going to take the
16 consequences of that.

17 My grandmother said pack up everything.
18 There's a big wave coming. And my mother and I were
19 sitting there with the other kids, and my mom said,
20 how do you know there's a big wave coming? She
21 pointed up to the tree and she said because the mo'o
22 told me. You know, there was no question. We packed
23 up everything. We headed up to Waimea. My mom had
24 to drive all the way back down and pick up my dad and
25 them who were just getting out of the water. They

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