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By CHRIS D'ANGELO Hawaii Tribune-Herald

A private attorney for the Thirty Meter Telescope was allowed in on state and county officials' conversations about jurisdictional issues on Mauna Kea, according to documents obtained by the Tribune-Herald.

Additionally, J. Douglas Ing, of Honolulu-based Watanabe Ing LLC, provided those officials with TMT's legal arguments supporting prosecution of the protesters who were arrested for blocking construction of the telescope atop Hawaii's tallest mountain.

In late April, in the wake of the initial 31 protesters' arrest, Ing, who represents the TMT International Observatory, participated in at least two conference calls with Hawaii Deputy Attorneys General Linda Chow and Julie China, as well as University of Hawaii attorney Ian Sandison and Hawaii County prosecutors, emails show.

Asked why an attorney for TMT would have been included in such conversations and allowed to offer legal arguments, Joshua Wisch, a spokesman for state Attorney General Doug Chin, pointed out that a number of the arrests April 2 involved protesters trespassing on the TMT site.

"Footage of people trespassing on the TMT site was videotaped by TMT security," Wisch said. "As a result, the purpose of the discussions ... was likely to coordinate with the Hawaii County prosecutor to make sure they had the necessary information to proceed with the cases, and so enforcement personnel would understand what evidence would be required for any future potential enforcement actions."

The conference calls were arranged by Sandison. Reached via email, Sandison referred the Tribune-Herald to UH spokesman Dan Meisenzahl, who deferred to the AG's office.

Shortly after an April 20 conference call, Ing sent out a document entitled "TMT - Legal argument re prosecution of protesters."

"Thank you for joining the call today," Ing wrote in an email addressed to Elizabeth "Britt" Bailey, the Hawaii County deputy prosecuting attorney assigned to the protesters' cases.

"In follow up, attached is the memo regarding sovereignty, the Kingdom, lack of jurisdiction issues and Judge Cardoza's ruling. This was prepared by Ross Shinyama of our office. Feel free to contact him if you have questions."

The nine-page document references a number of previous court rulings and outlines arguments for why TMT believes those arrested during protests against the \$1.4 billion project should be prosecuted for their crimes.

"There is no dispute that the protesters' conduct in obstructing state and county highways and roads occurred within the State of Hawaii," reads the memo. "The protesters are therefore subject to the criminal jurisdiction of the State of Hawaii."

The document also states that the existence of the Kingdom of Hawaii is not relevant to the issue of whether the state has jurisdiction over the protesters and their conduct. He referenced a 2013 case involving Kona resident Dennis Kaulia, in which the Hawaii Supreme Court held that "individuals claiming to be citizens of the Kingdom (of Hawaii) and not of the State (of Hawaii) are not exempt from application of the State's laws."

Sovereignty has been a resounding issue for TMT protesters, who have taken a firm stance against further telescope development on the mountain they consider sacred.

During an initial appearance April 28 in Hilo District Court, Oahu attorney Dexter Kaiama, representing seven of the defendants, said he planned to argue that the Hawaiian Kingdom still lawfully exists and that the United

States doesn't have jurisdiction over the matter. In early May, during a second proceeding, this time in Waimea, a number of defendants demanded the hearings be moved back to Hilo.

The documents obtained by the newspaper also included several photographs of the April 2 protest, a map outlining the different jurisdictions along Mauna Kea Access Road and an April 17 email from Hawaii County Deputy Prosecuting Attorney Darien Nagata introducing others to Bailey, who is assigned to the Waimea courthouse.

"Britt has already charged/filed Criminal Trespass 2 (HRS 708-814) cases and it is anticipated that we will be charging additional charges of Obstructing (HRS 711-1105) on other cases referred to our office," she wrote.

"For future cases, we would stress that we need to have the return to Hamakua Court (versus South Hilo Court) should the defendant(s) bail out and be provided with a future court date and courthouse."

Kahookahi Kanuha, a protest leader who has been arrested twice, said allowing Ing to participate in the calls is yet another example of corruption and the state going above and beyond to protect the rights of private interests, while working against the other.

"How is protecting the rights of foreign entities over the rights of people of this place a sign of respect to the host culture?" Kanuha said, referring to comments made by Gov. David Ige in May.

This week, Ige signed a new emergency rule that prohibits camping and restricts public access on Mauna Kea. State officials say the rules are necessary to address an "imminent peril" to public safety and natural resources resulting from the ongoing protests.

Williamson Chang, a professor of law at the University of Hawaii Richardson School of Law and TMT opponent, filed a petition Wednesday seeking to repeal the rule.

He argues it prevents telescope opponents from legally exercising their rights to peacefully protest.

Email Chris D'Angelo at cdangelo@hawaii.tribune-herald.com.



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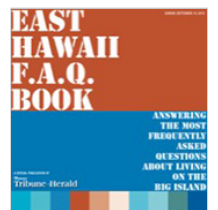
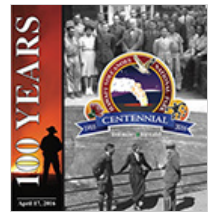
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