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cc: Edward_K_Thompson@os.doi.gov

Subject: Reconciliation Hearings Report

September 22, 2000

Assistant Secretary John Berry
c/o Document Management Unit
Department of the Interior
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Aloha 'āina e Mr. Berry:

Mahalo for inviting comments by our Kanaka Maoli Tribunal Kōmike on your August 23 Draft Report From Mauka to Makai: The River of Justice Must Flow Freely, on the Reconciliation Process between the US Federal Government and Native Hawaiians, prepared by the US Department of the Interior and the US Department of Justice.

Our 15 comments are numbered and listed as follows:

1. Your report's title misuses our language and abuses us Kānaka Maoli. With due respect to you as a high official in the government of the most powerful nation in the world today, we believe you were ill-advised to use our language in the title of your report as given above for two main reasons: (a) From ma ūka to ma kai means from the inner mountain uplands to the ocean. It is a metaphor for our pre-western ahupua'a integrated spiritual, cultural, social, economic, ecologic and political system of mālama (caring for) and kūka'i (sharing) for all the po'e (people) and our 'āina (sacred environment) in the present and for the future. The ahupua'a system was pono (balanced, harmonious, appropriate, true and just). It was almost completely destroyed by western, and especially US colonial individualism, capitalism, private property, militarism and exploitation of our people and our environment. Only remnants of our ahupua'a system remain and only in remote areas as part of our struggling Kanaka Maoli revitalization movement. (b) Your report, in its inception, process, findings and recommendations is not only not just to us Kānaka Maoli, it subordinates us further under US colonial rule. Thus, your report's title misuses our language to abuse us.

2. You omit the historical basis for the Apology Resolution (PL 103-150) and you avoid the the Apology Resolution as the basis for redress. Your report begins on p. i with the 1993 US Apology Resolution, but misses two major points: (a) PL 103-150 was the US colonial establishment's attempt to co-opt our Kanaka Maoli movement. You make no references to the more than 20 years of Kanaka Maoli land struggles, our relearning our true

history, our asserting our inherent sovereignty and our revitalizing our culture prior to the 1993 Apology Resolution. (b) In August 1993, the Kanaka Maoli Tribunal called upon the US President and State Department to proceed promptly with just redress to our Kanaka Maoli people and nation

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for US violations of treaties, international law, the US Constitution and Kanaka Maoli law, as detailed in the Kanaka Maoli Tribunal Mana'o Report previously submitted to you. In November 1993, the Apology Resolution was signed into law, but six years of US inaction followed. Only in December 1999 did we begin to witness the current feeble and contradictory "reconciliation" process, initiated by Sen. Daniel Akaka and your Interior and Justice Departments, confining the process to US domestic law. Your report only briefly refers to the Apology Resolution again on p. 43. You completely ignore the Apology Resolution's nine clauses that provide the basis for beginning just redress, such as was recommended by the Kanaka Maoli Tribunal.

3. You unilaterally impose a pre-determined wardship political status on us Kanaka Maoli. As we pointed out at the time of your December 1999 hearings and as we reiterate briefly hereafter, your starting premise is that "this reconciliation process should ultimately result in congressional confirmation of a political, government-to-government relationship between Native Hawaiians and the Federal Government pursuant to Congress' plenary authority over Indian Affairs," as stated on p. ii, paragraph 3. Therefore, we reject your process and product as another unilateral pre-determined imposition, rather than the result of claimed "dialogue" and "consultation" with our Kanaka Maoli people. This imposition is yet another contradiction and US violation of our Kanaka Maoli inherent sovereignty and right to self-determination.

4. Other contradictions and ironies. These abound in your report beginning on p. i, paragraph 2, line 9. Here you refer to the Apology Resolution as the starting point for "reconciliation" between the US Federal Government and Kanaka Maoli as requiring "action to rectify injustices and compensation for harm." Yet, nowhere in your report is their correction of injustices nor compensation for US harm to our Kanaka Maoli people and nation. Indeed, your report's recommendations further subjugate our Kanaka Maoli people and nation to the subordinate class of American Indians and Alaska Natives.

5. Delay in your report and timing of your report with the Akaka Bill hearings. You promised a draft of your report of the December 1999 hearings to be reviewed by our Kanaka Maoli people in February 2000. Your Draft Report was not released until August 23, 2000, on the eve of the Akaka Trust Recognition Bill (S. 2899 and H.R. 4904) hearings in Honolulu. Moreover, your report's findings and recommendations contain identical or similar terms, findings and recommendations found in the Akaka Bill. This observation supports our contention that the US Interior and Justice Departments are closely involved with the US Congress in the imposition of a predetermined subordinate political status for our Kanaka Maoli people similar to that of American Indians and Alaska Natives.

6. You ignore our Kanaka Maoli opposition and protests in your "dialogues" and "consultations." Your report ignores the opposition of the majority of Kanaka Maoli witnesses at the December 1999 hearings to your process, your limited legal framework and your pre-determined outcome of a subservient political status for us Kanaka Maoli as US wards. Your report ignores our cries for true and full Kanaka Maoli self-determination under international law and with international oversight for decolonization and independence. Your report ignores

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our request that your Secretaries of Interior and Justice convey to your US President that he and the US Secretary of State negotiate with us Kanaka Maoli on the basis of absolute equality of power as a separate people and nation, as required by international law.

7. We Kanaka Maoli reject your identification of us as "native Hawaiians" and/or "Native Hawaiians." These are US-imposed terms with colonial and racist definitions that perpetuate our status as wards.

As reiterated at the December 1999 hearings, we are Kanaka Maoli, true, real people, who come from, and belong to, our sacred environment since time immemorial. Our inherent sovereignty and naturally independent and self-determining status as a nation predate western colonialism and are based in Kanaka Maoli law.

8. Historical distortions and numerous errors of fact persist in your report. Your account of our history, on pp. 1-2, is the usual distorted US colonial account ignoring our self-identity and self-history, as sketched above, as Kanaka Maoli arising from our sacred environment since time immemorial. You also ignore US colonialism beginning in 1790, and the nine Kanaka Maoli Tribunal charges against the US and its subsidiaries through 1993, as detailed in the copy of the Kanaka Maoli Tribunal Mana'o Report, submitted with our testimony to you in December 1999. Here are additional examples of your report's many errors:

- On p. 1, paragraph 2, line 4, your "Provisional Republic of Hawaii" should be the January 1893 unlawful white oligarchy usurpers' "Provisional Government" which transformed itself, in July 1894, into the unlawful "Republic of Hawaii."
- Lines 4 and 5, your "Crown and public lands" should be Crown Lands and Government Lands of the Kingdom that were stolen by the Provisional Government and Republic of Hawaii which intentionally relabeled and managed these stolen lands as one entity, "Public Lands." The 1848-1950 Mahele land laws' references to our Kanaka Maoli people's vested interest in these lands have continued from Kingdom law through present US colonial law. This vested collective interest has never been directly implemented nor has it been directly extinguished. Because of this unsettled status, the lands are sometimes referred to as a "trust," but there is no trust document.
- Lines 7 and 8, in 1898, the US forced unlawful annexation of our homeland Ka Pae'āina against the expressed massive Kō'ē (protest) petitions of our Kanaka Maoli people, from 1893 to 1897, in violation of the US Declaration of Independence, the US Constitution, international law and Kanaka Maoli law.
- On p. 2, paragraph 3, line 9, at the December 1999 "Reconciliation"

Hearings, a majority of Kanaka Maoli repeatedly called for justice through independence with US return of all of our lands without delay and US withdrawal so that we Kanaka Maoli, with a reestablished government, would have these resources to relieve our social, health and economic plight. Only a minority of the Kanaka Maoli witnesses who are already receiving Federal funds sought more colonial dependency with wardship. We happily offer our services to review your next revision of your manuscript in order to minimize further errors before publication.

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9. Recommendation 1. You recommend that "Congress should enact further legislation to clarify Native Hawaiians' political status and to create a framework for recognizing a government-to-government relationship with a representative Native Hawaiian governing body." This language also appeared in the initial July 20 draft of the Akaka Bill. It confirms our foregoing contention and criticism that the US Interior and Justice Departments with the US Congress are imposing a predetermined wardship political status on us Kanaka Maoli similar to that of American Indians and Alaska Natives.

10. Recommendation 2. You recommend the establishment of an office in Interior on Native Hawaiian issues, within the Office of the Assistant Secretary for Indian Affairs. This is similar to the language of Section 4 in the amended Akaka Bill for a US Office for Native Hawaiian Affairs in the Office of the Secretary of the Interior Department. It confirms our position of a US-imposed predetermined wardship status for us Kanaka Maoli, as already established for American Indians.

11. Recommendation 3. You recommend that Justice assign the Office of Tribal Justice to maintain a dialogue with the Native Hawaiian people on issues of mutual concern and to work with Interior on these issues. Section 5 of the amended Akaka Bill has a similar provision for the Attorney General to designate an appropriate official within Justice to assist the US Office for Native Hawaiian Affairs in the Interior Department, assuring US Federal wardship of our Kanaka Maoli people.

12. Recommendation 4. You recommend a Native Hawaiian Advisory Commission to consult with all bureaus within Interior that manage land in Hawai'i affecting Native Hawaiians. Section 4 of the amended Akaka Bill provides for the US Office for Native Hawaiian Affairs in the Interior Department to maintain consultation with the Native Hawaiian people, Native Hawaiian Government and Native Hawaiian Interagency Task Force on matters affecting Native Hawaiian resources, rights or lands. Thus, it appears that any decision involving Kanaka Maoli lands will require extensive bureaucratic involvement in Washington and little, if any, input and control by Kanaka Maoli wards.

13. Recommendation 5 is vague. You state that the US "continues to have a moral responsibility for past US less than honorable actions toward Native Hawaiians who continue to suffer." You add that "past wrongs should be addressed through general efforts to promote the welfare of the Native Hawaiian people [and] respect [for] their rights."

However, you conclude with the nebulous belief "that the Executive Branch, Congress, State of Hawai'i and the Native Hawaiian people must develop an appropriate process to ensure reconciliation." Again, you appear to be hiding behind that never-clearly-defined term "reconciliation." We consider your above statement to be yet another US admission of guilt and acknowledgment of the need for justice. However, this is coupled with your persistent unwillingness to accept, or even consider, the principled solution, based in the Apology Resolution and the Kanaka Maoli Tribunal Report, and expressed by the majority of Kanaka Maoli witnesses at the December 1999 hearings.

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This solution is for the US to begin negotiations with us Kānaka Maoli as a people and nation with absolute equality of political power, as provided by international law, the US Constitution and Kanaka Maoli law, and as detailed in our November 25, and December 11, 1999 testimonies, and Kanaka Maoli Tribunal Mana'o Report previously submitted to you.

Since this proposed solution may be beyond your jurisdiction as an Interior official, we propose, as we did in December 1999, and as we have proposed directly to the US Senate Indian Affairs Committee and the US House Resources Committee on August 28 to September 1, 2000, and since, that this matter be referred to the US President and Secretary of State.

14. Appendix D. Written Statements Received. We request that all written testimonies submitted and the complete video-tape recording of the December 1999 hearings on all of the islands be included as part of your final official report.

15. Appendix E. Bibliography. We request that the Kanaka Maoli Tribunal Mana'o Report of February 1994, previously submitted to you as an attachment, be listed in your Appendix E. Bibliography. Should you need another copy for this purpose, we will happily re-send it to you.

Mahalo you for your consideration.

Me ka ho'omanu i nā mea pono,

Kekuni Blaisdell
Convenor