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STATEMENT OF KALI WATSON
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REGARDING FEDERAL RECONCILIATION EFFORTS
PURSUANT TO P.L. 103-150
THE APOLOGY RESOLUTION

HONOLULU, HAWAII
December 10, 1999

The Honorable John Berry, Assistant Secretary, Policy, Management, and Budget, for the US Department of the Interior, and the Honorable Mark Van Norman, Director, Office of Tribal Justice, US Department of Justice, welcome to Hawaii. I appreciate the opportunity to testify on the federal reconciliation efforts as called for in P.L. 103-150, the Apology Resolution.

This is truly a great and historic opportunity for our Hawaiian people. We face an exciting journey in search of the goal of reconciliation. While the hurt runs deep and is enduring, we as a people, and you as someone searching for a solution, cannot dwell upon the past. For our sake, the sake of our children, and future generations, we must move forward rather than flounder in frustration. I'm not saying that we must forget the past, but we can learn from it and use it to our advantage. We are not here to listen to more political rhetoric. With Rice v. Cayetano, the very real possibility looms that OHA's independence and our ability to elect our leaders might vanish. Even the existence of this trust, as well as that of DHHL, are at risk. So it is critical that we work together to fashion an immediate and lasting solution.

(You are both good men that have helped us in the past. John, I personally appreciate your timely effort in facilitating the agreement between the federal government and DHHL under the Hawaiian Home Lands Recovery Act (HHLRA). \$70 to \$90 million in federal lands will go a long way. Mark, your involvement in the Rice v. Cayetano case was key in getting the federal government to recognize and acknowledge for the first time a political relationship and a trust obligation to the Hawaiian people.)

I'm glad that we have this opportunity to take those first meaningful steps toward reconciliation. No one disputes the need, but what is the solution. As Senator Akaka so aptly put it, it is an ongoing process that will not come to us overnight. It will evolve and come in many parts.

Part of the answer lies with the restoration and formal federal recognition of our Hawaiian nation. A nation within a nation, an entity independent of federal or state government, with its leaders elected by its citizenry. It will foster self-determination, self-governance, economic independence, cultural pride, healthy and vibrant homesteading and business communities. A living, dynamic and real people would make up this Hawaiian nation, in control of its aina, its destiny, and the ability to build a sustainable future. While ending Hawaii's statehood and seceding from the United States are not realistic, restoration of the Hawaiian nation is realistic and capable of being done in a timely fashion.

History provides the legal basis. As stated in the Apology Resolution, "from 1826 until 1893, the United States recognized the independence of the kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation . . ." They were six agreements of peace, friendship and economic reciprocity. Furthermore, the kingdom was widely recognized as an independent nation, participated in international negotiations, and had international treaties with other countries.

In the Joint Resolution, Congress acknowledged that the overthrow of the Kingdom of Hawaii was "illegal," "resulted in the suppression of the inherent sovereignty of the Native Hawaii people," and deprived Native Hawaiians of their rights to "self-determination," that "the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;"

In fact, if you were to go to the U.S. National Archives, you will find on a single roll of microfilm, the petitions submitted by Hui Hawaii Aloha Aina o Na Wahine and its male counterpart, Hui Hawaii Aloha Aina, against U.S. annexation of Hawaii by treaty. The petitions offered 21,269 signatures, and were instrumental in defeating the treaty.

In Rice v. Cayetano, the federal government through its Amicus Brief has already and appropriately acknowledged and argued before the U.S. Supreme Court that Native Hawaiians retain their political status. Through various Constitutional provisions and federal power implicit in the structure of the Constitution, the federal government can take actions to regulate and protect Native Hawaiians and their property. (See the Indian Commerce Clause, Art. I, §8, Cl. 3; Treaty Clause, Ar. II, §2, Cl. 2 and Board of County Comm'rs v. Seber, 318 U.S. 705, 715 (1943).) Clearly, through Presidential Proclamation or Executive Order, or possible action by the U.S. Department of Interior, acknowledgement and restoration of our sovereign status is possible. While a portion of the land base is found in Hawaiian Home Lands, additional lands from the ceded land inventory can and should be transferred. Federal property and land, such as the old Federal Post Office and the island of Kahoolawe, could easily be transferred to this sovereign entity.

It will take time to make the restoration complete, but it is already happening. Look at DHHL with its \$600 million state settlement, its 203,500 acres, with recent transfer of choice lands totaling 16, 518 acres. Add this to the federal settlement under the HHLRA, OHA's \$352 million in liquid assets, in addition to its vested right to a portion of the ceded land revenues and Heeley claim, not to mention the assets of the

various Alii trusts: KSBE, Queen Liliu'okalani Trust, Queen Emma Foundation, Lunalilo Homes and it becomes obvious that collectively, the resources are there.

However, changes in the existing Hawaiian institutions must be made, at least as to OHA and DHHL, being politically controlled state government agencies. With its leaders being classified as state government employees and its resources restricted by state procurement laws, they will always be vulnerable to attack and mismanagement. These circumstances also limit the flexibility and potential of the Hawaiian people. I believe the key to success is the re-establishment of our independent Hawaiian nation, which can then gear itself to economic development. Only after the Hawaiian people can truly control their state and federally encumbered resources through their own independent institution, a Hawaiian nation, can true reconciliation take place.

A Nobel Prize winner and co-director of the Harvard Project on American Indian Economic Development, Professor Stephen Cornell of the University of California, San Diego, once said that "Sovereignty defines nations, but it also defines interest zones that cross national boundaries and other political borders. We must take a pragmatic look at sovereignty as a tool for economic development. Free trade zones, enterprise zones and special entitlement or taxation areas are defined in terms of access to services and funds or exemptions from regulations and taxes. While DHHL lands are exempt from zoning and subdivision requirements, and can participate in enterprise zones, and OHA can establish business enterprises exempt from county and state taxation, as governmental entities they are hindered by bureaucratic red tape and procurement restrictions. These statutory rights are limited and not always recognized or supported by local government. As the past Director of DHHL, I can say from experience that it was a constant battle.

In his study, Professor Cornell identified Indian tribes with federally recognized sovereign status that are major successes:

"The Mississippi Choctaws are now the fourth or fifth largest employer in the state of Mississippi. The White Mountain Apaches' forest products, skiing, recreation, and other enterprises have made it the economic anchor of the economy of east central Arizona, and their timber operation is one of the most productive in the western United States. In Montana, the Salish and Kootenai Tribes of the Flathead Reservation have built a successful private sector economy based on tourism, agriculture and retail services."

I've personally visited the Kah-Nee-Ta Indian tribe in Warm Springs, Oregon with their successful hotel casino resort, timber mill and hydroelectric plant. I've seen the Ngai Tahu Maori tribe in South Island, New Zealand, with their Whale Watch tourist business, their multi-million dollar deep sea fishing Sealords enterprise and other businesses.

In virtually every case of sustained and successful economic development by indigenous people of the world, the primary economic decisions were being made by their sovereign leaders, not by outsiders or government officials. We need to reform the existing situation. We must create laws, rules, and procedures that are appropriate and facilitate such a transition.

Presently, the HHC is appointed by the governor and approved by the State Senate, and more likely than not, the election process for OHA trustees will be ruled invalid by the US Supreme Court. Even if it isn't, the governor makes the appointment where there's an impasse at the Board of Trustee level in choosing replacement trustees. Outer-island trustees are not elected exclusively by their island constituents. They

compete on a statewide basis. While state legislation for an elected HHC almost passed last session, the same 15th Amendment attack by the Rices of the world makes such legislation unadvisable. When outsiders or government officials make bad decisions, they don't pay the price, the Hawaiian people do. They make up the thousands of people who died on the HHL residential waiting lists, or the native Hawaiians still plagued with health and socio-economic problems whose conditions were suppose to be improved by programs supported by ceded land revenues since 1959. There is no incentive or accountability for government officials.

Research shows that with sovereignty comes the potential for a sound economy. It brings accountability. It offers distinct legal and economic market opportunities, from reduced tax and regulatory burdens for industry to unique niches for gaming and the commercial use of wildlife. And finally, sovereignty secures the bases of development itself: control of one's own affairs and resources. It is the key and primary development resource for the Hawaiian people.

I'm not talking about an affirmative action program, but correcting an injustice as is reflected in Senator Akaka's Apology Resolution. Our inherent sovereignty and lands were taken from us. It's time to give it back and do what's fair. We want self-determination. While we may not get all our land back, we should get a substantial and equitable portion back. And the Federal Government needs to return or provide reparations on the 400,000 acres it took.

In a 1999 OHA survey, the most important issue to Hawaiians concerns land rights. They want control of the natural resources on the land and to be responsible for its own economic development. Hawaiians want it to be governed by elected leaders of Hawaiian ancestry. We must explore the possibility of transferring a portion of the ceded lands to OHA or its sovereign successor. Explore the consolidation of both DHHL and OHA resources under a single Hawaiian nation. I believe the public and the various government leaders, and more importantly the Hawaiian people are receptive to such an idea. The economic and social stability of the State requires such a change.

With the Rice v. Cayetano case hanging over our heads, we do not have much time. People, including Hawaiians, will need to be educated about such a drastic and far-reaching change. This will take some time. If you are sincere, and I believe you are, let's get on with the task. Justice delayed is justice denied.

So what do we do now?

Reconciliation Objectives

Enforcement of existing laws:

- Assist in insuring Admission Act's §5(f) compliance by the State (litigation)
 - Governor Cayetano's unilateral suspension of airport landing fees
 - Payment of a prorata portion of the Elliot Street Federal Prison proceeds to OHA
 - Compliance with the Heeley Decision
 - Complete and accurate inventory of ceded lands
- Assuring compliance with the HHCA
 - Article XII, §1 of State Constitution and a Feb 18, 1987 AG opinion mandates State funding of administrative & development costs
 - The 1992 General Fund allocation of \$4.3m has been continually reduced to where in 1999, it was \$1.3m of \$6.7m Admin & Operating Budget.
 - There has also been no CIP funding for many years

- Complying with 1995 State Settlement (\$15m last year vs. the agreed \$30m)
- Full implementation of the transfer of designated lands under the HHLRA
 - Barbers Point Raceway Park
 - Waipahu FCC Monitoring Site (federal funding for relocation of tower)
- Expanded effort, as the designated person under §206 HHLRA, to assist the beneficiaries & DHHL in accessing DOI programs & other Federal agencies that will promote homesteading opportunities, economic self-sufficiency, and social well-being of the beneficiaries. (Assign a staff person here in Hawaii)

Administrative Actions

- US Dept. of Commerce, Economic Development Agency (EDA) moneys –
Hawaiians should receive same benefits as American Indians & Alaska natives.
- US Dept of Agriculture
 - Creation of a new forestry loan program and federal insurance guarantee
 - Lobby a greater set-aside of federal grant and loan allocations for Hawaiians
- US Small Business Administration programs
 - Push SBA's 8(a) Program for minority businesses, making them eligible for federal contracting set-asides.
 - Create similar Tribal Business Information Centers (TBICs) which offer state-of-the-art computer & software technology, one-to-one business counseling services, & business management workshops
- Sponsor access to General Services Administration (GSA) federal surplus property
- Recommend a Presidential proclamation establishing a permanent office in DOI, similar to the Office of Tribal Justice at the US. Department of Justice, tasked with addressing Native Hawaiian issues

Support New Legislation

- Extend similar Alaska Native Corporation preferences on federal contracting set-asides to Native Hawaiian corporations
- Provide access to existing federal programs to all Hawaiians, both on and off of Hawaiian Home Lands (kuleana lands, Maunaloa, Milolii, Kahana Valley, Kekala Keokea) (\$225)
- Amend BIA Guaranteed Loan Program under the Indian Financing Act of 1974 to allow Hawaiians to also receive money to establish, expand or purchase businesses. Likewise include interest payment subsidies.

Restoration of Hawaiian Nation

- Recommend a Presidential Proclamation or Executive Order restoring the Hawaiian people's sovereign status
- Explore what administrative action, possibly by the Department of Interior, which may also re-establish Native Hawaiian sovereign status
- Assist in the drafting and lobbying of both federal and state legislation restoring the Hawaiian Nation and authorizing the transfer or use of the assets of OHA and DHHL, by the Hawaiian Nation, including a equitable portion of the state ceded lands
 - Creation of a sovereign entity similar, but separate, to those created under the 1934 Indian Reorganization Act, including the ability to use Section 17 to establish Hawaiian federally chartered corporations (free from federal and state taxation)
- Similar legislation for the federal ceded lands

I look forward to working with you to find a lasting solution. Pūpukahi I Holomua.
Let us stay united in order to progress.

Yours truly,

A handwritten signature in black ink that reads "Kali Watson". The signature is written in a cursive style with a large initial "K" and a long, sweeping underline.

Kali Watson
Legal Counsel
Office of Hawaiian Affairs