

FAQs on Act 255 Mauna Kea Stewardship and Oversight Authority Lawsuit

1. Act 255 establishing the Mauna Kea Stewardship and Oversight Authority (MKSOA) was signed into law in July 2022. Why is the Office of Hawaiian Affairs (OHA) only now filing a lawsuit challenging its legality and constitutionality?

OHA has long-standing concerns about the legality and constitutionality of Act 255 and testified against the bill before it was signed into law by then-Gov. David Ige.

Specifically, OHA views Act 255 and the establishment of the MKSOA as an effort by the State of Hawai'i to circumvent accountability for more than 50 years of mismanagement of Mauna Kea and prevent OHA's current lawsuit against the state, DLNR and UH for its blatant neglect of the mauna.

OHA's 2017 lawsuit against the State of Hawai'i for mismanagement of Mauna Kea recently received a trial date in July, 2024, thus the urgency in filing a lawsuit challenging Act 255. Act 255 is a strategic attempt by the state to stop that effort.

2. Has OHA expressed its opposition to Act 255 and the MKSOA previously?

Yes, OHA expressed serious concerns when the legislation was being heard at the Legislature in 2022 and testified against Act 255 before it was signed into law. Filing of the January 2024 lawsuit was the culmination of fruitless discussions in the political arena challenging Act 255.

3. Why does OHA not have a seat on MKSOA?

During the legislative process for Act 255, OHA was named as an entity that would have a seat on the MKSOA in multiple drafts. It's important to note that OHA was removed at the last minute as a member of the proposed Authority during conference committee. Thus, leaving OHA, the only constitutionally mandated agency that represents the well-being of Native Hawaiians and recipient of ceded land revenues without a seat at the table to weigh in on the management and stewardship of the mauna.

4. What are OHA's specific concerns about MKSOA?

OHA has two key concerns. First, Act 255 violates the "contract clause" of the United States Constitution, in that the legislation exonerates the government agencies that have legal responsibilities in the management of the Mauna Kea lands. By establishing the MKSOA, Act 255 creates a new trustee in the MKSOA and releases the State and UH from all obligations regarding past and future mismanagement of Mauna Kea lands.

Secondly, the MKSOA created by Act 255 consists of trustees, some of whom, have obvious conflicts of interest that jeopardize their ability to serve all beneficiaries of the ceded lands trust impartially.

5. The MKSOA includes respected Native Hawaiian representatives, including several who were on the forefront of the 'A'ole TMT movement. Doesn't OHA trust these individuals?

OHA has the utmost respect for the Native Hawaiian representatives currently seated on the MKSOA, but acknowledges that their tenure as trustees is not legal under the law. In other words, OHA's position is that Act 255 is flawed and illegal regardless of the member composition.

OHA's complaint via the lawsuit relates solely to the legality and constitutionality of Act 255, as well as to language in the Act that empowers the MKSOA to "develop, negotiate and execute agreements that *promote astronomy*." Act 255 is silent about the rights of Native Hawaiians to protect the cultural and religious importance of Mauna Kea.

6. If the MKSOA is repealed, how does OHA want to see the Mauna managed?

OHA advocates for the best interest of its Native Hawaiian beneficiaries. In this case, that means ending the attempt by the Legislature to avoid the State's responsibility to properly manage the Mauna Kea lands in accordance with its trust responsibilities. OHA is calling for Court oversight of DLNR and UH in their stewardship and management of Mauna Kea in order to end the State's more than 50 year well-documented mismanagement of Mauna Kea. Additionally, the development of a well-managed, fair management plan that cures the mismanagement of the past. The management plan must be fair and impartial. It cannot prioritize astronomy over Hawaiian rights.

7. How would the repeal of the MKSOA authority assist in protecting the trust relationship between the state and Native Hawaiians?

The MKSOA's priority and purpose is the privatization of the Mauna Kea lands for the benefit of the University of Hawaii's astronomy program while providing no explicit protection of Native Hawaiian rights.

8. OHA is saying that the establishment of the MKSOA authority will let UH and the DLNR "off the hook." What are some of the ramifications of these entities being held accountable vs. being let "off the hook?"

Better management of this precious ceded lands trust resource requires more than absolving the State and UH of their past wrongs and allowing future management of the mauna that balances the interests of astronomy and Native Hawaiian culture and practices. At best, OHA can achieve prospective injunctive relief against the state entities ultimately responsible for carrying out the management of the Mauna consistent with the State's fiduciary obligations, as well as damages to restore harm done to the trust property.

9. Is it possible to collect back damages from the State for the damage it has caused via its mismanagement of Mauna Kea?

The relief that OHA can achieve is called “prospective injunctive relief” to prevent future mismanagement of the trust lands at Mauna Kea. If OHA can prove demonstrable harm to the trust property, for instance chemical spills, destruction of habitat and Hawaiian artifacts, pollution of the underground aquifer, etc., the Court may award compensable monetary damages to restore the trust to its natural state.

For more information visit www.oha.org/maunakea.