



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

M-36978 (Supp.)

STATEMENT OF
SOLICITOR JOHN D. LESHY
November 15, 1993

I have decided to withdraw the January 19, 1993, Opinion of my predecessor on the scope of federal responsibilities for Native Hawaiians. That formal legal Opinion, issued at the very end of the Bush Administration, staked out a broad position that the United States had little responsibility regarding Native Hawaiians under the Hawaiian Homes Commission Act of 1921 and the Statehood Act of 1959. Its broad language and premises, coupled with its timing, have created considerable controversy.

The narrow issues addressed in the opinion--whether the 1921 Act and the Statehood Act created a federal trust responsibility and whether the United States can be judicially compelled to bring a legal action to enforce these statutes--are at issue in pending litigation. The Department of Justice, without referring to the January 19 Solicitor's Opinion, has been defending the position in the litigation that no federal trust responsibility exists under those statutes and that the United States cannot be compelled to bring an enforcement action. In February 1993, the federal district court in Hawaii, also without referring to the Opinion, found for the United States on these issues. The case is now before the Ninth Circuit Court of Appeals.

The United States is maintaining its position in the litigation. Therefore, rewriting the January 19 Opinion to narrow its focus seems unnecessary. Instead, I am simply withdrawing the Opinion in its entirety. To avoid confusion, I am at the same time disclaiming any future Departmental reliance upon an August 27, 1979, letter of the Deputy Solicitor (overruled in the January 19 Opinion) to the extent it could be construed as inconsistent with the position of the United States in the litigation.