

ROBERT A. MARKS 2163  
Attorney General of Hawaii

RICK J. EICHOR 1588  
Deputy Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, Hawaii 96813  
Telephone: 586-1180

Attorneys for State of Hawaii

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089
	)	
Plaintiff,	)	STATE OF HAWAII'S MOTION
	)	FOR PROTECTIVE ORDER, AND
vs.	)	AN ORDER TO QUASH SUBPOENA
	)	DUCES TECUM; MEMORANDUM IN
WILLIAM PATY, in his capacity	)	SUPPORT OF STATE OF HAWAII'S
as Chairman of the Board of	)	MOTION FOR PROTECTIVE ORDER,
Land and Natural Resources,	)	AND AN ORDER TO QUASH
State of Hawaii, MOSES	)	SUBPOENA DUCES TECUM;
KEALOHA, DOUGLAS ING, LEONARD	)	EXHIBITS "1", "2", & "3";
ZALOPANY, JOHN ARISUMI and	)	AFFIDAVIT OF RICK J. EICHOR;
HERBERT ARATA, in their	)	NOTICE OF HEARING MOTION AND
capacity as members of the	)	CERTIFICATE OF SERVICE
Board of Land and Natural	)	
Resources; The Estate of	)	
JAMES CAMPBELL, Deceased,	)	
FRED E. TROTTER, W.H. McVAY,	)	
P.R. CASSIDAY, and HERBERT C.	)	
CORNUELLE, in their fiduciary	)	DATE: <u>WED., APRIL 21, 1993</u>
capacity as Trustees under	)	
the Will of James Campbell,	)	TIME: <u>9:30 a.m. (TELEPHONE)</u>
Deceased, TRUE ENERGY	)	
GEOHERMAL CORP., TRUE	)	JUDGE: <u>HON. RIKI MAY AMANO</u>
GEOHERMAL DRILLING CO., and	)	
MID-PACIFIC GEOHERMAL, INC.,	)	
	)	[No Trial Date]
Defendants.	)	

STATE OF HAWAII'S MOTION FOR PROTECTIVE  
ORDER, AND AN ORDER TO QUASH SUBPOENA DUCES TECUM

The State of Hawaii, by and through Robert A. Marks,  
Attorney General, and Rick J. Eichor, Deputy Attorney General,

moves this Court for a protective order, and an order to quash the Subpoena Duces Tecum issued to Maurice Kaya and Dr. Fred Stone.

This motion is made pursuant to Rules 7 and 26 of the Hawaii Rules of Civil Procedure and is based upon the memorandum in support of motion and affidavit attached hereto.

DATED: Honolulu, Hawaii, April 16, 1993.

STATE OF HAWAII

ROBERT A. MARKS  
Attorney General of Hawaii

  
\_\_\_\_\_  
RICK J. EICHOR  
Deputy Attorney General

Attorneys for State of Hawaii

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	STATE OF HAWAII'S MOTION
vs.	)	FOR PROTECTIVE ORDER,
	)	AND AN ORDER TO QUASH
	)	SUBPOENA DUCES TECUM
WILLIAM PATY, in his capacity	)	
as Chairman of the Board of	)	
Land and Natural Resources,	)	
State of Hawaii, MOSES	)	
KEALOHA, DOUGLAS ING, LEONARD	)	
ZALOPANY, JOHN ARISUMI and	)	
HERBERT ARATA, in their	)	
capacity as members of the	)	
Board of Land and Natural	)	
Resources; The Estate of	)	
JAMES CAMPBELL, Deceased,	)	
FRED E. TROTTER, W.H. McVAY,	)	
P.R. CASSIDAY, and HERBERT C.	)	
CORNUELLE, in their fiduciary	)	
capacity as Trustees under	)	
the Will of James Campbell,	)	
Deceased, TRUE ENERGY	)	
GEOTHERMAL CORP., TRUE	)	
GEOTHERMAL DRILLING CO., and	)	
MID-PACIFIC GEOTHERMAL, INC.,	)	
	)	
Defendants.	)	

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MEMORANDUM IN SUPPORT OF STATE OF HAWAII'S MOTION FOR  
PROTECTIVE ORDER, AND AN ORDER TO QUASH SUBPOENA DUCES TECUM

Plaintiff Pele Defense Fund has issued two separate subpoena duces tecum for oral depositions and production of documents to Maurice Kaya and Dr. Fred D. Stone. Mr. Kaya is the Energy Program Administrator for the Department of Business, Economic Development and Tourism; Dr. Fred Stone has worked under contract for the Department of Land and Natural Resources preparing a burial lava tube study of certain lands in the Puna area. The burial lava tube study is a public

document and Plaintiffs have or can easily obtain a copy of the document; however, disclosure of the actual locations of the lava tube is protected to prevent scavengers from raiding the sites. A copy of each subpoena duces tecum is attached hereto and incorporated herein as Exhibits "1" and "2".

The subpoena addressed to Mr. Kaya commands him to "bring with him any and all documents relating to current State of Hawaii geothermal development plans and/or policies on the Island of Hawaii or other islands." The subpoena duces tecum issued to Dr. Stone commands him to bring "any and all documents relating to archaeological activities in the former Puna forest reserve and adjoining lands, conducted pursuant to contracts with either the State of Hawaii, the Campbell Estate, or True Energy Geothermal Corp. and/or Mid-Pacific Geothermal, Inc."

The State objects to the oral deposition notice and subpoena for document production issued to Mr. Kaya on the basis that the matters sought appear clearly to exceed the scope and relevance of the issues on remand in this case. The State objects to the deposition notice and subpoena to produce records issued to Dr. Stone to the extent Plaintiff seeks to inquire into activities and findings outside the boundaries of the Campbell Estate lands at issue in the lawsuit and to disclosure of the location of the burial lava tube which would expose it to desecration by scavengers.

## BACKGROUND

The Pele Defense Fund filed this lawsuit against the State Board of Land and Natural Resources, Campbell Estate, True Energy Geothermal Corporation and its predecessors, challenging the land exchange which occurred between the State and Campbell Estate in 1985. This case was appealed to the State Supreme Court which upheld the land exchange and found against Plaintiff on all claims, with the exception of an alleged violation of Article XII, Section 7 of the Hawaii State Constitution, commonly known as kalipi rights. See Pele Defense Fund v. Paty, 73 Haw. 587 (1992). The State Board of Land and Natural Resources was dismissed as a party from the lawsuit and the Judgment on Appeal remands the case for further hearings on the claim alleging that Campbell Estate and True Geothermal violated Plaintiff's kalipi rights by "the continued denial of access to the undeveloped areas of Wao Kele 'O Puna and other exchanged lands." See Exhibit "3" attached hereto and incorporated herein. The scope of kalipi rights and the determination of who is entitled to exercise those rights can be gleamed from the decisions of Kalipi v. Hawaiian Trust, Ltd., 66 Haw. 1 (1982); Pele Defense Fund v. Paty, id., and Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 1993 Westlaw 15605 (this Hawaii Appellate Court opinion has not been released for publication. Presumably either a petition for reconsideration or a petition for certiorari are pending.)

The issue on remand does not involve the use or access to the State lands, nor does it involve the State's geothermal plans, policies, or activities on either the Big Island or elsewhere in the State. The issue of the present denial of access is not impacted by the future policy of the State relative to geothermal development. Such development and the location of it is purely a matter of speculation. Future development, if it occurs, is not relevant to past or present denial of access to undeveloped lands.

Clearly, the Plaintiff's motivation is to expand the scope of their inquiry to gather information for use in other pending, or planned, lawsuits. Pele Defense Fund, or its individual members, are not strangers to geothermal litigation, and over the past ten years have engaged in multiple lawsuits. See Dedman v. DLNR, 69 Haw. 255 (1987); Medeiros v. Hawaii County Planning Commission, 8 Haw. App. 183 (1990); Pele Defense Fund v. Puna Geothermal Venture, Inc., 8 Haw. App. 203 (1990); Pele Defense Fund v. Puna Geothermal Venture, 9 Haw. App. 143 (1992); Ualelo v. Paty, 902 F.2d 1395; Pele Defense Fund v. Paty, 73 Haw. 578 (1992). Thus, the State requests that the Court issue a protective order prohibiting Plaintiff from taking the oral deposition of Maurice Kaya and quashing the subpoena duces tecum, and further, issue a protective order prohibiting the oral deposition and document production from Dr. Stone to the extent inquiry is made concerning matters outside the land owned by Campbell Estate and to the exact

location of the burial lava tubes on the grounds that these matters are irrelevant to the issues involved in this lawsuit.

DATED: Honolulu, Hawaii, April 16, 1993.

STATE OF HAWAII

ROBERT A. MARKS  
Attorney General of Hawaii

  
\_\_\_\_\_  
RICK J. EICHOR  
Deputy Attorney General

Attorneys for State of Hawaii

NATIVE HAWAIIAN LEGAL CORPORATION  
1164 Bishop Centre  
1164 Bishop Street, Suite 1205  
Honolulu, Hawaii 96813  
Telephone: (808) 521-2302

ALAN T. MURAKAMI 2285  
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NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, Colorado 80302  
Telephone: (303) 447-8760

YUKLIN ALULI 1428  
415-C Uluniu Street  
Kailua, Hawaii 96734  
Telephone: (808) 262-5900

Attorneys for Plaintiff  
PELE DEFENSE FUND

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	SUBPOENA DUCES TECUM
	)	
WILLIAM PATY, et al.,	)	
	)	
Defendants.	)	
	)	

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SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO THE SHERIFF OF THE STATE OF HAWAII or his Deputy or any  
Police Officer in the State of Hawaii:

YOU ARE COMMANDED to Subpoena Maurice Kaya, Energy Program  
Administrator of the Department of Business, Economic Development  
& Tourism, whose address is 335 Merchant Street, Room 108,

EXHIBIT NO. 1



Honolulu, Hawaii 96813, to appear for his deposition upon oral examination, before a notary public duly authorized by law to administer oaths, at the offices of Native Hawaiian Legal Corporation, 1164 Bishop Centre, 1164 Bishop Street, Suite 1205, Honolulu, Hawaii, on Thursday, April 22, 1993 at 1:00 p.m., and to bring with him any and all documents relating to current State of Hawaii geothermal development plans and/or policies, on the Island of Hawaii or other islands.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
CLERK OF THE ABOVE-ENTITLED COURT

RETURN OF SERVICE

Received this Subpoena Duces Tecum at \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_ and on \_\_\_\_\_

I served it on the within named \_\_\_\_\_

\_\_\_\_\_ by

delivering a copy to h\_\_ and tendering to h\_\_ the fee for one

day's attendance and the mileage allowed by law.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Deputy Sheriff, State of Hawaii

NATIVE HAWAIIAN LEGAL CORPORATION  
1164 Bishop Centre  
1164 Bishop Street, Suite 1205  
Honolulu, Hawaii 96813  
Telephone: (808) 521-2302

ALAN T. MURAKAMI 2285  
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1506 Broadway  
Boulder, Colorado 80302  
Telephone: (303) 447-8760

YUKLIN ALULI 1428  
415-C Uluniu Street  
Kailua, Hawaii 96734  
Telephone: (808) 262-5900

Attorneys for Plaintiff  
PELE DEFENSE FUND

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff,	)	Injunction)
	)	
vs.	)	SUBPOENA DUCES TECUM
	)	
WILLIAM PATY, et al.,	)	
	)	
Defendants.	)	

---

SUBPOENA DUCES TECUM

THE STATE OF HAWAII:

TO THE SHERIFF OF THE STATE OF HAWAII or his Deputy or any  
Police Officer in the State of Hawaii:

YOU ARE COMMANDED to Subpoena Dr. Fred D. Stone, of the  
University of Hawaii @ Hilo, Hawaii Community College, General  
Education Division, whose address is 523 W. Lanikala Street, Hilo

EXHIBIT NO. 2

Hawaii 96720, to appear for his deposition upon oral examination, before a notary public duly authorized by law to administer oaths, at the offices of Native Hawaiian Legal Corporation, 1164 Bishop Centre, 1164 Bishop Street, Suite 1205, Honolulu, Hawaii, on Thursday, April 22, 1993 at 9:00 a.m., and to bring with him any and all documents relating to archaeological activities in the former Puna Forest Reserve and adjoining lands, conducted pursuant to contracts with either the State of Hawaii, the Campbell Estate or True Energy Geothermal Corp. and/or Mid-Pacific Geothermal, Inc.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

CLERK OF THE ABOVE-ENTITLED COURT

RETURN OF SERVICE

Received this Subpoena Duces Tecum at \_\_\_\_\_

\_\_\_\_\_ on \_\_\_\_\_ and on \_\_\_\_\_

I served it on the within named \_\_\_\_\_

\_\_\_\_\_ by

delivering a copy to h\_\_ and tendering to h\_\_ the fee for one  
day's attendance and the mileage allowed by law.

DATED: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Deputy Sheriff, State of Hawaii

NO. 15373

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
	)	APPEAL FROM THE FINDINGS OF
vs.	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOTHERMAL CORP., TRUE )	)	
GEOTHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOTHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

1439E

JUDGMENT ON APPEAL

CERTIFICATE OF SERVICE

ROBERT A. MARKS 2163  
Attorney General  
State of Hawaii

WILLIAM M. TAM 1887  
JOHNSON H. WONG 498  
Deputy Attorneys General  
Room 300, Kekuanaoa'a Building  
465 South King Street  
Honolulu, Hawaii 96813  
Tel. No. 587-2982

Attorneys for Defendants-Appellees  
State Officials

EXHIBIT NO. 3

FILED  
Oct 26 9 08 AM '92  
ERNEST L. SABADO  
CLERK SUPREME COURT

NO. 15373

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
vs.	)	APPEAL FROM THE FINDINGS OF
	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOTHERMAL CORP., TRUE )	)	
GEOTHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOTHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

1434E

JUDGMENT ON APPEAL

Pursuant to the opinion of the Supreme Court entered on September 28, 1992, the judgment of the Third Circuit Court, State of Hawaii entered on May 20, 1991 is affirmed in part, reversed in part and remanded in part as follows:

The judgment of the lower court is affirmed in part and reversed in part. The case is remanded for trial on the claim alleging that Defendants-Appellees THE ESTATE OF JAMES CAMPBELL, FRED E. TROTTER, W.H. McVAY, P.R. CASSIDAY, HERBERT C. CORNUELLE, TRUE GEOTHERMAL ENERGY CORP., TRUE GEOTHERMAL DRILLING CO., and MID-PACIFIC GEOTHERMAL, INC. violated article XII, § 7 by the continued denial of access into the undeveloped areas of Wao Kele 'O Puna and other exchanged lands to native Hawaiian PDF members who seek access for customarily and traditionally exercised subsistence, cultural and religious practices. The judgment of the lower court is affirmed in all other respects for the reasons set forth in the opinion. There are no claims remaining against Defendants-Appellees WILLIAM PATY, MOSES KEALOHA, DOUGLAS ING, LEONARD ZALOPANY, JOHN ARISUMI, and HERBERT ARATA, and they are accordingly dismissed from the action.

DATED: Honolulu, Hawaii, OCT 26 1992.

BY THE COURT:

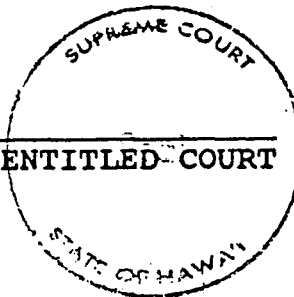
Eugene L. Sabado

CLERK OF THE ABOVE-ENTITLED COURT

APPROVED:

Robert G. Klein

JUSTICE OF THE ABOVE-ENTITLED COURT





NO. 15373

IN THE SUPREME COURT OF THE STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089 (Hilo)
	)	(Declaratory Judgment/
Plaintiff-	)	Injunction)
Appellant,	)	
	)	APPEAL FROM THE FINDINGS OF
vs.	)	FACT, CONCLUSIONS OF LAW AND
	)	DECISION AND ORDER GRANTING
WILLIAM PATY, in his capacity as)	)	DEFENDANTS' MOTIONS TO
Chairman of the Board of Land )	)	DISMISS OR, ALTERNATIVELY
and Natural Resources, State of )	)	FOR PARTIAL SUMMARY JUDGMENT
Hawaii, MOSES KEALOHA, DOUGLAS )	)	ENTERED ON MAY 20, 1991
ING, LEONARD ZALOPANY, JOHN )	)	
ARISUMI and HERBERT ARATA, in )	)	
their capacity as members of )	)	
the Board of Land and Natural )	)	
Resources, THE ESTATE OF )	)	
JAMES CAMPBELL, Deceased, )	)	
FRED E. TROTTER, W.H. McVAY, )	)	
P.R. CASSIDAY, and HERBERT C. )	)	
CORNUELLE, in their fiduciary )	)	
capacity as Trustees under the )	)	
Will of James Campbell, )	)	
Deceased, TRUE ENERGY )	)	
GEOTHERMAL CORP., TRUE )	)	
GEOTHERMAL DRILLING CO., and )	)	
MID-PACIFIC GEOTHERMAL, INC., )	)	
	)	
Defendants-	)	THIRD CIRCUIT COURT
Appellees.	)	
	)	HONORABLE ERNEST KUBOTA,
	)	JUDGE

1439E

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing document was duly served upon the following by U.S. Mail, postage prepaid, to their last known addresses on October 8, 1992:

MELODY K. MACKENZIE, ESQ.  
PAUL NAHOA LUCAS, ESQ.  
ALAN T. MURAKAMI, ESQ.  
NATIVE HAWAIIAN LEGAL CORPORATION  
1270 Queen Emma Street, Suite 1004  
Honolulu, Hawaii 96813

Attorneys for Appellant  
PELE DEFENSE FUND

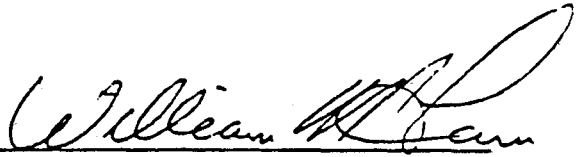
JAMES K. MEE, ESQ.  
PAUL S. AOKI, ESQ.  
ASHFORD & WRISTON  
P. O. Box 131  
Honolulu, Hawaii 96810

Attorneys for Appellees  
CAMPBELL ESTATE AND CORNUELLE

GARY B.K.T. LEE, ESQ.  
STEPHANIE A. REZENTS, ESQ.  
Kendall Building, 8th Floor  
888 Mililani Street  
Honolulu, Hawaii 96813

Attorneys for Appellees  
TRUE GEOTHERMAL ENERGY CORP.,  
TRUE GEOTHERMAL DRILLING CO.,  
and MID-PACIFIC GEOTHERMAL, INC.

DATED: Honolulu, Hawaii, October 8, 1992.

  
WILLIAM M. TAM  
Deputy Attorney General  
Attorney for Appellees  
State Officials

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089
	)	
Plaintiff,	)	AFFIDAVIT OF RICK J. EICHOR
	)	
vs.	)	
	)	
WILLIAM PATY, in his capacity	)	
as Chairman of the Board of	)	
Land and Natural Resources,	)	
State of Hawaii, MOSES	)	
KEALOHA, DOUGLAS ING, LEONARD	)	
ZALOPANY, JOHN ARISUMI and	)	
HERBERT ARATA, in their	)	
capacity as members of the	)	
Board of Land and Natural	)	
Resources; The Estate of	)	
JAMES CAMPBELL, Deceased,	)	
FRED E. TROTTER, W.H. McVAY,	)	
P.R. CASSIDAY, and HERBERT C.	)	
CORNUELLE, in their fiduciary	)	
capacity as Trustees under	)	
the Will of James Campbell,	)	
Deceased, TRUE ENERGY	)	
GEOTHERMAL CORP., TRUE	)	
GEOTHERMAL DRILLING CO., and	)	
MID-PACIFIC GEOTHERMAL, INC.,	)	
	)	
Defendants.	)	

---

AFFIDAVIT OF RICK J. EICHOR

STATE OF HAWAII	)	
	)	SS.
CITY AND COUNTY OF HONOLULU	)	

RICK J. EICHOR, being first duly sworn on oath,  
deposes and says:

1. I am an attorney duly licensed to practice in  
the State of Hawaii and represent the State of Hawaii in the  
Motion for Protective Order filed herein.

2. Attached to the Motion for Protective Order are true and correct copies of the subpoena duces tecum which were served on Maurice Kaya and Dr. Fred Stone.

3. The State requests that the Court issue a protective order to prohibit the deposition of Maurice Kaya and quash the subpoena duces tecum issued to Mr. Kaya on the grounds that the matters sought in the subpoena clearly fall outside the scope of whether Campbell Estate has denied access to its lands for the purpose of exercising Plaintiff's kalipi rights.

4. The State objects to the oral deposition and subpoena duces tecum issued to Dr. Stone on the basis that Plaintiff seeks information concerning lands outside those owned by Campbell Estate, and they seek documents identifying the precise location of the burial lava tube which must remain confidential to prevent desecration of the burial sites.

5. The State does not object to the oral deposition of Dr. Stone or disclosure of records to the extent that the same is directly related to the Campbell Estate lands and/or the alleged denial of Plaintiff's kalipi rights on Campbell Estate lands and does not disclose the actual location of the burial lava tube.

6. I have spoken with Mr. Lucas in an effort to resolve this dispute, but we were unable to come to a resolution.

Further Affiant sayeth naught.

*Rick J. Eichor*  
RICK J. EICHOR

Subscribed and sworn to before me  
this 16<sup>th</sup> day of April, 1993.

L.S.

*Jo Ann M. O'Brien*  
Notary Public, State of Hawaii  
My commission expires: 3/29/96

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT  
STATE OF HAWAII

PELE DEFENSE FUND,	)	CIVIL NO. 89-089
	)	
Plaintiff,	)	NOTICE OF HEARING MOTION AND
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
WILLIAM PATY, in his capacity	)	
as Chairman of the Board of	)	
Land and Natural Resources,	)	
State of Hawaii, MOSES	)	
KEALOHA, DOUGLAS ING, LEONARD	)	
ZALOPANY, JOHN ARISUMI and	)	
HERBERT ARATA, in their	)	
capacity as members of the	)	
Board of Land and Natural	)	
Resources; The Estate of	)	
JAMES CAMPBELL, Deceased,	)	
FRED E. TROTTER, W.H. McVAY,	)	
P.R. CASSIDAY, and HERBERT C.	)	
CORNUELLE, in their fiduciary	)	
capacity as Trustees under	)	
the Will of James Campbell,	)	
Deceased, TRUE ENERGY	)	
GEOHERMAL CORP., TRUE	)	
GEOHERMAL DRILLING CO., and	)	
MID-PACIFIC GEOHERMAL, INC.,	)	
	)	
Defendants.	)	

---

NOTICE OF HEARING MOTION

TO: ALAN T. MURAKAMI, ESQ.  
PAUL F. N. LUCAS, ESQ.  
STEVEN C. MOORE, ESQ.  
YUKLIN ALULI, ESQ.  
1270 Queen Emma Street, Suite 1004  
Honolulu, Hawaii 96813  
  
Attorneys for Plaintiff

MICHAEL W. GIBSON, ESQ.  
KEITH M. YONAMINE, ESQ.  
Ashford & Wriston  
Suite 1400, Alii Place  
1099 Alakea Street  
Honolulu, Hawaii 96813

Attorneys for Defendants THE ESTATE OF  
JAMES CAMPBELL, Deceased, F.E. TROTTER,  
W.H. McVAY, P.R. CASSIDAY, Trustees under  
the Will and of the Estate of James Campbell,  
Deceased, acting in their fiduciary and not  
in their individual capacities, and  
HERBERT C. CORNUELLE

BENJAMIN M. MATSUBARA, ESQ.  
GARY B.K.T. LEE, ESQ.  
JAMES M. YOSHIDA, ESQ.  
Matsubara, Lee & Kotake  
Suite 800, Kendall Building  
888 Mililani Street  
Honolulu, Hawaii 96813

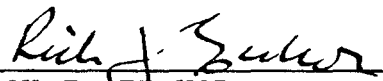
Attorneys for Defendants  
TRUE ENERGY GEOTHERMAL CORP., TRUE  
GEOTHERMAL DRILLING CO., and MID-PACIFIC  
GEOTHERMAL, INC.

PLEASE TAKE NOTICE that the foregoing State of  
Hawaii's Motion for Protective Order, and an Order to Quash  
Subpoena Duces Tecum, will be heard before the  
Honorable Riki May Amano, Judge of the above-entitled Court, by  
telephone conference, on Wednesday, the 21st day of April,  
1993, at 9:30 a.m. o'clock, or as soon thereafter as counsel  
may be heard.

DATED: Honolulu, Hawaii, April 16, 1993.

STATE OF HAWAII

ROBERT A. MARKS  
Attorney General of Hawaii

  
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RICK J. EICHOR  
Deputy Attorney General  
Attorneys for State of Hawaii


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 1993, a copy of the foregoing State of Hawaii's Motion for Protective Order, and an Order to Quash Subpoena Duces Tecum and supporting papers were duly served on the foregoing parties by mailing the same, postage prepaid.

DATED: Honolulu, Hawaii, April 16, 1993.

STATE OF HAWAII

ROBERT A. MARKS  
Attorney General of Hawaii

  
\_\_\_\_\_  
RICK J. EICHOR  
Deputy Attorney General  
Attorneys for State of Hawaii