

STATEMENT OF RIGHTS

HAWAIIAN GATHERING RIGHTS

The Hawai'i State Constitution recognizes "Traditional And Customary Rights" as follows:

Section. 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

AHUPUA'A TENANT GATHERING RIGHTS

The Hawai'i Revised Statutes 7 - 1 (1976) continues to recognize gathering rights that were granted to ahupua'a tenants in 1851, after private property or allodial titles were first established:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided, that this shall not be applicable to wells and water-courses, which individuals have made for their own use.

In 1982, the Hawai'i Supreme Court interpreted this statute as follows:

We believe that this balance is struck, consistent with our constitutional mandate and the language and intent of the statute, by interpreting the gathering rights of 7 - 1 to assure that lawful occupants of an ahupua'a, may for the purposes of practicing native Hawaiian customs and traditions, enter undeveloped lands within the ahupua'a to gather those items enumerated in the statute. Such activities would, of course, be subject to further governmental regulation. (Kalipi v. Hawaiian Trust Co Vol. 66 Haw p. 1-13, 1982)

CEDED LANDS RIGHTS

The Wao Kele O Puna Natural Area Forest Reserve is part of the 1.5 million acres of Crown and Hawaiian Kingdom government lands that were confiscated by the Provisional Government at the time of the 1893 overthrow and then ceded to the U.S. government at the time of Annexation in 1898. Transferred at statehood, they are known today as the ceded public lands trust, and managed by the State of Hawai'i's Department of Land and Natural Resources (DLNR) for two beneficiaries - the native Hawaiians and the general public. Section 5 (f) of the Admissions Act says the land is to be used for five purposes:

The support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use.

In 1985, the DLNR gave 27,000 acres of the Wao Kele O Puna to Campbell Estate in exchange for 25,000 acres at Kahauale'a. However, 12,000 acres at Kahauale'a are covered with freshly erupted lava, 1,200 acres are wood chipped, and 5,600 acres is promised to the Volcano National Park. This leaves our public land trust with only 3,200 acres of forested land. Campbell Estate needed the land exchange when Pele began to erupt right at the center of their Kahauale'a land. Pu'u O'o and a new lava lake now cover the area originally planned for geothermal wells.

Two years ago, Kaoleleo Ulaleo, an ahupua'a tenant of Kalapana, and the Pele Defense Fund filed a suit against this unjust exchange of the Hawaiian public trust lands for Campbell Estate lands. The suit claims that the land exchange was illegal and accuses the DLNR of breach of trust in not looking out for the interests of native Hawaiians. Ulaleo argues that he will no longer be able to gather in the forest of his ahupua'a or conduct religious and cultural ceremonies to his 'aumakua, as he has done since childhood with his kupuna. The court has not even made a final decision on the Ulaleo/Pele Defense Fund claims against the DLNR and the geothermal developers are destroying the Wao Kele O Puna Forest. They have bulldozed and graded a road and drilling pad. Their permit only allowed them to clear 5 acres but they cleared 8 acres and were fined \$16,000. Since then, they cleared another 20 acres, put a gate on the road that they built and hired a 24 hour security guard.

We believe that the Wao Kele O Puna is still part of the ceded public land trust and do not recognize Campbell Estate to be the owner of our forest. We believe that Hawaiians have the right of access to ceded public lands for the gathering of plant and tree materials and to hunt. Access to the forest is part of our birthright. Access to the Wao Kele O Puna should be kept open to our people for customary gathering and spiritual practices.

The ceded public lands is at the heart of our sovereign claims as a Hawaiian nation. If our ceded lands can be unfairly exchanged away and access to them cut off, it reduces the amount of land over which we have sovereign claims.

RELIGIOUS RIGHTS

The First Amendment of the U.S. constitution, "Freedom of Religion and Establishment" reads:
Congress shall make no laws respecting an establishment of religions or prohibiting the free exercise thereof...

The Hawaiians of Puna and Ka'u trace ancestry to Pele and her family who dwell in the Kilauea volcano and surrounding forests. Geothermal wells will dig into the volcano to draw out steam to run turbines to generate electricity. To those of us who believe in Pele, this is poking into our god to draw out her blood and life force. This desecrates and violates our religious beliefs, customs and practices. For our 'aumakua, our kupuna, our keiki and future generations of Hawaiians, we cannot let this happen. We cannot let this part of our lives as Hawaiians die.

ACCESS RIGHTS TO THE PUBLIC FOREST

Wao Kele O Puna, meaning Puna rain belt, is the last lowland tropical rainforest on Hawai'i. It was set aside as a Natural Area Reserve to protect, forever, the rare native Hawaiian plants, birds and insects that dwell there. 95 percent of the plants and animals here are found nowhere else in the world. Their ability to regenerate on the barren lava holds the key to the evolution of all life. This forest is alive with plants for subsistence and existence - food, healing, making lei, carving, and beauty. The general public has the right to access public forest lands for hiking and recreation. If allowed to become private land, public access to this area will be difficult. Geothermal development will kill the forest.